

Summary of the Unemployment Provisions of the CARES Act

The provisions are very complex and confusing. Some open questions exist. There are three basic person types: (1) those not entitled to anything absent the CARES Act; (2) those receiving state law unemployment compensation; and (3) those who were receiving state law unemployment compensation but are no longer receiving such benefits. State laws generally provide benefits only to employees who lost benefits. The CARES Act provides that self-employed people can receive benefits. The benefits can be very substantial. DOL guidance says a person may fit into multiple categories.

Those not entitled to anything absent the CARES Act: Section 2102 of the CARES Act applies. Subsection (b) provides: “Subject to subsection (c), the Secretary 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 unemployment compensation (as that term is defined in section 85(b) of title 26, U.S. Code) or waiting period credit.” Regulations issued under Code section 85(b) provide that unemployment compensation means any unemployment compensation paid by a government, including Disaster Unemployment Assistance (DUA) under the Disaster Relief Act of 1974 (42 U.S.C. §5177). That law permits major disaster assistance to employees who lose work due to a major disaster, for up to 26 weeks following the disaster. DUA is available due to the coronavirus. While the statutory provisions state that DUA is available only to employees (i.e. former employees), the regulations issued thereunder, that are cited by the CARES Act in several places, apply the provisions to self-employed persons as well. These regulations are 20 CFR §625.6. They are very important. Returning to a “covered individual” under subsection (b), subsection (a) of §2102 defines a “covered individual” as 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 that 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 . . . (laundry list similar to FFCRA list) . . . (ee) . . . is unable to reach the place of employment because of a quarantine . . . (more similar) . . . (ii) the individual has or had 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 the COVID—19 public health emergency; . . . or (II) is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise does 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 clause (I).” But, people eligible to telework and people receiving paid sick leave **generally** are not covered individuals. Subsection (d) provides: “In the case of a covered individual who is self-employed . . . or who would not otherwise qualify for unemployment compensation under State law, the assistance authorized under subsection (b) for a week of unemployment shall be calculated in accordance with section 625.6 of title 20, Code of Federal Regulations . . . and shall be increased by the amount of Federal Unemployment Compensation under section 2104.” This provision means that self-employed people are entitled to 20 CFR §625.6 benefits (only) or to those benefits plus \$600 per week. DOL guidance says it’s the former; some articles say it means the latter. (I agree with the DOL’s interpretation.) Benefits are generally available through December 31, 2020.

Those receiving state law unemployment compensation: Section 2104 of the CARES Act applies. They get their ordinary benefits plus \$600 per week, through July 31, 2020.

Those who ceased receiving state law unemployment compensation: Section 2107 applies. Their state law benefits continue, plus \$600 per week for each week that they are able to work, available to work, and actively seeking work, up to 13 weeks, through December 31, 2020. It seems that self-employed persons would be eligible after 26 weeks.