

**STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN COMPENSATION APPELLATE COMMISSION**

In the Matter of the Claim of:

Christine M. Holifield,

Appeal No. 20-024143

Claimant-Appellant,

Case No. 24375735

v.

ALJ: Lindsay Wilson

**Michigan Unemployment Insurance
Agency,**

Claimant SSN: [REDACTED]

Appellee.

CLAIMANT'S REVISED WRITTEN ARGUMENT AND SUPPORTING EXHIBITS

INTRODUCTION

On April 21, 2020, Claimant-Appellant Christine Holifield filed a claim for federal Pandemic Unemployment Assistance ("PUA"). The Unemployment Insurance Agency ("UIA") found that Ms. Holifield was eligible for PUA. Ms. Holifield was one of thousands of self-employed individuals and business owners who lost income due to the novel coronavirus pandemic through no fault of their own. Prior to the pandemic, Ms. Holifield worked as a self-employed independent contractor and business owner doing work in auction houses. Ms. Holifield receives Social Security Disability Insurance ("SSDI") and worked only part-time due to her health condition. When auction houses closed due to the coronavirus pandemic, Ms. Holifield lost her part-time income stream.

Congress created PUA in order to protect individuals who would not otherwise be eligible for regular state unemployment benefits, but who nonetheless suffered financially as a

result of the coronavirus pandemic, to qualify for supplemental federal unemployment benefits. Despite this purpose, nearly half a year after finding Ms. Holifield eligible for PUA, the UIA issued a Redetermination on October 16, 2020 finding her ineligible for PUA benefits under the Michigan Employment Security Act (“MESA”) based on her inability to work “full-time”. On December 8, 2020, Administrative Law Judge (“ALJ”) Lindsay Wilson found that the claimant had lost her part-time employment for a COVID-qualifying reason but upheld the Agency’s Redetermination based on Ms. Holifield’s inability to work full-time.¹ The ALJ decision failed to consider the text of and the purpose behind the PUA. Judge Wilson’s holding sets problematic precedent by rendering Ms. Holifield and similarly situated claimants who have lost part-time income as a result of the coronavirus pandemic ineligible for PUA benefits. It is not consistent with the approach of other ALJs in this state, or with the approach of other states and their Attorneys General.

The PUA program is a form of disaster relief fully funded by federal disaster assistance funds under the framework of the Disaster Unemployment Assistance (DUA) laws. If allowed to stand, the restrictive and erroneous interpretation by the ALJ would result in Claimant liability to return over \$10,000 in disaster assistance. In the aggregate, thousands of PUA recipients would be held ineligible under this standard, resulting in millions of dollars of federal disaster relief leaving the state. There is no legal *or policy* reason to support such a restrictive interpretation.

ARGUMENT

I. State Standards for Regular Unemployment Insurance Apply to PUA Only to the Extent They Do Not Directly Conflict with Federal Law Under the CARES Act.

Congress enacted the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act to protect the income of individuals who, although not eligible for traditional unemployment

¹ The ALJ decision is attached as Exhibit 1.

benefits, nonetheless lost income due to the coronavirus pandemic. Section 2102(a)(3)(A)(i) of the CARES Act defines a “covered individual” for PUA benefits as an individual who “is not eligible for regular compensation or extended benefits under State or Federal law.” This was understood to include individuals who had lost part-time employment, such as full-time students who lost internships and individuals with two part-time jobs who suffered a job loss due to the pandemic.

Section 2102(a)(3)(A)(ii)(I) of the CARES Act provides that an individual must self-certify that she “is otherwise able to work and available for work within the meaning of applicable State law.” The requirements of Section 2102(a)(3)(A)(i) and Section 2102(a)(3)(A)(ii)(I) conflict. If these two provisions are read literally together, an individual who is not “able and available for work” under state law is ineligible for PUA, despite being a PUA-covered individual due to ineligibility for regular state unemployment benefits. The only coherent reading, then, is that the CARES Act intends that state eligibility requirements be inapplicable to the extent they conflict with PUA eligibility criteria.

The legislative history confirms the purpose and intent of the Cares Act to provide federal disaster assistance to the Claimant and others like her who lost part-time work due to the pandemic but are unable to work full time:

Can someone receive Disability Insurance benefits and UI benefits at the same time?

Yes.

- The Unemployment Insurance (UI) program assists unemployed individuals by offering weekly benefit checks while they look for work. In order to be eligible, jobless workers must have a history of attachment to the workforce and must be able to and available for work.
- To qualify for Disability Insurance (DI) benefits, a person must be unable to engage in substantial gainful activity because of a medically determinable impairment that is expected to last 12 months or result in death.
- *Currently, a person can receive UI benefits (which requires an individual be willing and able to work) while also receiving DI benefits (be unable to work).*

(Ex. 2, COVID-19 Pandemic Unemployment Insurance Law, Guidance and FAQs at p.14

(Prepared by Ways and Means Republican Staff as of April 20, 2020)).

The US Department of Labor has also confirmed in its interpretation that although individuals must be “able and available” under the PUA program, “...states have flexibility to determine what type of work is suitable for an individual and what it means for that individual to be able, available, and seeking work, even when quarantined or otherwise affected by COVID-19.” Furthermore:

Under 20 CFR 604.S(a), a state may consider an individual available for work under any of the following circumstances:

- (1) The individual is available *for any work for all or a portion of the week* claimed, provided that any limitation placed by the individual on his or her availability does not constitute a withdrawal from the labor market.
- (2) The individual limits his or her availability to work which is suitable for such individual as determined under the State UC law, provided the State law definition of suitable work does not permit the individual to limit his or her availability in such a way that the individual has withdrawn from the labor market ...
- (3) The individual is on temporary lay-off and is available to work only for the employer that has temporarily laid off the individual.

Further, the regulations explicitly address individuals whose most recent separation occurred due to illness or physical injury, explaining that they may be considered able to work and available for work until such time as they are offered suitable employment and decline it due to that illness or injury (20 CFR 604.4(b)).

(Ex. 3, U.S. Department of Labor, Unemployment Insurance Program Letter 10-20 at p. 3).

II. The CARES Act Explicitly Extends Benefits to Individuals Seeking Part-Time Work Only—Individuals Who Would Otherwise be Ineligible for Regular State Unemployment Benefits.

Section 2102(3)(A)(ii)(II) of the CARES Act explicitly covers workers who have lost part-time work or are seeking part-time work but unable to return to the workforce for a COVID-qualifying reason. For CARES Act eligibility, an individual must self-certify that he or she “is

otherwise able to work and available for work within the meaning of applicable State law” or “is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for regular unemployment benefits under State or Federal law.” CARES Act Sections 2102(3)(a)(ii)(I), (II). Thus, Section 2102(3)(a)(ii)(II) explicitly covers individuals seeking part-time work, yet Michigan’s standard if read to require “full-time availability contradicts the requirement of Section 2102(3)(A)(ii)(I). To avoid a conflict between the federal law’s explicit extended coverage to part-time workers and the state’s “able and available” work standard, the state cannot interpret the “full-time” language of Section 28 of the Michigan Employment Security Act to apply to PUA recipients. Otherwise, the CARES Act would technically cover individuals seeking or only able to accept part-time work, yet those explicitly *eligible* individuals would be simultaneously and practically *ineligible* based on their inability to seek full-time work. (See, e.g. Ex. 4, *In the Matter of: Hayat Muse* (Minn. Ct. of Appeals) (holding full time high school student eligible for PUA under the CARES Act despite state UI restrictions to the contrary). Other ALJ’s in Michigan would agree. (Ex 5, ALJ Opinion of David Marmon) (“Claimant testified that she did qualify for regular unemployment assistance when she initially applied in April and instead was awarded benefits under the PUA program. Under this program, *claimant is only required to be available for part time work*”). Consequently there is a profound need for guidance from the UIAC.

III. The Department of Labor Has Endorsed the Interpretation that Individuals Receiving SSDI May Be Eligible for PUA Benefits.

The Department of Labor has suggested that the CARES Act’s PUA coverage should be interpreted in favor of eligibility. In a letter to the Wisconsin Department of Workforce Development, the Department of Labor (“DOL”) applied this tenet to questions regarding PUA eligibility of individuals receiving SSDI. The DOL clarified that because “the plain language text

of the Wisconsin law... would disqualify individuals who receive SSDI from eligibility,” individuals in Wisconsin who receive SSDI are ineligible for regular unemployment insurance and therefore “meet the PUA eligibility requirement of ‘not eligible for regular compensation.’” (Ex 6, U.S. Dep’t Lab., Letter on Pandemic Unemployment Assistance Eligibility (July 27, 2020)). The crux of the case in Wisconsin was whether an individual receiving SSDI, and thus presumptively unable to work full-time, was “not eligible for regular compensation or extended benefits under State or Federal law.” *Id.* Despite Wisconsin’s typical requirement that individuals be able and available to work full-time in order to receive state unemployment benefits, the DOL made no reference to the “able to work and available” under the state law eligibility requirement of Section 2102(a)(3)(ii)(I). *Id.*

By definition, SSDI recipients are unable to work full-time. To qualify for SSDI, an individual must not be able to engage in “substantial gainful activity” due to a physical or mental impairment. 42 U.S.C. § 423(d)(1)(A). SSDI guiding regulations state that even part-time work may constitute substantial gainful activity. 20 C.F.R. § 404.1572(a). Wisconsin unemployment eligibility standards require that a claimant be “able to work and available for work” for each benefits week. Wis. Stat. § 108.04(2)(a)(1). Wisconsin law defines full-time as “work performed for 32 or more hours per week.” Ex. 7, Wis. Stat. § 108.02(15s). Furthermore, Wisconsin law also specifically precludes from eligibility for unemployment benefits those receiving SSDI. Wis. Stat. Ann. § 108.04(12)(f)3.a. Normally, then, a claimant cannot be simultaneously eligible for unemployment insurance benefits in Wisconsin and SSDI. However, in reviewing the CARES Act, the DOL specifically contemplated that an individual receiving SSDI in Wisconsin “may be eligible for PUA” benefits despite an inability to work full-time. Wisconsin UI Agency

has agreed and subsequently confirmed that individuals on SSDI are eligible and will be qualified to receive PUA. Ex. 8, Wisconsin UI Press Release).

IV. The Department of Labor Has Explicitly Clarified That Other Part-Time Workers May Be Eligible for PUA Benefits.

DOL Program Letter 16-20 provides more evidence that state work requirements are applicable only to the extent they do not conflict with the CARES Act. (Ex. 9, U.S. Dep’t Lab., Unemployment Insurance Program Letter 16-20-Change 1 (Apr. 27, 2020)). Question 28 of Program Letter 16-20-Change 1 addresses the eligibility of full-time students who lost a part-time job for a qualifying reason. *Id.* A full-time student is not able and available for full-time work, but according to Program Letter 16-20-Change 1, this would not disqualify a student from PUA eligibility. *Id.* The DOL’s answer to Question 28 specifically states that “[p]rovided a full-time student who worked part-time is unemployed, partially unemployed, or unable or unavailable to work because of one of the COVID-19 related reasons in Section 2102(a)(3)(A)(ii)(I) of the CARES Act, then he or she may be eligible for PUA.” *Id.* Program Letter 16-20-Change 1 therefore indicates that the requirement of ineligibility “for regular compensation or extended benefits under State or Federal law” in 2102(a)(3)(A)(ii)(I) prevails over conflicting state eligibility requirements.

Sister states have seen Attorneys General act affirmatively to preserve the PUA disaster relief. In Minnesota, the State’s Attorney General recently intervened to file an *amicus curiae* brief on behalf of the right of high school students right to receive PUA assistance, despite state disqualifying language to the contrary. (Ex 10, Brief *Amicus Curiae* of Minnesota Attorney General *In the Matter of: Hayat Muse* (Minn. Ct. of Appeals)). In that matter, the Minnesota Attorney General, although respectful of its unemployment agency (known as “DEED”), found

its way to advocate on the side of claimants and against restrictive interpretations that would deprive state residents of federal pandemic unemployment assistance:

The AG understands that DEED was faced with the difficult task of interpreting and applying a relatively new federal law. DEED understandably chose to take a conservative, practical position. At this stage, however, given that this is a novel, legal question involving statutory interpretation of a clear and unambiguous, recently-enacted federal law, this Court is not required to defer to the agency's administrative decision, and should hold that the unemployment law judge erred as a matter of law.

(*Id.* at 19).

V. Judge Wilson's Interpretation Conflicts with Federal Law and Would Deny Thousands of Disabled Michigan Citizens Access to Federal Disaster Relief Aid Explicitly Granted Them in the CARES Act.

Section 28(1)(c) of the Michigan Employment Security Act specifies that an individual must be "able and available . . . to perform suitable full-time work" to be eligible to receive unemployment benefits. MCL 421.28(1)(c). The CARES Act provides that an individual who is not able and available to work full-time in Michigan would satisfy the PUA requirement that she "is not eligible for regular [unemployment] compensation." However, this same individual would fail the requirement that she "is otherwise able to work and available for work within the meaning of applicable State law." Judge Wilson concluded that when a potential claimant fulfills one contradictory requirement and fails the other, he or she is ineligible for PUA benefits. This holding is inconsistent with state and federal guidelines and with the text and purpose of the CARES Act.

The DOL Wisconsin Letter and Program Letter 16-20 illustrate how to resolve this conflict. To the extent that the state unemployment eligibility requirements conflict with those of the CARES Act, the state requirements are inapplicable. Applying Judge Wilson's logic to the Wisconsin Letter, an individual receiving SSDI in Wisconsin is not "otherwise able to work and

available for work within the meaning of applicable State law” and is therefore ineligible for PUA—the opposite conclusion the DOL reached.

Similarly, a full-time student who worked part-time prior to the coronavirus pandemic would not be able and available for full-time work under the Michigan Employment Security Act. *See* MCL 421.28(1)(c). Yet, DOL Program Letter 16-20-Change 1 explicitly contemplates that such a student would be eligible for PUA.

Judge Wilson’s ruling also contradicts public information disseminated by the Michigan Unemployment Insurance Agency (“the Agency”). According to an April 2020 PUA Fact Sheet issued by the Agency, “individuals who are self-employed, independent contractors . . . and part-time workers may qualify for unemployment benefits.” (Ex. 11, Mich. Unemployment Ins. Agency, PUA Fact Sheet 172 (Apr. 2020)). This statement could not be true if the Agency were to follow Judge Wilson’s holding. The Fact Sheet both asserts that “[i]ndividuals are eligible for PUA if they do not qualify for regular UI benefits and cannot work” because of a qualifying coronavirus-related reason and provides for coverage for part-time workers. *Id.* Denying benefits to an individual who lost part-time work due to the coronavirus pandemic and is able to seek only part-time work thus contravenes state and federal guidelines.

VI. Applying a Strict Interpretation Section 28 of the Michigan Employment Security Act Here Would Deny PUA Benefits to Disabled Citizens while Allowing Benefits for Others Who Cannot Seek Full-Time Work.

Ms. Holifield is one of thousands of independent contractors, business owners, and part-time workers who lost income due to the coronavirus pandemic. As an individual who is qualified for and receives SSDI benefits due to a health condition, Ms. Holifield is not able and available for full-time work and is therefore typically ineligible for regular unemployment

benefits. Notwithstanding the text and purpose of the CARES Act, Judge Wilson held that Ms. Holifield's ineligibility for regular state unemployment benefits also precluded PUA eligibility.

In enforcing the CARES Act's PUA eligibility requirements, unemployment agencies and courts are tasked with interpreting both new and old law in favor of eligibility. This broad application of PUA benefits to individuals who lost part-time work, including many disabled individuals who collect SSDI, is supported by the DOL's and the State of Michigan's guidance. Judge Wilson's ruling would deny equal access to PUA benefits to disabled citizens who collect SSDI and lost part-time work due to the coronavirus pandemic. Therefore, the requirement of Section 28(1)(c) of the Michigan Employment Security Act that workers be able and available for *full-time* work conflicts with the CARES Act and therefore "full time" provisions cannot be applied to otherwise-eligible PUA beneficiaries.

CONCLUSION AND RELIEF REQUESTED

Ms. Holifield is unable to work "full-time" due to a health condition, but she lost her long term part-time self-employment as a result of the coronavirus pandemic. This is exactly the type of individual Congress sought to protect when they created PUA. Ms. Holifield respectfully requests that the Commission reverse the ALJ's decisions.

Respectfully submitted,

/s/ David M. Blanchard

David M. Blanchard (P67190)
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Dated: March 1, 2021

PROOF OF SERVICE

I, Leslie Wenzel, hereby certify that on March 1, 2021, I served a copy of the foregoing document upon all interested parties identified below:

Unemployment Insurance Agency
3024 W. Grand Blvd.
Detroit, MI 48202
Via Facsimile to (517) 636-0427
Appellee

Talent Investment Agency
UIA Admin. Law & Rules Section
3024 W. Grand Blvd., Ste. 12-100
Attn: Jonathan Zadoff
Detroit, MI 48202
Via Email to zadoffj@michigan.gov
Additional Party

Rebecca M. Smith
Department of Attorney General
Labor Division
P.O. Box 30736
Lansing, MI 48909
Via Email to SmithR72@michigan.gov

/s/ Leslie M. Wenzel

Leslie Wenzel

Index of Exhibits

- Exhibit 1: December 8, 2020 ALJ Wilson Decision
- Exhibit 2: COVID-19 Pandemic Unemployment Insurance Law, Guidance and FAQs at p.14
- Exhibit 3: U.S. DOL Unemployment Insurance Program Letter 10-20 at p.3
- Exhibit 4: *In the Matter of: Hayat Muse* (Minn. Ct. of Appeals)
- Exhibit 5: ALJ Marmon Opinion
- Exhibit 6: July 27, 2020 U.S. DOL Letter on Pandemic Unemployment Assistance Eligibility
- Exhibit 7: Wis. Stat. § 108.02(15s)
- Exhibit 8: Wisconsin UI Press Release
- Exhibit 9: April 27, 2020 U.S. DOL Unemployment Insurance Program Letter 16-20 Change 1
- Exhibit 10: Brief *Amicus Curiae* of Minnesota Attorney General *In the Matter of: Hayat Muse*
- Exhibit 11: Michigan Unemployment Insurance Agency, PUA Fact Sheet 172

Exhibit 1



Docket No.: 20-024143
Case No.: 24375735
Employer:
Claimant: CHRISTINE M HOLIFIELD
SSN: [REDACTED]

RECEIVED

DEC 11 2020

DAVID BLANCHARD
DAVID BLANCHARD
221 N. MAIN STREET, SUITE 300
ANN ARBOR, MI 48104

This is an important legal document. Please have someone translate the document.

هذه وثيقة قانونية مهمة، يرجى أن يكون ذلك شخص ما يترجم المستند.
এটি একটি গুরুত্বপূর্ণ আইনি ডকুমেন্ট। দয়া করে কেউ দস্তাবেজ অনুবাদ করুন।

Este es un documento legal importante. Por favor, que alguien traduzca el documento.

这是一份重要的法律文件，请让别人翻译文件。

Ky është një dokument ligjor i rëndësishëm. Ju lutem, kini dikë ta përkthetë dokumentin.

ORDER

The Agency's October 16, 2020 Redetermination is affirmed.

The claimant is ineligible from receiving benefits pursuant to the ability provision, Section 28(1)(c), of the Michigan Employment Security Act (Act).

Further determinations consistent with this decision are left to the Agency.

Decision Date: December 8, 2020


LINDSAY WILSON
ADMINISTRATIVE LAW JUDGE

20-024143

PARTICIPANTS

		12-01-20			
		Sworn		Sworn	Sworn
Claimant	Christine Holifield	X	X		
Representative	David Blanchard, Attorney for Claimant	X			
Witness					
Witness					
Witness					
Witness					
Employer					
Representative					
Witness					
Witness					
Witness					
Witness					
Witness					
Witness					

EXHIBITS

NO	SUBMITTED BY			DOCUMENT DATED	FORM NO	DOCUMENT DESCRIPTION
	UIA	E	C			

JURISDICTION

On November 12, 2020, the claimant timely appealed an October 16, 2020 Unemployment Insurance Agency (Agency) Redetermination which held the claimant ineligible for benefits under the ability provision, Section 28(1)(c), of the Michigan Employment Security Act (Act), beginning June 28, 2020 and continuing.

ISSUE

Is the claimant ineligible for benefits under the ability provisions of Section 28(1)(c) of the Act?

APPLICABLE LAW

Section 28 of the Act provides:

(1) An unemployed individual is eligible to receive benefits with respect to any week only if the unemployment agency finds all of the following:

(c) The individual is able and available to appear at a location of the unemployment agency's choosing for evaluation of eligibility for benefits, if required, and to perform suitable full-time work of a character that the individual is qualified to perform by past experience or training, which is of a character generally similar to work for which the individual has previously received wages, and for which the individual is available, full time, either at a locality at which the individual earned wages for insured work during his or her base period or at a locality where it is found by the unemployment agency that such work is available. An individual is considered unavailable for work under any of the following circumstances:

(i) The individual fails during a benefit year to notify or update a chargeable employer with telephone, electronic mail, or other information sufficient to allow the employer to contact the individual about available work.

(ii) The individual fails, without good cause, to respond to the unemployment agency within 14 calendar days of the later of the mailing of a notice to the address of record requiring the individual to contact the unemployment agency or of the leaving of a telephone message requesting a return call and providing a return name and telephone number on an automated answering device or with an individual answering the telephone number of record.

(iii) Unless the claimant shows good cause for failure to respond, mail sent to the individual's address of record is returned as undeliverable and the telephone number of record has been

disconnected or changed or is otherwise no longer associated with the individual.

The claimant has the burden of proving eligibility for unemployment benefits. *Dwyer v UCC*, 321 Mich 178 (1948).

* * *

Section 2102(a)(3) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act provides in pertinent part:

(3) Covered Individual. – The term “covered individual” –

(A) means an individual who – ***

(ii) provides self-certification that the individual—

(I) is otherwise able to work and available for work within the meaning of applicable State law, except the individual is unemployed, partially un-employed, or unable or unavailable to work because— ***

(jj) the individual's place of employment is closed as a direct result of the COVID–19 public health emergency;

FINDINGS OF FACT

The claimant filed a claim for Pandemic Unemployment Assistance (PUA) on April 21, 2020 and established a benefit year beginning March 22, 2020. Prior to filing her claim for PUA benefits, the claimant was working as a 1099 independent contractor at various auction houses. However, as a result of the COVID-19 pandemic, the auction houses shut-down their operations.

The claimant is currently receiving Social Security Disability Insurance (SSDI). Based on her receipt of SSDI, the claimant is only able to work part-time.

REASONING AND CONCLUSIONS OF LAW

As noted above, the claimant filed a PUA claim under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Section 2102(a)(3)(A)(ii)(I) of the CARES Act defines a “covered individual” as someone who “is otherwise able to work and available for work within the meaning of applicable State law, except the individual is unemployed, partially unemployed, or unable or unavailable to work because . . .”.

Under Section 28(1)(c) of the Michigan Employment Security Act, an individual shall be eligible to receive benefits if the individual is “able and available . . . to perform suitable

20-024143

full-time work of a character which the individual is qualified to perform by past experience or training." The claimant has the burden of proving eligibility for unemployment benefits. *Dwyer v UCC*, 321 Mich 178 (1948).

Here, it was undisputed that the claimant was not able to work full-time within the meaning of Section 28(1)(c) of the Act. The claimant acknowledged she is only able to work part-time due to her receipt of SSDI. Although the claimant's separation from part-time work was due to a COVID-19 related reason, the CARES Act still requires the claimant to be able to work "within the meaning of applicable State law". Since she is not able to work full-time as required under Michigan law, the claimant is ineligible for benefits pursuant to the ability provision, Section 28(1)(c), of the Act.

Of note, the claimant's counsel argued that the July 27, 2020 U.S. Department of Labor letter addressed to the State of Wisconsin Department of Workforce Development, establishes that the claimant is eligible for PUA while receiving SSDI. This letter, however, provides an analysis under applicable Wisconsin state law, but does not address the applicable Michigan state law. Additionally, the July 27, 2020 letter only states that an individual receiving SSDI *may be eligible* for a PUA benefit. Similarly, the UI Program Letter No. 16-20 Change 1, also uses the same language by stating that an individual "*may be eligible*" for PUA benefits under certain circumstances. On review of the record and the applicable law, the argument that the claimant is eligible for PUA benefits based solely on her loss of part-time work due to a COVID-19 related reason is unpersuasive.

IMPORTANT: TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME

This Order will become final unless an interested party takes ONE of the following actions: (1) files a written, signed, request for rehearing/reopening to the Administrative Law Judge, or by an office or agent office of the agency OR (2) files a written, signed, appeal to the Unemployment Insurance Appeals Commission at P.O. Box 30475, Lansing, MI 48909-7975 (Facsimile: 517-241-7326); OR (3) files a direct appeal, upon stipulation, to the Circuit Court on or before:

January 7, 2020

If you elect to file an appeal with the Unemployment Insurance Appeals Commission, your appeal should be filed within the deadline set forth in my decision/order. **Your appeal may be submitted to the Commission by US mail or fax. Additionally, you may file an appeal electronically by completing a fillable form on the Commission's website.** The website address is <https://www.michigan.gov/uiac> and that website includes instructions on how to file the appeal. Do not use your MiWAM account through the Unemployment Insurance Agency's online system to file an appeal to the Commission.

I, P. Osborne, certify a copy of this order has been sent on the day it was signed, to

20-024143

each of the parties at their respective addresses on record.

(SEE ATTACHED SHEET)

English

IMPORTANT! This document(s) contains important information about your unemployment compensation rights, responsibilities and/or benefits. It is critical that you understand the information in this document.

IMMEDIATELY: If needed, call 1-866-500-0017 for assistance in the translation and understanding of the information in the document(s) you have received.

Arabic

أ. "هناك معلومات هامة عن حقوقك الخاصة بالمعاشات البطالة، ومسؤولياتك وأوامر تخصصاتك، وذلك من المهم جدًا أن تفهم البيانات الواردة في هذا المستند. على الفور: إذا كنت بحاجة إلى مساعدة اتصل بالرقم 1-866-500-0017 للحصول على مساعدة في ترجمة وفهم المعلومات الواردة في المستند (المستندات) التي تلقتها."

Bengali

"গুরুত্বপূর্ণ এই তথ্যপত্র আপনার বেকার ভাতা অধিকার, দায়িত্ব এবং/অথবা সুবিধাগুলি সম্পর্কে গুরুত্বপূর্ণ সূচনা দেওয়া আছে। এটা গুরুত্বপূর্ণ যে, এই তথ্যপত্র থাকা সূচনাগুলি আপনি ভালো করে বুঝে নেন। অবিলম্বে: আপনি যে তথ্যপত্র(গুলি) পেয়েছেন এতে থাকা সূচনাগুলি বুঝা এবং অনুবাদের ক্ষেত্রে সাহায্য পেতে প্রয়োজনানুসারে 1-866-500-0017 নম্বরে কল করুন।"

Spanish

¡IMPORTANTE! Este documento(s) contiene información importante sobre sus derechos, obligaciones y/o beneficios de compensación por desempleo. Es muy importante que usted entienda la información contenida en este documento.

INMEDIATAMENTE: Si necesita asistencia para traducir y entender la información contenida en el documento(s) que recibió, llame al 1-866-500-0017.

Mandarin

重要提示！这份文件包含有关失业补偿的权利、责任和/或利益的重要信息。您需要理解本文件中的信息，这一点至关重要。立即：如果需要，请拨打1-866-500-0017，可获得帮助，以帮助您翻译和理解所收到的文件中的信息。

Albanian

1. "E RËNDËSISHME! Ky dokument (dokumente) përmban informacion të rëndësishëm mbi të drejtat, përgjegjësitë dhe/ose përfitimet tuaja nga kompensimi i papunësisë. Është shumë e rëndësishme që ta kuptoni informacionin në këtë dokument.
2. **MENJËHERË:** Nëse është e nevojshme, telefononi në numrin 1-866-500-0017 për t'ju ndihmuar me përkthimin dhe kuptimin e informacionit të dokumentit (dokumenteve) që keni marrë."

REQUEST FOR REHEARING OR REOPENING BEFORE AN ADMINISTRATIVE LAW JUDGE

When the appeal to the Administrative Law Judge (ALJ) has been dismissed for lack of prosecution or a party is in possession of newly discovered material information not available when the case was heard by the ALJ, the party may request rehearing in writing before the ALJ instead of appealing to the Unemployment Insurance Appeals Commission (Commission). A request for rehearing must be signed by the requesting party or their agent, and **RECEIVED** by the Michigan Office of Administrative Hearings and Rules (MOAHR) at **611 West Ottawa, 2nd Floor, Lansing, MI 48933** or by an office or agent office of the agency, within 30 calendar days after the date of this decision. The party requesting rehearing must also serve the request on the opposing party. A rehearing request received (as described above) more than 30 days after the decision is mailed, shall be treated as a request for reopening.

The ALJ may, for good cause, reopen and review this decision and issue a new decision or issue a denial of rehearing/reopening.

If a request for rehearing or reopening is not received by MOAHR, and an appeal to the Commission is not submitted, the hearing decision becomes final.

If the Agency fails to comply with an ALJ decision or order more than 30 days, but within 1 year, after the date of mailing of the decision, you may request, in writing, that the ALJ reopen the matter. You must serve a copy of the request to reopen on the other party.

APPEAL TO THE UNEMPLOYMENT INSURANCE APPEALS COMMISSION

The Unemployment Insurance Appeals Commission (Commission) consists of up to seven members appointed by the governor and is not part of the Unemployment Insurance Agency (UIA).

An appeal to the Commission shall be in writing and signed by the party or his/her agent and **RECEIVED** directly by the COMMISSION within 30 days after the mailing of the ALJ's hearing decision or order denying rehearing or reopening. A timely appeal or request for rehearing/reopening may be made by personal service, postal delivery (**P.O. Box 30475, Lansing, MI 48909-7975**), facsimile transmission (**517.241.7326**), or other electronic means as prescribed by the Commission.

The timely appeal/request may also seek to present additional evidence in connection with the appeal or request an oral argument before the Commission. The Commission may consider written argument only if all parties are represented; by agreement of the parties; the Commission orders oral argument; or the Commission orders evidence be produced before it. For additional information, please review the Mich Admin Code, Rules 792.11416 through 792.11429 or visit <http://www.michigan.gov/lara/0,4601,7-154-35738--,00.html>.

An appeal cannot be requested by telephone, but information about the appeal process can be obtained by calling (800) 738-6372 or visiting http://www.michigan.gov/documents/uia_UC1800_76144_7.pdf.

BY-PASS OF COMMISSION/DIRECT APPEAL TO THE CIRCUIT COURT

A party may by-pass appealing to the Commission and appeal a decision or final order of an ALJ directly to a circuit court in the county in which the Claimant resides or in the county in which the Claimant's place of employment is (or was) located, or if the Claimant is not a party to the case, the circuit court in the county in which the employer's principal place of business in this state is located, if the parties (Claimant and Employer), or their respective authorized agents/attorneys, sign a timely written stipulation agreeing to the direct appeal to the circuit court. **The stipulation must be mailed to the Michigan Office of Administrative Hearings and Rules, 3026 W. Grand Blvd, 2nd Floor Annex, Suite 2-700, Detroit, Michigan 48202.** Application for review to a circuit court must be made within 30 days after the mailing date decision or final order by any method permissible under the rules and practices of the circuit court.

The responsibility for properly and timely filing an appeal with the clerk of the circuit court rests with the party filing the appeal.

Exhibit 2

COVID-19 Pandemic Unemployment Insurance Law, Guidance and FAQs

(Prepared by Ways and Means Republican Staff as of April 20, 2020)

Laws

FFRCA, Division D (P.L. 116-127/ H.R.6201)

CARES Act (P.L. 116-136/H.R.748), Title II, Subtitle A

WAMR Resources

UI Explainer: https://gop-waysandmeans.house.gov/wp-content/uploads/2020/03/UI-Explainer_3.30-1.pdf

CARES Act Section-by-Section: <https://gop-waysandmeans.house.gov/wp-content/uploads/2020/03/CARES-Bill-UI-Provisions-1-2.pdf>

FFRCA FAQ: <https://gop-waysandmeans.house.gov/phase-ii-coronavirus-package-unemployment-insurance/>

DOL Unemployment Insurance Program Letter (UIPL) Guidance

Federal Pandemic Unemployment Compensation (FPUC)

Extra \$600/week benefit thru July 31 (April 4, 2020)

https://wdr.doleta.gov/directives/attach/UIPL/UIPL_15-20.pdf

Pandemic Unemployment Assistance (PUA)

Expanded eligibility to self-employed and independent contractors (April 5, 2020)

https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20.pdf

Pandemic Emergency Unemployment Compensation (PEUC)

Additional 13 weeks of benefits (April 10, 2020)

https://wdr.doleta.gov/directives/attach/UIPL/UIPL_17-20.pdf

CARES Act of 2020

Summary of Provisions (April 2, 2020)

https://wdr.doleta.gov/directives/attach/UIPL/UIPL_14-20.pdf

Families First Coronavirus Response Act, Division D

Administrative grants, Extended Benefits and federal loans (March 22, 2020)

https://wdr.doleta.gov/directives/attach/UIPL/UIPL_13-20.pdf

State Tables: [https://wdr.doleta.gov/directives/attach/UIPL/UIPL_13-20_Attachment I.pdf](https://wdr.doleta.gov/directives/attach/UIPL/UIPL_13-20_Attachment_I.pdf)

COVID-19

State Flexibility (March 12, 2020)

https://wdr.doleta.gov/directives/attach/UIPL/UIPL_10-20.pdf

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Extra \$600/week (FPUC)

Do states have the option to make the \$600 additional payment retroactive into March?

No, the additional \$600 is restricted to Unemployment Benefits paid between April 1-July 31. However, the expansion of coverage to self-employed and independent contractors and plus 13 weeks is retroactive to Jan 27.

With the extra \$600 will some people get more on UI than their paycheck?

This is going to be the case for some workers. The additional \$600 in weekly benefits is designed to keep as many workers as whole as possible through the emergency. Some may temporarily receive more benefit than their paycheck – though that number is very small compared to everyone receiving Unemployment. Of course, people receiving Unemployment do not receive health insurance, retirement or other important benefits that can be available at work. The temporary \$600 is only available through July 31.

https://gop-waysandmeans.house.gov/wp-content/uploads/2020/03/UI-Explainer_3.30-1.pdf

How much do people get on UI?

It varies. Unemployment benefits across the country averaged \$385 per week in February 2020 but vary significantly by state. Generally, a person's benefits replace about 1/3 to 1/2 of their wages. The CARES Act provides an additional \$600 per week on top of whatever a person would normally receive in their state – limited to the next 4 months (expires July 31, 2020). This will end up providing a higher than average wage replacement rate for low-wage workers.

Refusing a Job Offer

What if someone receiving unemployment insurance is offered their job back but refuses to return to work?

States have long-standing practices for ensuring individuals do not receive unemployment insurance payments if they refuse "suitable work" (as defined under state law). While the definition of "suitable work" varies by state, refusal of

an offer to return to the same job the person was working in previously would likely disqualify an individual from receiving unemployment insurance payments (unless, in accordance with existing state laws, employment conditions have changed substantially, such as the rate of pay, the distance to work, or the degree of risk to health and safety).

How does a state know if someone refuses a job offer?

This will vary across states. Most states already have processes in place to ensure individuals do not receive unemployment insurance payments if they refuse “suitable work” (defined by the state). Refusal of an offer to return to the same job the person was working in previously would disqualify an individual from receiving unemployment insurance payments – unless they can provide good cause (defined by the state).

For example, one State said: Employers can notify us at any time when they make offers of employment. They just need to contact us to report. In “normal” times if a claimant is referred to an interview through our labor exchange site the employer can report through that system if they offered a job that was declined.

Individuals receiving unemployment benefits must demonstrate that they are able to work, available to work, and actively seeking work. Most states require individuals to record and report job search and contacts with employers on a weekly basis to certify continuation of benefits.

Paycheck Protection Program and UI

What happens if someone was laid off or furloughed, but then the employer gets a Paycheck Protection Program loan and the person returns to work?

The individual would receive unemployment insurance payments for the period in which they were not being paid by an employer. When the employer re-hires the person or puts them back on the payroll, the individual would no longer be eligible for unemployment insurance as they are receiving wages. Employers report quarterly wages for each employee to the state unemployment agency, which allows the state agency to determine if and when the individual was eligible for unemployment insurance payments. If the individual ends up receiving pay for

a week in which they also received unemployment insurance payments, the employer will report this information on the quarterly wage report provided to the state unemployment agency, and the individual will have to pay back the unemployment insurance payments they received for that period. In such a situation, the state will follow their regular practices for dealing with overpayments.

Is the employer still eligible for loan forgiveness when their employees refuse to come back to work and choose to stay on unemployment?

If the business has former employees that are now receiving unemployment benefits, those employees would be jeopardizing their unemployment benefits by refusing to go back to work. When an employee refuses recall to a position they held prior to layoff, the bar is fairly high to support a good cause exception for refusal. In the large majority of cases refusal to accept the recall would result in the termination of benefits. The main issue is the state would have to know that the refusal, in fact, occurred. As businesses re-open and move toward economic recovery, states will need to have accessible and easy-to-use mechanisms in place to allow employers to report when there is a job refusal.

Quitting Your Job

Is it your interpretation in the CARES Act that someone who quits their job would still be eligible for the Pandemic Unemployment Assistance program?

The CARES Act-authorized Pandemic Unemployment Assistance (PUA) program covers an individual who is not eligible for regular unemployment compensation, extended benefits, or pandemic emergency unemployment compensation under section 2107 of the CARES Act, and who otherwise is able to work and available for work, but cannot due to circumstances related to COVID-19. The individual must demonstrate that they are unemployed or partially unemployed because of the provisions included under Sec. 2102(a)(3)(A)(ii)(I) of the CARES Act. The law includes language at 2102 under "covered employee" to include "the individual has to quit his or her job as a direct result of COVID-19."

Generally, Unemployment Insurance (UI) payments provide temporary financial assistance to unemployed workers who are unemployed through no fault of their

own. Each State sets its own guidelines for eligibility for UI benefits, but an individual usually qualifies if they:

1. Are unemployed through no fault of their own;
2. Meet work and wage requirements;
3. Meet the specific State's requirements for wages earned or time worked during an established period of time referred to as a "base period"; and
4. Meet any additional State requirements.

Under the CARES Act, requirements that would result in the denial of benefit payments generally remain in place, including when a worker voluntarily leaves work without good cause.

Can employees refuse to go to work and collect UI? I thought DOL put restrictions on something like this, but we have an essential business in the district where the employees are refusing to show up to work because UI benefits are more generous. If this is not allowed, what actions does the employer have?

Unless an employee can provide "good cause," if they are offered their job back, they can't decline it and continue to receive UI. When an employee refuses recall to a position that they held prior to layoff, the bar is fairly high to support a good cause exception for refusal. In the large majority of cases refusal to accept the recall would result in the termination of benefits. The main issue is the state would have to know that the refusal, in fact, occurred.

In general, States have long-standing practices for ensuring individuals do not receive unemployment insurance payments if they refuse "suitable work" (as defined under state law). While the definition of "suitable work" varies by state, refusal of an offer to return to the same job the person was working in previously would likely disqualify an individual from receiving unemployment insurance payments (unless, in accordance with existing state laws, employment conditions have changed substantially, such as the rate of pay, the distance to work, or the degree of risk to health and safety). As businesses re-open and move toward economic recovery states will need to have accessible and easy-to-use mechanisms in place to allow employers to report when there is a refusal.

Work Search Requirement

Is the work activity requirement suspended w/CARES?

Individuals receiving unemployment benefits must demonstrate that they are able to work, available to work, and actively seeking work. Most states require individuals to record and report job search and contacts with employers on a weekly basis. The work search requirement hasn't been formally waived or suspended, instead states have flexibility to continue providing benefits if someone is unable to search for work due to COVID-19 related reasons.

Under the current crisis, most states have temporarily waived and given flexibility on these requirements, but they undergird the system. States work with individuals to provide reemployment services and support to get them back into the workforce – that is a bedrock of the system.

Guidance on flexibility in job search requirements:

DOL COVID-19 State Flexibility (03/12/2020)

https://wdr.doleta.gov/directives/attach/UIPL/UIPL_10-20.pdf

DOL guidance issued March 12th clarified that states have discretion in how determining how individuals demonstrate they are able and actively seeking work and could consider a person to be eligible for UI if they are unable to look for work due to COVID-19 related reasons.

In FFRCA, for states to get their 2nd allotment of the \$500 million in emergency administrative grants (no states have gotten their 2nd allotment yet) -they have to certify that they are taking steps to ease eligibility requirements that might otherwise limit access to UI during the pandemic, including work search requirements.

In CARES Act, DOL's guidance says "The programs and provisions in the CARES Act operate in tandem with the fundamental eligibility requirements of the Federal-State UI program must be adhered to... These requirements include that individuals are only entitled to benefits if they are no longer working through no fault of their own and that individuals must be able and available to work. The CARES Act requires that states provide flexibility for PEUC "in case of individuals unable to search for work because of COVID-19, including because of illness quarantine, or movement restriction."

Income (Taxable and Counting)

Unemployment Insurance benefits are being temporarily increased, would the additional benefits in UI each week also be taxable like normal benefits?

Section 2104 of the CARES Act increases weekly unemployment compensation by \$600 per week to each recipient of Unemployment insurance or Pandemic Unemployment Assistance for up to four months, from April 1 through July 31, 2020. These additional amounts are taxed the same way as normal Unemployment benefits.

Does the extra UI allotment count as income for a person applying for SNAP?

Yes. The only disregard is for Medicaid and SCHIP: (I-3)

https://wdr.doleta.gov/directives/attach/UIPL/UIPL_15-20.pdf

Disregard of FPUC for Purposes of Medicaid and State Children's Health Insurance Program (SCHIP). Under Section 2104(h) of the CARES Act, the monthly equivalent of any FPUC amount paid to an individual must be disregarded when determining income for any purpose under programs established under Titles XIX and Title XXI of the Social Security Act (SSA) (42 U.S.C. §1396 et seq., §1397aa et seq.).

If someone withdraws money from their 401(k) does that count against their UI benefit amount?

Qualification for unemployment is based on your prior quarterly or "base amount" wages, not assets or income from other sources. For those who have higher salaries the benefit amount is capped usually at ½ the state's average weekly wage. The weekly benefit amount could be reduced based on retirement payments an individual receives (per below) but it doesn't sound like lump sum retirement withdrawals qualify for purposes of reducing the benefit amount. FUTA is the Federal Unemployment Tax Act

<https://oui.doleta.gov/unemploy/pdf/uilawcompar/2019/nonmonetary.pdf> (P.47)

RETIREMENT PAYMENTS—FUTA requires states to reduce the weekly benefit amount of any individual by the amount, allocated weekly, of any "governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual...." This

requirement applies only to payments made under a plan maintained or contributed to by a base-period or chargeable employer that affected eligibility for or increased the amount of the retirement pay. States are permitted to reduce benefits on less than a dollar-for-dollar basis by taking into account the contributions made by the individual to the plan in question. (This effectively means the FUTA requirement is limited to 100 percent employer-financed pensions.) Also, the requirement applies only to those payments made on a periodic (as opposed to lump-sum) basis. As a result, states may choose from a variety of options in creating a retirement pay provision. FUTA also prohibits reductions for pensions, retirement or retired pay, annuity, or other similar payment not includible in the gross income of the individual because it was part of a rollover distribution.

Is unemployment insurance counted for SSI determination?

Unemployment insurance is considered unearned income for SSI (see: <https://www.ssa.gov/ssi/text-income-ussi.htm>). So that means SSI benefits are offset by \$1 for every \$1 of unearned income above \$20. SSA is not currently taking adverse actions, including redetermination so in the short term it is unlikely an individual's SSI benefit would change.

Non-Profits and Churches

I work at a Church and understand I'm not eligible for the normal Unemployment Insurance system. Does this bill do anything for me?

The bill includes a provision to provide federal funding (through states) to reimburse non-profits for 50% of the costs of providing unemployment benefits to their employees. Churches are not generally covered by this, but their employees would be eligible for the Pandemic Unemployment Assistance under Section 2102 of the CARES Act.

https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20.pdf

Background – The CARES Act was designed to mitigate the economic effects of the COVID-19 pandemic in a variety of ways. The CARES Act includes a provision of temporary benefits for individuals who have exhausted their entitlement to regular unemployment compensation (UC) as well as coverage for individuals who are not eligible for regular UC (such as individuals who are self-employed or who

have limited recent work history). These individuals may also include certain gig economy workers, clergy **and those working for religious organizations who are not covered by regular unemployment compensation**, and other workers who may not be covered by the regular UC program under some state laws.

Is it up to states whether to accept the 50% match and offer Unemployment Insurance to employees of non-profits, or is it mandatory? Is that coverage limited to 501(c)3 employees like other parts of the bill, or will it also be open to other employees of exempt non-profits like churches?

The 50% is to reimburse states so that they don't "charge" the state and local governments/non-profits the full amount of whatever the state ended up paying out for their employees. Unlike other employers who pay a State Unemployment Tax Act (SUTA) tax that is adjustable based on the number of layoffs, state and local/non-profits are "reimbursable employers" (i.e., they pay the state back on a dollar for dollar basis). This relieves those entities of half their financial burden by having the federal government pick up half their tab. For churches, they are not covered under that arrangement. However, church employees who are laid off will be covered by the new Pandemic Unemployment Assistance program which covers workers not typically covered by state programs.

How are Non-Profits and Unemployment Insurance treated in the CARES Act?

- Section 2103 of the CARES Act provides relief to non-profits organizations by providing federal funding to cover 50% of unemployment compensation paid to their former employees during the period March 13- Dec. 31, 2020.
- Many non-profit organizations are considered "reimbursable employers" because they can opt out of unemployment taxes paid by private sector companies. Instead, these organizations are charged on a dollar-for-dollar basis by the state for the costs of any unemployment compensation paid to employees laid off from their organizations.
- Under the CARES Act, the federal government is essentially picking up half the tab (50%) of non-profit organizations and state and local governments. It also allows states flexibility in the timing of when they charge non-profit employers for those reimbursable payments.
- Some have expressed concern that this relief does not go far enough because the layoffs have been so substantial, and the pandemic has jeopardized the

viability of so many non-profit charitable organizations. Non-profit and community-based organizations play an important role in serving low-income children and families.

One of our non-profits hasn't been paying a solvency fee, however, they think this may exclude them from being eligible for relief due to the Covid-19 crisis. Do you know if this is the case?

No. Reimbursing employers do not pay solvency fees (as described below). Section 2103 of the CARES Act provides financial relief for reimbursing employers. There is no requirement under Section 2103 that conditions this financial relief on paying solvency fees. DOL's Comparison of State Unemployment Laws 2019 explains that many states have solvency fees, various surcharges, surtaxes, and adjustments under state UI tax laws. For example, PA lists a "Solvency Measure," which is described as a "Surcharge adjustment of 5.4% and additional contributions of 0.5%." (See Table 2-11 in Chapter 2 FINANCING) These adjustments may be in the form of a direct modification of the employer's tax rate (for example, by adding 0.1 percent to, or subtracting 0.1 percent from, the employer's tax rate) or by taking these costs into account when calculating the employer's experience rate (for example, charging a prorated portion of socialized costs to the employer's account in a reserve-ratio state). Reimbursing employers are exempted from solvency adjustments since they already reimburse the state's unemployment fund for 100 percent of their benefit costs.

Getting UI and Being Employed

How exactly does the provision work that allows workers to maintain their employment and also receive UI benefits? Is there a certain reduction in income they have to realize? And do they still need to get at least some pay from their employer?

States have rules for allowing furloughed workers to receive unemployment benefits. Most require the employer to continue paying healthcare for the employee but have processes in place to accommodate that the worker is expected to return to work. Also, the Pandemic Unemployment Assistance covers individuals under certain circumstances if they are still employed but unable to work due to COVID-19 related reasons (Title II sec. 2102). Finally, states do pay

partial unemployment for part-time workers that meet minimum requirements as determined by the state.

It is your interpretation in the CARES Act that someone could be employed and “unable or unavailable to work” and get Pandemic unemployment assistance?

State laws may vary, but generally, if an individual remains attached to his/her employer, but is “unable or unavailable to work” and is experiencing a reduction in hours and a reduction in pay for one of the reasons identified in Sec. 2102(a)(3)(A)(ii)(I) of the CARES Act, the individual may be eligible for Pandemic Unemployment Assistance (PUA).

Sec. 2102(a)(3)(A)(ii)(I) of the CARES Act requires that the individual is “otherwise able to work and available for work” within the meaning of applicable State law, except that the individual is unemployed, partially unemployed, or unable or unavailable to work because of one of the COVID-19 related reasons identified in the subclause.

We have a long-standing interpretation that an individual is unemployed when they have a reduction in hours and a reduction in pay. The statute reflects this interpretation by specifically excluding those who may telework with pay or receive paid sick leave or other paid benefits (Sec. 2102(a)(3)(B)).

Part-Time Workers and UI

Would folks who still have their job but have had their salary reduced qualify?

Yes. If an individual is working less than the individual customarily worked prior to the COVID 19 pandemic, the individual may be eligible for a reduced PUA weekly benefit. The weekly benefit amount will be connected to what the state pays normally and include a +\$600 federal supplement through July 31. Here is the DOL guidance on PUA: https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20.pdf (I-3); also see https://wdr.doleta.gov/directives/attach/UIPL/UIPL_15-20.pdf (P.2 and I-5).

Disability Insurance and UI

Can someone receive Disability Insurance benefits and UI benefits at the same time?

Yes.

- The Unemployment Insurance (UI) program assists unemployed individuals by offering weekly benefit checks while they look for work. In order to be eligible, jobless workers must have a history of attachment to the workforce and must be able to and available for work.
- To qualify for Disability Insurance (DI) benefits, a person must be unable to engage in substantial gainful activity because of a medically determinable impairment that is expected to last 12 months or result in death.
- Currently, a person can receive UI benefits (which requires an individual be willing and able to work) while also receiving DI benefits (be unable to work).

Supplemental Administrative Funds for States

How does the H.R. 6201 support states that are experiencing a spike in claim for unemployment benefits due to COVID-19 layoffs and business closings?

Congress made available \$1 billion for emergency administrative grants to state unemployment agencies that can be used to help with spike in claims, processing and applications. The funds are separated into two allotments. The first is immediately available, the 2nd allotment is available to a state that experiences a 10% increase in claims from the previous quarter.

How much additional money for administration is my State getting for support in dealing with the spike in claims from COVID-19?

DOL recently issued guidance to states that includes an Attachment with state-by-state allocations. DOL Guidance to States for implementing the Families First Coronavirus Response Act, Public Law (Pub. L.) 116-127, specifically Division D, the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA): https://wdr.doleta.gov/directives/attach/UIPL/UIPL_13-20.pdf

What's in the law?

What unemployment provisions were included in the phase 2 Families First Coronavirus Response Act (FFRCA)?

Unemployment Provisions, Division D – Emergency Unemployment Insurance Stabilization and Access Act of 2020

Section 4102. Emergency Transfers for Unemployment Compensation Administration. This section provides \$1 billion in 2020 for emergency administration grants to states for activities related to processing and paying unemployment insurance (UI) benefits, under certain conditions. \$500 million is provide immediate additional funding to states for staffing, technology, systems, and other administrative costs, so long as they meet basic requirements about ensuring access to earned benefits for eligible workers. Those requirements are:

- Require employers to provide notification of potential UI eligibility to laid off workers.
- Ensure that workers have at least two ways (for example, online and phone) to apply for benefits.
- Notify applicants when an application is received and being processed and if the application cannot be processed, provide information to the applicant about how to ensure successful processing.

States are required to report on the share of eligible individuals who received UI benefits and the state's efforts to ensure access within one year of receiving the funding. The funding is distributed in the same proportions as regular UI administrative funding provided through annual appropriations.

\$500 million is reserved for emergency grants to states which experience at least a 10 percent increase in unemployment. Those states would be eligible to receive an additional grant, in the same amount as the initial grant, to assist with costs related to the unemployment spike, and would also be required to take steps to temporarily ease eligibility requirements that might be limiting access to UI during the COVID-19 outbreak, like work search requirements, required waiting periods, and requirements to increase employer UI taxes if they have high layoff rates. Depending on the state, those actions might require changes in state law, or might just require changes in state policy. This section also provides temporary

federal flexibility regarding those UI restrictions which are also in federal law.

Section 4103. Temporary Assistance for States with Advances. This section provides states with access to interest-free loans to help pay regular UI benefits through December 31, 2020, if needed.

Section 4104. Technical Assistance and Guidance for Short-Time Compensation Programs. This section requires the Secretary of Labor to provide technical assistance to states that want to set up work-sharing programs, in which employers reduce hours instead of laying employees off, and then employees receive partial unemployment benefits to offset the wage loss.

Section 4105. Full Federal Funding of Extended Unemployment Compensation for a Limited Period. For states that experience an increase of 10 percent or more in their unemployment rate (over the previous year) and comply with all the beneficiary access provisions in section 102, this section provides 100 percent federal funding for Extended Benefits, which normally require 50 percent of funding to come from states. Extended Benefits are triggered when unemployment is high in a state and provide up to an additional 26 weeks after regular UI benefits (usually 26 weeks) are exhausted.

What are the unemployment provisions in the latest version of McConnell's CARE package?

Because so many workers are now working in non-traditional arenas, the CARES act provides relief for workers who are self-employed, as well as independent contractors, while adding significantly

- About \$250 Billion to Expand Unemployment Benefits: The Senate economic relief package provides much-needed support for workers by making a significant investment.
- Unemployment Benefits for More Americans: The bill will make sure self-employed and independent contractors like Uber drivers and gig workers can receive unemployment.
- More Money for a Longer Period for More Workers: It also makes benefits more generous by adding \$600 per week on top of what the state normally pays in unemployment and provides an additional 13 weeks of benefits.

And provisions will ensure state and local governments and non-profits can pay unemployment to their employees.

- Temporary Provisions: Most of the unemployment provisions go through the end of 2020, in recognition of the temporary nature of this challenge.

I nearly exhausted my maximum weeks of unemployment. Does this do anything for me?

Yes, The CARES Act provides an additional 13 weeks of unemployment to help those who remain unemployed after weeks of state unemployment are exhausted.

I'm an independent contractor and am non-eligible for traditional Unemployment Insurance. Does this bill do anything for me?

Yes, Section 2102 of the CARES Act creates a temporary Pandemic Unemployment Assistance program through December 31, 2020 to provide payment to those not traditionally eligible for unemployment benefits (self-employed, independent contractors, those with limited work history, and others) who are unable to work or telework as a direct result of the coronavirus public health emergency. The expansion of coverage to self-employed and independent contractors is retroactive to Jan 27th. https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20.pdf (P.4)

What does unemployment look like in my state?

To find out how to apply for unemployment in your state visit:

<https://www.careeronestop.org/WorkerReEmployment/UnemploymentBenefits/unemployment-benefits.aspx>

A state-by-state summary of how each state determines weekly unemployment benefits amounts can be found here:

<https://oui.doleta.gov/unemploy/content/sigpros/2020-2029/January2020.pdf>

For information about how your state's unemployment agency is responding to the COVID-19 public health emergency visit:

<https://www.naswa.org/resources/coronavirus>

Exhibit 3

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Unemployment Insurance
	CORRESPONDENCE SYMBOL OUI/DL
	DATE March 12, 2020

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 10-20

TO: STATE WORKFORCE AGENCIES

FROM: JOHN PALLASCH
Assistant Secretary

**SUBJECT: Unemployment Compensation (UC) for Individuals Affected by the
Coronavirus Disease 2019 (COVID-19)**

1. **Purpose.** To provide guidance to states regarding unemployment compensation (UC) flexibilities related to COVID-19.
2. **Action Requested.** The Department of Labor's (DOL's) Employment and Training Administration (ETA) requests State Workforce Administrators to provide information contained in this Unemployment Insurance Program Letter (UIPL) to appropriate program and other staff in the state's workforce system.
3. **Summary and Background.**
 - a. Summary: This UIPL provides guidance to states regarding UC eligibility for individuals affected by COVID-19.
 - b. Background: The Administration is actively working with states to ensure they have the guidance needed about UC flexibilities related to COVID-19 in order to assist individuals affected by the disease. The Unemployment Insurance (UI) program requires individuals to be able and available for work and to actively seek work (we refer to these as the *able, available, and work search requirements* throughout this UIPL). However, states have significant flexibility in implementing these requirements, as well as in determining the type of work that may be suitable given the individual's circumstances. In short, an individual may be quarantined or otherwise affected by COVID-19 but still eligible for UC, depending on state law. To clarify, UI is not intended to be used as paid sick leave.

RESCISSIONS None	EXPIRATION DATE Continuing
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4. Guidance and Information.

This UIPL provides guidance on the following UC issues related to COVID-19:

- a. Determining whether an individual is “unemployed;
- b. Determining if the individual is able to work, available for work, and actively seeking work;
- c. Examples for assessing UC eligibility;
- d. Employer charging, with consideration for impact on trust fund solvency;
- e. Impact of eliminating the waiting week; and
- f. Promotion of Short-Time Compensation.

a. Determining whether an individual is “unemployed”

The Department has a longstanding legal interpretation of federal UC law that “unemployment” includes a reduction of both work hours and earnings.

The Department first defined “unemployment” in 1950 in its model for state legislation to meet the requirements of federal UC law. The model defined “week of unemployment” as “any week during which [an individual] performs less than full-time work for any employing unit if the wages payable to [the individual] with respect to such week are less than the weekly benefit amount.” (Manual of State Employment Security Legislation 1950.)

The Department further clarified the meaning of the term “unemployment” in UIPL No. 08-98: “Federal law limits the payment of UC to periods in which an individual has experienced unemployment, that is, an actual reduction in hours worked.” UIPL 08-98 cited, among other things, a January 31, 1939, Social Security Board statement that explained that “[S]ince ... any benefits paid under a State law must be paid with respect to unemployment, a State’s plan for the payment of partial benefits must safeguard against the payment for reduced earnings without accompanying unemployment.”

An individual receiving paid sick leave or paid family leave is still receiving pay. Thus, generally speaking, the individual is not “unemployed,” so the individual is ineligible for UC.

b. Determining if the individual is able to work, available for work, and actively seeking work

Federal UC law requires that claimants be able to work, available for work, and actively seeking work. 42 USC 503(a)(12) (Section 303(a)(12) of the Social Security Act (SSA)). These federal requirements cannot be categorically waived or exempted for individuals affected by COVID-19. Yet states have significant discretion to establish how individuals demonstrate that they are meeting these requirements.

The Department has interpreted and enforced the federal able, available, and work search requirements since the inception of the federal-state UC program. As far back as 1939, the Chair of the Social Security Board explained in a letter to the Governor of California, “The

entire legislative history [of the UC titles of the original SSA] . . . all indicate, either expressly or by implication, the compensation contemplated under [these titles] is compensation to individuals who are able to work but are unemployed by reason of lack of work.”

The able and available requirements were codified in federal regulation at 20 CFR 604.4 in 2007. The regulation’s accompanying notice explained, “The UC program is designed to provide temporary wage insurance for individuals who are unemployed due to a lack of suitable work. The [able and available requirements] implement this design by testing whether the fact that an individual did not work for any week was involuntary due to the unavailability of suitable work.” 72 Fed. Reg. 1890 (Jan. 16, 2007). In 2012, Congress codified the able, available, and work search requirements at Section 303(a)(12) of the SSA.

Federal UC law makes some exceptions to these requirements, such as for state-approved training. (Section 3304(a)(8) of the Federal Unemployment Tax Act (FUTA)). Federal UC law also permits some substitutions for these requirements, such as participation in the Short-Time Compensation program. (Section 3306(v)(5) of FUTA.) However, exceptions to this requirement are limited to those included in FUTA or SSA and there is no exception from the able, available, and work search requirements for an individual affected by COVID-19.

Even so, states have flexibility to determine what type of work is suitable for an individual and what it means for that individual to be able, available, and seeking work, even when quarantined or otherwise affected by COVID-19.

Under 20 CFR 604.5(a), a state may consider an individual available for work under any of the following circumstances:

- (1) The individual is available for any work for all or a portion of the week claimed, provided that any limitation placed by the individual on his or her availability does not constitute a withdrawal from the labor market.
- (2) The individual limits his or her availability to work which is suitable for such individual as determined under the State UC law, provided the State law definition of suitable work does not permit the individual to limit his or her availability in such a way that the individual has withdrawn from the labor market . . .
- (3) The individual is on temporary lay-off and is available to work only for the employer that has temporarily laid off the individual.

Further, the regulations explicitly address individuals whose most recent separation occurred due to illness or physical injury, explaining that they may be considered able to work and available for work until such time as they are offered suitable employment and decline it due to that illness or injury (20 CFR 604.4(b)). In addition, federal law requires that an individual actively search for work. However, as with the able and available requirements, states have considerable discretion to determine the types of suitable work which individuals must seek.

Taken together, the federal UC framework gives states significant flexibility to determine standards for ability to work, availability to work, and suitable work in the context of COVID-19.

c. Examples for assessing UC eligibility

The following scenarios are meant to help states assess UC eligibility for individuals affected by COVID-19. In each, the individuals may be unemployed as they have reduced hours and pay.

Federal law permits states to exercise the flexibilities described below. An individual need not quit or be discharged to potentially be eligible for benefits. Therefore, we encourage states to review their laws in light of COVID-19's effects. Other scenarios than these may arise. We encourage states to contact DOL for technical assistance.

Scenario 1: Employer temporarily ceases operations.

An employer or employing unit temporarily shuts down due to COVID-19 with the expectation that the individual will return when business resumes.

Federal law would permit a state to treat the separation here as a temporary layoff. States have significant discretion to determine able, available, and work search requirements, and they can determine that the suitable work for this individual is the job he or she intends to return to after business resumes. As provided in 20 CFR 604.5(a)(3), individuals are able to and available for work if their employer temporarily laid them off and the individuals remain available to work only for that employer. Thus, for states that take this approach, individuals may only need to be able and available for that job and, to meet the work search requirement, take reasonable steps to preserve their ability to come back to that job.

Scenario 2: Individual is quarantined and will return to employer.

An individual is quarantined by a medical professional or under government direction, and the employer has instructed the individual to return to work after the quarantine is over or has not provided clear instruction to do so.

Federal law would permit a state to treat the separation for the period of the quarantine as a temporary layoff. Again, states have significant discretion to determine able, available, and work search requirements, and can determine that the suitable work for this individual is the job he or she intends to return to after quarantine ends. Therefore, for states taking this approach, individuals may only need to be able and available for that job and, to meet the work search requirement, take reasonable steps to preserve their ability to come back to that job. However, if the individual does not return to the employer after the quarantine ends, the state will need to reassess eligibility.

Scenario 3: Individual is not returning to the employer.

An individual is quarantined by a medical professional under government direction or leaves employment due to a reasonable risk of exposure or infection (i.e.; self-quarantine) or to care for a family member and either does not intend to return to the employer or the employer will not allow the individual to return.

Federal law would permit a state law to determine whether the separation here is a quit or a discharge and whether the circumstances are allowable under the state's good cause/just cause provisions. If permitted under the state's good cause/just cause provision, states should consider how they will adjudicate the reasonableness of an individual's separation for reasonable risk of exposure. One such factor could be considering if the individual is in a population that is particularly susceptible to COVID-19.

An individual who leaves work with good cause, however, must still meet all other eligibility requirements to receive benefits, including the able, available, and work search requirements. For example, if state law permits, states may determine that a quarantined individual is still able, available, and seeking work, provided it is work that is suitable for an individual who is quarantined and that limitation does not constitute a withdrawal from the labor market. (20 CFR 604.5(a)(1)).

d. Employer charging and trust fund impacts

Many states do not charge individual employers for benefit costs under certain limited circumstances. These "noncharging" provisions are found in practically all state experience-rating laws. When determining, in the context of COVID-19, whether certain unemployment benefits should be charged to employers, states should consider how to fairly distribute the costs to employers.

If states consider changing their laws to increase availability of UI benefits in the context of the COVID-19 virus, they should also consider the impacts on trust-fund solvency. There are currently 21 states and jurisdictions below the recommended solvency standard and only 31 states that meet the eligibility criteria for interest-free borrowing. (*State Unemployment Insurance Trust Fund Solvency Report*, Feb. 2020).

e. Impact of eliminating the waiting week

In most states, an individual who is otherwise eligible for benefits must first serve a waiting period. This is not federally required, although it is a longstanding practice in the UI program that may give states time to assess eligibility and deter fraud. However, to facilitate individuals' ability to comply with quarantine orders, states should consider temporarily waiving such requirements.

States should understand that if they trigger Extended Benefits while the waiting week is waived, they will not be reimbursed for the federal share of the first week of all Extended Benefit claims. (Section 204(a)(2) of the Federal-State Extended Unemployment Act of 1970).

f. Promotion of Short-Time Compensation

The Short-Time Compensation (STC) program, also known as worksharing, helps employers avert layoffs. The program allows employers with a state-approved STC plan to reduce the hours of their employees in lieu of layoffs, while permitting these employees to receive payment for partial unemployment. Employees benefit because they do not suffer a complete loss of employment and they are paid STC when their hours are reduced. Employers benefit because they are able to reduce labor costs temporarily while still maintaining their skilled workforce. In this way, STC protects employer investments in recruiting and training.

In the context of COVID-19, STC can be an important resource for employers whose business temporarily declines. STC provides a safety net to employees with reduced hours; it helps employers retain their workforce; and it saves jobs. There are currently 28 states who have enacted or amended STC laws in response to changes made by Congress in the Middle Class Tax Relief and Job Creation Act of 2012. We strongly urge states to consider implementing and promoting use of the STC program to avert layoffs where possible.

5. **Inquiries.** Please direct inquiries to the appropriate Regional Office.

6. **References.**

- Section 303, Social Security Act, 42 USC § 503
- Section 3304 Federal Unemployment Tax Act (FUTA), 26 USC § 3304
- Section 3306 Federal Unemployment Tax Act (FUTA), 26 USC § 3306
- Federal-State Extended Unemployment Act of 1970, 26 USC § 3304 note
- 20 CFR Part 604
- Unemployment Insurance Program Letter 08-98, "*Unemployment Compensation (UC) – Payment Only for Periods of Unemployment*"
<https://wdr.doleta.gov/directives/attach/UIPL8-98.cfm>
- Manual of State Employment Security Legislation 1950 (Blue book)
https://oui.doleta.gov/dmstree/pl/blue_book.pdf
- *State Unemployment Insurance Trust Fund Solvency Report* (Feb. 2020)
<https://oui.doleta.gov/unemploy/docs/trustFundSolvReport2020.pdf>

Exhibit 4

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1330**

In the Matter of: Hayat Muse.

**Filed February 22, 2021
Reversed
Segal, Chief Judge**

Department of Employment and Economic Development
File No. 39175517-6

Gregory R. Merz, Lathrop GPM LLP, Minneapolis, Minnesota (for relator Hayat Muse)

Keri A. Phillips, Katrina Gulstad, Anne B. Froelich, Minnesota Department of Employment and Economic Development, St. Paul, Minnesota (for respondent Minnesota Department of Employment and Economic Development)

Keith Ellison, Attorney General, Liz Kramer, Solicitor General, Bradley Simon, Ed Stockmeyer, Assistant Attorneys General, St. Paul, Minnesota (for amicus curiae State of Minnesota)

Considered and decided by Segal, Chief Judge; Hooten, Judge; and Smith, Tracy M., Judge.

SYLLABUS

Minnesota high school students are not categorically ineligible to receive Pandemic Unemployment Assistance under the federal Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136, 134 Stat. 281 (2020) (CARES Act).

OPINION

SEGAL, Chief Judge

In this certiorari appeal, relator Hayat Muse challenges a determination by an unemployment-law judge (ULJ) that relator is ineligible for Pandemic Unemployment

Assistance (PUA) under the CARES Act because she is a high school student. PUA is one of the federal financial assistance programs enacted to provide added unemployment benefits to help mitigate the financial hardships caused by the COVID-19 pandemic. The ULJ in this case denied PUA benefits to relator because, under the state unemployment statute, high school students are not eligible for regular unemployment benefits. Minn. Stat. § 268.085, subd. 2(3) (2020). Relator contends that this decision is in conflict with the unambiguous terms of the CARES Act. We agree and, accordingly, reverse the decision of the ULJ.

FACTS

Relator Hayat Muse is a high school student who was separated from her part-time employment at a coffee shop because of the COVID-19 pandemic. Muse applied for unemployment benefits through respondent Minnesota Department of Employment and Economic Development (DEED) in March 2020, identifying herself as a high school student in her application. Muse received PUA benefits for only five weeks.

In May 2020, DEED issued an initial determination of ineligibility stating that Muse was not eligible for PUA benefits because she is a high school student. Muse filed an administrative appeal. Following an evidentiary hearing, a ULJ issued a decision determining Muse ineligible for PUA benefits because of the ineligibility of high school students for regular unemployment-compensation benefits under state law. As a consequence, Muse received no additional payments and was ordered to pay back the \$1,170 she had received in PUA benefits. A second ULJ affirmed the decision after Muse sought reconsideration.

Muse filed this certiorari appeal and a motion, jointly filed with DEED, to expedite the court's consideration of the appeal. In the joint motion, DEED represented that it will apply this court's decision, both retrospectively and prospectively, with regard to the eligibility of Minnesota high school students for PUA benefits.¹ We granted the joint motion and a subsequent motion by the Minnesota Attorney General to file an amicus brief in support of Muse's position. Following expedited briefing and oral argument, we issued a December 1, 2020 order reversing the ULJ's decision, with an opinion to follow. This opinion sets forth our analysis in support of that order.

ISSUE

Are Minnesota high school students categorically ineligible for PUA benefits?

ANALYSIS

This appeal is limited to the narrow but impactful issue of whether Minnesota high school students are disqualified from receiving PUA benefits because high school students are not eligible for regular unemployment benefits under state law. We apply a de novo standard of review to administrative agencies' interpretations of federal statutes such as the CARES Act. *In re Gillette Children's Specialty Healthcare*, 883 N.W.2d 778, 784 (Minn. 2016).

¹ DEED's agreement stemmed from a settlement agreement in federal litigation. Relator was a plaintiff in a now-dismissed federal lawsuit challenging DEED's denial of PUA benefits to high school students. *See Youthprise v. Minn. Dep't of Emp't & Econ. Dev.*, No. 20-CV-02087 (D. Minn.). The federal lawsuit was dismissed in October 2020 pursuant to a stipulation that included DEED's agreement to seek expedited consideration of this appeal and to apply this court's decision retrospectively and prospectively.

The CARES Act, signed into law on March 27, 2020, “creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits, and provides funding to states for the administration of the program.” U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20 (April 5, 2020) (UIPL 16-20), at 1. Under the Act, the Secretary of Labor “shall provide to any covered individual unemployment benefit assistance while such individual is unemployed, partially employed, or unable to work for the weeks of such unemployment with respect to which the individual is not entitled to any other employment compensation . . . or waiting period credit.” CARES Act § 2102(b).

A “covered individual” eligible to collect PUA benefits is an individual who (1) “is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation,”² and (2) self-certifies that she is “otherwise able to work and available for work within the meaning of applicable State law, except the individual is unemployed, partially unemployed, or unable or unavailable to work because” of one of 11 reasons related to the COVID-19 pandemic.³ CARES Act § 2102(a)(3)(A). The PUA program extended economic assistance to people who lost work due to the pandemic but would not be eligible for regular unemployment-

² Pandemic emergency unemployment compensation (PEUC) is available to individuals who have received all regular unemployment benefits available to them for a particular benefit year. *See generally* CARES Act § 2107. Because Minnesota high school students are not eligible for regular unemployment benefits, they cannot exhaust them and qualify for PEUC.

³ The definition of “covered individual” contains several additional inclusions and exclusions, none of which are relevant here. *See* CARES Act § 2102(a)(3)(A)(ii)(II), (a)(3)(B).

compensation benefits, such as “gig economy” workers who are ineligible for regular unemployment benefits because they are classified as independent contractors and not employees. UIPL 16-20 Attachment 1, at I-6; UIPL 16-20 Change 1 (April 27, 2020), at I-8. As the U.S. Department of Labor (USDOL) has explained, “PUA is a benefit of last resort for anyone who does not qualify for other [unemployment-compensation] programs and who would be able and available to work but for one or more of the COVID-19 related reasons listed in section 2102 of the CARES Act.” UIPL 16-20 Change 1, at I-8.

The USDOL issued guidance on how to administer the PUA program in UIPL 16-20 and four subsequent UIPLs referred to as Changes 1 - 4 to UIPL 16-20. Relevant to this appeal, Change 1 to UIPL 16-20 provided an answer to the question of whether a full-time student who is laid off from part-time employment due to the pandemic (and the part-time income is not her primary source of income) can be eligible for PUA benefits:

Answer: Yes. Provided a full-time student who worked part-time is unemployed, partially unemployed, or unable or unavailable to work because of one of the COVID-19 related reasons in section 2102(a)(3)(A)(ii)(I) of the CARES Act, then he or she may be eligible for PUA.

The requirement that the employment be the “principal source of income” . . . does not apply to eligibility for PUA.

UIPL 16-20 Change 1, at I-7 (Question 28). The guidance also makes clear that there is not a minimum age to be eligible to receive PUA benefits. UIPL 16-20 Change 2 (July 21, 2020), at I-3 - I-4 (Question 6). The USDOL noted that federal or state laws relating to the employment of minors could impact eligibility, but concluded that “[i]f federal and state

laws . . . do not make it illegal to employ the individual, and the individual meets the state's able and available requirements, the individual may be eligible for PUA.”⁴ *Id.*

The USDOL guidance further provides that, in the event of questions concerning coverage or administration of the federal benefits that are not answered in the CARES Act or corresponding UIPLs, states should consult the regulations governing Disaster Unemployment Assistance (DUA), 20 C.F.R. Part 625. UIPL 16-20 Change 1, at 2. DUA is a preexisting, ongoing federal program that provides unemployment assistance to eligible persons impacted by a major disaster. 42 U.S.C. § 5177; 20 C.F.R. § 625.1(a). Congress provided that the regulations governing DUA apply to the PUA program “[e]xcept as otherwise provided in [section 2102 of the CARES Act] or to the extent there is a conflict between [section 2102] and [part] 625.” CARES Act § 2102(h). Finally, only after applying the provisions of the CARES Act, the UIPLs and the DUA regulations (to the extent not inconsistent with the Act or the UIPLs) are states to look at their own unemployment laws in interpreting eligibility for PUA benefits. UIPL 16-20 Change 1, at 2.

With this as background, we turn to the question of whether the ULJ correctly interpreted the CARES Act in disqualifying Muse from receiving PUA benefits. When interpreting a federal statute, this court must “give effect to the will of Congress.” *Goodman v. Best Buy, Inc.*, 777 N.W.2d 755, 758 (Minn. 2010) (quoting *Griffin v. Oceanic*

⁴ In connection with this guidance, we note that DEED submitted a question to the USDOL regarding the high-school eligibility issue, but did not receive a direct response and the USDOL did not select that specific question for inclusion in the UIPLs.

Contractors, Inc., 458 U.S. 564, 570, 102 S. Ct. 3245, 3250 (1982)). If the language of the statute is clear, we will not look beyond it. *Id.* “We must ‘presume that [the] legislature says in a statute what it means and means in a statute what it says there.’” *Id.* (quoting *Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 253-54, 112 S. Ct. 1146, 1149 (1992)).

The CARES Act sets out two requirements for PUA eligibility: (1) an individual must be ineligible for regular unemployment benefits or PEUC benefits and (2) an individual must self-certify that they are available to work but unable to do so because of one of 11 reasons related to the COVID-19 pandemic. CARES Act § 2102(a)(3)(A). There is no dispute that Minnesota high school students meet the first requirement because, under the Minnesota Unemployment Insurance Law, high school students are categorically ineligible to collect unemployment benefits. Minn. Stat. § 268.085, subd. 2(3) (providing that an applicant is ineligible for benefits during any week “that occurs in a period when the applicant is a student in attendance at, or on vacation from a secondary school including the period between academic years or terms”). The second requirement can also be met by high school students. All it requires is that the student be available for work, but not be able to work because of one of the listed COVID-19-related reasons. DEED does not dispute that Muse is ineligible for benefits under state law and lost her part-time employment because of the pandemic. Muse thus satisfies the two prerequisites and is thereby eligible for PUA benefits under the plain language of the CARES Act.

DEED, however, urges this court to defer to its interpretation of the CARES Act as the “only reasonable position that accounts for all of the relevant authorities.” Deference, however, is only appropriate if the provision being interpreted is ambiguous. *In re Cities*

of Annandale & Maple Lake NPDES/SDS Permit Issuance, 731 N.W.2d 502, 516 (Minn. 2007); *see also Abdi v. Dep't of Emp't & Econ. Dev.*, 749 N.W.2d 812, 815 (Minn. App. 2008) (“[I]f we conclude that the Act and regulations are clear and unambiguous with respect to the issue before us, DEED’s interpretation is entitled to no deference.”). For a provision to be ambiguous, the provision must be capable of two or more reasonable interpretations. *Cities of Annandale*, 731 N.W.2d at 516. For the reasons set out below, we conclude that DEED’s proposed interpretation is not reasonable and is, therefore, not entitled to deference.

DEED’s interpretation is based on language in an attachment to the USDOL guidance that relates to the processing of PUA claims. UIPL 16-20 Attachment 1, at I-9. The language relied on by DEED states that “[t]he provisions of the applicable state law that apply to claims for PUA include . . . [d]isqualification, including disqualifying income provisions.” *Id.* DEED argues that “disqualification” is equivalent to “ineligibility,” and that, because high school students are ineligible for regular unemployment benefits under Minnesota law, they are also ineligible for PUA benefits. DEED’s reasoning is flawed for several reasons.

First, DEED’s argument ignores the beginning of the above-quoted section, which provides that state law applies “consistent with 20 C.F.R. 625.11” of the DUA regulations. *Id.* Section 625.11 of the DUA regulations expressly limits the applicability of state law to only those provisions “as specifically set forth” in that part of the regulations. 20 C.F.R. § 625.11. The section of the DUA regulations that relates to disqualification provides, in relevant part:

(b) *Disqualification.*

(1) An individual shall not be entitled to DUA for any week after the week in which the individual is reemployed in a suitable position.

(2) An individual who refuses without good cause to accept a bona fide offer of reemployment in a position suitable to the individual . . . shall not be entitled to DUA [benefits] For the purposes of this paragraph, a position shall not be deemed to be suitable for an individual if . . . acceptance for the position would . . . be inconsistent with any labor standard . . . of the Federal Unemployment Tax Act, . . . *or the comparable provisions of the applicable State law.*

20 C.F.R. § 625.13(b) (emphasis added). There is nothing in these subsections that would allow disqualification on the basis of the high school restriction in our state law. To the contrary, the regulations appear to narrowly restrict the applicability of state law provisions to questions relating to whether the benefit applicant has turned down a “suitable position” without “good cause.” We thus conclude that DEED erred by relying on this one item in the guidance, without reading it together with the DUA regulations as the guidance requires.

Moreover, the interpretation urged by DEED is inconsistent with the language and purpose of the CARES Act and is illogical. Eligibility for PUA benefits requires a showing that the person is not eligible for regular unemployment-compensation benefits. If the very thing that makes the person eligible for PUA benefits is treated as a disqualification, no one would be eligible for PUA benefits.⁵

⁵ We note that DEED does not assert that all individuals who are ineligible for regular unemployment compensation are ineligible for PUA benefits. Rather, DEED argues that “[t]here is a legal distinction between individuals who are not eligible for regular

DEED's interpretation also ignores the USDOL guidance related to students. That guidance expressly states that full-time students may be eligible for PUA benefits, even though their work was only part-time and was not a "primary source of income." UIPL 16-20 Change 1, at I-7. The guidance further provides that there is not a minimum age requirement for PUA eligibility. UIPL 16-20 Change 2, at I-3. This undermines DEED's contention that our state law disqualification of high school students from regular unemployment-compensation benefits should be applied to determine PUA eligibility.

Another factor that weighs against DEED's interpretation is the fact that the CARES Act offers "coverage for individuals who are not eligible for regular [unemployment compensation]," including "certain gig economy workers, clergy and those working for religious organizations who are not covered by regular [unemployment compensation], and *other workers who may not be covered by the regular [unemployment-compensation] program under some state laws.*" UIPL 16-20, at 1-2 (emphasis added); *see also* UIPL 16-20 Change 1, at I-8 ("PUA is a benefit of last resort for *anyone* who does not qualify for other [unemployment-compensation] programs and who would be able and available to work but for one or more of the COVID-19 related reasons listed in section 2102 of the CARES Act." (emphasis added)). Our state unemployment law bars "gig economy workers" from eligibility for regular unemployment benefits because they are classified as

unemployment insurance benefits due to reasons that prevent them from establishing an unemployment benefit account, and those who are ineligible due to application of state law disqualification/ineligibility provisions." Here again, however, we can discern no language in the CARES Act or the USDOL guidance to support such a distinction and it ignores section 625.11 of the DUA regulations that limits the applicability of state law provisions.

independent contractors pursuant to Minn. Stat. § 268.035, subd. 15(a)(1) (2020), but the guidance makes clear that they are not categorically disqualified from eligibility for PUA benefits. *See* UIPL 16-20 Attachment 1, at I-6; UIPL 16-20 Change 1, at I-8.

DEED's final argument in support of its interpretation of the CARES Act is that, if high school students are deemed eligible to obtain PUA benefits, it will throw open the doors of eligibility so wide that even incarcerated individuals and individuals not actually unemployed may be eligible for benefits. This is not accurate. As we have explained, applicants for PUA benefits must demonstrate, among other things, that they are "otherwise . . . available for work." CARES Act § 2102(a)(3)(A). Incarcerated individuals cannot be eligible for PUA benefits because they are not "otherwise able to work and available for work within the meaning of applicable State law." *Id.* (a)(3)(A)(i).⁶ And individuals who are not actually unemployed cannot be eligible for PUA benefits because the definition of "covered individual" is limited to those who self-certify that they are "unemployed, partially unemployed, or unable or unavailable to work because" of one of the enumerated COVID-19-related reasons. *Id.* (a)(3)(A)(ii)(I).

We therefore reject DEED's contention that its interpretation is reasonable and discern no ambiguity in the applicable provisions of the CARES Act. Under the plain language of the Act, we conclude that our state law barring high school students from

⁶ The USDOL guidance confirms this in answering a question about the eligibility of "an incarcerated individual who is no longer participating in the work release program because the jail closed this program due to COVID-19." UIPL 16-20 Change 2, at I-4 (Question 9). The USDOL explains that "the incarcerated individual is not 'otherwise able to work and available for work within the meaning of applicable State law' because of his or her incarcerated status." *Id.*

receiving regular unemployment-compensation benefits does not render high school students categorically ineligible for PUA benefits.

DECISION

The ULJ erred by concluding that Minn. Stat. § 268.085, subd. 2(3), applies to render Minnesota high school students ineligible for PUA benefits under the CARES Act. For this reason, and because DEED does not dispute that Muse has met the second requirement for PUA eligibility, we reverse the decision of the ULJ.

Reversed.

Exhibit 5



Docket No.: [REDACTED]

Case No.: [REDACTED]

Employer: [REDACTED]

INC

Claimant: [REDACTED]

SSN: XXX-XX-0034

This is an important legal document. Please have someone translate the document.

هذه وثيقة قانونية مهمة. يرجى أن يكون هناك شخص ما يترجم المستند.
এটি একটি গুরুত্বপূর্ণ আইনি ডকুমেন্ট। দয়া করে কেউ
হিস্টালাইজ অনুবাদ করুন।

Este es un documento legal importante. Por favor, que alguien traduzca el documento.

这是一份重要的法律文件。请让某人翻译文件。

Ky është një dokument ligjor i rëndësishëm. Ju lutem, kini dikë ta përkthetë dokumentin.

ORDER

The Agency's January 8, 2021 Determination is modified.

Claimant is ineligible from receiving state and Pandemic Emergency Unemployment Compensation (PEUC) benefits pursuant to Section 28(1)(c) of the Michigan Employment Security Act (Act).

Claimant is ineligible from April 19, 2020 through August 29, 2020.

Claimant was not ineligible to receive Pandemic Unemployment Assistance (PUA) benefits under the CARES Act pursuant to Section 28(1)(c) of the Act.

The Agency's January 8, 2021 Determination of Overpayments is to be recalculated consistent with this decision.

Decision Date: February 4, 2021


DAVID MARMON
ADMINISTRATIVE LAW JUDGE

21-001072

PARTICIPANTS

[illegible]

EXHIBITS

[illegible]

21-00107

JURISDICTION

On January 11, 2021, Claimant timely protested a January 8, 2021 Unemployment Insurance Agency Determination which held Claimant ineligible for benefits under Section 28(1)(c) of the Michigan Employment Security Act (Act). The claimant was required, under Section 62(a), to repay benefits improperly received.

ISSUE

Is Claimant ineligible for benefits under the availability provisions of Section 28(1)(c) of the Act?

APPLICABLE LAW

Section 28 of the Act provides:

(1) An unemployed individual is eligible to receive benefits with respect to any week only if the unemployment agency finds all of the following:

(c) The individual is able and available to appear at a location of the unemployment agency's choosing for evaluation of eligibility for benefits, if required, and to perform suitable full-time work of a character that the individual is qualified to perform by past experience or training, which is of a character generally similar to work for which the individual has previously received wages, and for which the individual is available, full time, either at a locality at which the individual earned wages for insured work during his or her base period or at a locality where it is found by the unemployment agency that such work is available. An individual is considered unavailable for work under any of the following circumstances:

(i) The individual fails during a benefit year to notify or update a chargeable employer with telephone, electronic mail, or other information sufficient to allow the employer to contact the individual about available work.

(ii) The individual fails, without good cause, to respond to the unemployment agency within 14 calendar days of the later of the mailing of a notice to the address of record requiring the individual to contact the unemployment agency or of the leaving of a telephone message requesting a return call and providing a return name and telephone number on an automated answering device or with an individual answering the telephone number of record.

(iii) Unless the claimant shows good cause for failure to respond, mail sent to the individual's address of record is returned as undeliverable and the telephone number of record has been disconnected or changed or is otherwise no longer associated with

the individual.

The claimant has the burden of proving eligibility for unemployment benefits. *Dwyer v UCC*, 321 Mich 178 (1948).

Section 2102 of the CARES Act (PUA provision) states in part as follows:

(a) DEFINITIONS.—In this section:

* * *

(3) COVERED INDIVIDUAL.—The term "covered individual"—(A) means an individual who—

- (i) is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107, including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107; and
- (ii) provides self-certification that the individual—
 - (I) is otherwise able to work and available for work within the meaning of applicable State law, except the individual is unemployed, partially unemployed, or unable or unavailable to work because—
 - (aa) the individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
 - (bb) a member of the individual's household has been diagnosed with COVID-19;
 - (cc) the individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;
 - (dd) a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
 - (ee) the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
 - (ff) the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
 - (gg) the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;

(hh) the individual has become the bread-winner or major support for a household because the head of the household has died as a direct result of COVID-19;
(ii) the individual has to quit his or her job as a direct result of COVID-19;
(jj) the individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or
(kk) the individual meets any additional criteria established by the Secretary for unemployment assistance under this section; or
(ll) is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107 and meets the requirements of subclause (l); and

(B) does not include—

- (i) an individual who has the ability to telework with pay; or
- (ii) an individual who is receiving paid sick leave or other paid leave benefits, regardless of whether the individual meets a qualification described in items (aa) through (kk) of subparagraph (A)(i)(I).

Per UIPL 17-20, PEUC availability requirements are the same as under state law.

FINDINGS OF FACT

Employer operates a [REDACTED] franchise. Claimant was hired to work for Employer on July 1, 2014, parttime. Claimant continued working for Employer until April 14, 2020. At that time, Employer had to scale back its hours because of the Covid-19 Pandemic and Claimant took herself off of Employer's work schedule. Claimant has two minor children, ages 2 and 1. While working, Claimant's mother watched Claimant's kids.

Claimant filed for benefits and was told that she did not qualify for state benefits. Instead, she was given benefits under the PUA provision of the CARES Act. Claimant was not available for fulltime work from April 25, 2020 until August 29, 2020 because of her mother's work schedule. Claimant again became available for fulltime work after August 29, 2020. Claimant received benefits under the PEUC program effective November 29, 2020. Claimant has resumed working parttime.

REASONING AND CONCLUSIONS OF LAW

Section 28(1)(c) requires a claimant to be available for work fulltime. This requirement is also present for eligibility under the PEUC program. As Claimant was not available for fulltime work from April 25 through August 29, 2020, she is not eligible for state benefits or benefits under PEUC during this period. However, Claimant testified that she did not qualify for regular benefits when she initially applied in April, and instead was awarded benefits under the PUA program. Under this program, Claimant is only

21-031073

required to be available for parttime work. Accordingly, the Agency's January 8, 2021 Determination is modified. Claimant is ineligible from receiving state and PEUC benefits pursuant to Section 28(1)(c) of the Act from April 19, 2020 through August 29, 2020. Claimant was not ineligible to receive PUA benefits under the CARES Act pursuant to Section 28(1)(c) of the Act. The Agency's January 8, 2021 Determination of Overpayments is to be recalculated consistent with this decision.

IMPORTANT: TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME

This Order will become final unless an interested party takes ONE of the following actions: (1) files a written, signed, request for rehearing/reopening to the Administrative Law Judge, or by an office or agent office of the agency OR (2) files a written, signed, appeal to the Unemployment Insurance Appeals Commission at P.O. Box 30475, Lansing, MI 48909-7975 (Facsimile: 517-241-7326); OR (3) files a direct appeal, upon stipulation, to the Circuit Court on or before:

March 8, 2021

If you elect to file an appeal with the Unemployment Insurance Appeals Commission, your appeal should be filed within the deadline set forth in my decision/order. **Your appeal may be submitted to the Commission by US mail or fax. Additionally, you may file an appeal electronically by completing a fillable form on the Commission's website.** The website address is <https://www.michigan.gov/ulac> and that website includes instructions on how to file the appeal. Do not use your MIWAM account through the Unemployment Insurance Agency's online system to file an appeal to the Commission.

I, M. Hanrahan, certify a copy of this order has been sent on the day it was signed, to each of the parties at their respective addresses on record.

(SEE ATTACHED SHEET)

21-001032

REQUEST FOR REHEARING OR REOPENING BEFORE AN ADMINISTRATIVE LAW JUDGE

When the appeal to the Administrative Law Judge (ALJ) has been dismissed for lack of prosecution or a party is in possession of newly discovered material information not available when the case was heard by the ALJ, the party may request rehearing in writing before the ALJ instead of appealing to the Unemployment Insurance Appeals Commission (Commission). A request for rehearing must be signed by the requesting party or their agent, and RECEIVED by the Michigan Office of Administrative Hearings and Rules (MOAHR) at 3026 West Grand Boulevard, 2nd Floor Annex, Ste 2-700, Detroit, MI 48202 or by an office or agent office of the agency, within 30 calendar days after the date of this decision. The party requesting rehearing must also serve the request on the opposing party. A rehearing request received (as described above) more than 30 days after the decision is mailed, shall be treated as a request for reopening.

The ALJ may, for good cause, reopen and review this decision and issue a new decision or issue a denial of rehearing/reopening.

If a request for rehearing or reopening is not received by MOAHR, and an appeal to the Commission is not submitted, the hearing decision becomes final.

If the Agency fails to comply with an ALJ decision or order more than 30 days, but within 1 year, after the date of mailing of the decision, you may request, in writing, that the ALJ reopen the matter. You must serve a copy of the request to reopen on the other party.

APPEAL TO THE UNEMPLOYMENT INSURANCE APPEALS COMMISSION

The Unemployment Insurance Appeals Commission (Commission) consists of up to seven members appointed by the governor and is not part of the Unemployment Insurance Agency (UIA).

An appeal to the Commission shall be in writing and signed by the party or his/her agent and RECEIVED directly by the COMMISSION within 30 days after the mailing of the ALJ's hearing decision or order denying rehearing or reopening. A timely appeal or request for rehearing/reopening may be made by personal service, postal delivery (P.O. Box 30475, Lansing, MI 48909-7975), facsimile transmission (517.241.7326), or other electronic means as prescribed by the Commission.

The timely appeal/request may also seek to present additional evidence in connection with the appeal or request an oral argument before the Commission. The Commission may consider written argument only if all parties are represented by agreement of the parties; the Commission orders oral argument; or the Commission orders evidence be produced before it. For additional information, please review the Mich Admin Code, Rules 792.11416 through 792.11429 or visit <http://www.michigan.gov/lara/0,4601,7-154-35738--,00.html>

An appeal cannot be requested by telephone, but information about the appeal process can be obtained by calling (800) 738-6372 or visiting http://www.michigan.gov/documents/uiia_UC1800_76144_7.pdf

BY-PASS OF COMMISSION/DIRECT APPEAL TO THE CIRCUIT COURT

A party may by-pass appealing to the Commission and appeal a decision or final order of an ALJ directly to a circuit court in the county in which the Claimant resides or in the county in which the Claimant's place of employment is (or was) located, or if the Claimant is not a party to the case, the circuit court in the county in which the employer's principal place of business in this state is located, if the parties (Claimant and Employer), or their respective authorized agents/attorneys sign a timely written stipulation agreeing to the direct appeal to the circuit court. The stipulation must be mailed to the Michigan Office of Administrative Hearings and Rules, 3026 W. Grand Blvd, 2nd Floor Annex, Suite 2-700, Detroit, Michigan 48202. Application for review to a circuit court must be made within 30 days after the mailing date decision or final order by any method permissible under the rules and practices of the circuit court.

The responsibility for properly and timely filing an appeal with the clerk of the circuit court rests with the party filing the appeal.

Exhibit 6

U.S. Department of Labor

Assistant Secretary for
Employment and Training
Washington, D.C. 20210



July 27, 2020

Mr. Caleb Frostman
Secretary
State of Wisconsin
Department of Workforce Development
P.O. Box 7946
Madison, WI 53707

Dear Secretary Frostman:

The U.S. Department of Labor (Department) received your letter regarding Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pandemic Unemployment Assistance (PUA) eligibility for State of Wisconsin recipients of Social Security Disability Insurance (SSDI) payments. Your correspondence was forwarded to the Department's Employment and Training Administration (ETA) for response. ETA is responsible for administering the federal-state Unemployment Insurance (UI) program within the Department.

Wisconsin's state law provides that an individual is "ineligible for benefits" for each week in the month in which an individual receives SSDI.¹ Wisconsin interprets this provision of its law as a prohibition on receiving regular unemployment compensation (UC) for individuals receiving SSDI.² The plain language text of the Wisconsin law, and the Department's understanding of the State's interpretation of its law, would disqualify individuals who receive SSDI from eligibility for regular UC. Because these individuals are ineligible for regular UC, they meet the PUA eligibility requirement of "not eligible for regular compensation." Therefore, if they are unemployed, have reduced employment, or are unable to work or are unavailable to work due to one of the specified COVID-19 reasons outlined in the CARES Act or the Department's guidance in UI Program Letter No. 16-20, they may be eligible for PUA benefit.³

Because Section 2102 of the CARES Act does not provide for the treatment of other income an individual may have, the Disaster Unemployment Assistance (DUA) regulations govern this issue. The DUA regulation at 20 C.F.R. 625.13(a)(6) provides that the prorated amount of SSDI an individual receives is required to be deducted from DUA payments but only to the extent that this benefit would be reduced under the applicable state law. Under Wisconsin law, SSDI income is not reduced from an individual's entitlement to regular UC because, under the State's law, an individual is ineligible for any UC if they are receiving SSDI. Therefore, it appears that under Wisconsin law, SSDI income would not be reduced from an individual's DUA (or PUA) entitlement.

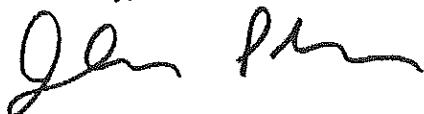
¹ See Wis. Stat. Ann. § 108.04(12)(f)a (West 2020).

² See Wis. Stat. Ann. § 108.04(12)(f) (West 2020).

³ Accessible at https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4628.

Thank you for your commitment to ensuring that payments of PUA are consistent with the applicable state and federal laws and regulations for this program. If you have any additional questions, please contact ETA at (202) 693-2772.

Sincerely,

A handwritten signature in black ink, appearing to read "John Pallasch". The signature is fluid and cursive, with the first name "John" being more prominent than the last name "Pallasch".

John Pallasch
Assistant Secretary for Employment and Training

Exhibit 7

(15m) FAMILY CORPORATION. “Family corporation” means:

(a) A corporation or a limited liability company that is treated as a corporation under this chapter in which 50 percent or more of the ownership interest, however designated or evidenced, is or during a claimant’s employment was owned or controlled, directly or indirectly, by the claimant or by the claimant’s spouse or child, or by the claimant’s parent if the claimant is under the age of 18, or by a combination of 2 or more of them; or

(b) Except where par. (a) applies, a corporation or a limited liability company that is treated as a corporation under this chapter in which 25 percent or more of ownership interest, however designated or evidenced, is or during a claimant’s employment was owned or controlled, directly or indirectly, by the claimant.

(15s) FULL-TIME WORK. “Full-time work” means work performed for 32 or more hours per week.

(16) FUND. “Fund” means the unemployment reserve fund established in s. 108.16.

(17) GOVERNMENT UNIT. “Government unit” means:

(a) This state, including all of its constitutional offices, branches of government, agencies, departments, boards, commissions, councils, committees and all other parts and subdivisions of state government, and all public bodies or instrumentalities of this state and one or more other states; and

(b) Any school district, county, city, village, town and any other public corporation or entity, any combination thereof and any agency of any of the foregoing, and any public body or instrumentality of any political subdivision of this state and one or more other states or one or more political subdivisions of one or more other states.

(17m) INDIAN TRIBE. “Indian tribe” has the meaning given in 25 USC 450b (e), and includes any subdivision, subsidiary, or business enterprise that is wholly owned by such an entity.

(18) INSTITUTION OF HIGHER EDUCATION. “Institution of higher education” means a nonprofit or public educational institution which provides an educational program for which it awards a bachelor’s or higher degree, or provides a program which is acceptable for full credit toward such a degree or a program of training to prepare students for gainful employment in a recognized occupation, and admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate.

(18m) LOGGER. “Logger” means a skidding operator or piece cutter with a forest products manufacturer or a logging contractor.

(19) NONPROFIT ORGANIZATIONS. “Nonprofit organization” means an organization described in section 501 (c) (3) of the Internal Revenue Code that is exempt from federal income tax under section 501 (a) of the Internal Revenue Code.

(20) PARTIAL UNEMPLOYMENT. An employee is “partially unemployed” in any week for which he or she earns some wages and is eligible for some benefits under s. 108.05 (3).

(20g) PART-TIME INTERMITTENT CARE. “Part-time intermittent care,” as defined by the department of health services under s. 49.45 (10), means skilled nursing service that is provided in the home of a recipient of medical assistance under ch. 49 under a written plan of care that specifies the medical necessity of the care.

(20m) PART-TIME WORK. “Part-time work” means work performed for less than 32 hours per week.

(20r) PARTNERSHIP. “Partnership” has the meaning given in s. 178.0102 (11).

(21) PAYROLL. (a) “Payroll” means all wages paid directly or indirectly by an employer within a certain period to individuals with respect to their employment by that employer, and includes all such wages for work which is excluded under sub. (15) (k) if the wages paid for such work:

1. Are subject to a tax under the federal unemployment tax act or are exempted from that tax only because the federal unemployment tax act (26 USC 3301 to 3311) applies to a lesser amount of

wages paid to an individual during a calendar year than the amount specified in par. (b); and

2. Are not subject to contributions under another unemployment insurance law.

(b) Notwithstanding par. (a), except as provided in ss. 108.151 (7) (a) and 108.155 (1) (a), an employer’s payroll for calendar years prior to 2009 includes only the first \$10,500 of wages paid by an employer to an individual during each calendar year, for calendar years 2009 and 2010 includes only the first \$12,000 of such wages, for calendar years 2011 and 2012 includes only the first \$13,000 of such wages, and for calendar years after 2012 includes only the first \$14,000 of such wages, including any wages paid for any work covered by the unemployment insurance law of any other state, except as authorized in s. 108.17 (5).

(c) If the federal unemployment tax is amended to apply to a higher amount of wages paid to an individual during a calendar year than the amount specified in par. (b), then the higher amount shall likewise apply under par. (b), as a substitute for the amount there specified, starting with the same period to which the federal amendment first applies.

(21c) PRIVATE-DUTY NURSING SERVICE. “Private-duty nursing service” means skilled nursing service under a written plan of care that specifies the medical necessity of the care, which is provided to a recipient of medical assistance under ch. 49 whose medical condition requires more continuous skilled nursing service than may be provided as part-time intermittent care.

(21e) PROFESSIONAL EMPLOYER ORGANIZATION. “Professional employer organization” means any person who is currently registered as a professional employer organization with the department of financial institutions in accordance with subch. III of ch. 202, who contracts to provide the nontemporary, ongoing employee workforce of more than one client under a written leasing contract, the majority of whose clients are not under the same ownership, management, or control as the person other than through the terms of the contract, and who under contract and in fact:

(a) Has the right to hire and terminate the employees who perform services for the client and to reassign the employees to other clients;

(b) Sets the rate of pay of the employees, whether or not through negotiations and whether or not the responsibility to set the rate of pay is shared with the client;

(c) Has the obligation to and pays the employees from its own accounts;

(d) Has a general right of direction and control over the employees, including corporate officers, which right may be shared with the client to the degree necessary to allow the client to conduct its business, meet any fiduciary responsibility, or comply with any applicable regulatory or statutory requirements;

(e) Assumes responsibility for the unemployment insurance coverage of the employees, files all required reports, pays all required contributions or reimbursements due on the wages of the employees, and otherwise complies with all of the provisions of this chapter that are applicable to employers on behalf of the client;

(f) Has the obligation to establish, fund, and administer employee benefit plans for the employees; and

(g) Provides notice of the employee leasing arrangement to the employees.

(21m) QUARTER. “Quarter” means a 3-month period ending on March 31, June 30, September 30 or December 31.

(21s) RELATED CORPORATIONS. “Related corporations” means 2 or more corporations to which at least one of the following conditions applies:

(a) The corporations are members of a controlled group of corporations, as defined in 26 USC 1563, or would be members if 26 USC 1563 (a) (4) and (b) did not apply and if the phrase “more than fifty percent” were substituted for the phrase “at least eighty percent” wherever it appears in 26 USC 1563 (a).

Exhibit 8



Department of Workforce Development

**Department of
Workforce Development
Secretary's Office**

201 E. Washington
Avenue

P.O. Box 7946

Madison, WI 53707-7946

Telephone: (608) 266-
3131

Fax: (608) 266-1784

Email: sec@dwd.wisconsin.gov

STATE OF WISCONSIN



Department of Workforce Development

Tony Evers, Governor

Caleb Frostman, Secretary

FOR IMMEDIATE RELEASE

Monday, July 27, 2020

CONTACT: DWD Communications, 608-266-2722

On the Web: <http://dwd.wisconsin.gov/news/>

On Facebook: <http://www.facebook.com/WIWorkforce>

On Twitter: @WIWorkforce

DWD Encourages SSDI Recipients Whose Jobs Were Affected by COVID-19 to Apply for PUA Benefits

MADISON – After receiving awaited official guidance from the U.S. Department of Labor, the Department of Workforce Development (DWD) today encouraged Social Security Disability Insurance (SSDI) recipients whose ability to work was impacted by COVID-19 to apply for Pandemic Unemployment Assistance (PUA) benefits.

Those who are eligible for PUA may be able to receive retroactive benefits to the week ending February 8, 2020, or the first week an individual is out of work due to COVID-19, whichever is later.

Wisconsin state law disqualifies SSDI recipients from receiving state unemployment insurance (UI) benefits. A previous interpretation extended this disqualification to PUA benefits, which prevented individuals with disabilities from receiving needed financial support during the COVID-19 pandemic health emergency.

SSDI is a federal program that provides assistance to working-age individuals who have demonstrated an inability to work at substantial levels. The program encourages program recipients to work to their greatest ability.

Governor Tony Evers and Department of Workforce Development Secretary Caleb Frostman, along with U.S. Senator Tammy Baldwin and Representatives Ron Kind, Mark Pocan, and Gwen Moore, have been advocating for SSDI recipients, sending letters to U.S. Department of Labor Secretary Eugene Scalia, arguing that SSDI recipients out of work due to COVID-19 should not be excluded from receiving PUA benefits, especially during a period of public health emergency.

The coalition contended that PUA is intended for individuals who are ineligible for regular UI, including those not covered under state law. With Wisconsin law precluding those individuals who receive SSDI from receiving regular UI, they should be covered under PUA. If Wisconsin SSDI recipients otherwise meet COVID-related eligibility, they should not be disqualified from PUA benefits.

Although contrary to initial interpretations, DWD Secretary Caleb Frostman recognized that fighting for PUA benefits for SSDI recipients was urgently important for the applicants' economic security.

"If you lose work through no fault of your own, you should be eligible for Unemployment Insurance or its equivalent," he said. "With today's news, our state's residents who receive SSDI and are out of work due to COVID-19 now have an opportunity to receive partial wage replacement through PUA if they are otherwise eligible."

Secretary Frostman also expressed concern that an interpretation denying SSDI recipients of PUA eligibility would discriminate against those with disabilities, using SSDI as a proxy or as having a disparate impact on individuals with disabilities since all SSDI recipients—by definition—have disabilities.

"We are grateful that DOL's agreement on our interpretation can provide needed relief to SSDI recipients who are eligible for PUA," Secretary Frostman wrote.

PUA provides payments to workers not traditionally eligible for unemployment benefits (e.g., self-employed, independent contractors, workers with limited work history, etc.) who are unable to work as a direct result of the COVID-19 public health emergency.

For more information on PUA and how to apply, please visit <https://dwd.wisconsin.gov/uiben/pua/>

Under the previous interpretation, five individuals were denied PUA benefits. DWD will reprocess their claims and determine their eligibility based on the updated guidance.

Exhibit 9

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION
	Unemployment Insurance
	CORRESPONDENCE SYMBOL
	OUI/DUIO
	DATE
	April 27, 2020

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 16-20
Change 1

TO: STATE WORKFORCE AGENCIES

FROM: JOHN PALLASCH 
Assistant Secretary

SUBJECT: Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 –
Pandemic Unemployment Assistance (PUA) Program Reporting Instructions and
Questions and Answers

1. **Purpose.** As States have gained experience administering the PUA program under the CARES Act, they have identified questions about aspects of the program's operation. The purpose of this UIPL is to address those questions and provide further guidance about the PUA program authorized by section 2102 of the CARES Act of 2020, Public Law (Pub. L.) 116-136 and to provide instructions for completing Form ETA 9178-P, Quarterly Narrative Progress Report – Employment and Training Supplemental Budget Request Activities.
2. **Action Requested.** The U.S. Department of Labor's (Department) Employment and Training Administration (ETA) requests that State Workforce Administrators provide the information in this Unemployment Insurance Program Letter (UIPL) and all attachments to appropriate program and other staff in state workforce systems as they implement the Unemployment Insurance (UI)-related provisions in the CARES Act that respond to the economic effects of the Coronavirus Disease 2019 (COVID-19).
3. **Summary and Background.**
 - a. **Summary.** On March 27, 2020, the President signed into law the CARES Act, which includes the Relief for Workers Affected by Coronavirus Act set out in Title II, Subtitle A. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits, and provides funding to states for the administration of the program. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed.

RESCISSIONS	EXPIRATION DATE
None	Continuing

b. **Background.** The CARES Act was designed to mitigate the economic effects of the COVID-19 pandemic in a variety of ways. The CARES Act includes a provision of temporary benefits for individuals who have exhausted their entitlement to regular unemployment compensation (UC), as well as coverage for individuals who are not eligible for regular UC, individuals who are self-employed, or who have limited recent work history. These individuals may also include certain gig economy workers, clergy and those working for religious organizations who are not covered by regular unemployment compensation, and other workers who may not be covered by the regular UC program under some state laws. The coordination of programs within the CARES Act is discussed in UIPL No. 14-20.

4. **Questions and Answers.** The Department hosted a webinar with states on April 8, 2020, to discuss UIPL No. 16-20, which went over key provisions of the PUA program. A recording is available under the “Events” section on the Unemployment Insurance Community of Practice on WorkforceGPS (<https://ui.workforcegps.org/>). Attachment I contains answers to certain questions received during the webinar and through the Department’s designated e-mail on all COVID-19 related inquiries (covid-19@dol.gov). Attachment II provides a reference table for how to calculate the WBA for PUA.

When determining the appropriate course of action in administering the PUA program, states should first consult section 2102 of the CARES Act and the subsequent operating instructions provided by the Department, including UIPL No. 16-20 and UIPL No. 16-20 Change 1. Where the CARES Act and the operating instructions are silent, states should refer to DUA regulations at 20 C.F.R. Part 625. Where DUA regulations are silent, states should follow applicable state law for administering the regular UC program.

5. **Supplemental Budget Request Project Status Tracking.** The form ETA 9178-P is intended to be a monitoring instrument used by ETA to track a grantee’s progress toward completing project activities related to the supplemental budget request funding provided to states under section 4(e) of UIPL No. 16-20.

As part of the monitoring process, grantees that receive supplemental grant awards must submit a Quarterly Progress Report (QPR) using the form ETA 9178-P. The form ETA 9178-P requires the grantee to provide ETA with narrative updates on supplemental grant activities and helps ensure that the grantee achieves the goals described in the supplemental grant application. Attachment II contains form ETA 9178-P and Attachment III provides instructions for completing the form ETA 9178-P and timeline for the submission of these status reports. The reporting requirements outlined in this section also apply to SBR funding provided to states under UIPL Nos. 15-20 (paragraph 3 under section 4(c)) and 17-20 (paragraph 3 under section 4(c)), respectively.

6. **Inquiries.** States should direct inquiries to covid-19@dol.gov and copy the appropriate Regional Office.

7. References.

- Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116-136), including Title II Subtitle A Relief for Workers Affected by Coronavirus Act;
- 20 C.F.R. Part 625;
- UIPL No. 03-20, *Minimum Disaster Unemployment Assistance (DUA) Weekly Benefit Amount: January 1 – March 31, 2020*, issued December 12, 2019, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3675;
- UIPL No. 13-20, *Families First Coronavirus Response Act, Division D Emergency Unemployment Insurance Stabilization and Access Act of 2020*, issued March 22, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8634;
- UIPL No. 14-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Summary of Key Unemployment Insurance (UI) Provisions and Guidance Regarding Temporary Emergency State Staffing Flexibility*, issued April 2, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3390;
- UIPL No. 15-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Federal Pandemic Unemployment Compensation (FPUC) Program Operating, Financial, and Reporting Instructions*, issued April 4, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9297;
- UIPL No. 16-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Pandemic Unemployment Assistance (PUA) Program Operating, Financial, and Reporting Instructions*, issued April 5, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4628;
- UIPL No. 17-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Pandemic Emergency Unemployment Compensation (PEUC) Program Operating, Financial, and Reporting Instructions*, issued April 10, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8452; and
- ET Handbook No. 356 *Disaster Unemployment Assistance Handbook*.

8. Attachments.

- Attachment I: Questions and Answers
- Attachment II: Calculating the Weekly Benefit Amount (WBA) for Pandemic Unemployment Assistance (PUA)
- Attachment III: Form 9178-P Quarterly Narrative Progress Report
- Attachment IV: ETA 9178-P Quarterly Narrative Progress Report Instructions

Attachment I to UIPL No. 16-20 Change I

Questions and Answers: Pandemic Unemployment Assistance (PUA) Program

A. Relationship of PUA to Disaster Unemployment Assistance (DUA)

Like Disaster Unemployment Assistance (DUA), the Pandemic Unemployment Assistance (PUA) program is an emergency program activated in response to a crisis and designed to provide benefits to certain individuals who are ineligible for or who have exhausted entitlement to regular unemployment compensation (UC) or extended benefits (EB). Like DUA, PUA has a defined assistance period, and a set minimum Weekly Benefit Amount (WBA) which is determined based on each state's average WBA for regular UC. In addition, PUA benefits and the cost of its administration are federally funded.

The eligibility criteria for PUA are different from DUA. An individual, in addition to having no entitlement to regular UC or EB, must also have no entitlement to Pandemic Emergency Unemployment Compensation (PEUC) under section 2107 of the CARES Act. An individual must self-certify that he or she is unemployed, partially unemployed, or unable or unavailable to work because of a COVID-19 related reason listed in section 2102(a)(3)(A)(ii)(I) of the CARES Act. Unlike DUA, an individual filing for PUA does not need to provide proof of employment or self-employment to qualify, nor does PUA take into account the individual's principal source of income as part of the self-certification process.

To the extent possible, the PUA program should be administered using the same initial application, continued claims forms, and adjudication procedures utilized by the state for the DUA program.

1. Question: Can states request that the Pandemic Assistance Period be extended?

Answer: No. The time period of PUA under the CARES Act is statutory. Congress would need to enact a law to extend the Pandemic Assistance Period.

2. Question: Do states have to follow the procedures associated with issuing an approved press release announcing PUA availability, as is the practice with DUA declared disasters?

Answer: Yes, with some modifications. To ensure public knowledge of PUA availability, each state must notify all appropriate news media having statewide coverage of the beginning of the state's PUA program. However, unlike DUA, there is no requirement in PUA to notify an individual that he or she must apply within 30 days after the date the program's availability is announced. Additionally, states do not need to coordinate the press release with the Federal Emergency Management Agency (FEMA).

B. Claims Filing

3. Question: An individual's employer offers him or her the ability to telework with pay. However, because of domestic violence, sexual violence, or stalking, the individual is unable to telework. Does this preclude the individual from being eligible for PUA?

Answer: Generally, PUA is not payable to an individual who has the ability to telework with pay. However, many state UC laws include provisions to allow good cause for being unemployed or partially unemployed when an individual is experiencing domestic violence, sexual violence, or stalking. If domestic violence, sexual violence, or stalking prevents an individual from teleworking and the individual is not eligible for regular UC, the individual may be qualified to receive PUA if he or she is unemployed, partially unemployed, or unable or unavailable because of one of the COVID-19 related reasons listed in section 2102(a)(3)(A)(ii)(I) of the CARES Act.

4. Question: Is an individual required to demonstrate good cause to backdate a PUA claim?

Answer: No. An individual does not need to demonstrate good cause to backdate a PUA claim. Rather, the claim **must** be backdated to the first week during the Pandemic Assistance Period that the individual was unemployed, partially unemployed, or unable or unavailable to work because of a COVID-19 related reason listed in section 2102(a)(3)(A)(ii)(I) of the CARES Act.

5. Question: Must states review regular UC claims that were denied to assess eligibility for PUA?

Answer: Yes. States are required to review regular UC claims that were denied as of January 27, 2020 forward and identify individuals who are potentially eligible for PUA during the Pandemic Assistance Period. States are thereafter required to provide these individuals with appropriate written notification of their potential eligibility, including filing instructions.

It is possible that an individual who exhausted regular UC after January 27, 2020 could receive PUA benefits in the interim weeks before PEUC benefits become available with the week beginning March 29, 2020, provided he or she is otherwise eligible.

6. Question: Can the state convert an ineligible regular UC claim to a PUA claim?

Answer: It depends. A new application would not be required if the state has gathered sufficient information on the initial application, including a self-certification from the individual that one of the COVID-19 related reasons listed in section 2102(a)(3)(A)(ii)(I) of the CARES Act is applicable.

The base period for computing a PUA WBA is Calendar Year (CY) 2019, which may be different from the regular UC claim, so additional information may be required. Reference section C and Attachment I in UIPL No. 16-20 Change 1 for additional information on calculating the PUA WBA.

7. Question: If an individual is living in one state and is self-employed in another state, where should the individual file for PUA benefits?

Answer: The self-employed individual must file with the state where he or she was working at the time of becoming unemployed, partially unemployed, or unable or unavailable to work because of a COVID-19 related reason listed in section 2102(a)(3)(A)(ii)(I) of the CARES Act. If an individual worked in more than one state at this time, the individual may file in any of those states.

8. Question: Are states required to have a separate initial claim application for the PUA program?

Answer: No. However, states must be able to identify that individuals are filing under the PUA program for purposes of adjudications, appeals, reporting, etc.

9. Question: Should the state adjust its benefits rights information to include information on PUA claims, such as eligibility requirements, pandemic assistance period, WBA, wage proof requirements, appeal rights, and penalties for making false statements?

Answer: Yes. States must notify an individual of his or her benefit rights information for the PUA program as described on page III-5 and III-6 of ET Handbook No. 356, which governs DUA. This notification must include: (1) a statement that the purpose of this information is to inform the individual of his or her rights and responsibilities under PUA; (2) the eligibility requirements; (3) the Pandemic Assistance Period and potential WBA if he or she is found eligible; (4) the different types of deductions which may affect their application; (5) reporting and filing requirements; and (6) the individual's appeal rights under state law.

The state has flexibility in how this notification occurs. For instance, it may provide a link to a central resource on its website or create a PUA-specific insert for their Claimant Handbook.

10. Question: How must the state notify an individual when he or she is deemed eligible for PUA?

Answer: If the state determines an individual is eligible for PUA, the state must send an individual monetary determination indicating the program type, information about benefits, and information about continuing eligibility requirements.

C. Calculating Benefit Entitlement (including WBA)

11. Question: To be eligible for PUA, is an individual required to meet a minimum monetary requirement in the base period, similar to the monetary requirements for regular UC?

Answer: No. There is no minimum monetary requirement for an individual to be eligible for PUA. However, base period wages are considered when calculating the individual's WBA.

12. Question: What base period must states use for determining an individual's PUA WBA?

Answer: When computing a WBA under 20 C.F.R. §625.6, the base period to be used is the most recent tax year, which is CY 2019.

13. Question: How do states determine the PUA WBA?

Answer: The PUA WBA will be the amount of compensation an individual would have been paid regularly as computed under the provisions of the applicable state law, using the state's existing wage records and any additional supporting evidence provided by the individual. States must treat employment wages and self-employment income not covered by applicable state UC law in the same manner and with the same effects as covered employment. Refer to Attachment II for a table summarizing the process.

However, an individual will be provided the minimum PUA WBA if the state does not have any existing wage records and he or she does not provide evidence to support a higher amount.

14. Question: What is the minimum PUA WBA?

Answer: As described in 20 C.F.R. §625.6(b), the minimum PUA WBA is "50 percent of the average weekly payment of regular compensation in the state, as provided quarterly by the Department." The Department publishes information on each state's minimum WBA in a quarterly UIPL for DUA. This same information is applicable for PUA. States must use the amount in UIPL No. 03-20 for the minimum WBA on all PUA claims.

An individual may also qualify for an additional \$600 FPUC payment each week, as described in UIPL No. 15-20. Per section 2102(a)(5) of the CARES Act, the amount of FPUC also must be added to the amount of benefits under PUA programs established in Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

15. Question: Under DUA, if an individual is employed or self-employed less than full-time, 20 C.F.R. §625.6(b)(1) requires calculating the WBA as a percentage of the minimum WBA. Does this same calculation apply to PUA?

Answer: No. Section 2102(d)(1)(A)(i) of the CARES Act provides that the PUA WBA may not be less than the minimum weekly benefit amount described in 20 C.F.R. §625.6. For purposes of PUA, the minimum weekly benefit amount is 50 percent of the average weekly payment of regular compensation (*see* Question #14).

16. Question: What is the maximum PUA WBA?

Answer: The maximum PUA WBA is equal to the maximum WBA for regular compensation as authorized under the applicable state law.

17. Question: What is the minimum or maximum PUA WBA for a territory that does not have an applicable state law to reference?

Answer: For territories without an underlying UC program or applicable law to reference, the Department will establish the standard PUA WBA and inform the appropriate territory.

18. Question: DUA requires that an individual provide proof of employment or commencement of employment within 21 calendar days. Is PUA the same?

Answer: No. PUA does not require proof of employment. Instead, PUA requires that the individual self-certify that one of the COVID-19 related reasons identified in section 2102(a)(3)(A)(ii)(I) applies to his or her situation.

19. Question: When an individual is unable to provide a copy of the prior year's income tax return, what other documentation is acceptable to establish monetary entitlement for PUA?

Answer: Acceptable documentation of wages earned or paid during CY 2019 (*i.e.*, the PUA base period) includes, but is not limited to, state agency wage records, pay check stubs, bank receipts, business records, ledgers, contracts, invoices, and billing statements.

20. Question: How will the state calculate the PUA WBA when an individual does not provide proof of base period wages within 21 days?

Answer: If an individual does not provide proof of CY 2019 (*i.e.*, PUA base period) wages within 21 days, an individual's WBA will be reduced based on whichever is higher - the record of wages already on file or the minimum PUA WBA. An overpayment must be established for any benefits overpaid.

An individual may submit additional documentation at any time during the Pandemic Assistance Period to substantiate wages earned or paid during the base period. The state must immediately issue a monetary redetermination if the state determines the wages documentation is sufficient to permit a re-computation.

The monetary redetermination applies to all weeks of unemployment that the individual files during the Pandemic Assistance Period. The state must recalculate the WBA for any weeks previously paid and provide supplementary payment as appropriate.

21. Question: When an individual has insufficient wages (or no wages) during the PUA base period, how is the PUA WBA calculated?

Answer: If an individual has insufficient wages (or no wages) from employment or insufficient net income (or no net income) from self-employment in the applicable PUA base period to compute a WBA, the individual is entitled to the minimum PUA WBA.

Even with no wages in the base period, the individual must meet the requirements under section 2102(a)(3)(A)(ii)(I) of the CARES Act—he or she must be unemployed, partially unemployed, or unable or unavailable to work because of one of the COVID-19 related reasons. The individual must have an attachment to the labor market and must have experienced a loss of wages and hours or was unable to start employment following a bona fide job offer.

22. Question: Should the state use gross income or net income to calculate the PUA WBA for a self-employed individual?

Answer: For purposes of computing the WBA, the state should use net income reported on the tax return for a self-employed individual.

23. Question: Is Dependents' Allowance payable with PUA?

Answer: Yes. Dependents' Allowance is payable with PUA.

24. Question: Are PUA benefits included in the individual's gross income for federal income tax purposes and subject to federal income tax withholding?

Answer: Yes. PUA benefits are included in the individual's gross income for federal income tax purposes and subject to federal income tax withholding if the individual elects to have federal withholding deducted from the individual's PUA payments. An individual will receive Form 1099-G to file with his or her income tax return.

25. Question: Are PUA payments subject to child support intercept?

Answer: Yes. Child support obligations must be deducted from PUA payments in the same manner and to the same extent as these obligations are deducted from regular UC.

D. Eligibility – Initial Claims

26. Question: Is self-attestation sufficient to determine that an individual is not eligible for regular UC, EB, or PEUC? If not, what other steps must the state take to ensure an individual is ineligible for regular UC, EB, or PEUC?

Answer: Self-attestation is not sufficient to demonstrate ineligibility for regular UC, EB, or PEUC. The state may add a notation to the case file without requiring an application for regular UC if the individual has insufficient covered wages to meet the monetary requirements or if the individual has an active UC claim with a disqualification.

States must also determine whether the individual is eligible for regular UC in another state.

If the individual's eligibility for regular UC is questionable (for example, there are wages in the base period but no claim is filed, or a job separation that has not been adjudicated), then the state must first require the individual to file a regular UC claim. If the individual is subsequently disqualified from receiving regular UC, the state then must consider the individual for PUA eligibility.

27. Question: When an individual files an initial PUA claim, how does the state assess whether he or she satisfies one of the COVID-19 related eligibility criteria?

Answer: At the time of filing for an initial PUA claim, the state must ensure that an individual completes a self-certification form (either paper or online) that includes:

- The identification of the applicable COVID-19 related reason(s) under section 2102(a)(3)(A)(ii)(I) of the CARES Act, and
- A notice advising the individual that intentional misrepresentation on the self-certification is fraud.

Additionally, separate from the self-certification, states must provide the individual with a request for acknowledgement that he or she understands that the certification is under penalty of perjury. Examples of this separate acknowledgement include checking a box at the time of submission or checking a box in a pop-up message.

States have significant flexibility in how they implement the self-certification form. If the state provides a free-form text box for the individual to identify the reason for their unemployment, partial unemployment, or inability or unavailability to work, then the state must evaluate this information against the list of acceptable reasons found under section 2102(a)(3)(A)(ii)(I) of the CARES Act and document the reason.

28. Question: A full-time student who works part-time may be excluded from DUA because he or she has not lost their "principal source of income" as described under 20 C.F.R. §625.2(s). Is he or she eligible for PUA?

Answer: Yes. Provided a full-time student who worked part-time is unemployed, partially unemployed, or unable or unavailable to work because of one of the COVID-19 related reasons in section 2102(a)(3)(A)(ii)(I) of the CARES Act, then he or she may be eligible for PUA.

The requirement that the employment be the "principal source of income" under DUA does not apply to eligibility for PUA.

29. Question: Is a Peace Corps and Americorps participant who is no longer volunteering because their volunteer sites are closed due to COVID-19 eligible for PUA?

Answer: Yes. An individual participating in Peace Corps and Americorps who would not qualify for regular UC, whose volunteer site is closed down as a direct result of COVID-19, and who has suffered a loss of income is eligible for PUA.

E. Eligibility – Not Eligible for Regular UC

30. Question: An individual is not eligible for regular UC because he or she has not earned requalifying wages since the prior UC claim (double dip provision). Is he or she eligible for PUA?

Answer: Yes. Provided the individual is unemployed, partially unemployed, or unable or unavailable to work because of at least one of the COVID-19 related reasons listed in section 2102(a)(3)(A)(ii)(I) of the CARES Act, then the individual may be eligible for PUA.

31. Question: An individual is disqualified on a claim filed prior to March 2020 and must earn requalifying wages before he or she can be considered eligible for regular UC. However, due to COVID-19, he or she has not had the opportunity to earn sufficient wages to be eligible for regular UC. Can this individual be eligible for PUA?

Answer: Yes. Provided the individual is unemployed, partially unemployed, or unable or unavailable to work because of at least one of the COVID-19 related reasons listed in section 2102(a)(3)(A)(ii)(I) of the CARES Act, then the individual may be eligible for PUA.

32. Question: If the individual is disqualified on the regular UC claim and collects PUA, must the individual stop collecting PUA and begin collecting on the regular UC claim once the disqualification period for regular UC is satisfied?

Answer: Yes. Once the individual has served the weeks of the disqualification period, the state must revert the individual back to his or her regular UC claim if there are remaining benefits to be received, provided all other eligibility requirements are met.

33. Question: If an individual is disqualified for regular UC because of a job separation that occurred prior to the individual's unemployment due to COVID-19, is he or she potentially eligible for PUA?

Answer: Yes. If the individual is disqualified from regular UC for a cause that occurred prior to the individual's COVID-19 related reason, he or she may be eligible for PUA. This includes an individual who has a prior fraud disqualification.

PUA is a benefit of last resort for anyone who does not qualify for other UC programs and who would be able and available to work but for one or more of the COVID-19 related reasons listed in section 2102 of the CARES Act.

34. Question: If an individual refuses to return to work when called back by the employer because he or she wanted to receive unemployment benefits, would he or she be eligible for PUA?

Answer: No. If the individual refused work in order to file for unemployment benefits, he or she is not unemployed, partially unemployed, or not able or not available to work for one of the COVID-19 related reasons listed in section 2102(a)(3)(A)(ii)(I) of the CARES Act. Thus, the individual would not qualify for PUA.

35. Question: An individual is on approved unpaid medical leave from his or her employer and is not eligible for state UC because he or she is not able or available to work. Would the individual qualify for PUA?

Answer: It depends. If the medical leave is based on one of the COVID-19 related reason listed in section 2102(a)(3)(A)(ii)(I) of the CARES Act, the individual may be eligible for PUA benefits.

If the individual does not satisfy one of the COVID-19 related reasons and is otherwise not able to work or available for work, he or she is not eligible for PUA.

36. Question: An individual is eligible for regular UC but not collecting payments due to a 100 percent offset. Is he or she eligible for PUA?

Answer: No. In this scenario, the individual is eligible to collect regular UC and is deemed to be receiving payments even when they are used to reduce an existing overpayment. Therefore, he or she is eligible for regular UC and, thus, cannot be eligible for PUA.

37. Question: When the state requires that an individual must serve penalty weeks before being eligible for regular UC, may the individual use those weeks of PUA benefits to satisfy the penalty weeks?

Answer: State law will determine whether the weeks of filing for PUA may be used to satisfy penalty weeks for a disqualification.

F. Eligibility – COVID-19 Related Reasons

38. Question: Some of the reasons identified under Sections 2102(a)(3)(A)(ii)(I)(aa), (bb), (cc), and (ff) of the CARES Act require a medical diagnosis. Does this mean that the individual or members of the individual's household must have tested positive for COVID-19?

Answer: No. While a positive test is sufficient to qualify for PUA, a qualifying diagnosis does not require a positive test. Any diagnosis from a qualified medical professional, including one made via phone or telehealth, is also sufficient. This applies to the individual in section (aa), the members of the household in sections (bb) and (cc), or an

individual required to quarantine in section (ff).

39. Question: Section 2102(a)(3)(A)(ii)(I)(dd) of the CARES Act in UIPL No. 16-20 allows for PUA if the individual is the primary caregiver for a child who is unable to attend school that is closed as a direct result of the COVID-19 public health emergency. Does this apply during the summer months when school is not usually in session?

Answer: After the 2019-2020 school year was originally scheduled to end, a school is no longer considered closed as a direct result of the COVID-19 public health emergency, for purposes of 2102(a)(3)(A)(ii)(I)(dd).

Once the regular 2019-2020 school year is over, parents should rely on their customary summer arrangements for caring for their children. Absent some other qualifying circumstances, the individual will not be eligible to receive PUA.

However, if the facility that the individual relies on to provide summer care for the child is also closed as a direct result of the COVID-19 public health emergency, he or she may continue to qualify for PUA under section 2102(a)(3)(A)(ii)(I)(dd) of the CARES Act. Similarly, if there is some other reason under which he or she qualifies for PUA, he or she will continue to be eligible to receive benefits.

40. Question: The examples provided for section 2102(a)(3)(A)(ii)(I)(ee) and (gg) of the CARES Act in UIPL No. 16-20 explain that an individual who is unable to reach the place of employment because of a quarantine, including a state or municipal order restricting travel, may be eligible for PUA. Would this also apply if an individual is following a stay-at-home order?

Answer: Yes. The examples in UIPL No. 16-20 are not intended to be exclusive or comprehensive. An individual may also qualify if he or she is unable to reach the place of employment due to a stay-at-home, shelter-in-place, or other order that requires an individual to stay home in quarantine to reduce the spread of COVID-19.

41. Question: An example provided for section 2102(a)(3)(A)(ii)(I)(ff) of the CARES Act in UIPL No. 16-20 explains that an individual whose health care provider advises him or her to self-quarantine due to a compromised immune system by virtue of a serious health condition may be eligible for PUA. Are there other reasons that an individual may be eligible for PUA under this clause?

Answer: Yes. The examples in UIPL No. 16-20 are not intended to be exclusive or comprehensive. Regardless of the underlying reason for an individual's increased risk for COVID-19, section 2102(a)(3)(A)(ii)(I)(ff) of the CARES Act applies to all individuals who are advised by a health care provider to self-quarantine due to concerns related to COVID-19. Without having been advised by a health care provider to self-quarantine, an individual who does not go to work due to general concerns about exposure to COVID-19, and who does not meet any of the other COVID-related criteria for PUA, is not eligible for PUA.

42. Question: UIPL No. 16-20 provides an example of a driver for a ridesharing service who is forced to significantly limit his or her performance of customary work activities because of the COVID-19 public health emergency, such as if a state or municipal order restricting movement makes continued operations unsustainable, indicating that he or she may be eligible for PUA under section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act. Does this apply to other types of independent contractors?

Answer: Yes. An independent contractor may be eligible for PUA if he or she is unemployed, partially unemployed, or unable or unavailable to work because of one of the COVID-19 related reasons listed in section 2102(a)(3)(A)(ii)(I) of the CARES Act. This includes an independent contractor who experiences a significant diminution of work as a result of COVID-19.

G. Eligibility – Ongoing

43. Question: Must a state's Notice of Determination list all the COVID-19 related eligibility criteria an individual did not satisfy?

Answer: No. If the state deems an individual ineligible, the Notice of Determination could be simple: "Based on our investigation and the available information, you are not considered unemployed, partially unemployed, or unable or unavailable to work for one of the qualifying reasons identified under section 2102(a)(3)(A)(ii)(I) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act."

44. Question: Is PUA eligibility determined on a weekly basis like DUA?

Answer: Yes.

45. Question: What action must the state take during the continued claim filing process to assess whether an individual continues to satisfy one of the COVID-19 related eligibility criteria listed in section 2102(a)(3)(A)(ii)(I) of the CARES Act?

Answer: The requirements are substantially the same as those discussed in Question #27. At the time of filing a continued claim, the state must ensure that an individual completes a self-certification form (either paper or online) that includes:

- The identification of the applicable COVID-19 related reason(s) under section 2102(a)(3)(A)(ii)(I) of the CARES Act, and
- A notice advising the individual that intentional misrepresentation on the self-certification is fraud.

Additionally, separate from the self-certification, states must provide the individual with a request for acknowledgement that he or she understands that the certification is under penalty of perjury. Examples of this separate acknowledgement include checking a box at the time of submission or checking a box in a pop-up message.

States have significant flexibility in how they implement the self-certification form. If the state provides a free-form text box for the individual to identify the reason for their unemployment, partial unemployment, or inability or unavailability to work, then the state must evaluate this information against the list of acceptable reasons found in section 2102(a)(3)(A)(ii)(I) of the CARES Act and document the reason.

46. Question: An individual may file for PUA because of one of the COVID-19 related reasons described in section 2102(a)(3)(A)(ii)(I) of the CARES Act, but later on have another COVID-19 related reason apply to his or her situation. Is the individual eligible to continue receiving PUA? Must the individual file a new initial application?

Answer: The individual must provide the initial reason for his or her unemployment, partial unemployment, or inability or unavailability to work at the time of the initial PUA claim for the state to assess his or her eligibility. The individual must then certify on the continued claim each week that one of the enumerated reasons continues to apply. The individual continues to qualify, even if the precise provision under which he or she initially qualified changes to another precise provision under section 2102(a)(3)(A)(ii)(I) of the CARES Act. This does not require a separate initial claim.

47. Question: Is an individual required to search for work while collecting PUA benefits?

Answer: The applicable state UC laws related to continued claims are applicable to PUA claims. However, states may use the emergency flexibility described in UIPL No. 13-20 to temporarily modify or suspend work search requirements as needed to respond to the spread of COVID-19.

48. Question: How does an individual meet the able and available provisions of PUA if he or she is ill due to COVID-19, caring for someone with COVID-19, or unable to work due to travel restrictions due to COVID-19?

Answer: An individual satisfies the able and available provisions by certifying each week that he or she is not able or available to work because one of the COVID-19 related reasons listed in section 2102(a)(3)(A)(ii)(I) of the CARES Act, but he or she would otherwise be available.

49. Question: Is an individual who refuses an offer of work eligible for PUA?

Answer: No, unless the individual is unable to work as a direct result of COVID-19. Eligibility for PUA requires that the individual be able to work and available to work within the meaning of applicable state law, unless the individual is unable or unavailable to accept the offer of work because of a reason listed under section 2102(a)(3)(A)(ii)(I) of the CARES Act, he or she would not be eligible for PUA.

50. Question: If the jurisdiction's stay at home order due to the COVID-19 emergency is lifted and an employer has called his or her employees back to work, is an individual who refuses to return to work due to a general fear of exposure to the coronavirus still eligible for PUA?

Answer: To qualify for PUA, the individual must be unemployed, partially unemployed, or unable or unavailable to work because of a COVID-19 related reason listed in section 2102(a)(3)(A)(ii)(I). An individual who does not go to work due to general concerns about exposure to COVID-19, and who does not meet any of the other COVID-19 related criteria for PUA, is not eligible for PUA because general concerns about exposure to COVID-19 is not one of the reasons listed in section 2102(a)(3)(A)(ii)(I).

51. Question: How often are states required to check whether an individual remains ineligible for regular UC and PEUC?

Answer: Because an individual receiving PUA cannot be eligible for regular UC and PEUC, states are required to confirm an individual is still ineligible for regular UC and PEUC every quarter. States must also check when the individual's regular UC benefit year expires.

States must also assess an individual's eligibility for EB should the state trigger on to an EB period.

Additionally, for claims that are backdated to an effective date prior to March 29, 2020, states must assess an individual's eligibility for PEUC for claimants who previously exhausted their regular UC at the time the program becomes available (this is March 29, 2020 in most states).

If the individual becomes eligible for regular UC, EB, or PEUC, then payment on PUA must stop and the individual may file a regular UC, EB, or PEUC claim.

H. Overpayments and Fraud

52. Question: Must PUA benefits be offset to recover overpayments for other states through the Interstate Reciprocal Overpayment Recovery Arrangement (IRORA)?

Answer: Yes. PUA payments must be reduced to recover overpayments for other states if the state has signed the IRORA agreement. However, the state may not offset more than 50 percent from the PUA payment to recover overpayments for other programs.

53. Question: May the state apply its own state law waiver provisions to PUA overpayments?

Answer: No. Under 20 C.F.R. §625.14(e), any provision of state law authorizing the waiver of recovery of overpayments is not applicable.

I. Appeals

54. Question: Do appeals of PUA claims follow the same appeal rights and processes as DUA claims?

Answer: No. PUA determinations, redeterminations, appeals, and hearings follow the provisions of state law applicable to claims for and payment of regular UC.

55. Question: What appeal rights and processes should be listed on the PUA determinations?

Answer: All determinations of PUA eligibility should follow state law appeal provisions for regular UC.

56. Question: What information about an individual's appeal rights must states include in the state's notification of PUA eligibility determinations?

Answer: The state must follow its own laws for notifying an individual of his or her UC appeal rights.

J. Financial Information and Reporting

57. Question: Will there be a quarterly status reporting for Supplemental Budget Requests (SBRs) received for PUA implementation?

Answer: Yes. States must submit an ETA 9178-P for SBRs received for PUA implementation. The ETA 9178-P report was created for SBR status reporting for programs under the CARES Act. See Attachments III and IV to UIPL No. 16-20 Change 1.

Grantees must submit form ETA 9178-P to their respective Federal Project Officer (FPO) within 45 days of each quarter's end. If the due date of the report falls on a Saturday, Sunday, or holiday, the report is due the previous business day. The table below provides the due dates for each reporting quarter:

Reporting Quarters	Due Dates
October 1 st – December 31 st	February 14 th
January 1 st – March 31 st	May 15 th
April 1 st – June 30 th	August 14 th
July 1 st – September 30 th	November 14 th

Attachment II to UIPL No. 16-20 Change 1

Calculating the Weekly Benefit Amount (WBA) Pandemic Unemployment Assistance (PUA)

If an individual . . .	And if . . .	Then
(1) has base period wages	Wages <u>sufficient</u> under state UC law for monetary qualification	<p>Compute a WBA for the individual under state UC law.</p> <p>(a) If computation exceeds 50% of AWBA, the individual receives this WBA (though it may not be higher than the state's max WBA for regular UC). (20 C.F.R. §625.6(a)(1)).</p> <p>(b) If computation is less than 50% of AWBA, individual will receive the minimum WBA (50% of state AWBA). (20 C.F.R. §625.6(b)).</p>
(2) has base period wages	Wages <u>insufficient</u> under state UC law for monetary qualification	An individual will receive the minimum WBA (50% of state AWBA). (20 C.F.R. §625.6(b)).
(3) has no base period wages and no earnings from self-employment		An individual will receive the minimum WBA (50% of state AWBA). (20 C.F.R. §625.6(b)).

Average Weekly Benefit Amount (AWBA). Average weekly benefit payment of regular compensation in the state, as provided quarterly by the Department. The PUA Pandemic Assistance Period began January 27, 2020. States must use UIPL No. 03-20 to identify their AWBA for purposes of PUA.

Base Period. Look-back period from which to assess an individual's WBA. This is the most recent tax year that has ended for the individual (whether an employee or self-employed) prior to the individual's unemployment that was a direct result of the COVID-19 public health emergency (20 C.F.R. §625.6(a)(2)). The PUA base period is CY 2019.

Wages. Remuneration for services performed for another, and, with respect to self-employed individual, net income from services performed in self-employment (20 C.F.R. §625.2(u)). For purposes of calculating the WBA, employment, wages, and self-employment which are not covered by the applicable state law shall be treated in the same manner and with the same effect as covered employment and wages (20 C.F.R. §625.6(a)(1)).

Wages do not include employment, self-employment, or wages earned or paid for employment or self-employment which are contrary to or prohibited by federal law (e.g., compensation for services performed by an alien who was not lawfully present for purposes of performing such services) (20 C.F.R. §625.6(a)(1)).

Weekly Benefit Amount (WBA). If the individual is eligible for an amount higher than the AWBA as provided in the table above, this is the weekly amount calculated pursuant to state UC law.

Attachment III to UIPL No. 16-20 Change I

Form ETA 9178-P

U.S. Department of Labor
Employment and Training Administration
Form ETA-9178-P

OMB No. N/A
Expiration Date: N/A

**Quarterly Narrative Progress Report
Employment and Training Supplemental Budget Request Activities**

General Information					
State Name:		Grant Number:		Report Quarter Ending:	Date of Submission:
Project Name:				UIPL/Solicitation Number:	
Project Contact Information					
Name:				Agency:	
Title				Address:	
Phone:		Ext:		City:	
E-Mail:				State:	Zip Code:
Project Report					

A. Summary of Project

Please limit your response to 1000 characters or less.

This section is an executive summary of the project. Each funded project will have its own separate quarterly progress report (ETA 9178-P) through the quarter the project ends. Use this section to provide a short summary of the project's purpose. This summary should only change during the life of the grant if the state has received an approved modification to the grant Statement of Work.

B. Timeline for Grant Activities and Milestones or Deliverables

Please limit your response to 1000 characters or less.

Use this section to provide the timelines for and the progress in completing grant activities, key milestones, and deliverables for this quarter. Use the timeline in the grant's statement of work to identify all major program activities for the entire life of the grant. The timeline will paint a picture of project flow that includes start and end dates, schedule of activities, and projected outcomes. In order to reap the most benefit from the timeline, it is important that it be updated each quarter, noting the actual date of completion as each activity is accomplished. Items to incorporate in the timeline include: project goals, milestones, special events, important deadlines and deliverables.

C. Project Implementation and Funding Status

Please limit your response to 1000 characters or less.

Use this section to provide a description of the implementation of key activities in line with the grant's Statement of Work for the current quarter. Place an 'X' in one of the four boxes provided below to provide an assessment of implementation progress. The status narrative should support the assessment, noting if the project is on schedule, behind schedule, ahead of schedule, or complete this quarter. In addition, please provide the funding status for this project for the end of the quarter, including the total project funding, total obligated, funding balance, and time remaining to expend funds/expenditure target.

State Self-Assessment:	On Schedule	Behind Schedule	Ahead of Schedule	Complete this Quarter
Total Project Funding	Total Obligated	Funding Balance	Expenditure Target	

Certification

Name of Grantee Certifying Official:

Phone:

E-Mail Address:

"OMB Approval. Section 2116(a), Division B, Title II of the CARES Act states that "Chapter 35 of Title 44, United States Code, (commonly referred to as the "Paperwork Reduction Act of 1995") shall not apply to the amendments made under this subtitle. As the OMB approval process is waived for these reporting instructions, these instructions should be considered final."

Attachment IV to UIPL No. 16-20 Change I

**Employment and Training Supplemental Budget Request Activities:
Quarterly Narrative Progress Report Form and Instructions-P**

OMB Control Number: N/A

Expiration Date: N/A

**Employment and Training Supplemental Budget Request
Activities:**

ETA 9178-P Quarterly Narrative Progress Report Form & Instructions

Prepared By
Employment and Training Administration
United States Department of Labor

Public Burden Statement

“OMB Approval. Section 2116(a), Division B, Title II of the CARES Act states that “Chapter 35 of Title 44, United States Code, (commonly referred to as the “Paperwork Reduction Act of 1995”) shall not apply to the amendments made under this subtitle. As the OMB approval process is waived for these reporting instructions, these instructions should be considered final.”

I. GENERAL INSTRUCTIONS

Recipients of funding for Employment and Training Supplemental Budget Request (SBR) activities are required to submit quarterly progress reports to the United States Department of Labor's Employment and Training Administration (USDOL/ETA) in order to comply with the reporting and record keeping requirements of these grants. ETA implements these projects through Unemployment Insurance (UI) SBR grants. Each state recipient of supplemental funds must submit a narrative Quarterly Progress Report (QPR) containing updates on the progress and implementation of each grant project as listed in the award letter. The instructions and performance reporting form (ETA 9178-P) for completing this report are found under Section II and Appendix A of these instructions. Should changes in definitions resulting from new legislation or related regulations occur, appropriate revisions will be issued to reflect these changes.

II. REPORT FORMS AND INSTRUCTIONS

The QPR provides narrative updates on the implementation of projects as described in each state's statements of work and a self-assessment of the status of each project per quarter. The instructions for states to complete the QPR are found in Appendix A. The format for the QPR is found in Appendix A.

III. DUE DATES

All quarterly reports under Section II are due to ETA no later than 45 days after the end of each reporting quarter. The table below shows the expected due dates for each reporting quarter.

Reporting Quarters	Due Dates
October 1 st – December 31 st	February 14 th
January 1 st – March 31 st	May 15 th
April 1 st – June 30 th	August 14 th
July 1 ST – September 30 th	November 14 th

Should the due date of the report fall on a Saturday, Sunday, or holiday, the report is due the previous business day.

IV. SUBMISSION PROCEDURES

Information contained in the UI SBR quarterly reports (ETA 9178-P) must be submitted by email directly to the ETA regional office. An ETA Federal Project Officer will review and accept the report within 30 days of receipt, saving the document in ETA's online grants management system as part of the official grant file. A grantee must specifically request approval through the Federal Project Officer prior to submitting any modifications to a

submitted report. The Federal Project Officer will then review the modification and submit it to the ETA national office for comment and approval.

Appendix A

Instructions for Completing the Quarterly Narrative Progress Report (ETA 9178-P) Employment and Training Supplemental Budget Request Activities

General Information

State Name:

Grant Number:

Report Quarter Ending:

Date of Submission:

Project Name: This is the name of the funded project identified in the grant statement of work. States shall complete one full report per funded project.

UIPL/Solicitation Number: This is the number of the UI Program Letter from which the supplemental funding was obligated. Examples: UIPL No. 15-20, UIPL No. 16-20, UIPL 17-20, etc.

Project Contact Information

Contact Information:

This section is to provide the contact information (*i.e.*, Name, Title, Address, etc.) for the state official who is the project lead responsible for the day-to-day operation and implementation of the project. This may be a different person than the project certifying official.

Project Report

A. Summary of Project

This section is an executive summary of the project. Each funded project will have its own separate quarterly progress report (ETA 9178-P) through the quarter the project ends. Use this section to provide a short summary of the project's purpose. This summary should only change during the life of the grant if the state has received an approved modification to the grant Statement of Work.

B. Timeline for Grant Activities, Milestones, and Deliverables

Use this section to provide the timelines for and the progress in completing grant activities, key milestones, and deliverables for this quarter. Use the timeline in the grant's statement of work to identify all major program activities for the entire life of the grant. The timeline will paint a picture of project flow that includes start and end dates, schedule of activities, and projected outcomes. In order to reap the most benefit from the timeline, it is important that it is updated each quarter, noting the actual date of completion as each activity is accomplished. Items to incorporate in the timeline include: project goals, milestones,

special events, important deadlines and deliverables.

C. Project Implementation and Funding Status

Use this section to provide a description of the implementation of key activities in line with the grant's Statement of Work for the current quarter. Place an 'X' in one of the four boxes provided below to provide an assessment of implementation progress. The status narrative should support the assessment, noting if the project is on schedule, behind schedule, ahead of schedule, or complete this quarter. In addition, please provide the funding status for this project for the end of the quarter, including the total funding, total obligated, funding balance, and time remaining to expend funds.

D. Certification

- **Name of Grantee Certifying Official**

Use this section to provide the name of the state official who is certifying submission of the report to the Department.

- **Telephone Number**

Provide the area code (###) and telephone number ((###) ###-####) of the authorized state official.

- **Email Address**

Provide the email address of the authorized state official.

Exhibit 10

No. A20-1330

STATE OF MINNESOTA
IN COURT OF APPEALS

H. M.,

Relator,

vs.

Department of Employment & Economic Development,

Respondent.

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LEGAL ISSUE

- I. The federal Pandemic Unemployment Assistance program provides unemployment assistance for workers who are ineligible for other assistance, including state unemployment benefits. High school students in Minnesota are ineligible for state unemployment benefits. Should high school students in Minnesota be able to receive unemployment assistance under the Pandemic Unemployment Assistance program?

An unemployment law judge with the Minnesota Department of Employment and Economic Development determined that Minnesota law, which disqualifies high school students from receiving state unemployment compensation benefits, also disqualifies them from receiving federal benefits under the Pandemic Unemployment Assistance program.

Most apposite authorities:

15 U.S.C. § 9021

Minn. Stat. § 268.085

Unemployment Insurance Program Letter No. 16-20

Unemployment Insurance Program Letter No. 16-20 Change 1

Unemployment Insurance Program Letter No. 16-20 Change 2

STATEMENT OF INTEREST

This case presents an issue of statewide importance: whether Minnesota high school students are eligible to receive federal unemployment compensation pursuant to the Pandemic Unemployment Assistance (“PUA”) program, which Congress enacted as part of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act” or “Act”).¹ The Court’s ruling will impact thousands of high school students throughout the state who lost income as a result of the devastating and unprecedented COVID-19 pandemic. This case will also affect the families of such students, many of whom rely on the students’ income to help pay bills and support the basic needs of their family.

The Minnesota Attorney General (“AG”) appears on behalf of the state in civil matters where the interests of the state require it. *See* Minn. Stat. § 8.01. The AG also maintains inherent *parens patriae* powers to assure Minnesota residents “enjoy the full benefit of federal laws.” *State by Humphrey v. Standard Oil Co.*, 568 F. Supp. 556, 563 (D. Minn. 1983); *see also State v. Minn. School of Business*, 935 N.W.2d 124, 133 (Minn. 2019). The AG seeks to help Minnesotans afford their lives by ensuring they receive the federal economic benefits to which they are entitled. Because the Court’s ruling in this case will have a significant impact on Minnesotans throughout the state, and concerns Minnesotans’ right to benefits under federal law, the AG participates in this matter to offer his views on the issue and to support the Relator’s request that the Court find that high

¹ No portion of this brief was authored by counsel for a party, and no monetary contribution was made to the preparation or submission of this brief. *See* Minn. R. Civ. App. P. 129.03.

school students are not categorically ineligible for federal unemployment benefits under the CARES Act.

STATEMENT OF FACTS

Relator's Loss of Income

Relator, H.M., is a high school student. Rel. Add. 12. She grew up in a single-parent household with eight siblings and a grandmother.² She began working the summer before ninth grade to help contribute financially to her household.³ Prior to the COVID-19 pandemic, Relator was a junior at Spring Lake Park High School and worked 15 to 20 hours per week, outside of school hours, at Caribou Coffee.⁴ She used the money she earned to supplement her mother's income, and to pay for food, utilities, and other household expenses.⁵

In March 2020, Caribou furloughed Relator a result of the pandemic.⁶ In July, she returned to working at Caribou, but her hours were significantly reduced.⁷ Relator applied for unemployment benefits and the Minnesota Department of Employment and Economic Development ("DEED") initially approved her to receive benefits under the PUA program.

² Erin Hinrichs, *Denied Unemployment Benefits, Minnesota High Schoolers Push for Reforms*, MinnPost (Oct. 1, 2020), <https://www.minnpost.com/education/2020/10/denied-unemployment-benefits-minnesota-high-schoolers-push-for-reforms/> (last visited Nov. 8, 2020).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

Rel. Add. 13. DEED later determined she was ineligible for the PUA program because she was a high school student. Rel. Add. 15.

Employment Trends Among Youth

Relator is not alone. Minnesota has a large and productive body of high-school aged workers. Before the COVID-19 pandemic, nearly half of Minnesotans aged 16 to 19 participated in the state's workforce.⁸ This outpaced the national participation rate in this age group by roughly 13 points.⁹ In the summer of 2019, 6.6 percent of the state's total employed workforce was between the ages of 16 and 19.¹⁰ On average, these young Minnesotans made more than \$11 per hour.¹¹

As Relator's example shows, Minnesota high school students represent an important source of economic stability for themselves and their families.¹² Approximately 17 percent of high school students reported saving at least 41 percent of their earnings for future education expenses.¹³ And more than 10 percent reported contributing at least 41 percent

⁸ See Minnesota Department of Employment and Economic Development, Youth Summer Employment 2020 (March 2020), <https://mn.gov/deed/newscenter/publications/review/march-2020/youth-employment.jsp> (last visited Nov. 6, 2020) (stating that 48 percent of teenagers participated in the labor force).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² See Jerald G. Bachman et al., *What do teenagers do with their earnings, and does it matter for their academic achievement and development?* Monitoring the Future Occasional Paper No. 78, Figure 1A (2014), <http://monitoringthefuture.org/pubs/occpapers/mtf-occ78.pdf> (last visited Nov. 6, 2020) (finding that over 50 percent of teenagers use at least 41 percent of their earnings on discretionary spending).

¹³ *Id.* at 11.

of their earnings to supplement their household income.¹⁴ That is even more true for students of color: one quarter of Black high schoolers and 22 percent of Hispanic high schoolers contribute at least this amount to their family's daily needs.¹⁵

The COVID-19 pandemic fundamentally altered the ability of young people to spend, save, and help their family's finances. Nationally, the number of unemployed workers between the ages of 16 and 24 increased from 1.7 million in February 2020 to 4.9 million in May.¹⁶ Workers in this age group were the most likely to experience both unemployment and underemployment during this period.¹⁷ Though certain demographics, including Black, Hispanic, Asian American, and Pacific Islander workers, have been disproportionately affected,¹⁸ the pandemic has caused unemployment rates to spike for every gender, racial, and ethnic group.¹⁹

The reason young workers suffered the greatest pandemic-related work losses is simple—those sectors where job losses were greatest are the sectors where youth employment was most concentrated. Nationally, one quarter of 16 to 24-year-old workers are employed in the leisure and hospitality industry, an industry that lost 41 percent of its

¹⁴ *Id.* at 11-12.

¹⁵ *Id.* at 12.

¹⁶ U.S. Dep't of Labor, Bureau of Labor Statistics, Employment and Unemployment Among Youth—Summer 2020, at 3 (Aug. 18, 2020), <https://www.bls.gov/news.release/pdf/youth.pdf> (last visited Nov. 6, 2020).

¹⁷ Elise Gould & Melat Kassa, *Young workers hit hard by the COVID-19 economy*, Economic Policy Institute (October 14, 2020), <https://www.epi.org/publication/young-workers-covid-recession/> (last visited Nov. 6, 2020) (hereinafter “Gould & Kassa”).

¹⁸ *Id.*

¹⁹ Hande Inanc, *Trends in Youth Unemployment During COVID-19*, Mathematica (June 29, 2020), <https://www.mathematica.org/commentary/trends-in-youth-unemployment-during-covid-19> (last visited Nov. 6, 2020).

jobs between February and May of this year.²⁰ Minnesota's young workforce is similarly concentrated. During the second quarter of 2019, workers between the ages of 16 and 19 made up 22 percent of the state's total accommodation and food service employees, 17 percent of the state's arts, entertainment, and recreation employees, and 15.5 percent of the state's retail employees.²¹ These were the sectors of Minnesota's economy hit hardest by the pandemic.²² For example, in February 2020, 219,581 Minnesotans were employed in the accommodation and food services industry.²³ Two months later, state-wide accommodation and food services employment had plummeted to 103,232.²⁴ As DEED recently assessed, "the COVID-19 response has shut down the sectors in which teens are most likely to find work, which may make the summer of 2020 one of the most difficult in history for teens who want to work."²⁵

Relator's personal story, as well as the statistics showing her story is not an anomaly, form the important context for this appeal.

ARGUMENT

This Court should reverse the decision of the unemployment law judge because the CARES Act clearly allows Minnesotans such as Relator, who are ineligible under regular

²⁰ Gould & Kassa.

²¹ DEED, Youth Summer Employment 2020.

²² *Id.*

²³ See Minnesota Department of Employment and Economic Development, Current Employment Statistics—Minnesota: Leisure and Hospitality, <https://apps.deed.state.mn.us/lmi/ces/ResultDetails.aspx?ind=700000000&title=Leisure%20and%20Hospitality> (data available by clicking the "H" icon beside the "Accommodation and Food Services" row) (last visited Nov. 6, 2020).

²⁴ *Id.*

²⁵ DEED, Youth Summer Employment 2020.

unemployment laws, to recover under this unique, temporary program. The PUA program was designed to provide a temporary safety net to workers who are affected by the COVID-19 pandemic, and who are ineligible for other relief. Minnesota law, which renders high schoolers ineligible to receive state unemployment benefits, does not bar those young people from eligibility for PUA benefits.

In addition, while DEED was constrained in its decision-making by concern that the United States Department of Labor (“DOL”) or this Court could later find it had improperly paid benefits, this Court does not similarly have its hands tied. Instead, this Court is the final word on Minnesota’s unemployment assistance. *See Albert v. Larson, et al.*, Civil File No. 05-1632, 2005 WL 3542872, at *3 (D. Minn. Dec. 21, 2005) (noting the “Minnesota Court of Appeals reviews final decisions of unemployment law judges”); *see also Beaver Creek Mut. Ins. Co. v. Comm’r of Jobs and Training*, 463 N.W.2d 535, 538 (Minn. Ct. App. 1990) (stating “the judiciary must have the final word” over the interpretation of agency statutes).

I. STANDARD OF REVIEW.

Upon review of the decision of an unemployment law judge, the Court may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the Relator may have been prejudiced because the conclusion or decision is affected by an error of law. Minn. Stat. § 268.105, subd. 7(d)(4).

This case requires the Court to interpret provisions of the federal CARES Act. Statutory interpretation presents a question of law that appellate courts review de novo. *Goodman v. Best Buy, Inc.*, 777 N.W.2d 755, 758 (Minn. 2010). “When considering a

federal statute, [the Court's] task is to give effect to the will of Congress.” *Bergman v. Caulk*, 938 N.W.2d 248, 251 (Minn. 2020) (internal citation omitted). When Congress’ intent is “clear and unambiguous, then no further analysis is necessary.” *Id.* The Court should consider “the bare meaning of the words, as well as their placement and purpose in the statutory scheme.” *Id.* (internal citation omitted).²⁶

II. THE CARES ACT CLEARLY AND UNAMBIGUOUSLY PERMITS ELIGIBLE HIGH SCHOOL STUDENTS TO RECEIVE BENEFITS PURSUANT TO THE PUA PROGRAM.

A. The Plain Text of the CARES Act Covers Minnesotans Who Are Otherwise Ineligible.

The will and intent of Congress is clear. The plain language of the CARES Act, as well as guidance and instruction issued by the DOL make clear that the PUA program was intended to be a benefit of last resort for individuals whose work was disrupted by the pandemic, and who are otherwise ineligible for lost-income benefits. High school students

²⁶ As a state administrative agency, DEED is entitled to deference when interpreting a federal regulation that is ambiguous, and that it is charged with enforcing and administering. *In re Cities of Annandale & Maple Lake NPDES/SDS Permit Issuance for the Discharge of Treated Wastewater*, 731 N.W.2d 502, 516 (Minn. 2007). If the statute is clear and unambiguous, however, the court need not defer to the agency’s interpretation and may substitute its own judgment for that of the agency. *Id.*; see also *Abdi v. Dep’t of Empl. And Econ. Dev.*, 749 N.W.2d 812, 815 (Minn. Ct. App. 2008). If the court concludes the statute is ambiguous, it must then determine whether the agency’s interpretation is reasonable. *Annandale*, 731 N.W.2d at 516. An agency’s interpretation may also be entitled to “some weight” where the statute is technical in nature and the agency’s interpretation is one of long-standing application. *Arvig Tel. Co. v. Northwestern Bell Tel. Co.*, 270 N.W.2d 111, 114 (Minn. 1978). In this instance, the Court need not defer to DEED’s interpretation because the statute is unambiguous, the issue requires interpretation of a federal law that was recently enacted, the language at issue is not technical in nature, DEED’s interpretation is not long-standing, and the administration of federal PUA benefits is outside the scope of DEED’s typical area of expertise. And if the Court determines the statutory language is ambiguous, DEED’s interpretation is not reasonable for the reasons described in this brief.

who lose their jobs due to COVID-19, and who do not qualify for state unemployment benefits under state law, are precisely the type of worker that the PUA program was intended to benefit.

The PUA program was enacted by Congress as part of the CARES Act. *See* 15 U.S.C. § 9021. Generally, PUA provides economic benefits to people who are unable to work due to COVID-19-related circumstances, and who are ineligible for other unemployment benefits. The PUA program is administered by state agencies, via agreements between the DOL and the states. 15 U.S.C. § 9021(f).

The key text of the PUA program is simple. It provides that the Secretary of Labor shall provide unemployment assistance “to any covered individual” to cover the weeks in which “the individual is not entitled to any other unemployment compensation.” 15 U.S.C. § 9021(b). A “covered individual” is defined, in relevant part, as an individual who “is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation.” 15 U.S.C. § 9021(a)(3). A “covered individual” must also self-certify that they are “otherwise able to work and available for work...except the individual is unemployed, partially unemployed, or unable or unavailable to work” due to one of several reasons related to the COVID-19 pandemic. *Id.* In other words, if a Minnesotan certifies that he or she would be able and available for work if it were not for COVID-19, and that Minnesotan is not eligible for regular unemployment benefits, they **are** covered by PUA and able to recover federal funds.

B. The DOL's Guidance Confirms that High School Students are Eligible for PUA.

The Act provides that the Secretary of Labor “may issue any operating instructions or other guidance necessary to carry out the provisions of, or the amendments made by, this subtitle.” 15 U.S.C. § 9032. Pursuant to that authority, the DOL has issued several Unemployment Insurance Program Letters (“UIPLs”) to instruct states on administering the PUA program.

Those guidance documents repeatedly confirm that individuals who are ineligible for regular unemployment benefits **are** eligible for PUA benefits. In one such UIPL, the DOL emphasized that “[t]he CARES Act was designed to mitigate the economic effects of the COVID-19 pandemic in a variety of ways” including by providing “temporary benefits for individuals who have exhausted their entitlement to regular unemployment compensation...as well as coverage for individuals who are not eligible for regular [unemployment compensation].” Rel. Add. 17-18. Individuals who qualify for such benefits include “gig economy workers, clergy...and other workers who may not be covered by the regular UC program under some state laws.” *Id.*

The DOL also explicitly instructed states that students are eligible for PUA benefits, assuming the student meets all other eligibility requirements of the Act: “Provided a full-time student who worked part-time is unemployed, partially unemployed, or unable or unavailable to work because of one of the COVID-19 related reasons in...the CARES Act, then he or she may be eligible for PUA.” Rel. Add. 26. The phrase “full-time student” plainly encompasses high school students. That is especially true because the DOL also

clarified that the CARES Act does not contain an age requirement to qualify for PUA.²⁷ UIPL 16-20 Change 2, at I-3, I-4, https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Change_2.pdf (last visited Nov. 5, 2020).

Finally, DOL indicated in its instructions that individuals who are disqualified from receiving state unemployment compensation benefits remain eligible for PUA, provided they meet all other requirements under the Act. *See* UIPL 16-20 Change 1, at I-8 (noting that individuals who are disqualified for regular unemployment benefits, even for fraud, may remain eligible for PUA benefits).

Based on the plain, unambiguous language of the Act, a high school student who meets all eligibility requirements is entitled to unemployment compensation through the PUA program. The Act does not include any age restriction for those who qualify, and the DOL specifically indicated that full-time students can be eligible to receive benefits. The DOL has also instructed states that applicants who have been disqualified for state unemployment compensation, even for instances of fraud, can remain eligible to collect PUA benefits. A high school student, like Relator, who was furloughed from her job as a

²⁷ The DOL noted that “it is possible that federal or state laws relating to the employment of minors might prohibit an individual from qualifying for PUA” if they are not “otherwise able to work and available for work within the meaning of applicable State law.” *See* UIPL 16-20 Change 2, at I-3, I-4, https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Change_2.pdf (last visited Nov. 5, 2020). In this case, however, the unemployment law judge’s decision was not based on a finding that Relator was unable or unavailable to work under Minnesota law, but rather a blanket determination that all “applicants who are in attendance at or on vacation from secondary school, are ineligible” for PUA. Rel. Add. 15.

result of the COVID-19 pandemic, and is not eligible for any other unemployment benefits, is precisely the type of individual the PUA program was intended to benefit.

III. MINNESOTA LAW DOES NOT DISQUALIFY HIGH SCHOOL STUDENTS FROM RECEIVING BENEFITS PURSUANT TO THE PUA PROGRAM.

Minnesota law provides that high school students are ineligible to receive state unemployment benefits. However, this disqualification does not bar students from receiving unemployment benefits through the PUA program. Rather, the state's ineligibility provision is a reason that high school students may be eligible for PUA benefits.

Minnesota Statutes section 268.085, subdivision 2, paragraph (3) provides that “[a]n applicant is ineligible for unemployment benefits for any week...that occurs in a period when the applicant is a student in attendance at, or on vacation from a secondary school including the period between academic years or terms.” In holding Minnesota law bars high school students from receiving PUA benefits, the unemployment law judge in this case cited a statement in DOL’s guidance that “[t]he provisions of the applicable state law that apply to claims for PUA include...[d]isqualification, including disqualifying income provisions.” UIPL 16-20, at I-9, https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20.pdf (last visited Nov. 5, 2020). The unemployment law judge determined that, because Minnesota law “disqualifies” high school students from receiving state unemployment benefits, the disqualification also bars eligibility for the PUA program. Rel. Add. 15.

That interpretation of DOL’s guidance is faulty for at least three reasons. First, in the following two paragraphs of the same UIPL, the DOL further explains that “[i]n

processing claims for PUA, states must verify that individuals have no regular [unemployment insurance] entitlement,” and that if an individual is disqualified from receiving regular unemployment benefits, “then the state may consider the individual for PUA eligibility.” UIPL 16-20, at I-9. When read as a whole, the DOL’s instruction is clear. Rather than acting as a bar to receiving PUA benefits, a high school student’s ineligibility for Minnesota unemployment benefits *satisfies* one of the eligibility requirements under the PUA program. Guidance published on DEED’s website likewise indicates that the PUA program “provides weekly benefit payments for those who are **not eligible** for regular or extended unemployment benefits in Minnesota or any other state.”²⁸

Second, even if that aspect of the guidance creates ambiguity in the statute’s interpretation, DOL makes clear that other types of workers who are ineligible for unemployment benefits under state law are eligible for PUA benefits. For example, independent contractors in Minnesota are ineligible for Minnesota unemployment benefits. *See* Minn. Stat. § 268.035, subd. 15(a)(1). However, the DOL instructed states that independent contractors can be eligible for PUA benefits. *See* UIPL No. 16-20, at I-6 (“The Secretary has determined that...an individual who works as an independent contractor with reportable income may also qualify for PUA benefits....”). Guidance published on DEED’s website is consistent with the DOL’s instruction, and notes that the PUA program

²⁸ DEED, COVID-19 Information for Workers, <https://www.uimn.org/applicants/needtoknow/news-updates/covid19-workers.jsp> (last visited Nov. 6, 2020) (emphasis in original).

“provides weekly benefit payments for self-employed people, independent contractors and others who are **not eligible** for regular unemployment benefits.”²⁹

Other states considering the issue have interpreted the CARES Act to make PUA benefits available to students who are ineligible for state unemployment benefits under state law. Michigan’s Department of Labor and Economic Opportunity, for example, issued guidance on its website indicating that, although full-time students are ineligible for state unemployment benefits under Michigan law, they are eligible to apply for PUA benefits.³⁰ Maine issued similar guidance, informing its residents that its high school students may be eligible for PUA benefits if they are deemed ineligible for state unemployment benefits because they lack sufficient wage history.³¹

The third and maybe most compelling reason that the Minnesota law cannot be read to disqualify high school students from PUA benefits is that such an interpretation is inconsistent with the overall purpose of the PUA program, which is to provide a last-resort safety net of economic benefits to those who cannot work due to COVID-19 and who would not otherwise be eligible to receive unemployment benefits. It also improperly elevates UIPL guidance over the actual text of the Act, which the DOL itself has prohibited.

²⁹ DEED, COVID-19 Information for Self-Employed People and Independent Contractors, <https://www.uimn.org/applicants/needtoknow/news-updates/covid19-pua.jsp> (last visited Nov. 6, 2020) (emphasis in original).

³⁰ Michigan Dep’t of Labor and Econ. Opp., Is There a Certain Age to Qualify for Unemployment Benefits?, https://www.michigan.gov/leo/0,5863,7-336-94422_97241_98585_98650-527668--,00.html (last visited Nov. 5, 2020).

³¹ Maine Dep’t of Labor, Information for Individuals Filing for PUA, at 5, <https://www.maine.gov/unemployment/docs/2020/pua2020/faq/english.pdf> (last visited Nov. 5, 2020).

The DOL provided the following order of precedence that state administrators should use in administering PUA benefits:

When determining the appropriate course of action in administering the PUA program, states should first consult 2102 of the CARES Act and the subsequent operating instructions provided by the Department, including UIPL No. 16-20 and UIPL No. 16-20 Change 1. Where the CARES Act and the operating instructions are silent, states should refer to [Disaster Unemployment Assistance] regulations at 20 C.F.R. Part 625. Where DUA regulations are silent, states should follow applicable state law for administering the regular UC program.

UIPL 16-20 Change 1, at 2, https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Change_1.pdf (last visited Nov. 5, 2020). The DOL made clear that states should consult the language of the Act first (*see* Section II.A, *supra*), then review the DOL's operating instructions.

Here, the language of the Act favors a student's eligibility. Indeed, it would be an impermissibly absurd reading of the Act to conclude that all state law bases for disqualification under regular unemployment insurance also disqualify individuals like Relator for PUA benefits, because then no one would receive PUA benefits. *See* Minn. Stat. § 645.17; *see also* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 63 (1st ed. 2012) (when interpreting federal statutes, "[a] textually permissible interpretation that furthers rather than obstructs the document's purpose should be favored"). Relator, who is ineligible for regular state unemployment benefits solely because of her status as a high school student, is a covered individual under the PUA program and therefore DEED should not have categorically excluded her and other students from this form of federal emergency unemployment assistance.

IV. THE COURT'S DECISION ON THIS ISSUE WILL HAVE A SIGNIFICANT IMPACT ON MINNESOTA'S WORKING YOUTH AND THEIR FAMILIES.

In addition to being legally correct, permitting high school students to claim PUA benefits is good policy for Minnesota. The COVID-19 pandemic has created significant economic hardship for Minnesotans across the state. Minnesota's youth, many of whom work during their time in high school, have been impacted more significantly than other demographics because of the types of industries they commonly work in. Industries such as food service, retail, hospitality, and other small businesses are common employers of high school students and suffered the greatest job losses. These businesses have faced closures, reductions in hours of operation, and reductions in staff levels. Even as the economy slowly recovers, high school workers will be less likely to find work because they have less experience than other job applicants and employers will look to re-hire their furloughed staff before considering new hires.³²

Moreover, the industries where high schoolers tend to work require significant amounts of face-to-face contact with customers and coworkers. High school workers who were fortunate enough to keep their jobs were, therefore, at greater risk of exposure to COVID-19 and were "disproportionately forced to choose between their health and their earnings."³³ In the absence of unemployment benefits, high schoolers may also be less inclined to stay home from work if they are sick or have had close contact with someone

³² See Ann Carrns, *Virus 'Dramatically' Narrows Teenagers Summer Job Prospects*, New York Times (June 26, 2020), <https://www.nytimes.com/2020/06/26/your-money/coronavirus-teenagers-summer-jobs.html?login=email&auth=login-email>; Gould & Kassa.

³³ Gould & Kassa.

who is sick, thereby risking passing the virus onto others. *See Cunningham v. Lyft, Inc.*, No. 1:19-cv-11974, 2020 WL 2616302, at *12 (D. Mass. May 22, 2020) (observing that “[w]ithout access to sick leave, staying home is far easier said than done”). Categorizing all high schoolers as ineligible for PUA benefits makes it “more difficult to protect the public from the spread of the disease.” *Id.* (concluding that the public interest weighs in favor of granting paid sick leave to independent contractors, like Lyft drivers).

Furthermore, high school students’ income is no less important than the income of others. Many families, like Relator’s, rely on a high school student’s income to supplement the income of the parents, and to help pay for necessities such as rent, food, and utilities.³⁴ Some students are financially independent, and some have children of their own who they support. A high school student may also be working to save money for college, or to pay for gas and upkeep for a car the family relies on for transportation. And when Minnesota’s youth earn income, they spend it at the same restaurants, retail shops, coffee shops, and other small businesses that are struggling to remain open during these unprecedented times.

Providing students with PUA benefits may also save them from the difficult choice of whether to continue their education without income or drop out of school to apply for

³⁴ *See, e.g.,* Hinrichs, *Denied Unemployment Benefits, Minnesota High Schoolers Push for Reforms* (where Relator was quoted as saying her income “didn’t go to shopping at the mall,” but rather was “for eating, electrical bills, or whatever bill [her] mom couldn’t cover that month”).

unemployment benefits.³⁵ Minnesota's youth should not be forced to decide between obtaining a high school diploma and helping their family pay the next month's rent.³⁶

Families of working high school students are also at risk of falling through a coverage gap in pandemic aid. Many high school students are dependents for tax purposes, and were thus ineligible for the \$1,200 economic impact payments.³⁷ Parents of high school students may also not have received the \$500 checks for dependents because the age cutoff is 17.³⁸ Approving Minnesota's high school students for eligibility in the PUA program would protect our state's youth and their families from falling through these gaps in coverage.

To the extent the Court is concerned about the possibility that some students may receive a windfall from the PUA program, that is not a compelling reason to exclude all students from eligibility. As with any economic compensation program, the possibility exists that some applicants may receive more compensation than is equitable. However, the benefits of permitting high school students to participate in the program, and ensuring

³⁵ See, e.g., Minnesota House of Representatives, Comm. Hearing on HF 4623 Before House Jobs & Economic Development Finance Division (June 3, 2020), <https://www.leg.state.mn.us/audio/House/2020/jobs060320.mp3>, at 01:25:19 – 01:47:13 (last visited Nov. 6, 2020) (where several Minnesota high school students testified before the Committee about their experiences losing income during the pandemic, how they depend on the income for basic necessities such as rent and utilities, and how some are considering dropping out of high school).

³⁶ See Hinrichs, *Denied Unemployment Benefits, Minnesota High Schoolers Push for Reforms* (noting that “[f]or some youth, this technicality poses a drastic crossroads: complete high school, or drop out to qualify for unemployment benefits to help support themselves and their families”).

³⁷ Gould & Kassa.

³⁸ *Id.*

that those who relied on income before the pandemic have a safety net available to them, far outweigh any concerns about potential windfalls to a few individuals.

The AG understands that DEED was faced with the difficult task of interpreting and applying a relatively new federal law. DEED understandably chose to take a conservative, practical position. At this stage, however, given that this is a novel, legal question involving statutory interpretation of a clear and unambiguous, recently-enacted federal law, this Court is not required to defer to the agency's administrative decision, and should hold that the unemployment law judge erred as a matter of law. *See* Minn. Stat. § 268.105, subd. 7(d)(4).

CONCLUSION

For the reasons stated herein, the AG respectfully asks that this Court reverse the decision of the unemployment law judge and hold that Minn. Stat. § 268.085, subd. 2(3) does not render Minnesota high school students ineligible for benefits pursuant to the PUA program.

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Exhibit 11

PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA)

What is Pandemic Unemployment Assistance?

Pandemic Unemployment Assistance was established by the Coronavirus Aid, Relief, and Economic Security (CARES) Act that was passed by Congress and became law on March 27, 2020.

PUA provides up to 39 weeks of unemployment benefits to individuals who are ineligible for unemployment benefits. Under PUA, individuals who are self-employed, independent contractors, nonprofit employees, gig economy workers, clergy and those working for religious organizations not covered by regular unemployment compensation, and part-time workers may qualify for unemployment benefits. Individuals who have exhausted all rights to such benefits and individuals that lack sufficient work history are also eligible for PUA.

In Michigan, a claimant can receive PUA unemployment benefits beginning February 2, 2020, or the first week a claimant was unable to work as a result of COVID-19, whichever date is later. The last week PUA benefits are available is the week ending December 26, 2020.

Who is eligible for PUA?

Individuals are eligible for PUA if they do not qualify for regular UI benefits and cannot work because they:

- Are diagnosed COVID-19 or have COVID-19 symptoms and are seeking a medical diagnosis;
 - Have a member of the household who is diagnosed with COVID-19;
 - Are providing care for a family or household member diagnosed with COVID-19;
 - Are the primary caregiver for a child whose school or care facility closed due to COVID-19;
 - Are unable to reach their place of employment due to an imposed quarantine as a direct result of COVID-19, or because advised by a medical provider to self-quarantine, due to COVID-19;
 - Were scheduled to start new employment and cannot reach the workplace as a direct result of COVID-19;
 - Became the major breadwinner because the head of household died from COVID-19;
 - Quit their job as a direct result of COVID-19;
 - Had their place of employment closed as a direct result of COVID-19; or
 - Meet any additional criteria specified by the U.S. Secretary of Labor.
- Individuals are not eligible for PUA if they can telework or are receiving paid sick leave or other paid leave benefits (regardless of meeting a category listed above).

Who is not eligible for PUA?

Individuals are not eligible for PUA if they are being paid the full amount of regular wages for:

- Teleworking with pay;
- Paid sick leave or some other type of paid leave.

When and How to File for PUA

New claimants or claimants who have been denied regular state unemployment benefits (as of January 27, 2020) may apply online using the PUA application available in the Michigan Web Account Manager (MiWAM) at michigan.gov/uia.

Information Needed to File

PUA applicants should have proof of their Social Security number and proof of income. Applicants will also be required to make certain self-attestations, including whether they were planning to start employment or were self-employed at the time they lost their job due to COVID-19.

Proof of income is used to determine the weekly benefit amount under PUA. Examples of acceptable proof of income include but is not limited to 1099's, W-2s, tax returns, bank statements, last pay stub, work orders and invoices, or other documents that substantiate employment or self-employment or to substantiate work that was to begin. You should have this information available for 2019 and 2020.

Weekly Benefit Amount Under PUA

The amount of benefits an individual may receive is based on the individual's gross wages or self-employed income. The minimum PUA benefit rate is 50% of the average weekly benefit amount in Michigan. In Michigan, the weekly benefit amount will be from \$160 to \$362.

Individuals who qualify for PUA are also eligible for an additional \$600 per week in Pandemic Unemployment Compensation (PUC). This means individuals will receive the PUA weekly benefit amount plus the \$600 PUC amount each week. The additional \$600 PUC amount per week will end when an individual's benefit entitlement expires or the week ending July 25, 2020, whichever date comes first. The last week PUA benefits are available is the week ending December 26, 2020.

Claimants Must Certify Bi-Weekly

Claimants must certify (report) every two weeks that they are eligible for benefits. After the first certification (which is done during the third week of unemployment) they will receive their payment in about 7-10 days after certification. You can certify online with MiWAM at michigan.gov/uia 24 hours a day, 7 days a week.