

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Unemployment Insurance
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**ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 16-20,
Change 3**

TO: STATE WORKFORCE AGENCIES

FROM: JOHN PALLASCH
Assistant Secretary



SUBJECT: Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Eligibility of Individuals who are Caregivers for Pandemic Unemployment Assistance (PUA) in the Context of School Systems Reopening.

1. **Purpose.** States have gained experience administering the PUA program under the CARES Act, Public Law (Pub. L. 116-136), and have identified additional questions about the PUA eligibility of individuals who are caregivers and affected by school systems reopening. The purpose of this Unemployment Insurance Program Letter (UIPL) is to address those questions concerning the PUA program.
2. **Action Requested.** The Department of Labor’s (Department) Employment and Training Administration (ETA) requests State Workforce Administrators to provide the information contained in this UIPL to appropriate program and other staff in state workforce systems as they implement the PUA program.
3. **Summary and Background.**
 - a. Summary – The CARES Act was signed into law on March 27, 2020, and includes the Relief for Workers Affected by Coronavirus Act set out in Title II, Subtitle A. Section 2102 of the CARES Act creates the temporary PUA program, which provides unemployment benefits for individuals who are: 1) ineligible for regular Unemployment Compensation (UC), Extended Benefits (EB), and Pandemic Emergency Unemployment Compensation (PEUC) under Section 2104 of the CARES Act; and 2) unemployed, partially unemployed, or unable or unavailable to work due to one or more of the COVID-19 reasons set out in Section 2102(a)(3)(A)(ii)(I) of the CARES Act.

As school systems are taking various approaches to operating schools in response to the COVID-19 pandemic, states have presented the Department with questions regarding the impact of these various approaches on the PUA eligibility of individuals who are caregivers of students. This UIPL provides guidance for states in evaluating the PUA

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eligibility of these individuals, as well as the intersection of PUA with paid leave made available under the Families First Coronavirus Response Act (FFCRA) (Pub. L. 116-127).

- b. Background – ETA provided operating, financial, and reporting instructions for the PUA program in UIPL No. 16-20, issued on April 5, 2020. ETA addressed questions received during a webinar held on the topic, as well as questions submitted through ETA’s designated e-mail for COVID-19 UI-related inquiries (covid-19@dol.gov) in UIPL No. 16-20, Change 1, issued on April 27, 2020, and UIPL No. 16-20, Change 2, issued on July 21, 2020.

Among other provisions, FFCRA includes the Emergency Paid Sick Leave Act (EPSLA) and Emergency Family and Medical Leave Expansion Act (EFMLEA). The Department’s Wage and Hour Division (WHD) administers both of these programs. Additional details are available at <https://www.dol.gov/agencies/whd/ffcra>.

ETA issued UIPL No. 23-20 on May 11, 2020 to remind states of the program integrity functions that are required for the regular UI program and the UI programs authorized by the CARES Act. Addressing improper payments and fraud in the UI program is a top priority for the Department and the entire UI system. During this time of extraordinary UI claims workload, there is a heightened need for states to maintain a steadfast focus on UI functions and activities that ensure program integrity and the prevention and detection of improper payments and fraud across all UI programs.

To help prevent and detect improper payments, states are required to ensure that their employment services, UI, and other workforce partners are engaged with claimants. States are expected to track referrals to possible suitable employment. As an added measure of program integrity, states are also strongly encouraged to provide a mechanism for employers to report information when workers refuse to return to suitable work for reasons that do not support their continued eligibility for benefits.

- 4. **Guidance.** An individual who is: 1) ineligible for regular UC, EB, and PEUC; and 2) self-certifies that he or she is unemployed, partially unemployed, or unable or unavailable to work because “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” may be eligible for PUA, as described in Section 2102(a)(3)(A)(ii)(I)(dd) of the CARES Act.

However, as described in Section 2102(a)(3)(B) of the CARES Act, the individual is not eligible for PUA if he or she has the ability to telework with pay or if he or she is receiving paid sick leave or other paid leave benefits, regardless of whether the individual is unemployed, partially unemployed, or unable or unavailable to work because of one of the COVID-19-related reasons listed in the statute at Section 2102(a)(3)(A)(ii)(I).

WHD provides a series of Questions and Answers explaining when an individual may be eligible for paid leave through provisions of FFCRA in the context of school systems reopening. This is available at <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>. The state must treat any paid sick leave or paid leave received by an individual, including EPSLA and EFMLEA, in accordance with the income restrictions set out in 20 C.F.R. 625.13.

Below we provide three scenarios addressing the PUA eligibility of individuals who are caregivers and affected by school systems reopening.

Scenario 1: The school system goes fully online as a direct result of the COVID-19 public health emergency.

When the school system is only providing online instruction, it is not open for students to be physically present at the school, and therefore is considered closed under section 2102(a)(3)(A)(ii)(I)(dd) of the CARES Act. If the individual must stay home because he or she is the primary caregiver for the student(s), the individual may be eligible for paid leave benefits under FFCRA.

If the individual is not receiving paid leave benefits and is unable or unavailable to work because he or she is the primary caregiver for the student(s), the individual may be eligible for PUA. An individual who is permitted to work from home, but must provide such ongoing and constant attention to the student(s) for whom he or she is the primary caregiver that working from home is not possible, may be considered unable or unavailable for work. Provided the individual is not eligible for regular UC, EB, and PEUC, then the individual meets the provisions of item (dd) of Section 2102(a)(3)(A)(ii)(I) of the CARES Act and may collect PUA.

As described in Section 4.a. of UIPL No. 16-20, an individual who is receiving paid leave for part of the week or working part-time hours during the week must report such earnings when filing for PUA. Failure to report such earnings may result in an overpayment. Failure to report such earnings may also result in penalties for fraud and criminal prosecution. These earnings will be deducted from the PUA weekly benefit amount in accordance with 20 C.F.R. 625.13.

Scenario 2: The school system operates in a “hybrid” environment as a direct result of the COVID-19 public health emergency, where students attend school in-person some days of the week, with the rest of the week being done remotely, online.

When the school system is providing a combination of online and in-person instruction, it is not open for certain student(s) to be physically present at the school on those certain days when receiving online instructions, and therefore is considered closed under section 2102(a)(3)(A)(ii)(I)(dd) of the CARES Act. If the individual must stay home to care for the

student(s) on the days of remote instruction, the individual may be eligible for paid leave benefits under FFCRA.

If the individual is not receiving paid leave benefits and is unable or unavailable to work because he or she is the primary caregiver for the student(s), the individual may be eligible for PUA. An individual who is permitted to work from home, but must provide such ongoing and constant attention to the student(s) for whom he or she is the primary caregiver that working from home is not possible, may be considered unable or unavailable for work. Provided the individual is not eligible for regular UC, EB, and PEUC, then the individual meets the provisions of item (dd) of Section 2102(a)(3)(A)(ii)(I) of the CARES Act and may collect PUA.

As described in Section 4.a. of UIPL No. 16-20, an individual who is receiving paid leave for part of the week or working part-time hours during the week must report such earnings when filing for PUA. Failure to report such earnings may result in an overpayment. Failure to report such earnings may also result in penalties for fraud and criminal prosecution. These earnings will be deducted from the PUA weekly benefit amount in accordance with 20 C.F.R. 625.13.

Scenario 3: The school system provides students the option to stay home and attend online classes or to attend school in-person full time.

When the school system provides the individual with a choice between full-time in-person instruction and remote learning, it is open for students to be physically present at the school.

If the individual who is the primary caregiver chooses to have the student(s) participate in remote learning instead of in-person instruction, the individual does not meet the provisions of item (dd) of Section 2102(a)(3)(A)(ii)(I) of the CARES Act. Unless the individual meets another listed COVID-19 related reason under items (aa) through (kk) in Section 2102(a)(3)(A)(ii)(I) of the CARES Act, the individual is ineligible for PUA. An individual who continues to claim PUA benefits under item (dd), despite the reopening of schools, may face an overpayment, as well as penalties for fraud and criminal prosecution.

5. **Inquiries.** We encourage states to contact ETA for technical assistance. Please direct inquiries about PUA and other UI matters to covid-19@dol.gov, with a copy to the appropriate ETA Regional Office.

Please direct inquiries about the paid leave provisions under FFCRA, including questions from employers, to whd-covid19@dol.gov.

6. **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;

- Families First Coronavirus Response Act (Pub. L. 116-127);
- 20 C.F.R. Part 625;
- UIPL No. 23-20, *Program Integrity for the Unemployment Insurance (UI) Program and the UI Programs Authorized by the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 - Federal Pandemic Unemployment Compensation (FPUC), Pandemic Unemployment Assistance (PUA), and Pandemic Emergency Unemployment Compensation (PEUC) Programs*, issued May 11, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4621;
- UIPL No. 16-20, Change 2, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Pandemic Unemployment Assistance (PUA) Additional Questions and Answers*, issued July 21, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5479;
- UIPL No. 16-20, Change 1, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Pandemic Unemployment Assistance (PUA) Program Reporting Instructions and Questions and Answers*, issued April 27, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5899;
- 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 05, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4628; and
- WHD Families First Coronavirus Response Act: Questions and Answers, <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>.

7. **Attachment(s)**. (None).