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## Employees Weigh Risk of Losing Unemployment by Refusing to Return to Work

As Pennsylvania inches its way toward the yellow phase, employees and employers alike will be confronted with plenty of reopening challenges.

By **Jeffrey Campolongo** | May 22, 2020



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According to the U.S. Department of Labor (DOL), over 38.6 million Americans have filed for unemployment in the last nine weeks, with 2.4 million more having filed in the last week alone. The weekly number of workers filing for unemployment has begun to decrease, as states start to reopen for business. As Pennsylvania inches its way toward the yellow phase, employees and employers alike will be confronted with plenty of reopening challenges. Questions surrounding worker safety, unemployment,

use of sick leave and paycheck protection can leave one scratching their head for answers. Fortunately, there are a number of valuable resources for businesses as they gear up for the economy to start back up. Sadly, there are not quite as many resources for employees who may have trepidation about returning to work because of the undeniable risks of COVID-19. Here are some helpful tips to consider.

## Unemployment Compensation

As a result of COVID-19, the U.S. Congress significantly improved benefits and eligibility for unemployment insurance available to unemployed and underemployed workers. New laws uniformly increased the amount of unemployment insurance paid to each claimant by a flat \$600 per week for a period of up to four months of unemployment or under employment and increases the period during which a person may receive unemployment insurance benefits by up to 13 weeks, in addition to the amount the state currently offers (up to 26 weeks, in Pennsylvania).

You should file for regular UC (apply here (<https://www.uc.pa.gov/unemployment-benefits/file/Pages/File%20an%20Initial%20Claim.aspx>)) if you have an employer and:

- You have been laid off; or
- Your hours have been reduced through no fault of your own;
- You cannot work because a medical or public official has directed you to quarantine or self-isolate because of COVID-19 exposure, symptoms, or a positive diagnosis; or
- You are caring for someone who is suspected of having or has tested positive for COVID-19.

Additionally, the law allows workers who typically are ineligible for unemployment insurance to receive it —part-time workers, self-employed workers, freelance workers and other “gig economy” workers.

You should file for Pandemic Unemployment Assistance (PUA) (apply here (<https://www.uc.pa.gov/unemployment-benefits/file/Pages/File%20an%20Initial%20Claim.aspx>)) if you are ineligible for regular UC, you have lost income due to COVID-19 and:

- Are self-employed, or
- Are seeking part-time work, or
- Lack sufficient work history, or
- Have exhausted all rights to regular UC or extended benefits.

Due to COVID-19, Pennsylvania has waived wait time and work requirements (<https://www.uc.pa.gov/Pages/covid19.aspx>). Previously, claimants were not eligible for benefits during their first week of unemployment (the “waiting week”). This has been suspended. Claimants are not required to prove they have applied or searched for a new job to maintain their unemployment compensation benefits.

- **How Much Will I Receive in PUA Benefits?**

The amount of PUA benefits you will receive is based on your previous income reported. PUA benefits may not be more than the state's maximum weekly benefit rate for regular UC, which is \$572 in Pennsylvania. PUA benefits may not be less than half of the state's average weekly benefit amount. In Pennsylvania, the minimum PUA payment is \$195.

All individuals collecting PUA will receive \$600 per week from Federal Pandemic Unemployment Compensation (FPUC), in addition to weekly benefits as calculated above. FPUC payments began the week ending April 4. The last week that FPUC is payable is the week ending July 25.

- **How much do I need to receive in UC benefits to be eligible for the additional \$600?**

The U.S Department of Labor has issued guidance ([https://wdr.doleta.gov/directives/attach/UIPL/UIPL\\_15-20.pdf](https://wdr.doleta.gov/directives/attach/UIPL/UIPL_15-20.pdf)) indicating that if the employee is eligible to receive at least \$1 of underlying benefits for the claimed week, the claimant will receive the full \$600 FPUC.

- **How far back can I request benefits?**

You may submit claims backdated to Jan. 27, if you have been unemployed due to one of the COVID-19 related reasons that are PUA-eligible. If you are found eligible for PUA, you will receive compensation retroactive to Jan. 27, or to the date when you became unemployed, whichever is more recent.

PUA provides benefits for up to 39 weeks for weeks of unemployment beginning on or after Jan. 27. PUA payments will not be made for weeks of unemployment after Dec. 31. Individuals who are still within their unemployment benefit year do NOT need to apply. Once you receive the balance of your regular unemployment benefits, you will automatically be enrolled in the PEUC program for the additional 13 weeks of benefits.

## **Partial Benefit Credit**

You may earn up to 30% of your weekly benefit rate (<https://www.uc.pa.gov/unemployment-benefits/benefits-information/Pages/Weekly-Benefit-Rate.aspx>) in each claim week before your earnings affect your weekly benefit payment. This 30% of your weekly benefit rate is your "partial benefit credit." Any amount that you earn over the partial benefit credit earned in a week will be deducted from your weekly benefit rate dollar-for-dollar. When reporting earnings for a calendar week, always give the actual amount of gross earnings.

Partial earnings are to be reported in the week earned, not in the week in which they were paid. All earnings must be reported, even if they are less than the partial benefit credit.

## **Return to Work Options and Unemployment**

Amid fears of returning to work, employees face the Hobson's choice of risking infection or risk losing their unemployment benefits, including the additional \$600 per week payment that has been a boon for many lower wage workers. A little over a month ago, Gov. Tom Wolf was asked a very pointed question during a press conference: "If we have employees that are currently laid off and we call them back to work and they tell us that they don't or won't come back because they're getting paid more with unemployment and the \$600 bonus, what can we do?" asked a business owner. "Can their unemployment be revoked?"

"No," said Wolf. "And as a former business owner, if you ever face that kind of situation, there's one really simple thing you can do as a business owner and that is raise the compensation of your employees." Wolf's comments immediately drew rebuke from many in the business community, resulting in the governor's office issuing a follow-up statement. Here is what Wolf's office said: "... during the COVID-19 pandemic, if an employee refuses to return to work because they are at high risk of complications of the virus and their employer cannot make reasonable accommodations for them, or if they were being asked to return to work at reduced hours that result in them earning less than they did before the pandemic, UC staff would review those specific reasons and make determinations based on the facts of their individual cases."

Since issuing that clarification, the Pennsylvania Department of Labor and Industry has issued a written guidance (<https://www.uc.pa.gov/COVID-19/Pages/Employer-COVID19-FAQs.aspx>) to address the issue of when an employer offers work to employees and the employee refuses to return to work. Per the guidance, if you ask your employees to return to work, they must return, unless they have good cause for refusing your offer. Determining whether there was good cause for a refusal of work is driven by the facts of each claimant's circumstances. The more valid or legitimate the reason for refusing to return to work, the more likely the person will remain eligible for unemployment. If the only reason someone refuses to go back is to make more money on unemployment, then that will not fly.

The U.S. Department of Labor (<https://www.dol.gov/coronavirus/unemployment-insurance#guidance>) has also issued new guidance for workers and others who are out of work due to the pandemic. Here are some of the questions and answers from the DOL:

- My employer has remained open because it is essential. I'm not sick, nor is anyone in my household sick. Can I get PUA benefits because I'm afraid of getting coronavirus at work? Answer is no. As a general matter, you are likely to be eligible for PUA due to concerns about exposure to the coronavirus only if you have been advised by a health care provider to self-quarantine as a result of such concerns.
- My employer will let me work from home with pay. However, because my children are out of school and my spouse is working, I need to care for them and it is too difficult to work from home. Do I qualify for PUA? Answer is yes. You should bear in mind that the CARES Act provides PUA only when a child is home because of a school closure that is a direct result of the COVID-19 public health emergency. Once the school year is over, parents should rely on their customary summer arrangements for caring for their children, and will not, absent some other qualifying circumstances, be eligible to receive PUA.
- I was furloughed by my employer, but they have now reopened and asked me to return to my job. Can I remain on unemployment? Answer is no. As soon as the business reopens and the employee is recalled for work, eligibility for PUA would cease unless the individual could identify some other qualifying circumstance outlined in the CARES Act.
- One of my workers quit because he said he would prefer to get unemployment. Is he eligible for unemployment? Answer is no. Individuals who quit their jobs to access higher benefits, and are untruthful in their UC application about their reason for quitting, will be considered to have committed fraud.

As one can see, there is broad support for workers who remain out of work for legitimate safety-related reasons due to COVID-19. The more specific the threat or risk, the more likely the person will be eligible to remain on unemployment. If motivated to stay out of work solely to receive the additional \$600 PUA benefit, the less likely one is to stay on unemployment. Employees should discuss with their employers all the reasons why a return to work is not feasible. Explore the possibility of exhausting all paid time off under the FMLA and FFCRA before resorting to unemployment. Employers should game plan in advance of reopening to assure that employees are given every opportunity to return in a safe way. When that is not possible, unemployment compensation should be the route to go.

**Jeffrey Campolongo**, *founder of the Law Office of Jeffrey Campolongo, focuses his practice on employment and entertainment law. For over a decade, he has been devoted to counseling employees, working professionals and small businesses in employment discrimination and human resource matters.*

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