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FEDERAL PANDEMIC UNEMPLOYMENT INSURANCE DEPARTMENT OF LABOR GUIDANCE

The Department of Labor issued an Advisory Letter related to the Federal Pandemic Unemployment Insurance Program. The guidance identified the types of unemployment compensation benefits that an individual must receive to be entitled to the pandemic unemployment compensation; and included important program dates and details. The DOL Guidance can be found [here](#) and is excerpted below. Arkansas specific procedural information is found at the conclusion of this document.

- **Programs which entitle an individual to receive FPUC.** This program provides an additional **\$600 per week** to individuals who are collecting regular Unemployment Compensation through their state unemployment departments, as well as the following unemployment compensation programs:
 - Pandemic Emergency Unemployment Compensation
 - Pandemic Unemployment Assistance
 - Extended Benefits
 - Short-Time Compensation
 - Trade Readjustment Allowances
 - Disaster Unemployment Assistance; and
 - Payments under the Self-Employment Assistance program (collectively, the “Unemployment Program”).

A number of state laws include provisions for extending the potential duration of benefits during periods of high unemployment for individuals in approved training who exhaust benefits, or for a variety of other reasons. Although some state laws call these programs “extended benefits,” the Department uses the term “additional benefits” (AB) to avoid confusion with the Federal-State EB program. FPUC is not payable to individuals who are receiving AB payments.

- **Important program dates.** FPUC is payable for weeks of unemployment beginning on or after the date on which the state enters into an agreement with the Department. Arkansas has entered into the agreement with the Federal Department and the Arkansas Department of Workforce Services has begun implementing procedures to pay the \$600/week. According to Commerce Secretary Mike Preston, the first wave of \$600/week checks went out on April 7, 2020. In states where the week of unemployment ends on a Saturday, the first week for which FPUC may be paid was the week ending April 4, 2020, provided an agreement was in place no later than March 28, 2020. In states where the week of unemployment ends on a Sunday, the first week for which FPUC may be paid was the week ending April 5, 2020, provided an agreement was in place no later than March 29, 2020.

The \$600 FPUC payment is not payable for any week of unemployment ending after July 31, 2020. Accordingly, in states where the week of unemployment ends on a Saturday, the last week that FPUC may be paid is the week ending July 25, 2020. For states where

the week of unemployment ends on a Sunday, the last week that FPUC is payable is the week ending July 26, 2020.

- **Program administration funding for FPUC program.** The cost of these additional \$600 payments to eligible individuals each week is 100% federally funded. States may not charge employers for any FPUC benefits paid. The FPUC program is administered through a voluntary agreement between a state and the Department. Implementation costs and ongoing administrative costs for this program are also 100% federally funded.

Processing Payments for FPUC.

1. Notification to Claimants. The state must notify a potentially eligible individual of his or her entitlement to FPUC. Such notification should include both the beginning and ending dates for the FPUC program. States have flexibility in the method of providing this notification. States will decide eligibility for FPUC based on eligibility for the underlying program eligibility; individuals do not have to separately apply for FPUC.

2. Applicability of State Law and Underlying Eligibility Requirements. Except where inconsistent with the CARES Act or with the operating instructions promulgated to carry out the CARES Act, all terms and conditions of the state UC law or any federal law applicable to claims for and payment of regular UC or any of the underlying benefits listed below apply to the payment of FPUC. An individual is not entitled to receive FPUC for a week in which the individual is ineligible for regular UC or the underlying benefit from another federal program.

3. Allowable Methods of Payment. States must issue payments of FPUC as soon as administratively feasible. States have some flexibility in how they issue FPUC payments; states may pay the additional \$600 either: (a) as an amount which is paid at the same time and in the same manner as any regular UC otherwise payable for the week involved; or (b) at the option of the state, by payments which are made separately from, but on the same weekly basis as, any regular UC otherwise payable.

4. Payment Calculations for FPUC. The CARES Act requires the additional \$600 FPUC to be paid to individuals “in amounts and to the extent that they would be determined if the State law of the State were applied with respect to any week for which the individual is . . . otherwise entitled under the State law to receive regular compensation.” This includes the Unemployment Programs.

- a. Determining entitlement to FPUC.
 - i. States will calculate the weekly benefit amount, for the programs outlined above.
 - ii. If the individual is eligible to receive at least one dollar (\$1) of underlying benefits for the claimed week, the claimant will receive the full \$600 FPUC.
 - iii. Individuals whose underlying benefit payments are intercepted to pay debts (e.g., overpayments) are eligible for the \$600 FPUC, even if 100% of their weekly benefit amount is intercepted. Benefits intercepted to pay debts are considered to be compensation for the week.
5. Child Support. Child support obligations must be deducted from FPUC payments in the same manner and to the same extent as these obligations are deducted from regular UC.

6. **Taxable Income.** The \$600 FPUC is taxable. Therefore, states must include FPUC when preparing 1099Gs, and must, consistent with Section 3304(a)(18), FUTA (26 U.S.C. §3304(a)(18)), withhold taxes from the weekly benefit amount and from the \$600 FPUC, when an individual elects to have taxes withheld.

Appeals and Hearings. The CARES Act requires that FPUC determinations are subject to review in the same manner and to the same extent as determinations under the state UC law, and only in that manner and to that extent.

Individuals are automatically eligible for FPUC if they are eligible for the underlying benefit. Therefore, the only grounds to deny FPUC to an individual is the individual's ineligibility for one of these benefits. If an individual files an appeal on the state's determination to deny an individual FPUC, all documents relevant to the denial of the underlying benefit determination must be transmitted to the appeals division, in addition to the determination documentation for the state's decision to deny FPUC. The appeals division must consider the merits of the state's denial of the underlying benefit when determining eligibility for FPUC payments.

Fraud and Overpayments.

1. **Fraud.** An individual commits fraud if he or she knowingly has made or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of FPUC to which such individual was not entitled.

An individual who has committed fraud and was subsequently disqualified for a week that included a payment of FPUC is therefore ineligible for additional FPUC in accordance with the provisions of the applicable state UC law relating to fraud in connection with a claim for UC and is subject to prosecution.

The CARES Act only provides for an individual being ineligible for future benefits in accordance with the applicable provisions of state UC law, it does not permit the establishment of a penalty on FPUC that was fraudulently obtained, so states may not impose fraud penalty provisions on FPUC payments.

2. **Overpayments.** An FPUC overpayment occurs when an individual has received an FPUC payment to which he or she is not entitled. If an individual is deemed ineligible for regular compensation in a week and the denial creates an overpayment for the entire weekly benefit amount, the FPUC payment for the week will also be denied. And the FPUC overpayment must also be created.

Section 2104(f)(2) of the CARES Act requires individuals who have received FPUC overpayments to repay these amounts to the state agency, except as provided in the Waiver of Overpayments section below.

3. **Opportunity for a Hearing.** A state may not require repayment of an FPUC overpayment until it determines that the payment was an overpayment, the individual was provided notice of the determination, the individual had an opportunity for a fair hearing, and the determination is final.

4. **Waiver of Overpayments.** The state has authority to waive repayments of FPUC if the payment was without fault on the part of the individual and such repayment would be contrary to equity and good conscience.

ARKANSAS UNEMPLOYMENT

Workers who have become separated from employment as a result of the COVID-19 Pandemic should file their unemployment insurance claims through the Arkansas Division of Workforce Services.

There are multiple ways to apply for unemployment benefits:

1. File online at www.ezarc.adws.arkansas.gov . We encourage patience, however, as we understand the EZARC online application system is experiencing delays. Currently the hub is being saturated from all States due to the COVID-19. Claimants are asked to only enter a Social once, not several times.
2. Call the nearest Workforce Center directly, or call 1-855-225-4440. While it is not recommended, you may visit your nearest workforce center.
3. Effective Monday, March 23, 2020, a Temporary Claims Processing Hotline will be available for affected workers who require assistance in filing their unemployment claims. The Temporary Claims Processing Hotline can be reached at 1-844-908-2178 or 501-534-6304 from 8 a.m. to 3:30 p.m.

With states responding to increased volumes of initial UI claims related to COVID-19 shutdowns, the national claims filing hub is facing some transaction processing issues and delays. Configuration changes have been made to accommodate the volume increase and reduce response time delays.

Effective March 18, 2020, Governor Hutchinson authorized the following unemployment insurance waivers for 30 days:

- Waived one-week waiting period, allowing ADWS to pay claims more quickly.
- Waived work-search requirement, allowing unemployed to receive benefits without seeking employment.
- Waived requirement for in-person follow-up after a claim has been filed, allowing the unemployed to apply for benefits online or by telephone, thus furthering the effort to minimize the risk of spreading COVID-19.

After filing an initial claim for unemployment benefits, claimants will need to file weekly claims to receive benefits, either by ArkNet or ArkLine. Claimants will need to begin filing weekly claims on the Sunday following the day that the initial claim was filed.

The amount a claimant will receive in unemployment insurance benefits is determined by the amount of wages earned in their base period. The base period is the first four of the last five completed quarters of employment. Arkansas' weekly benefit amounts range from \$81 to \$451 per week.

If a business has a temporary reduction in its workforce for a period of 10 weeks or less, its workers will not be required to seek new employment. It is recommended that the business provide a letter to their workers with a specific return work date that is within 10 weeks of their last day of work. This letter will expedite the process. Affected workers should provide this letter to DWS.

Arkansas DWS reported that they have started the process related to the expanded unemployment benefits, including those of **self-employed workers** and **individual contractors**. On April 8, 2020, Commerce Secretary Mike Preston said that it will take approximately three weeks to build the new system to provide unemployment benefits for self-employed workers and independent contractors. The state will backdate those claims and payments.