

TO: Conference Ministers, Conference Attorneys, Covenant Partners

FROM: Office of General Counsel

DATE: April 15, 2020

RE: Unemployment for Church Workers

MEMORANDUM

Please feel free to distribute this memorandum. It is not intended as legal advice to any particular individual or church setting.

I. Introduction

The Office of General Counsel is receiving numerous inquiries about the availability of unemployment benefits to lay church workers and clergy. This memorandum is intended to explain the current status of unemployment compensation for church workers in light of the new federal CARES Act. There are several unemployment assistance programs included in the CARES Act (with enough new acronyms to impress even the most seasoned United Church of Christ members), and church settings should review the information below carefully. Church settings are reminded that individual states are controlling the unemployment assistance process; accordingly, there may be no one right answer to questions that individuals have regarding how they apply for benefits, how the benefit amount is determined, and when they can expect to receive benefits. Individuals who believe they are eligible for unemployment are encouraged to apply directly with the appropriate agency in their state.

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II. Executive Summary

Most church workers are not covered by state unemployment insurance programs. Church workers, including clergy, who are unemployed due to COVID-19 related reasons may be eligible for unemployment compensation under the Pandemic Unemployment Assistance (PUA) and Federal Pandemic Unemployment Compensation (FPUC) provisions of the CARES Act. Church workers must have their eligibility determined by their state, and each state will follow its own process for making that determination.

III. Church Workers and Unemployment

Many of our United Church of Christ Local Churches and other settings have been surprised to learn that church workers who are terminated are generally not eligible for unemployment compensation through the state's unemployment insurance program. Under federal law and in most states, churches are exempt from paying into the state's unemployment insurance program, or "unemployment taxes." While churches may be able to participate voluntarily in the state unemployment insurance system or participate as a self-insured employer by reimbursing the state for payments made after an employee is terminated, most churches do not. Thus, when church workers are terminated from employment, most are not eligible for unemployment benefits.

IV. Pandemic Unemployment Assistance (PUA)

The CARES Act provides a new unemployment benefit to individuals who are not normally eligible for state unemployment benefits. This benefit is called Pandemic Unemployment Assistance (PUA). It is available to workers not normally eligible for state unemployment compensation, including 1) those not eligible in general for state unemployment benefits (like most church workers) and 2) those who have exhausted all rights to state unemployment benefits.

A. Eligibility for Benefits

PUA includes church workers whose employers do not pay into state unemployment compensation systems.¹ To be eligible, individuals must certify that they are able and available to work but are unemployed, partially unemployed, or unable or unavailable to work for the following COVID-19-related reasons:

- The individual has been diagnosed with COVID-19, or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- A member of the individual’s household has been diagnosed with COVID-19;
- The individual is providing care for a family member or a member of the individual’s household who has been diagnosed with COVID-19;
- 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 closed² as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
- 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;
- 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;
- 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;

¹ Guidance from the Department of Labor states: “Eligibility for PUA includes those individuals not eligible for regular unemployment compensation or extended benefits under state or federal law or pandemic emergency unemployment compensation (PEUC), including those who have exhausted all rights to such benefits. Covered individuals also include self-employed individuals, those seeking part-time employment, and individuals lacking sufficient work history. **Depending on state law, covered individuals may also include clergy and those working for religious organizations who are not covered by regular unemployment compensation.**” (emphasis added)

² A school is not considered “closed” as a direct result of COVID-19 after the date the school year is originally scheduled to end.

- The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
- The individual has to quit his or her job as a direct result of COVID-19; or
- The individual's place of employment is closed as a direct result of the COVID-19 public health emergency.

Workers who are eligible to receive paid leave (such as under the paid FMLA or paid sick leave provisions of the Families First Coronavirus Response Act) are not eligible for PUA.³ Workers who can work remotely are also not eligible to receive PUA.

To receive benefits under PUA, workers must first be officially determined ineligible for state unemployment compensation benefits. Each state will have their own process for workers to follow; individuals should check with the appropriate agency in their state. **Further, each state is required to enter into an agreement with the Department of Labor to receive federal funds to implement to PUA program.** It is difficult to determine how the states' own progress in fulfilling the federal requirements will affect workers' ability to obtain benefits in a timely manner.

B. Benefits Duration and Calculation

Benefits under PUA are available up to 39 weeks for periods of unemployment between January 27, 2020 (retroactive) and December 31, 2020. Benefits will only be available for each week that a qualifying reason exists. The amount of the benefit is the same as it would be under Disaster Unemployment Assistance (DUA), a federal program that provides unemployment assistance to individuals not normally eligible for unemployment compensation when the President has declared a major disaster. Each state calculates DUA benefits differently, based on the provisions of state law for unemployment compensation in the state where the disaster

³ Some workers may be eligible to receive Disaster Unemployment Assistance (DUA), where the President has declared a major disaster. These individuals are not eligible for PUA for weeks that they already receive DUA.

occurred. Accordingly, individuals should seek guidance on the amount of benefits from the appropriate agency in their state.

V. Federal Pandemic Unemployment Compensation (FPUC)

The CARES Act also provides an additional benefit to workers who are eligible to receive PUA (see above), called Federal Pandemic Unemployment Compensation (FPUC). This includes church workers receiving PUA. FPUC is an additional \$600 per week that is automatically added to benefits under PUA—no additional application is needed. FPUC is available for weeks of unemployment beginning on or after the date on which **the worker's state enters into an agreement with the Department of Labor**, through July 31, 2020.

VI. Pandemic Emergency Unemployment Compensation (PEUC)

If your church setting is one of the few required to pay unemployment taxes or that voluntarily pays unemployment taxes, then any employee that is terminated without fault due to COVID-19 should be eligible for state unemployment benefits regardless of the CARES Act.⁴ Once ordinary unemployment benefits have been exhausted, these workers may be eligible for additional benefits under the CARES Act Pandemic Emergency Unemployment Compensation (PEUC) program, which will be administered by each individual state. Employees must apply for the PEUC benefits, which provides up to 13 weeks of additional benefits at the state unemployment compensation level. PEUC benefits begin with weeks of unemployment ending April 5, 2020, and end by December 31, 2020. **PEUC benefits are only available in states that have entered into an agreement with the Department of Labor.**

Individuals who are eligible for PEUC are also eligible for the additional \$600 benefit under FPUC, described above. The FPUC benefit does not require an additional application.

⁴ Churches that reimburse the state for unemployment benefits may be eligible for reimbursement from federal funds up to one-half the cost of the benefits under Section 2103 of the CARES Act. Section 2103 is beyond the scope of this memorandum.

Once an individual who is eligible for PEUC exhausts the benefit, the individual is eligible to apply for PUA, as described in III.

VI. Effect of Unemployment on Paycheck Protection Program Loans

Churches that have obtained Paycheck Protection Program loans should carefully consider whether terminating employees during the period of the loan will impact the amount of the loan that can be forgiven. Churches may wish to consult an accountant for more information.