

## MEMORANDUM

To: Alabama's Public Workforce System Stakeholders  
Date: 24 March 2020  
From: The Governor's Office of Education and Workforce Transformation  
Subject: Workforce Flexibilities During the COVID-19 Outbreak

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### **Outline**

- I. Initial Unemployment Claims, page 3
- II. U.S. Department of Labor Guidance on Unemployment Insurance Flexibilities During the COVID-19 Outbreak. page 3
- III. The Family Medical Leave Act (FMLA) and COVID-19, page 7
- IV. COVID-19 State of Emergency, page 5
- V. H.R. 6201 Families First Coronavirus Response Act, page 7
- VI. The Anticipated Federal Phase Three Economic Recovery Proposal, page 10
- VII. Small Business Administration (SBA) Disaster Assistance Loans for Small Businesses Impacted by Coronavirus (COVID-19), page 11
- VIII. Coronavirus Disease National Health Emergency (NHE) Dislocated Worker Grant (DWG), page 12
- IX. Rapid Response, page 1
- X. Disaster Unemployment Assistance (DUA), page 13
- XI. COVID-19 Scenarios and Available Benefits, page 14

### **Executive Summary**

Due to the continuing impact of the COVID-19 pandemic, Governor Kay Ivey issued a State of Emergency on Friday, March 13, 2020. This action provides the State the ability to quickly respond to this dynamic situation with necessary assistance from state agencies and positions the state to receive federal assistance. The impact this pandemic will have on Alabama's, and the nation's, workforce and education is substantial, and this memorandum will outline the latest flexibilities provided to help those impacted by COVID-19 as well as the necessary information intended to assist business and industry during this time.

Given the current situation, the Alabama Department of Labor (ADOL) has experienced a significant increase in the number of unemployment benefits claims. The latest figures show the number of claims within a single day is nearly the same amount as the ADOL received in all of last month. Nationally, the figures are also substantial and represent the highest level of claims since September of 2017. A chart containing various workforce scenarios and related available unemployment benefits provided through the most recent federal and state responses is included on the last page of the memorandum.

In response to the national workforce impact, the U.S. Department of Labor (USDOL) provided guidance on Thursday, March 12<sup>th</sup> to states in announcing significant workforce flexibilities in administering their unemployment insurance benefits in multiple scenarios to assist those affected by COVID-19. Accordingly, the ADOL modified existing unemployment compensation rules to allow those who are affected in the following ways to file a claim for benefits:

- Those who are quarantined by a medical professional or a government agency.
- Those who are laid off or sent home without pay for an extended period by their employer due to COVID-19 concerns.
- Those who are diagnosed with COVID-19.
- Those who are caring for an immediate family member who is diagnosed with COVID-19.

The federal guidance does not require an employee to quit in order to receive benefits due to the impact of COVID-19. Additionally, those who are being paid to work from home and those receiving paid sick or vacation leave are not eligible for unemployment compensation benefits.

The memorandum also contains important information regarding reporting flexibilities with the Emergency Unemployment Stabilization and Access Act of 2020 (EUISAA) as well as USDOL's guidance on Unemployment

Compensation Reporting Flexibilities Benefits Accuracy Measurement (BAM), Benefits Timeliness & Quality Reviews (BTQ), and Reemployment Services and Eligibility Assessment Program (RESEA).

- Notably, Secretary Fitzgerald Washington has implemented the flexibilities provided by state and federal law to waive the work search, wait week, good cause provisions of the unemployment insurance program. Secretary Washington also announced on March 20<sup>th</sup>, 2020 that all charges will be waived against those employers who file partial unemployment compensation claims on behalf of their employees. These charges will be waived until further notice.

For further clarification on unemployment insurance benefits, the ADOL has put together a list of various examples as well as a “Frequently Asked Questions” document that is contained in its entirety within the official memo.

Regarding the Family Medical Leave Act (FMLA) and COVID-19, the FMLA entitles eligible employees of covered employers to take up to 12 weeks of unpaid, job-protected leave in a designated 12-month period for specified family and medical reasons. An employer covered by FMLA is any person engaged in commerce or in any industry or activity affecting commerce, who employs 50 or more employees for each working day during each of 20 or more calendar work weeks in the current or preceding calendar year.

Important federal updates are provided in the memo as well pertaining to H.R. 6201/Families First Coronavirus Response Act, Small Business Administration (SBA) Disaster Assistance Loans, and USDOL Dislocated Worker Grants.

- H.R. 6201, which was introduced on Wednesday March 11<sup>th</sup>, 2020, passed in the House of Representatives by a vote of 363-40 on March 14 and subsequently passed the Senate by a vote of 90-8. H.R. 6201 was signed into law by President Trump on Wednesday, March 18<sup>th</sup>, 2020 and provides important and necessary actions for increased workforce flexibilities during this unprecedented time. This includes:
  - Amendments to the FMLA
  - Emergency grants and interest-free loans to provide assistance in paying unemployment insurance benefits
  - Full federal funding for Extended Benefits
  - Emergency paid sick leave and related payroll tax credits
- Governor Ivey announced the approval of Alabama’s request for SBA Economic Injury Disaster Loans (EIDL) on Saturday, March 21<sup>st</sup>, 2020. According to the SBA, there are more than 400,000 small businesses in Alabama. Small businesses should visit the SBA’s COVID-19 recovery website to determine their eligibility and to apply for an Economic Injury Disaster Loan.
- The USDOL announced the availability of up to \$100 million for Disaster Dislocated Worker Grants (DWGs) in response to the workforce-related impacts of COVID-19. Disaster DWGs will provide eligible participants with both disaster-relief employment and employment and training activities.

## **I. Initial Unemployment Claims**

Between Monday, March 16, 2020 and Friday, March 20, 2020, the Alabama Department of Labor (ADOL) received 3,867 claims for unemployment benefits, more than double what the department received in a five-day period last week. The total number of claims in the past -business day period (5,542) has nearly reached the 5,819 total claims the ADOL received in all of February. Nationally, for the week ending on March 14th, the advance figure for seasonally adjusted initial claims was 281,000, an increase of 70,000 from the previous week's unrevised level of 211,000. This is the highest level for initial claims since September 2, 2017 when it was 299,000. The 4-week moving average was 232,250, an increase of 16,500 from the previous week's revised average. This is the highest level for this average since January 27, 2018 when it was 234,500. The previous week's average was revised up by 1,750 from 214,000 to 215,750.<sup>1</sup>

## **II. U.S. Department of Labor Guidance on Unemployment Insurance Flexibilities During the COVID-19 Outbreak**

On March 12, 2020, the U.S. Department of Labor (USDOL) announced guidance outlining flexibilities that states have in administering their unemployment insurance (UI) programs to assist Americans affected by the COVID-19 outbreak. Federal law permits significant flexibility for states to provide unemployment insurance (UI) benefits in multiple scenarios related to COVID-19. For example, federal law allows states to pay benefits where: (1) an employer temporarily ceases operations due to COVID-19, preventing employees from coming to work; (2) an individual is quarantined with the expectation of returning to work after the quarantine is over; and (3) an individual leaves employment due to a risk of exposure or infection or to care for a family member. In addition, federal law does not require an employee to quit in order to receive benefits due to the impact of COVID-19.<sup>2</sup>

### **Unemployment Insurance Program Letter (UIPL) No. 10-20**

The U.S. Department of Labor issued Unemployment Insurance Program Letter (UIPL) No. 10-20 on March 12, 2020. UIPL 10-20 provides guidance to states on the flexibility permitted under federal law to provide UI benefits to individuals affected by COVID-19.<sup>3</sup>

### **Determining Whether an Individual is “Unemployed”**

Unemployment includes a reduction of both work hours and earnings. People who are being paid to work from home, or those receiving paid sick or vacation leave are not eligible for unemployment compensation benefits as they are still receiving pay.

### **Determining if the Individual is able to Work, Available for Work, and Actively Seeking Work**

Federal unemployment compensation (UC) law requires that claimants be able to work, available for work, and actively seeking work.<sup>4</sup> States have significant flexibility to establish how individuals demonstrate that they are meeting these requirements. In Alabama, the requirement that a laid-off worker be “able and available” to work while receiving unemployment compensation benefits has been modified for claimants who are affected by COVID-19 in one of the following scenarios:

- Those who are quarantined by a medical professional or a government agency,
- those who are laid off or sent home without pay for an extended period by their employer due to COVID-19 concerns,
- those who are diagnosed with COVID-19,

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<sup>1</sup> U.S. Department of Labor, News Release, Unemployment Insurance Weekly Claims, 19 March 2020, accessed on 19 March 2020 <<https://www.dol.gov/ui/data.pdf>>.

<sup>2</sup> News Release, U.S. Department of Labor, U.S. Department of Labor Announces New Guidance on Unemployment Insurance Flexibilities During COVID-19 Outbreak, 13 March 2020, accessed 13 March 2020 <<https://www.dol.gov/newsroom/releases/eta/eta20200312-0>>.

<sup>3</sup> Pallasch, John, Unemployment Insurance Program Letter (UIPL) No. 10-20, Unemployment Compensation (UC) for Individuals Affected by the Coronavirus Disease 2019 (COVID-19), 12 March 2020, accessed on 13 March 2020 <[https://wdr.doleta.gov/directives/attach/UIPL/UIPL\\_10-20.pdf](https://wdr.doleta.gov/directives/attach/UIPL/UIPL_10-20.pdf)>.

<sup>4</sup> 42 USC 503(a)(12).

- or, those who are caring for an immediate family member who is diagnosed with COVID-19.<sup>5</sup>

### **Implementing Unemployment Insurance Flexibilities Employer Experience Rating, Work Search, Work Week, Good Cause**

As described in UIPL No. 10-20, many states do not charge individual employers for benefit costs under certain limited circumstances. These “noncharging” provisions are found in practically all state UC laws. UC benefits are primarily financed through the quarterly assessment of taxes on employer payrolls. In the United States, the benefits paid to unemployed workers are financed by payroll taxes levied against individual employers.<sup>6</sup> The tax system is experience rated and operates like an insurance program. An employer begins at an initial rate of tax, which rate will subsequently vary based upon the amount of benefits charged to the employer’s account. Thus, the more charges against the account, the higher the tax rate, the fewer claims against the account, the lower the tax rate. The purposes of experience rating are to ensure an equitable distribution of costs of the system among the employers who cause unemployment, to encourage employers to stabilize their workforce, and to encourage employers to participate in the UC system as charges to their accounts will directly influence their tax rates.<sup>7</sup> The Alabama Unemployment Insurance Trust Fund has grown to more than \$717 million, representing an increase of \$75 million over 2018. We collected more than \$203 million in unemployment insurance taxes in 2019.<sup>8</sup> Existing federal UC law requires that claimants be able to work, available for work, and actively seeking work. (42 U.S.C. §503(a)(12)). Building on the flexibility described in UIPL No. 10-20, the passage of EUISAA allows for states to provide for an emergency temporary modification or suspension of the “actively seeking work” requirement as needed to respond to the spread of COVID-19. States may consider applying this emergency temporary flexibility to all individuals collecting UC and not just those recently separated, and can allow individuals who are quarantined or social distancing to qualify as “able and available.” This allows individuals to more effectively comply with the social distancing recommendations of federal, state, and local government officials to mitigate the spread of COVID-19. States can also continue using the flexibilities for able-and-available requirements set out in UIPL No. 10-20. Existing federal EB law requires states to have a non-compensable waiting week in order for the state to receive federal sharing of the first week of extended benefits. Most states UC laws, including Alabama, include a requirement to serve a non-compensable waiting week. Existing federal UC law requires that claimants be able to work, available for work, and actively seeking work. (42 U.S.C. §503(a)(12)). This requirement is temporarily suspended with the passage of EUISAA. States with no waiting week and states that temporarily suspend waiting week requirements are eligible to receive federal matching for the first week of extended benefits. In light of the emergent need to cover individuals impacted by COVID-19 and to allow the UI program to act as an economic stimulus, states may consider temporarily suspending requirements to serve a non-compensable waiting week. State laws provide for instances where “good cause” is considered in deciding eligibility. The passage of EUISAA provides broad flexibility for states to temporarily amend their “good cause” provisions in response to the spread of COVID-19. State laws provide for instances where “good cause” is considered in deciding eligibility. This often applies in job separations where the individual voluntarily quits, as well as issues of suitable work, able-and-available requirements, and reporting requirements. This may also apply to allowable reasons for extending deadlines or suspending in-person reporting requirements. The passage of EUISAA provides broad flexibility for states to temporarily amend their “good cause” provisions in response to the spread of COVID-19, to allow a greater number of reasons to qualify as “good cause” for leaving a job temporarily, including to care for a family member or due to reasonable risk of exposure or infection. The U.S. Department of Labor issued Unemployment Insurance Program Letter (UIPL) No. 13-20 on March 12, 2020. UIPL 13-20 provides guidance to states for implementing Division D (the Emergency Unemployment Stabilization and Access Act of 2020 [EUISAA]) of the

<sup>5</sup> “Alabama Announces Support for Workers Impacted by COVID-19,” Alabama Department of Labor Press Release, 16 March 2020, accessed on 17 March 2020 <<https://www.labor.alabama.gov/COVID-19%20UC%20Changes%20March%2016%202020%20News%20Release.pdf>>.

<sup>6</sup> Topel, Robert H, “Experience Rating of Unemployment Insurance and the Incidence of Unemployment,” *The Journal of Law & Economics*, vol. 27, no. 1, 1984, pp. 61–90, accessed on 23 March 2020, *JSTOR* <[www.jstor.org/stable/725153](http://www.jstor.org/stable/725153)>.

<sup>7</sup> “Experience Rating,” Conformity Requirements for State UC Laws, accessed on 23 March 2020 <[https://oui.doleta.gov/unemploy/pdf/uilaws\\_exper\\_rating.pdf](https://oui.doleta.gov/unemploy/pdf/uilaws_exper_rating.pdf)>.

<sup>8</sup> 2019 Annual Report, Alabama Department of Labor, accessed on 23 March 2019 <[https://labor.alabama.gov/docs/dir/ADOL\\_2019%20Annual%20Report.pdf](https://labor.alabama.gov/docs/dir/ADOL_2019%20Annual%20Report.pdf)>.

Families First Coronavirus Response Act of 2020 (P.L. 116-127).<sup>9</sup> Secretary Fitzgerald Washington has implemented the flexibilities provided in UIPLs 10-20, UIPL 13-20, and existing state and federal law to temporarily waive the work search, wait week, good cause provisions of the unemployment insurance program. Secretary also announced on March 20, 2020 that all charges will be waived against those employers who file partial unemployment compensation claims on behalf of their employees until further notice.<sup>10</sup>

### **Examples for Assessing Unemployment Compensation Eligibility**

- 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. This may be treated as a temporary layoff.
- 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. This may be treated as a temporary layoff. If the employee does not return to the employer, the State must reassess eligibility.
- Individual is not returning to the employer—an individual is quarantined by a medical professional under government direction or leaves employment 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. Individuals leaving with “good cause” must meet other eligibility requirements to receive benefits.

### **U.S. Department of Labor Unemployment Compensation Reporting Flexibilities Benefits Accuracy Measurement (BAM)**

The BAM program is an essential quality function for the UI program. The states have the responsibility to draw samples, perform investigations, identify errors, compute error rates, analyze data, and initiate corrective action if appropriate. For BAM paid cases, USDOL encourages states to continue to sample at the current rate/week and complete the investigations for the quarter ending March 31, 2020 (through Batch #202013), if at all possible.

### **Benefits Timeliness & Quality Reviews (BTQ)**

The determination of a claimant's eligibility for UI benefits is a critical UI program function. BTQ reviews assess the overall quality of the nonmonetary determination process using a set of federally established minimum criteria, evaluating the quality elements of the determination. States may suspend BTQ for the quarter ending March 31, 2020. However, it should be noted that the prior three quarters will be used to assess the FY 2021 State Quality Service Plan quality performance. Additionally, based upon request and with appropriate rationale, we may approve suspension of BTQ for one additional quarter beginning April 1, 2020 through June 30, 2020.

### **Reemployment Services and Eligibility Assessment Program (RESEA)**

The Employment and Training Administration is not anxious to interrupt program delivery if at all feasible and strongly urges states to continue RESEA service delivery. To support states in their continued operation of the RESEA program, USDOL offers the following recommendations:

- During the temporary circumstances related to COVID-19, states have flexibility to conduct RESEA service delivery by telephone if other person-to-person virtual means are not practical.
- In recognition that traditional work search may not be feasible, states are encouraged to focus on helping claimants frame effective reemployment and work search plans to be implemented when there is no longer a COVID-19 threat.

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<sup>9</sup> Pallasch, John, Unemployment Insurance Program Letter (UIPL) No. 13-20, Families First Coronavirus Response Act, Division D Emergency Unemployment Insurance Stabilization and Access Act of 2020, 12 March 2020, accessed on 23 March 2020 <[https://wdr.doleta.gov/directives/attach/UIPL/UIPL\\_10-20.pdf](https://wdr.doleta.gov/directives/attach/UIPL/UIPL_10-20.pdf)>.

<sup>10</sup> Alabama Department of Labor, News Release, Alabama to Waive Employer Charges for COVID-19 Related Claims State Urging Employers to File Claims on Employees' Behalf, 20 March 2020, accessed on 23 March 2020 <<https://www.labor.alabama.gov/COVID/COVID-19%20Employers%20File%20Claims%20news%20feed.pdf>>.

## **Coronavirus and Unemployment Insurance Benefits Alabama Department of Labor—Frequently Asked Questions<sup>11</sup>**

### **Question 1: Will workers qualify for unemployment benefits if the coronavirus (COVID-19) causes an employer to shut down operations?**

**Answer:** Alabama unemployment benefits are available to individuals who are unemployed through no fault of their own. If an employer must shut down operations and no work is available, individuals may be eligible for unemployment benefits.

### **Question 2: If an employer lays off employees due to the loss of production caused by the coronavirus, will the employees be eligible for unemployment insurance benefits?**

**Answer:** Alabama unemployment benefits are available to any individual who is unemployed through no fault of their own. If an employer must lay off employees due to the loss of production caused by the coronavirus, individuals may be eligible for unemployment benefits.

### **Question 3: If an employee receives unemployment benefits as a result of a coronavirus-related business shutdown, will the employer's unemployment taxes increase?**

**Answer:** At this time, no further guidance has been issued. Until such a time, normal procedures will be followed. Congressional action expected on this topic may provide federal subsidization for benefits, so employers should monitor further bulletins closely.

### **Question 4: If an employee receives unemployment benefits as a result of a coronavirus-related business shutdown, can the benefits be charged to the mutual account?**

**Answer:** At this time, no further guidance has been issued. Until such a time, normal procedures will be followed. Congressional action expected on this topic may provide federal subsidization for benefits, so employers should monitor further bulletins closely.

### **Question 5: If an asymptomatic employee imposes a *self-quarantine* because of the coronavirus, but intends to return to work, will they be eligible for unemployment benefits?**

**Answer:** In most cases, no. Unemployment benefits are available to individuals who are totally or partially unemployed due to no fault of their own. In this example, the individual—not the employer—is choosing not to work and, therefore, would be ineligible. However, the facts of each circumstance are important. If the employer allowed this individual to telework, they would not qualify for benefits because they would not be unemployed. If the employer required the individual to stay home but did not offer telework, the individual might be eligible for benefits if they met the monetary and weekly eligibility criteria.

### **Question 6: If an employee is in mandatory quarantine because of suspicion of having the coronavirus, will they be eligible for unemployment benefits?**

**Answer:** Yes, they will be eligible and the period will be treated as a temporary layoff. Certain criteria and exceptions may apply and are subject to change.

### **Question 7: If an employee is ill because of the coronavirus and unable to work, will they be eligible for unemployment benefits?**

**Answer:** Yes, they will be eligible. Certain criteria and exceptions may apply and are subject to change.

### **Question 8: Is the coronavirus considered a disaster, and can I receive Disaster Unemployment Assistance?**

**Answer:** The president of the United States has declared the coronavirus a national disaster, but at this time there is no separate Disaster Unemployment Assistance available.

### **Question 9: What types of proof may be required to substantiate a COVID-19 claim?**

**Answer:** In the case of an employee who is unemployed because of quarantine or illness, proof of a medical diagnosis from a health care professional for the claimant and/or the immediate family member, and/or confirmation of quarantine by the employer or applicable government entity will be required.

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<sup>11</sup> Alabama Department of Labor, Coronavirus and Unemployment Insurance Benefits Alabama Department of Labor, 16 March 2020, accessed on 17 March 2020 <<https://www.labor.alabama.gov/Coronavirus%20Unemployment%20Benefits%20FAQ.pdf>>.

**Question 10: What is a partial claim?**

**Answer:** A partial claim is filed when an employee is laid off for a short period but is expected to be rehired at the same job.

**Question 11: How long can I receive benefits?**

**Answer:** Generally, up to three weeks, subject to verification.

**III. The Family Medical Leave Act (FMLA) and COVID-19**

Employees are eligible to take FMLA leave if they work for a covered employer and:

- have worked for their employer for at least 12 months;
- have at least 1,250 hours of service over the previous 12 months; and
- work at a location where at least 50 employees are employed by the employer within 75 miles.

An employer covered by FMLA is any person engaged in commerce or in any industry or activity affecting commerce, who employs 50 or more employees for each working day during each of 20 or more calendar work weeks in the current or preceding calendar year.<sup>12</sup> The FMLA entitles eligible employees of covered employers to take up to 12 weeks of unpaid, job-protected leave in a designated 12-month period for specified family and medical reasons. The FMLA protects eligible employees who are incapacitated by a serious health condition or who are needed to care for covered family members who are incapacitated by a serious health condition.<sup>13</sup>

**IV. COVID-19 State of Emergency**

Governor Ivey issued a State of Emergency under the Alabama Emergency Management Act of 1955 on Friday, 13 March 2020, which provided relief for students and teachers missing school days due to the emergency and provided that state government offices may be closed at the discretion of the Governor. On Sunday, 15 March 2020, Governor Ivey issued an executive memorandum that provided pathways for department directors to allow telework options for state employees. The executive memorandum also provided that state employees who are unable to work remotely and are asked to not report to their duty stations will not be charged sick leave and will be provided emergency leave until Monday, 6 April 2020.<sup>14</sup>

**V. H.R. 6201 Families First Coronavirus Response Act**

H.R. 6201, the Families First Coronavirus Response Act, was introduced by Rep. Nita Lowey (D-NY), Chair of the House Appropriations Committee, on Wednesday, 11 March 2020. H.R. 6201 passed in the House of Representatives by a vote of 363-40 on Saturday, 14 March 2020.<sup>15</sup> H.R. 6201 passed in the U.S. Senate by a vote of 90-8 and was signed into law by President Trump on Wednesday, March 18, 2020.<sup>16</sup>

**Section 3102. Amendments to the Family and Medical Leave Act (FMLA.)** This section provides employees of employers with fewer than 500 employees and State, local, and some government employers, who have been on the job for at least 30 days, with the right take up to 12 weeks of job-protected leave under the FMLA to be used for any of the following reasons:

- To adhere to a requirement or recommendation to quarantine due to exposure to or symptoms of coronavirus (this is an existing FMLA activity);
- To care for an at-risk family member who is adhering to a requirement or recommendation to quarantine due to exposure to or symptoms of coronavirus (this is an existing FMLA activity); and
- To care for a child of an employee if the child’s school or place of care has been closed, or the child-care provider is unavailable, due to coronavirus (this activity is new under H.R. 6201).

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<sup>12</sup> P.L. 103-3, 29 U.S.C. sec. 2601.

<sup>13</sup> COVID-19 or Other Public Health Emergencies and the Family and Medical Leave Act Questions and Answers, U.S. Department of Labor, Wage and Hours Division, accessed on 17 March 2020 <<https://www.dol.gov/agencies/whd/fmla/pandemic>>.

<sup>14</sup> Coronavirus (COVID-19) State Government Operations, Executive Memorandum to All State Agency Heads, Governor Kay Ivey, 15 March 2020.

<sup>15</sup> Roll Call Vote 102, 116<sup>th</sup> Congress, Second Session, 14 March 2020, accessed on 17 March 2020 <<http://clerk.house.gov/evs/2020/roll102.xml>>.

<sup>16</sup> U.S. Senate, Roll Call Vote on the Passage on H.R. 6201, 18 March 2020, accessed on 18 March 2020 <[https://www.senate.gov/legislative/LIS/roll\\_call\\_lists/roll\\_call\\_vote\\_cfm.cfm?congress=116&session=2&vote=00076](https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=116&session=2&vote=00076)>.

The first two weeks of this leave must be either unpaid or covered by federally paid sick leave under H.R. 6201, as described below. Paid benefits are limited to 2/3 of an employee's salary.

**Section 4102. Emergency Transfers for Unemployment Compensation Administration.** This section provides \$1 billion in 2020 for emergency grants to states for activities related to processing and paying unemployment insurance (UI) benefits, under certain conditions. \$500 million would be used to provide immediate additional funding to all states for staffing, technology, systems, and other administrative costs, so long as they met 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; and
- 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.

\$500 million would be reserved for emergency grants to states which experienced 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 are 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.

Section 4102(a) of EUISAA added a new subsection (h) to Section 903, SSA authorizing a total of \$1,000,000,000 in emergency grants to states for administration of each state's unemployment compensation law. Funds provided through these emergency administrative grants may only be used for administration of the UC Program and are not available to be used for the payment of UC itself. This means each state's share is based on its proportionate share of calendar year 2018 Federal Unemployment Tax Act (FUTA) taxable wages multiplied by \$1,000,000,000. States are eligible for two equal, separate, and distinct allotments, each with specific application criteria. Allotment I is prescribed at 42 U.S.C. §1103(h)(1)(C)(i) and Allotment II is prescribed at 42 U.S.C. §1103(h)(1)(C)(ii). Each allotment is equal to 50 percent of the state's calculated apportionment. Alabama's total allotment for the emergency grants to states is \$12,731,537, which will be allocated in two equal allotments of \$6,365,768.50.

**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 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), this section provides 100 percent federal funding for Extended Benefits, which normally require 50 percent of funding to come from states. Extended Benefits (EB) 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. This section also suspends the financial penalty within EB for states that waive the usual one-week waiting period for benefits.

**Section 5102. The Emergency Paid Sick Leave Act.** This section requires employers with fewer than 500 employees and State, local, and federal government employers to provide employees two weeks of paid sick leave, paid at the employee's regular rate up to \$511 per day, to quarantine or seek a diagnosis or preventive care for coronavirus; or paid at two-thirds the employee's regular rate up to \$200 per day to care for a family member for such purposes or to care for a child whose school has closed, or child care provider is unavailable, due to the coronavirus.

- Full-time employees are entitled to 2 weeks (80 hours) paid leave, and part-time or hourly employees are entitled to paid leave based on the typical number of hours that they work in a typical two-week period (in some cases, compensation can be based on a six-month average).
- The bill ensures employees who work under a multiemployer collective agreement and whose employers pay into a multiemployer plan are provided with leave.



Section 5102 will expire on December 31, 2020.<sup>17</sup>

**Section 7001. Payroll Credit for Required Paid Sick Leave.** This section provides a refundable tax credit equal to 100 percent of qualified paid sick leave wages paid by an employer for each calendar quarter. The section makes a distinction between qualified sick leave wages paid with respect to employees who must self-isolate, obtain a diagnosis, or comply with a self-isolation recommendation with respect to coronavirus. For amounts paid to those employees, the amount of qualified sick leave wages considered for each employee is capped at \$511 per day. For amounts paid to employees caring for a family member or for a child whose school or place of care has been closed, the amount of qualified sick leave wages considered for each employee is capped at \$200 per day.

**Section 7002. Credit for Sick Leave for Certain Self-Employed Individuals.** This section provides a refundable tax credit equal to 100 percent of a qualified sick leave equivalent amount for eligible self-employed individuals who must self-isolate, obtain a diagnosis, or comply with a self-isolation recommendation with respect to coronavirus. For eligible self-employed individuals caring for a family member or for a child whose school or place of care has been closed due to coronavirus, the section provides a refundable tax credit equal to 67 percent of a qualified sick leave equivalent amount. The credit is allowed against income taxes and is refundable. Eligible self-employed individuals are individuals who would be entitled to receive paid leave pursuant to the Emergency Paid Sick Leave Act if the individual was an employee of an qualified employer (other than himself or herself). For eligible self-employed individuals who must self-isolate, obtain a diagnosis, or comply with a self-isolation recommendation, the qualified sick leave equivalent amount is capped at the lesser of \$511 per day or the average daily self-employment income for the taxable year per day. For eligible self-employed individuals caring for a family member or for a child whose school or place of care has been closed due to coronavirus, the qualified sick leave equivalent amount is capped at the lesser of \$200 per day or the average daily self-employment income for the taxable year per day.

**Section 7003. Payroll Credit for Required Paid Family Leave.** This section provides a refundable tax credit equal to 100 percent of qualified family leave wages paid by an employer for each calendar quarter. The tax credit is allowed against the tax imposed by section 3111(a) (the employer portion of Social Security taxes). Qualified family leave wages are wages required to be paid by the Emergency Family and Medical Leave Expansion Act. The amount of qualified family leave wages considered for each employee is capped at \$200 per day and \$10,000 for all calendar quarters.

**Section 7004. Credit for Family Leave for Certain Self-Employed Individuals.** This section provides a refundable tax credit equal to 100 percent of a qualified family leave equivalent amount for eligible self-employed individuals. The credit is allowed against income taxes and is refundable. Eligible self-employed individuals are individuals who would be entitled to receive paid leave pursuant to the Emergency Family and Medical Leave Expansion Act if the individual was an employee of an employer (other than himself or herself). The qualified family leave equivalent amount is capped at the lesser \$200 per day or the average daily self-employment income for the taxable year per day.

#### **Technical Changes to the Families First Coronavirus Response Act (H.R. 6201)**

On Monday, March 16, 2020, the U.S. House of Representatives modified H.R. 6201, the Families First Coronavirus Response Act, and substantially narrowed the employer leave requirements under the Emergency Family and Medical Leave Expansion Act and the Emergency Paid Sick Leave Act. This is the final version passed in the Senate and sent to the President. The major changes from the previous version of the Emergency Paid Sick Leave Act are as follows:

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<sup>17</sup> H.R. 6201, the Families First Coronavirus Response Act, Title-by-Title Summary, House of Representatives Appropriations Committee, accessed on 17 March 2020  
<<https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/Families%20First%20Summary%20FINAL.pdf>>.

- Language defining the circumstances under which employers must provide the new paid sick time to employees affected by COVID-19 adds that the employee must be “unable to work (or telework) due to a need for leave,” and redefines the following six reasons as qualifying:
  1. The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19;
  2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
  3. The employee is experiencing symptoms of COVID-19 and is seeking medical diagnosis;
  4. The employee is caring for an individual who is subject to a federal, state or local quarantine order, or the individual has been advised to self-quarantine due to concerns related to COVID-19;
  5. The employee is caring for the employee’s son or daughter, if the child’s school or child care facility has been closed or the child’s care provider is unavailable due to COVID-19 precautions; or
  6. The employee is experiencing any other substantially similar condition as specified by Health and Human Services in consultation with the Department of the Treasury and the Department of Labor.
- Employers are still prohibited from requiring employees to use other paid leave provided by the employer before using the new paid sick time, but the explicit prohibition against employers changing their existing paid leave policies on or after any date of enactment has been eliminated.
- There are new caps on the total amount of pay an employee may receive under the Act:
  - Emergency sick time relating to an employee’s own condition (see 1-3 above) is calculated based on the employee’s regular rate or applicable minimum wage, whichever is greater, but is limited to \$511 per day and \$5,110 total.
  - Emergency sick time relating to situations where the employee is acting as a caregiver (see 4-6 above) is calculated based on two-thirds of the employee’s regular rate or applicable minimum wage, whichever is greater, but is limited to \$200 per day and \$2,000 total.

The major changes from the previous version of the Emergency Family and Medical Leave Expansion Act are as follows:

- The new Emergency FMLA has been significantly narrowed to include only leave for an employee who is “unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.”
- The initial period of unpaid leave, during which an employee can substitute accrued vacation, personal leave, or medical or sick leave, has been reduced from 14 to 10 days.
- There are new caps on paid leave for the 10 weeks following the initial 10-day period of unpaid leave of \$200 per day and \$10,000 total.
- Certain small employers may now be exempt from penalties for violation of the Act.

In addition to the above, there are new features of both the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act under H.R. 6201:

- There are new exceptions allowing health care providers or emergency responders to elect to exclude certain employees from the Act; and
- The Department of Labor is now explicitly authorized to issue regulations which, among other things:
  - (1) exclude health care workers and emergency responders from eligibility for emergency paid sick time, and
  - (2) exempt businesses with fewer than 50 employees when providing emergency paid sick time would jeopardize the viability of the business.

## **VI. The Anticipated Federal Phase Three Economic Recovery Proposal**

The White House is working with lawmakers to craft a third phase of support for struggling sectors of the economy and for individuals. Highlights of the White House’s suggested priorities are included below.

### **Airline Industry Secured Lending Facility (\$50 billion)**

- Treasury Department to determine appropriate interest rate and other terms and conditions;
- Secured by collateral specified by the Treasury Department; and

- Requirements on borrowers would include:
  - Specified continuation of service requirements; and
  - Limits on increases in executive compensation until repayment of the loans.

**Other Severely Distressed Sectors of the U.S. Economy (\$150 billion)**

- This provision would appropriate an additional \$150 billion and authorize use of those funds for secured lending or loan guarantees to assist other critical sectors of the U.S. economy experiencing severe financial distress due to the COVID-19 outbreak.

**Economic Impact Payments**

- This provision would authorize and appropriate funds for two rounds of direct payments to individual taxpayers, to be administered by the IRS and Bureau of the Fiscal Service.
  - \$250 billion to be issued beginning April 6
  - \$250 billion to be issued beginning May 18
- Payment amounts would be fixed and tiered based on income level and family size. Treasury is modeling specific options.
- Each round of payments would be identical in amount.

A Senate proposal would include requirements to manufacture, purchase, and stockpile medical materials, prioritization of COVID-related activities at FDA, \$1.32 billion in supplemental funding for community health centers and additional grant programs for telemedicine and rural health. It would also cap paid FMLA employer contributions at \$200 per day or \$10,000 in the aggregate, and contributions for paid sick leave at \$5,110 for sick leave or \$2000 for child care related leave. Employers would be able to receive federal subsidies by receiving an advance tax credit, rather than reimbursement. Employees would be allowed to have access to paid family and medical leave if they are laid off but later rehired. It would also expand the authority for the Secretary of Labor to exempt small businesses with fewer than 50 employees and require that unemployment applications and related assistance be accessible in person, by phone, or online. The bill includes enhanced unemployment insurance benefits for those who lose jobs as a result of the coronavirus, tacking on an extra \$600 a week for 12 weeks, as well as an additional 13 weeks of benefits after state unemployment compensation has been exhausted.

Competing legislation from the U.S. House of Representatives would provide similar benefits for a longer time period, and add an additional \$300 benefit as short-term “pandemic compensation” during closures. These discussions are still in process and are changing rapidly, however, so please look to the most current information possible to guide decisions.

**VII. Small Business Administration (SBA) Disaster Assistance Loans for Small Businesses Impacted by Coronavirus (COVID-19)**

SBA’s Economic Injury Disaster Loans (EIDL) offer up to \$2 million in assistance for a small business. These loans can provide economic support to small businesses to help overcome the temporary loss of revenue they are experiencing. The U.S. Small Business Administration is offering designated states and territories low-interest federal disaster loans for working capital to small businesses suffering substantial economic injury as a result of the Coronavirus (COVID-19). Upon a request received from a state’s or territory’s Governor, SBA will issue under its own authority, as provided by the Coronavirus Preparedness and Response Supplemental Appropriations Act that was recently signed by the President, an Economic Injury Disaster Loan declaration. Any such Economic Injury Disaster Loan assistance declaration issued by the SBA makes loans available to small businesses and private, non-profit organizations in designated areas of a state or territory to help alleviate These loans may be used to pay fixed debts, payroll, accounts payable and other bills that can’t be paid because of the disaster’s impact. The interest rate is 3.75 percent for small businesses without credit available elsewhere; businesses with credit available elsewhere are not eligible. The interest rate for non-profits is 2.75 percent. SBA offers loans with long-term repayments in order to keep payments affordable, up to a maximum of 30 years. Terms are determined on a case-by-case basis,

based upon each borrower's ability to repay.<sup>18</sup> After declaring a state of emergency on Friday, March 13, 2020, Governor Ivey requested federal disaster loans for Alabama's small businesses. Governor Ivey announced the approval of Alabama's request for SBA Economic Injury Disaster Loans (EIDL) on Saturday, March 21, 2020. According to the SBA, there are more than 400,000 small businesses in Alabama. Small businesses should visit the SBA's COVID-19 recovery website to determine their eligibility and to apply for an EIDL.<sup>19</sup>

### **VIII. Coronavirus Disease National Health Emergency (NHE) Dislocated Worker Grant (DWG)**

The U.S. Department of Labor announced on March 18, 2020<sup>20</sup> the availability of up to \$100 million for Disaster Dislocated Worker Grants (DWGs) in response to the workforce-related impacts of COVID-19. Entities eligible to apply for Disaster Recovery DWGs include:

- States;
- Outlying areas; and
- Indian Tribal Governments as defined in the Stafford Act (42 U.S.C. 5122(6)).

Disaster DWGs will provide eligible participants with both disaster-relief employment and employment and training activities. These participants can include dislocated workers, workers who were laid-off as a result of the disaster, self-employed individuals who are unemployed or underemployed as a result of the disaster, and long-term unemployed individuals. Eligible entities can also apply for Employment Recovery DWGs in response to layoffs caused by cancellations or shutdowns caused by coronavirus. Employment Recovery DWGs will provide employment and training services to reintegrate eligible individuals back into the workforce. States can apply for Employment Recovery DWGs if either of the following events occur:

- 50 or more individuals are laid off by one employer; or
- Significant layoffs that significantly increase unemployment in a given community, even if the total layoffs are fewer than 50 individuals.

The U.S. Department of Labor Education and Training Administration (ETA) issued Training and Employment Guidance Letter (TEGL) 12-19, which provides updated guidance to inform the state and local workforce development systems of the policies and priorities that govern the award and use of National Dislocated Worker Grant (DWG) funds, pursuant to the Workforce Innovation and Opportunity Act (WIOA), Title I, Section 170.<sup>21</sup>

### **IX. Rapid Response**

Under WIOA, one of the services that helps to address the effects of mass employee layoffs or company closures is Rapid Response. The Alabama Department of Commerce, Workforce Development Division serves as the State Dislocated Worker Unit for Alabama, and notices of plant closings and layoffs should be sent the Worker Adjustment and Retraining Notification Act (WARN.) The State Rapid Response Team goes on site to companies that have issued WARN notices for the layoff of 50 or more employees or otherwise notified the State Rapid Response Team of impending employee layoffs.<sup>22</sup> The Team works with employers to schedule an on-site visit to meet with affected workers to provide them with valuable information regarding Unemployment Insurance, services available through the One-Stop Career Centers, and services available from other workforce partner agencies. The Department of Labor's Employment and Training Administration (ETA) provides funding for the

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<sup>18</sup> U.S. Small Business Administration, Press Release, *SBA to Provide Disaster Assistance Loans for Small Businesses Impacted by Coronavirus (COVID-19)*, 12 March 2020, accessed on 18 March 2020 <<https://www.sba.gov/about-sba/sba-newsroom/press-releases-media-advisories/sba-provide-disaster-assistance-loans-small-businesses-impacted-coronavirus-covid-19>>.

<sup>19</sup> Governor Kay Ivey, Press Release, "Governor Kay Ivey, Press Release, "Gov. Ivey: Alabama small businesses can seek SBA COVID-19 disaster loans," 21 March 2020, accessed on 23 March 2020 <<https://governor.alabama.gov/newsroom/2020/03/gov-ivey-alabama-small-businesses-can-seek-sba-covid-19-disaster-loans/>>.

<sup>20</sup> U.S. Department of Labor, Press Release, U.S. Department of Labor Announces Availability of Up to \$100 Million in National Health Emergency Dislocated Worker Grants in Response to COVID-19 Outbreak, 18 March 2020, accessed on 18 March 2020 <<https://www.dol.gov/newsroom/releases/eta/eta20200318>>.

<sup>21</sup> Pallasch, John, Training and Employment Guidance Letter (12-19), National Dislocated Worker Grant Program Guidance, 18 March 2020, accessed on 19 March 2020 <[https://wdr.doleta.gov/directives/attach/TEGL/TEGL\\_12-19.pdf](https://wdr.doleta.gov/directives/attach/TEGL/TEGL_12-19.pdf)>.

<sup>22</sup> Rapid Response, Alabama Department of Commerce, Workforce Development Division, accessed on 18 March 2020 <<https://wioa-alabama.org/rapid-response/>>.

Alabama Dislocated Worker Program, “Rapid Response”. The program provides workers who lost jobs, through no fault of their own, due to plant closures, company downsizing, or some other significant change in market conditions the following:

- Informational and direct reemployment services for workers, including but not limited to:
  - Information and support filing for unemployment insurance claims;
  - Information about TAA program and support for filing petitions for TAA Certifications;
  - Information on the impacts of layoff on health coverage or other benefits;
  - Information and referral to career services;
  - Reemployment focused workshops and services;
  - Information on available training programs;
  - Convening/facilitating the connections, networks and partners to ensure the ability to aid dislocated workers and their families such as home heating assistance, food assistance, legal aid, and financial advice.

#### **X. Disaster Unemployment Assistance (DUA)**

The Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974, as amended, authorizes the President to provide benefit assistance to individuals unemployed as a direct result of a major disaster. The U.S. Department of Labor oversees the DUA program and coordinates with the Federal Emergency Management Agency (FEMA), to provide the funds to the state UI agencies for payment of DUA benefits and payment of state administration costs under agreements with the Secretary of Labor.<sup>23</sup> Disaster Unemployment Assistance provides financial assistance to individuals whose employment or self-employment has been lost or interrupted as a direct result of a major disaster and who are not eligible for regular unemployment insurance benefits. When a major disaster has been declared by the President, DUA is generally available to any unemployed worker or self-employed individual who lived, worked, or was scheduled to work in the disaster area at the time of the disaster; and due to the disaster:

- no longer has a job or a place to work; or
- cannot reach the place of work; or
- cannot work due to damage to the place of work; or
- cannot work because of an injury caused by the disaster.

An individual who becomes the head of household and is seeking work because the former head of household died as a result of the disaster may also qualify for DUA benefits. DUA benefits are payable to individuals (whose unemployment continues to be a result of the major disaster) only for weeks of unemployment in the Disaster Assistance Period (DAP). The DAP begins with the first day of the week following the date the major disaster began and continues for up to 26 weeks after the date the disaster was declared by the President.

The maximum weekly benefit amount payable is determined under the provisions of the state law for unemployment compensation in the state where the disaster occurred. However, the minimum weekly benefit amount payable is half (50%) of the average benefit amount in the state. As of March 23, 2020, the President has not declared a major disaster in Alabama. Currently, California, Washington State, and New York State are under major disaster declarations.<sup>24</sup>

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<sup>23</sup> U.S. Department of Labor, Education and Training Administration, Disaster Unemployment Assistance (DUA), accessed on 23 March 2020 <<https://oui.doleta.gov/unemploy/disaster.asp>>.

<sup>24</sup> Federal Emergency Management Agency (FEMA), Disasters, accessed on 23 March 2020 <<https://www.fema.gov/disasters>>.

## XI. COVID-19 Scenarios and Available Benefits

COVID-19 Scenarios and Available Benefits	Unemployment Insurance		Family Medical Leave Act	State Employees During State of Emergency (Green Means Sick Leave Use Not Required)
	Current Law	Emergency Rule (UIPL 10-20)	As Amended by H.R. 6201 (P.L. 103-3, 29 U.S.C. sec. 2601); must use sick leave first	March 13 State of Emergency and March 15 Executive Memorandum
Employee is diagnosed with COVID-19	RED	GREEN	GREEN	GREEN
Employee was exposed, quarantined, and plans to return to work. Employing business remains open.	RED	GREEN	GREEN	GREEN
Employee is caring for a sick family member.	RED	GREEN	GREEN	RED
Employee has a child in a school closed due to COVID-19 and has no childcare.	RED	RED	GREEN	RED
The employee has an underlying medical condition and has been advised by his or her physician to self-quarantine.	RED	RED	GREEN	GREEN
Worker refused to go to work and is self-distancing, but employer remains open.	RED	RED	RED	RED
Employer order to shut down by a public official.	GREEN	GREEN	RED	GREEN
Employer shuts down due to employer slowdown and lack of demand.	GREEN	GREEN	RED	RED
The employee's hours are reduced due to business slow down or lack of demand.	GREEN	GREEN	RED	RED
The employer shuts down in defiance of a public health urging to close.	YELLOW	YELLOW	RED	RED

Figure 1, GREEN=eligible; RED=not eligible; YELLOW=TBD