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Aug 16 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Hon. R. Lawton McIntosh, Circuit Court Judge

Case No. 2021-CP-40-03774

Sheena Brannon, Shane Stencil, Tina Sullivan, and Brandon Beaty

Appellants,

v.

Henry Dargan McMaster, in his official capacity as Governor of the State of South Carolina, and G. Daniel Ellzey, in his official capacity as Director of the South Carolina Department of Employment and Workforce

Respondents

**MOTION FOR EMERGENCY REVIEW
AND EXPEDITED CERTIFICATION**

**PANDEMIC UNEMPLOYMENT BENEFIT PROGRAMS EXPIRE
SEPTEMBER 6, 2021**

August 16, 2021
Columbia, South Carolina

SOUTH CAROLINA APPLESEED
LEGAL JUSTICE CENTER

s/ Adam Protheroe _____

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On June 26, 2021, at the direction of Governor McMaster, the South Carolina Department of Employment and Workforce prematurely ended the State's participation in several enhanced unemployment benefits which were a part of the Congressional response to the COVID-19 pandemic. These benefits were scheduled to continue through September 6, 2021. The week after this action took effect, more than 71,000 South Carolinians stopped receiving unemployment benefits of any kind, a decrease of more than 82%. The effect of this action will be to forfeit somewhere between \$600 million and \$900 million in federal funds that would otherwise flow into the South Carolina economy and allow those unemployed, through no fault of their own, to meet critical needs. This loss is occurring, and will continue to occur , at a rate of tens of millions of dollars per week until these benefits ultimately expire on September 6, 2021.

On July 28, 2021, Appellants' filed suit seeking declaratory and injunctive relief along with a writ of mandamus requiring Respondents to immediately reinstate South Carolina's participation in these benefit programs. Appellants argue that S.C. Code § 41-29-230(1) requires Respondents to seek and obtain all unemployment benefits available under the Social Security Act, including the enhanced unemployment benefits at issue here. By order dated August 13, 2021, the Circuit Court denied Appellants' motion for preliminary injunction and dismissed this action with prejudice.

Appellants seek emergency review and certification to the South Carolina Supreme Court pursuant to Rule 204(b), SCACR, for two main reasons. First, Appellants along with tens of thousands of South Carolinians who have been deprived of pandemic unemployment relief are suffering irreparable harm and need relief now. Second, each week that goes by with South

Carolina withdrawn from these unemployment benefit programs may result in the permanent loss of benefits at a rate of tens of millions of dollars per week. Appellants cannot wait for the usual appellate process to run its course and, instead, ask that this matter be immediately certified to the South Carolina Supreme Court to resolve a question of statutory interpretation which will be dispositive of this action.

Counsel for Appellants have conferred with Counsel for respondents and are informed that Respondents do not anticipate opposing certification of this appeal for review under Rule 204(b), SCACR, but that Respondents reserve the right to respond to the motion if necessary.

FACTUAL BACKGROUND

Congress Provides Pandemic Unemployment Benefits to Alleviate the Economic Hardship Caused by the COVID-19 Pandemic

To alleviate some of the economic hardship that the COVID-19 pandemic caused, Congress enacted the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act. Signed into law on March 27, 2020, the CARES Act provides for a variety of pandemic relief programs including several types of enhanced unemployment benefits (collectively “Pandemic Unemployment Benefits”). 15 U.S.C. § 9001 *et seq.*

Pandemic Unemployment Assistance (“PUA”) is one type of Pandemic Unemployment Benefit and is available to workers who would not otherwise be eligible for regular Unemployment Insurance (“UI”) benefits including the self-employed, underemployed, independent contractors, and others whose unavailability or inability to work was caused by COVID-19. 15 U.S.C. § 9021.

Pandemic Emergency Unemployment Compensation (“PEUC”) is a second type of Pandemic Unemployment Benefit and provides additional weeks of benefits for workers who have exhausted their regular UI benefits. 15 U.S.C. § 9025. Federal Pandemic Unemployment Compensation (“FPUC”) is a third type of Pandemic Unemployment Benefit which increases the weekly benefit amount available to an individual who receives any other type of unemployment benefit, including regular UI, PUA, or PEUC. FPUC increased benefits by \$600 per week from March 27, 2020, through July 31, 2020. 15 U.S.C. § 9023. From July 31, 2020, to December 27, 2020, FPUC benefits lapsed. They were reinstated beginning December 27, 2020, at \$300 per week and are currently scheduled to continue through September 6, 2021. Continued Assistance for Unemployed Workers Act of 2020 (“CAUWA”). Pub. L. No. 116-260, § 200–01, 206; American Rescue Plan Act of 2021 (“ARPA”). Pub. L. No. 117-2, § 9013 (March 11, 2021).

Funds have been appropriated by congress for Pandemic Unemployment Benefits and are available in the Unemployment Trust Fund to be distributed to eligible South Carolinians through September 6, 2021. ARPA §§ 9011, 9013, and 9016.¹ The costs of Pandemic Unemployment Benefits and the costs to states of administering these programs, including startup costs and ongoing administration costs, are 100% federally funded. 15 U.S.C. §§ 9021(f)(2), 9023(d)(1)(A), 9025(d)(2)(A).² Pandemic Unemployment Benefits and administration costs are funded through Sections 901, 904, and 905 of the Social Security Act, 42 U.S.C. § §§ 1101(a), 1104(a), and 1105(a). 15 U.S.C. §§ 9021(g), 9025(d).

¹ The CARES Act provided for three additional types of enhanced unemployment benefits which are not at issue in this case.

Pandemic Unemployment Benefits and regular UI benefits both operate under the same SSA infrastructure. The state agency that processes claims, determines eligibility, and pays regular UI benefits, DEW in this case, does the same for the Pandemic Unemployment Benefits. The features of state law which apply to key aspects of regular UI, and which are mandated by the SSA – like appeal procedures, overpayments, fraud determinations, and work availability or search requirements – also apply to the Pandemic Unemployment Benefits. *See, e.g.*, 15 U.S.C. §§ 9021(c)(5)(B)(ii), 9023(f)(4), 9025(a)(4)(B), (e)(4).

Respondents Prematurely End South Carolina’s Participation in Pandemic Unemployment Benefits.

On May 6, 2021, Director Ellzey issued a memorandum to Governor McMaster purporting to assess the impact should South Carolina decide to “opt-out” of Pandemic Unemployment Benefits effective June 27, 2021, rather than participate through the currently scheduled end of those programs in early September 2021.³ In his memorandum, Director Ellzey estimated that such action would result in the loss of the following amounts of federal funding between June 27, 2021, and September 4, 2021:

³ Exhibit App. 1 attached hereto.

Program	Anticipated 10-Week Funding Loss (June 27, 2021 – September 4, 2021)
FPUC	\$370.0 million
PEUC	\$146.0 million
PUA	\$62.0 million
Total	\$578 million⁴

Other sources indicate that closer to \$900 million in federal funds would be lost because of Respondents’ actions.⁵ The same day Director Ellzey issued his memorandum, Governor McMaster directed DEW to terminate South Carolina’s participation in the Pandemic Unemployment Benefits effective June 30, 2021.⁶

The effects of Respondents’ actions on vulnerable South Carolinians were swift and dramatic. In the first week after Respondents opted out of Pandemic Unemployment Benefits, the number of South Carolinians receiving unemployment benefits of any kind fell by more 71,000, a reduction of more than 82%.⁷

⁴ DEW estimates that an additional \$7.3 million in benefits will be lost during this time under the three Pandemic UI Programs that are not at issue in this case.

⁵ Stettner, Andrew, *Fact Sheet: What’s at Stake As States Cancel Federal Unemployment Benefits*, The Century Foundation, May 13, 2021 (available at <https://tcf.org/content/commentary/fact-sheet-whats-stake-states-cancel-federal-unemployment-benefits/>).

⁶ Exhibit App. 2 attached hereto.

⁷ <https://www.dew.sc.gov/data-and-statistics/data-dashboard> (accessed July 14, 2021, for June 27-July 3 data and accessed July 15, 2021, for July 4-July 10 data)

	June 27 – July 3	July 4 – July 10	Change
Individuals receiving Unemployment Benefits of any kind	87,018	15,414	(71,604)

South Carolinians received over \$39,000,000 less in Pandemic Unemployment Benefits between July 4, 2021, and July 10, 2021, than they did the week before Respondents’ decision to opt out of those benefits took effect.⁸ This weekly loss will most likely increase as Respondents’ decision takes full effect.

	June 27 – July 3	July 4 – July 10	Change
FPUC Benefits Paid	\$29,311,525.00	\$3,479,806.00	(\$25,831,719.00)
PEUC Benefits Paid	\$10,583,318.00	\$1,062,149.00	(\$9,521,169.00)
PUA Benefits Paid	\$4,276,299.00	\$445,028.00	(\$3,831,271.00)
Total	\$44,171,142.00	\$4,986,983	(\$39,184,159.00)

⁸ <https://www.dew.sc.gov/data-and-statistics/data-dashboard> (accessed July 14, 2021, for June 27-July 3 data and accessed July 15, 2021, for July 4-July 10 data)

While Respondents' decision to opt out of Pandemic Unemployment Benefits has taken effect, that action is revocable. On July 12, 2021, the United States Department of Labor ("DOL") issued guidance to state workforce agencies which clarified that "[a]ny state that has provided notice to [DOL] of its intent to terminate any of the Pandemic Unemployment Benefits prior to the September 6, 2021, end date may reinstitute participation in any or all programs it previously indicated it would be terminating."⁹

DOL's July 12 guidance indicates that if the date on which a state has indicated it will terminate participation in Pandemic Unemployment Benefit programs has passed, as it has in South Carolina, those programs may still be restarted, but the state may need to enter into a new agreement with DOL to reinstitute operations. Doing so may result in a lapse in FPUC and PEUC benefits because the new agreement would become effective the week of unemployment after that agreement is signed.¹⁰ Thus, every week that passes without an agreement between DEW and DOL to administer Pandemic Unemployment Benefits may result in the permanent loss of tens of millions in federal unemployment benefits for South Carolinians unemployed through no fault of their own, including Appellants. DOL has indicated that PUA benefits will not lapse if a state enters into a new agreement to administer these benefits because the state would be required to provide individuals receiving PUA an opportunity to certify for the missing weeks.¹¹

⁹ Unemployment Insurance Program Letter No. 14-21, Change 1 (available at https://wdr.doleta.gov/directives/corr_doc.cfm?docn=9502)

¹⁰ *Id.* at 7

¹¹ *Id.*

Tens of thousands of South Carolina families have faced, and continue to face, significant hardships because of Respondents' actions. Appellants' stories provide a few examples of these hardships, which include the risk of homelessness, loss of utility service, food insecurity, and lack of needed medical treatment.

This action was initially filed in the Court of Common Pleas for Richland County as *S.B. v. McMaster*, Case No. 2021-CP-40-03774 (filed July 28, 2021). Appellants moved for a preliminary injunction and Respondents moved to dismiss.¹² The Circuit Court denied Appellants' motion for preliminary injunction and granted Respondents' motion to dismiss with prejudice.¹³ Appellants now seek appellate review and certification to the South Carolina Supreme Court because of the public interest involved and the need for prompt and final resolution.

REQUEST FOR CERTIFICATION TO THE SOUTH CAROLINA SUPREME COURT

Appellants request that this matter be immediately certified to the South Carolina Supreme Court relief pursuant to Rule 204(b), SCACR, which provides that “[c]ertification is normally appropriate where the case involves an issue of significant public interest or a legal principle of major importance.”

¹² Respondents also moved to strike Appellants' certifications, which had been filed identifying Appellants by initials only, or required that Appellants publicly identify themselves. Appellants provided Respondents with unredacted certifications, and the Circuit Court subsequently denied Respondents' motion as moot because the Court granted Respondents' motion to dismiss. However, the Circuit Court indicated that it would have granted Respondent's motion to require Appellants to identify themselves had it not been rendered moot. Appellants have identified themselves here in an effort to avoid further dispute on this question and to reach the merits of this action as quickly as possible.

¹³ A copy of this order is attached to Appellants' Notice of Appeal.

I. This case presents an issue of significant public interest and legal principles of major importance.

This case turns on a simple question, the answer to which will have profound and immediate effects on tens of thousands of South Carolina workers and this State's economy. The question is this: Are temporary enhancements to unemployment benefits which are funded, administered, and governed by provisions of the Social Security Act "advantages available under the provisions of the Social Security Act that relate to unemployment compensation" as that phrase is used in S.C. Code Ann. § 41-29-230(1)? If the answer is yes, as Appellants submit, then Respondents acted unlawfully and in violation of their statutory obligations when they prematurely ended South Carolina's participation in these temporary enhancements. And Respondents should be directed to immediately reinstate these programs, including retroactive benefits to the greatest extent possible. If the answer is no, then Respondents' decision to end these programs early was a discretionary act which Appellants have no grounds to challenge here. A final answer to this question is urgently needed for two reasons.

First, the number of South Carolinians affected by Respondents' decision to opt out of Pandemic Unemployment Benefits and the magnitude of those effects are enormous. As noted above, immediately after Respondents withdrew from these programs more than 71,000 South Carolinians stopped receiving unemployment benefits of any kind. And somewhere between \$600 million and \$900 million in federal funds will be lost to this State between June 27, 2021, and September 6, 2021. In short, Respondents actions have caused tens of thousands of South Carolinians, unemployed through no fault of their own, to lose access to hundreds of millions of

dollars in unemployment benefits that would otherwise enable them to meet critical needs like shelter, food, utilities, and medical care.

While other pandemic relief measures exist that may be able to help mitigate the harm that South Carolina workers are facing, some of the most significant are temporary or have fallen short in critical ways. For example, the CDC eviction moratorium protects individuals who have been impacted by the pandemic from being evicted for nonpayment of rent. However, that moratorium is currently set to expire on October 3, 2021.¹⁴ That moratorium has also been the subject of numerous legal challenges and the United States Supreme Court has warned that extending that moratorium beyond July 31, 2021, would require “clear and specific congressional authorization.”¹⁵ Such authorization has not been obtained. In addition, federally funded rent assistance programs have, to date, largely distributed funds at a glacial pace leaving thousands of families at risk of eviction.¹⁶ Until Respondents ended the State’s participation in Pandemic Unemployment Benefits, they served the critical needs of tens of thousands of South Carolina

¹⁴ <https://www.cdc.gov/coronavirus/2019-ncov/communication/Signed-CDC-Eviction-Order.pdf>

¹⁵ *Alabama Ass’n. of Realtors v. Dep’t. of Health and Human Svcs.*, No. 20A169, June 29, 2021 (Kavanaugh, J. concurring)

¹⁶ See e.g. Moore, Thad, *SC Supreme Court urges lawyers to help tenants facing eviction as CDC moratorium ends*, The Post and Courier, July 30, 2021, https://www.postandcourier.com/news/sc-supreme-court-urges-lawyers-to-help-tenants-facing-eviction-as-cdc-moratorium-ends/article_badde6ca-f15e-11eb-a3b9-c73c75616ce5.html (noting that the SC Stay Plus program had approved funding for only 393 households of the more than 12,000 that had applied as of July 30, 2021); Garrison, Joey and Michael Collins, *‘An epidemic in itself’: Why billions of federal aid isn’t making it to renters, landlords during pandemic*. USA Today, August 15, 2021, <https://www.usatoday.com/in-depth/news/politics/2021/08/15/covid-pandemic-federal-aid-renters-landlords/5552227001/> (noting that South Carolina had distributed just 1.1% of the \$272 million in emergency rent assistance funds that the state received in February 2021).

families. The harm that Appellants and others like them are facing because of Respondents' decision is immediate, substantial, and irreparable.

Second, most of benefits that would have been paid to unemployed South Carolinians but for Respondents' decision to opt out may be permanently lost even if the programs are ultimately reinstated in South Carolina. As noted above, DOL's July 12 guidance indicates that there may be a lapse in PEUC and FPUC benefits for any weeks in which a state did not have an agreement with DOL to administer those benefits. FPUC and PEUC account for approximately 89% of all Pandemic Unemployment Benefits paid from March 15, 2020, through August 9, 2021. It appears that the state of Indiana may have been able to reinstate all Pandemic Unemployment Benefits retroactively after that state's governor prematurely withdrew from those programs and his withdrawal was declared unlawful under a statute very similar to our Section 41-29-230(1).¹⁷ However, DOL has not issued guidance which indicates that this result would be replicable or whether it is permanent. Thus, the possibility of permanent benefit loss remains.

II. This case is appropriate for prompt resolution by the South Carolina Supreme Court.

The South Carolina Supreme Court has often granted petitions for original jurisdiction to resolve similar questions of executive power as those presented here, signaling that those questions are sufficiently important to warrant intervention by the Supreme Court at an early stage. *See e.g. Senate v. McMaster*, 425 S.C. 315, 821 S.E.2d 908 (2018) (original jurisdiction granted to

¹⁷ See Exhibit App. 3, p. 29 attached hereto (indicating that all Pandemic Unemployment Benefits will be paid retroactively in Indiana).

determine whether a governor had power to make recess appointments); *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000) (same regarding governor’s authority to remove a board member from a public utility); *Edwards v. State*, 383 S.C. 82, 678 S.E.2d 412 (2009) (same regarding a governor’s authority to refuse to apply for federal funds after the legislature appropriated them). Just such a question is posed here, namely, whether the statutory scheme governing unemployment benefits permits Governor McMaster to reject federal funding for those benefits.

CONCLUSION

For the reasons stated herein, Appellants respectfully request (1) that this case be immediately certified to the South Carolina Supreme Court, (2) that this case be briefed and heard on an expedited basis, (3) a declaration that Respondents’ actions in prematurely withdrawing the State from Pandemic Unemployment Benefits programs was unlawful, (3) an injunction directing Respondents to take such action as is necessary to reinstate South Carolina’s participation in Pandemic Unemployment Benefits without delay and to pay retroactive Pandemic Unemployment Benefits to the greatest extent possible, (4) in the alternative, issue a writ of mandamus directing the same, and (5) grant Appellants such other and further relief as the Court deems just and proper.

Respectfully submitted,

August 16, 2021

SOUTH CAROLINA APPLESEED
LEGAL JUSTICE CENTER

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Henry McMaster
Governor

G. Daniel Ellzey
Executive Director

TO: HENRY MCMASTER, GOVERNOR OF SOUTH CAROLINA
FROM: G. DANIEL ELLZEY, EXECUTIVE DIRECTOR
SUBJECT: OPTING OUT OF “AGREEMENT IMPLEMENTING THE RELIEF FOR WORKERS AFFECTED BY CORONAVIRUS ACT”
DATE: MAY 6, 2021

I. Background

On May 4, 2021, Montana announced it was using federal funds authorized by the American Rescue Plan Act to issue “return-to-work bonuses” to individuals on unemployment who rejoin the labor force and maintain employment for at least one month. At the same time, Montana also announced that it was fully opting out of the federal unemployment programs enacted in response to the COVID-19 pandemic. This “opt-out” is effective June 27, 2021. Montana cited a low unemployment rate (3.8%), a shrinking labor force (-10,000 people), and high number of job postings as the reasons for its decision.

This memorandum explains the implications in the event South Carolina follows a similar course of action.

II. Federal Programs

South Carolina elected to participate in the six unemployment-related programs in connection with the Coronavirus Aid, Relief, and Economic Security Act and Continued Assistance to Unemployed Workers Act of 2020. The agreement South Carolina signed to initiate these programs allows South Carolina or the United States Department of Labor to terminate the programs upon thirty days’ written notice to the other party.

1. Pandemic Unemployment Assistance (PUA) – Section 2102

What It Is: benefits to the self-employed, the underemployed, independent contractors, and individuals who have been unable to work as a direct result of COVID-19. This includes individuals diagnosed with COVID-19 or instructed to quarantine.

How It Would Change: Beginning no sooner than 30 days from the date South Carolina provides written notice to USDOL, South Carolina would stop paying PUA benefits to

existing claimants and not process any new PUA claims filed after the expiration of the notice period.

What is the impact: For claim week ending May 1, 2021, 37,284 claimants received PUA benefits for a weekly cost of \$6.2 million.

2. Pandemic Emergency Unemployment Compensation (PEUC) – Section 2107

What It Is: Extension of unemployment benefits for claimants beyond the traditional 20 weeks by an additional 51 weeks. PEUC allowed claimants to extend their time on unemployment where they normally would have expired.

How It Would Change: Beginning no sooner than 30 days from the date South Carolina provides written notice to USDOL, South Carolina claimants who have exhausted their regular UI benefits would no longer be eligible for payments.

What is the impact: For claim week ending May 1, 2021, 56,318 claimants received PEUC benefits for a weekly cost of \$14.6 million; however, approximately 9,300 PEUC would be eligible to move to regular unemployment insurance compensation.

3. Federal Pandemic Unemployment Compensation (FPUC) – Section 2104

What It Is: \$300 weekly add-on benefit for all types of unemployment assistance.

How It Would Change: Beginning no sooner than 30 days from the date South Carolina provides written notice to USDOL, South Carolina would stop issuing the \$300 weekly FPUC benefit payments for weeks after the expiration of the notice period.

What is the impact: For claim week ending May 1, 2021, 108,483 claimants received FPUC benefits for a weekly cost of \$37.0 million.

4. Mixed Earners Unemployment Compensation (MEUC)

What It Is: \$100 weekly add-on benefit for those who are eligible for regular UI benefits, but also earned self-employment income.

How It Would Change: Beginning no sooner than 30 days from the date South Carolina provides written notice to USDOL, South Carolina would stop paying MEUC benefits to existing claimants and stops processing any MEUC claims received after the notice period.

What is the Impact: For claim week ending May 1, 2021, 21 claimants received MEUC benefits for a weekly cost of \$34,400.

5. Emergency Unemployment Relief for Governmental Entities and Nonprofit Organizations – Section 2103

What It Is: Funding for 75% of UI benefits paid to employees of governmental entities and non-profits. These entities are known as “reimbursable employers” because they reimburse the UI trust fund dollar-for-dollar for any benefits paid to their employees instead of paying UI taxes. The rationale for the program was to lessen the financial burden of COVID-19 shutdowns because these employers would not benefit from capping tax rates and non-charging like other employers would.

How It Would Change: Beginning no sooner than 30 days from the date South Carolina provides written notice to USDOL, South Carolina would stop receiving funding for this program. Reimbursable employers go back to being charged 100% of the benefits DEW pays out to their employees after the expiration of the notice period.

What is the Impact: The funding of benefits for employees of reimbursable employers returns to normal. Reimbursable employers do not have the benefit of federal funding if they still experience a layoff connected to COVID-19. While this provision provided millions of dollars in relief to the reimbursable employers in 2020, the benefit charges of these entities have declined significantly.

6. Temporary Federal Funding of the First Week of Compensable Regular Unemployment for States with No Waiting Week – Section 2105

What It Is: Funding for one week of benefits for states that waive the one-week waiting period claimants must typically serve prior to receiving UI benefits. South Carolina waived its statutory waiting week via Executive Order. In South Carolina, the analysis of whether to waive this statutory provision is not tied to federal funding, but to whether the labor market is such that claimants could pursue other employment during that first week of unemployment.

How It Would Change: The Governor rescinds/amends the Executive Order waiving the waiting week. Then, beginning no sooner than 30 days from the date South Carolina provides written notice to USDOL, South Carolina stops receiving funding for this program. The first week of unemployment for claimants who file after the expiration of the notice period would not be compensable.

What is the Impact: New claimants who (1) file after the expiration of the notice period and (2) do not exhaust all benefits receive one less week of benefits than they currently would. Between May 2020 and the end of March 2021, this provision resulted in approximately \$88.7 million in funding. However, as state UI claim levels have declined,

so too has the benefit of this provision. The state is averaging roughly \$400,000 per week in first week waiting reimbursements.

III. Return-to-Work Bonus

In addition to opting out of the federal programs, Montana also decided to pay a return-to-work bonus. Described as an incentive for individuals to reenter the workforce, the bonus is a \$1,200 payment to the first 12,500 Montanans with an active unemployment claim as of May 4, 2021, who:

- Discontinue receiving unemployment benefits
- Accept an offer of employment in the state of Montana
- Complete at least four full weeks of paid employment

These equates to a maximum payout of \$15 million. Montana plans to use federal stimulus funds authorized by the American Rescue Plan Act to fund this bonus. As we understand it, Montana has reached out to the United States Treasury Department for confirmation that federal funds can be used for this purpose.

IV. Total Financial Impact

Assuming an end to the federal programs as of week ending June 26, 2021, the maximum amount of expected losses in federal funding to the state would be between \$600 and \$650 million, or around \$63 million for each week of lost program time. Most of this would be the result of the end of the FPUC and PEUC programs.

Program	Anticipated 10-Week Funding Loss
PUA	\$62.0 million
PEUC	\$146.0 million
FPUC	\$370.0 million
MEUC	\$0.3 million
Reimbursable	\$3.0 million
Waiting Week	\$4.0 million
Total	\$585.3 million

The current estimates are based on individuals currently filing and receiving payments. There may also be additional payments owed to individuals who are in pending status or have a future appeal reversal. Thus, the \$600 million is the maximum expected loss from ending the program as of June 26, 2021.

These potential losses will be offset, to some extent, by individuals returning to work. There are currently more than 80,000 open jobs in the state. It is not possible to predict which individuals will go back, how quickly, or at what wage levels. But assuming that between 30 and 50 percent of the current unemployment claimants return to work at an average weekly wage of \$500, between \$223 and \$372 million in wages could be earned over the ten week period between June 27th and September 4th. These earnings do not take into account any additional fringe benefits, which could include health benefits, retirement benefits, etc. Additionally, as the economy continues to recover, it is expected that more job openings will become available and be filled.

V. Other Considerations

1. *Declining claimant numbers:* The number of individuals drawing benefits will be decreasing rapidly regardless of whether South Carolina opts out of federal programs. 28,000 PUA claimants were required to provide documentation and did not. Therefore, they have disqualified themselves from benefits. We are also enforcing the requirement to search for work more aggressively. Lastly, we are engaging in broad reemployment efforts that will have an effect on the number of individuals drawing benefits each week. **See Attachment A.**
2. *Program-specific opt-out:* The agreement does not necessarily require a complete opt out of all federal programs, although that is what Montana did. Conceptually, South Carolina could opt out of one program such as FPUC and elect to remain in other programs. For this reason, we have provided separate analysis for each of the programs.
3. *Notice Period:* The agreement requires 30 days-notice from a state to effect a termination. However, there does not appear to be a limitation on providing more than 30-days notice. For example, Montana provided notice on May 4, 2021, but is continuing in the program for 53 days (through June 26, 2021).
4. *No ability to modify programs:* The agreement only allows for South Carolina to terminate participation in a program, i.e., we do not have authority to limit or modify a program. For example, we could not say to end benefits once a claimant receives a certain number of weeks or dollar amount.



HENRY McMASTER
GOVERNOR

May 6, 2021

Mr. Daniel Ellzey
Director
Department of Employment and Workforce
1550 Gadsden Street
Columbia, SC 29202

Dear Director Ellzey,

South Carolina's businesses have borne the brunt of the financial impact of the COVID-19 pandemic. Those businesses that have survived—both large and small, and including those in the hospitality, tourism, manufacturing, and healthcare sectors—now face an unprecedented labor shortage.

This labor shortage is being created in large part by the supplemental unemployment payments that the federal government provides claimants on top of their state unemployment benefits. In many instances, these payments are greater than the worker's previous pay checks. What was intended to be short-term financial assistance for the vulnerable and displaced during the height of the pandemic has turned into a dangerous federal entitlement, incentivizing and paying workers to stay at home rather than encouraging them to return to the workplace.

These federal entitlements pose a clear and present danger to the health of our State's businesses and to our economy. Since the Biden administration and Congress appear to have little to no comprehension of the damage being done and no appetite to terminate the federal payments, the State of South Carolina must take action.

Accordingly, I hereby direct the Department of Employment and Workforce (DEW) to terminate the State of South Carolina's participation in the Federal Pandemic Unemployment Compensation (FPUC) program, the Pandemic Unemployment Assistance (PUA) program, the Pandemic Emergency Unemployment Compensation (PEUC) program, the Mixed Earner Unemployment Compensation (MEUC) program, the Emergency Unemployment Relief for Governmental Entities and Non-profit Organizations program, and the Temporary Federal Funding of the First Week of Compensable Regular Unemployment for States with No Waiting Week program, effective June 30, 2021.

Mr. Daniel Ellzey

May 6, 2021

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Following termination of participation in these federal programs, DEW shall return to normal operation of the State's unemployment insurance program, including enforcing the requirement that claimants demonstrate active efforts to seek employment in order to remain eligible for benefits.

Thank you for your continued leadership and attention to these important issues. Please keep me informed of your progress.

Yours very truly,



Henry McMaster

Indiana Unemployment Insurance

CLAIMANT FREQUENTLY ASKED QUESTIONS for COVID-19 work-related issues

Updated August 6, 2021

(updates noted in red)

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Section J

- Mixed Earners Unemployment Compensation (MEUC)

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- Restart of PUA, PEUC and FPUC

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The below questions and answers are based on the CARES Act, the Continued Assistance Act and the President's and Governor's Executive Orders.

SECTION A

HOW DO I FILE?

Q1. How do I file for unemployment insurance (UI) benefits?

A1. Online, using a computer or smart phone. Go to www.Unemployment.IN.gov to file, and to see Frequently Asked Questions, the Claimant Handbook, and video tutorials. If you **do not** have access to a computer or smart phone to file for UI, you can use our file by phone number. If you use this service, you will not have access to a UI account in the Uplink system and all UI information must be obtained through the file by phone system: 1-800-298-6650.

Q2. What information do I need when I apply for unemployment insurance (UI) benefits online?

A2. You will need the following information to file:

- A valid email account – your email address will become your Username;
- Your personal information, including your:
 - Indiana Driver's license or Indiana ID card;
 - Address;
 - Social security number (SSN);
 - Date of birth; and
 - Phone number.
- Information about your last employer, including:
 - Employer's name/company name;
 - Employer's mailing address; and
 - Employer's phone number.
- Information about your employment, including your:
 - Dates of employment; and
 - The reason you are unemployed.
- Your bank routing number and account number if you chose direct deposit as your payment option (*NOTE: a debit card - Key2Benefits prepaid MasterCard® - is also available*).

Q3: I have an Uplink Claimant Self-Service account, but I cannot log-in to file my claim or voucher because I forgot my username or password or have too many failed attempts to log in. What should I do?

A3: Visit the Uplink Claimant Self-Service home page and choose "Forgot Username" or "Forgot Password" to reset it yourself. You will be prompted to enter your SSN, date of birth, and other information to confirm your identity. You will then be able to create a new username or password. If you attempted to log in and reach 5 failed attempts, you will get a message that requires you to click on "forgot password" to reset their account. You should not continue to enter your password. You should instead follow the on-

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screen instructions. If you do continue to enter your password, your account will be revoked. The account will automatically reset in 24 hours and you will then need to follow the forgot passwords instructions.

Q4. What do I do if the system freezes and will not let me to proceed through filing my initial claim or voucher?

A4. Please try these recommended tips before reaching out to the DWD Contact Center for assistance:

- 1) Be sure you do not have the Uplink CSS application open on any other Web Browsers or Tabs
- 2) Refresh the page (ctrl + F5)
- 3) Clear the cache on your internet browser (click link below for instructions)
 - [How to clear Cache](#)
- 4) Use Chrome or Microsoft Edge browsers

Q5. I am a New User to Uplink Claimant Self-Service and completed the registration process. What do I do next?

A5. As part of the registration process, DWD will send you an “Email Account Verification” link to the email address you provided. This can take several hours to receive depending on the number of other new users also registering. Once you receive the email, you will be able to complete the registration process and file a claim after clicking on the “Confirm Email” provided in the email. If you enter an invalid email address, you will need to wait 24 hours to re-enter your correct email address and finish the registration process.

Q6. If I live in one state but work in another or work in multiple states, which state do I file in?

A6. Generally, you should file your claim with the state where you worked. If you work in more than one state, you should file where your employer filed your wages. If you worked for more than one employer in different states, file where you primarily worked. If you file in the other state, it could take longer to obtain your wages to fully review the claim. If you did not work in Indiana at all, you should not file in Indiana.

AM I ELIGIBLE FOR REGULAR UNEMPLOYMENT INSURANCE?

Q1. If my employer temporarily shuts down or lays me off because of COVID-19, will I be eligible for unemployment insurance (UI) benefits?

A1. Yes, if an employer must lay off employees due to COVID-19, the employees will be eligible for unemployment insurance (UI) benefits if they have earned enough wages to set up a claim and meet the weekly eligibility criteria. Employees **must** stay in contact with your employer and be available to work when called back by your employer.

Q2. If I am in quarantine based on a directive from my medical professional or my employer due to COVID-19, will I be eligible for unemployment insurance (UI) benefits?

A2. Effective week ending June 6, 2021, you will no longer be eligible if you must quarantine due to COVID-19. You may be eligible for Pandemic Unemployment Assistance (PUA). See below for more information.

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Q3. If I cannot continue to work because I am caring for my child (or children) while their school or daycare is closed due to COVID-19, am I still eligible for benefits?

A3. No, but you may be eligible for Pandemic Unemployment Assistance (PUA). See below for more information.

Q4. If I am compensated partially by tips, such as in the restaurant industry, will I be eligible for unemployment insurance (UI) benefits?

A4. If you are laid-off or have lost work related to COVID-19 and you meet the minimum amount of wages, then yes, you will be eligible. However, whether you meet the minimum amount of wages will probably depend upon how your employer reported your earnings to DWD in their quarterly reports. If your employer reported tips as part of your wages, then those tips are included in your base period wages. If your employer did not report tips as part of your wages, it is possible you will not meet the minimum. If you receive a DWD determination that you do not meet the minimum amount, you can appeal that determination and request that DWD include your records of your tipped wages. If you have sufficient documentation, then your base period wages can be recalculated. Documents that will be considered include pay stubs, W2, or any other type of documentation of payment from your employer. Sometimes a record of cash deposits to a bank account may be considered if no other evidence is available. If you do not have wages to set up an unemployment insurance claim, then you may be eligible for Pandemic Unemployment Assistance (PUA). See below for more information.

Q5. If my hours are reduced but I am still employed, can I apply?

A5: Yes, you may be eligible for benefits, but part-time employment during the week claimed will reduce the amount of benefits paid for that week. To find out if you are eligible, start your application for benefits as soon as you know that your hours are being reduced. If you do work while receiving benefits, you **must** report any money you earned on the voucher **for the week you worked** (not the week you ultimately get paid for the work). Failure to report money you earned is fraud and can result in denial of benefits, collections actions, and criminal prosecution. If you earned wages from a Base Period Employer (see your Monetary Determination of Eligibility), then a dollar-for-dollar deduction will be taken from your Weekly Benefit Amount (WBA). If you earned wages from an employer who is NOT on your Monetary Determination of Eligibility or in your Base Period, then the following calculation applies. If you earn 20% or less of your WBA from an employer that is not listed on your Monetary Determination of Eligibility, no deduction will be made from your benefit payment. If you earn more than 20% of your WBA from an employer that is not listed on your Monetary Determination of Eligibility, a dollar-for-dollar deduction will be made from your benefit payment for all wages earned in excess of 20% of your WBA. If you work odd jobs for anyone other than your base period employer(s), a dollar-for-dollar deduction will be made after an amount equal to 20% of your weekly benefit amount has been earned.

Q6: If I decide to remain at home because of a fear of COVID-19 with no directive from a medical professional or from my employer to do so, will I be eligible for unemployment insurance (UI) benefits?

A6: No.

Q7: If I am not working due to COVID-19 and am receiving sick pay or other leave pay from my employer, will I be eligible for unemployment insurance (UI) benefits?

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A7: Individuals receiving sick pay or other leave pay are not eligible for regular unemployment insurance (UI) benefits. However, the facts of each circumstance are important. You can file and DWD will evaluate your claim. If you are no longer receiving sick pay or other leave pay, you may be eligible for Pandemic Unemployment Assistance (PUA).

Q8. If I am paid a bonus during the period of separation, will I be eligible for UI benefits?

A8. Maybe. If you receive payments from your employees while you are collecting UI, you may have to declare the payment as deductible income. Sick pay, vacation pay, severance pay, payment in lieu of notice, and holiday pay are all deductible income, and you must report it. Bonuses are wages for your employer's tax purposes, but bonuses are not deductible income for UI benefits, thus it does not impact your UI benefits.

Q9. If I am self-employed, part of the "gig" economy or do not have sufficient work history to qualify for unemployment insurance benefits but am not able to work due to COVID-19, will I be eligible for unemployment insurance benefits?

A9. No, you will not be eligible for regular unemployment insurance benefits but may be eligible for PUA. See below for more information.

Q10. What is the amount of wages I must earn to meet the minimum eligibility for unemployment insurance (UI) benefits?

A10. If you have not earned enough wages to meet the minimum eligibility, then you will not be eligible. This is determined by how much money you earned while working during your *base period*. Your base period includes the first four of the last five completed calendar quarters before the week you file an initial claim application for UI benefits.

Quarter 2 of 2020	Quarter 3 of 2020	Quarter 4 of 2020	Quarter 1 of 2021	Quarter 2 of 2021	File Date:
Base Period Wages	Base Period Wages	Base Period Wages	Base Period Wages	Lag Quarter	Between 07/04/2021 and 10/02/2021

The wages you earned during your base period are used to determine if you qualify for benefits and to calculate how much you can be paid. The last quarter you worked is called the lag quarter, and no wages from that quarter count in your base period.

To meet the minimum eligibility for UI, your total wages during your base period must be equal to at least one and one-half (1.5) multiplied by your wages in the highest quarter of your base period. Your base period wages must also total at least \$4,200, with at least \$2,500 of those wages earned in the last six (6) months of the base period. For an example of this calculation, review pages 7-8 of the Claimant Handbook, found at https://www.in.gov/dwd/files/Claimant_Handbook.pdf

We understand this is a complicated calculation, so the easiest way to find out if you meet the minimum eligibility is to file your claim immediately upon being laid-off and we will complete a wage calculation as part of your application process and notify you whether you met the minimum amount.

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SECTION B

PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA)

Q1. What is Pandemic Unemployment Assistance (PUA)?

A1. PUA is a temporary federal unemployment insurance program for individuals not otherwise eligible for UI benefits, including the self-employed, those seeking part-time employment, individuals lacking sufficient work history (i.e., they do not have sufficient wages to establish a regular UI claim), and those who otherwise do not qualify for regular UI. PUA is not payable to individuals who can telework with pay or who are receiving paid sick leave or other paid leave benefits. Under the Continued Assistance Act, you must submit proof of employment to be eligible for payments of PUA made after Dec. 27, 2020. This applies regardless of the week being paid. For example, if you are being paid on January 10, 2021, for a week of PUA in late November, you will be required to submit proof of employment. More information on what documents are acceptable and the penalty for not submitting documentation is in a below FAQ.

Q2. What makes someone eligible for PUA?

A2. Individuals must provide self-certification that the individual is otherwise able and available to work except that the individual is unable to work because of the following circumstances which all relate to COVID-19:

- The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis; or
- A member of the individual's household has been diagnosed with COVID-19; or
- The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19; or
- 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; or
- The individual is unable to reach the place of employment because of a quarantine imposed as a result of the COVID-19 public health emergency; or
- 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; or
- 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; or
- 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; or
- The individual must quit their job because of COVID-19; or
- The individual's place of employment is closed because of COVID-19; or the individual is self-employed, seeking part-time employment, does not otherwise qualify for benefits, and fits one of the above.

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- The individual was denied continued unemployment benefits because the individual refused to return to work or accept an offer of work at a worksite that, in either instance, is not in compliance with local, state, or national health and safety standards directly related to COVID-19. This includes but is not limited to, those related to facial mask wearing, physical distancing measures, or the provision of personal protective equipment consistent with public health guidelines.
- The individual provided services to an educational institution or educational service agency and is unemployed or partially unemployed because of volatility in the work schedule that is directly caused by the COVID-19 public health emergency. This includes, but is not limited to, changes in schedules and partial closures.
- The individual is an employee and the individual's hours have been reduced or the individual was laid off as a direct result of the COVID-19 public health emergency.

Q3. How do I apply for PUA?

A3. To apply for PUA benefits, you must first file a regular claim for unemployment insurance benefits. Instructions on how to add your employer can be [found here](#). If you are denied, the PUA application will then appear on your claimant home page as a "To-Do" at the top of the screen for you to submit your PUA application. You must submit this application and answer all questions accurately in order to be eligible for PUA benefits. NOTE: UI is evaluated each quarter. We need to ensure you are not eligible for regular UI in the most recent quarter.



Q4. Do I need to file something each week to get paid under the PUA program?

A4. Yes, just like a regular unemployment insurance claim, you need to file a weekly voucher in order to receive benefits for the week. You must answer all questions honestly. Those answers will be evaluated to determine if you continue to have eligibility for PUA.

Q5. What documentation do I need to provide to have my weekly benefit amount increased above \$149?

A5. When you file your PUA application, you will be asked if you filed your taxes with the State of Indiana. If you have, you will need to enter your federally adjusted gross income from your tax return, even if you have filed your taxes jointly with another person. If you have not filed your state taxes, you will need to enter your earnings. To do so, you will need to collect all W-2's, 1099's, and pay stubs. You will need to add them together to determine the amount that you should enter as earnings on your PUA application. If you filed as a single tax filer, DWD will use your tax return to calculate your benefit amount. If you filed as married filing jointly or did not file your taxes, you will receive the minimum weekly benefit amount of \$149. Once you receive your PUA Monetary Determination form, you will be

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able to submit documentation of your income via the Uplink system. You only need to submit this documentation if you disagree with the wage amounts, have missing wages in the chart of wages, or would like to provide other proof of your earnings. On your claimant homepage, go to the Claims section, click on the BYE date next to the open PUA claim. You can then click on “DWD Secure File Exchange” and then “Add File” to upload your documents.” Acceptable documentation of wages earned or paid includes, but is not limited to, state tax return (line 1 of your state return titled Federal AGI) or federal tax return (Form 1040), pay check stubs, bank receipts, business records, ledgers, contracts, invoices, and billing statements. We can accurately calculate your weekly benefit amount if you provide them as soon as possible. NOTE that for self-employed, DWD must use your NET wages per the US Department of Labor when deciding your Weekly Benefit Amount (WBA). Others who are not self-employed must report GROSS wages.

Q6. I have not been able to work for months, how do I get paid under PUA for all the time I have been unemployed due to COVID-19?

A6. When you apply for PUA, you should answer all questions honestly and enter the date in which COVID-19 first affected your ability to work. Under the CARES Act, the first payable week of PUA was February 2, 2020. That program ended December 26, 2020. For new PUA applications on or after December 27, 2020, PUA is payable as of December 6, 2020. All PUA payments will be audited to prevent identity theft and prevent fraud in the PUA program. A “Job Attachment” issue may be generated if you request to backdate your unemployment claim and more information is needed to verify employment at the date of impact. To resolve a Job Attachment issue, claimant should visit www.unemployment.in.gov, click on “Forms and downloads,” and download State Form 57024 (PUA Job Attachment Documentation). This form must be filled out completely with the requested supporting documentation and mailed or faxed to the department. Failure to return the form and the supporting documentation to the department could result in an investigation of you claim and/or suspension of benefits that results in an overpayment on you claim.

Q7. How do I apply for PUA under the Continued Assistance Act or under the American Rescue Plan Act if I was receiving PUA under the CARES Act?

A7. If you were filing for PUA on or before Dec. 26, 2020, there was no new PUA application to continue benefits under the Continued Assistance Act. If you were filing for PUA on or before March 13, 2021, there is also no new PUA application to continue benefits under the American Rescue Plan. Continue to file your weekly voucher for the PUA program if you remain unemployed. You will also need to complete the To-Do on your Claimant Homepage to File a New UI Claim as this is required at each quarter change. The new PUA benefits under the Continued Assistance Act were only available for weeks ending on or after December 27, 2020. The new PUA benefits under the American Rescue Plan Act are only available for weeks ending on or after March 20, 2021.

Q8. If I am eligible, how many weeks of payments can I receive?

A8. Through the CARES Act, the PUA program initially ended on December 26, 2020. With the Continued Assistance Act, PUA was extended with new requirements for 11 weeks or a total of 50 weeks, ending on March 13, 2021. With the American Rescue Plan Act, PUA was further extended 25 weeks. Any weeks in which you received regular unemployment insurance or Extended Benefits (EB) since January 27, 2020 will be subtracted from this amount.

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Q9. Does the PUA program expire?

A9. Yes. The PUA program expired on Dec. 26, 2020. The Continued Assistance Act made changes to the program, including a new expiration date of March 14, 2021. The American Rescue Plan Act restarted PUA effective week ending March 20, 2021, with an expiration date of Sept. 6, 2021.

Q10. What if I am working some, but my hours are reduced?

A10. You will need to report any income earned each week you file, but if it's below a certain amount (specific to your individual claim), then you may still be eligible for some payment of PUA during the weeks you worked and earned wages. All individuals, self-employed and others, must report GROSS earnings on the weekly PUA vouchers.

Q11. What are next steps after I file my PUA application?

A11. **FIRST STEP:** Within the next few weeks, you will receive a document called the PUA Monetary Determination in your Claimant Correspondence in Uplink. This document will show the weekly benefit amount. Receiving the PUA Monetary Determination does not mean that you are eligible for PUA payments. Your weekly benefit amount is calculated based on the earnings you entered on your PUA application and tax information from the Indiana Department of Revenue. If you are married filing jointly or have not yet filed your tax return with the Indiana Department of Revenue, you will receive the minimum weekly benefit amount of \$149. Once you receive your PUA Monetary Determination form, you will be able to submit documentation of your income via the Uplink system to have the \$149 reconsidered. You only need to submit this documentation if you disagree with the wage amounts, have missing wages in the chart of wages, or would like to provide other proof of your earnings. On your claimant homepage, go to the Claims section, click on the BYE date next to the open PUA claim. You can then click on "DWD Secure File Exchange" and then "Add File" to upload your documents." Acceptable documentation of wages earned or paid includes, but is not limited to, state tax return (line 1 of your state return titled Federal AGI) or federal tax return (Form 1040), paycheck stubs, bank receipts, business records, ledgers, contracts, invoices, and billing statements. You have until 09/04/2021 to provide proof of earnings, but we can accurately calculate your weekly benefit amount if you provide them as soon as possible.

SECOND STEP: Under the Continued Assistance Act, you must submit proof of employment to be eligible for payments of PUA made after Dec. 27, 2020. This applies regardless of the week being paid. For example, if you are being paid on January 10, 2021, for a week of PUA in late November, you will be required to submit proof of employment. You will receive a notice on your claimant correspondence page if you are required to submit this documentation. More information on this new requirement, including what documents are acceptable and the penalty for not submitting documentation is in a below FAQ.

THIRD STEP: If needed, you may be contacted by a DWD Claims Investigator for additional information to determine your eligibility for PUA benefits. If you are found eligible, you will start receiving payments of your weekly vouchers. If you are not eligible, you will receive a PUA Eligibility Determination. If you disagree with that decision, you must follow the appeal instructions included on the determination.

Q12. What if I entered something incorrectly on my PUA application?

A12. When you receive your PUA Monetary Determination, follow the instructions on that document if you entered incorrect information on your PUA application.

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Q13: I have a Job Attachment issue on my PUA claim. What does this mean and how do I resolve it?

A13. A job attachment issue is generated when a claimant has requested to backdate his/her PUA claim and more information is needed to verify employment at the date of impact.

To resolve this issue, claimants should visit www.unemployment.in.gov, click on “Forms and Downloads,” and download State Form 57024 (PUA Job Attachment Documentation). This form must be filled out completely with the requested supporting documentation and mailed or faxed to the department. Failure to return the form and the supporting documentation to the department could result in an investigation of your claim and/or suspension of benefits that results in an overpayment on your claim.

Q14. I believe I am eligible for PUA. I am not self-employed or an independent contractor and have enough wages to set up a regular UI claim, but I have been denied regular UI for other reasons. Will I be able to apply for PUA?

A14. You can apply for PUA. DWD will review your application to determine if you are eligible.

Q15. Am I eligible for Pandemic Unemployment Assistance (PUA) after I exhaust UI, PEUC and EB (if EB is applicable)?

A15. An individual who moved through the [progression chart](#) (from regular UI to PEUC to EB) and continues to be unemployed has demonstrated a recent attachment to the labor force and may be eligible for PUA. Eligibility for PUA is based on the reason the individual is unemployed, partially unemployed, or unable or unavailable for the week in question. **It is important to note that one of the PUA eligibility reasons (discussed in the PUA Section above) must apply each week.** A general statement of not being able to find work is not one of the listed reasons.

Q16. Am I required to provide proof of employment or self-employment to be eligible for PUA?

A16. Yes. The Continued Assistance Act requires that you must submit proof of employment or self-employment or planned commencement of employment or self-employment for any PUA payments made on or after Dec. 27, 2020. If you do not submit the required documentation by the required date, you will not be eligible for PUA. An overpayment will be set up for any weeks paid for weeks ending after December 27, 2020.

Q17. What are the acceptable forms of proof of employment or self-employment?

A17. See below for the types of acceptable documentation. The documentation must be dated at some point between the start of the applicable taxable year and the date of filing. For example:

- An individual filing a claim effective December 27, 2020, must submit documentation that substantiates employment or self-employment which occurred between January 1, 2019 (the start of the applicable tax year) and December 27, 2020.

An individual filing a claim effective January 3, 2021, must submit documentation that substantiates employment or self-employment which occurred between January 1, 2020 (the start of the applicable tax year) and January 3, 2021.

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Proof of employment can include:

- paycheck stubs,
- earnings and leave statements showing the employer's name and address, and
- W-2 forms when available.

Proof of self-employment can include:

- State or Federal employer identification numbers,
- business licenses,
- tax returns,
- business receipts, and
- signed affidavits from persons verifying the individual's self-employment.

Proof of the planned commencement of employment can include:

- letters offering employment, and
- statements/affidavits by individuals (with name and contact information) verifying an offer of employment.

Proof of the planned commencement of self-employment can include:

- state or Federal employer identification numbers,
- written business plans, or
- a lease agreement.

Q18. How do I submit my documentation for proof of employment or self-employment?

A18. You **must** submit the required documentation through your Uplink Claimant Self-Service homepage. You should have a "TO DO" to upload the information through the Secure File Exchange. The "TO DO" will remain on your homepage until DWD resolves the issue. This will allow you to upload additional documents if needed. Do not upload multiple versions of the same documentation. If you do not have a "TO DO", then click on your **PUA claim** on your homepage, which will take you to details regarding your PUA claim and you will see the Secure File Exchange link. The only exception to using the Secure File Exchange is if you file by phone. If you file by phone, you can fax or mail the required documentation to DWD at the below address. You **must** attach the Notice of Requirement to Submit Proof of Employment or Self-Employment that can be found on your Uplink Correspondence page.

Q19. What if I do not submit the documentation timely or if the documentation does not prove employment or self-employment?

A19. You will not be eligible for PUA. An overpayment will be set up for any weeks paid for weeks ending after December 27, 2020.

Q20. What if I cannot submit the documentation timely?

A20. If you cannot submit the documentation by the deadline, you can request an extension. You must have good cause. The request **MUST** be received before the deadline. **If you do not request an extension before the deadline or the request does not show good cause, you will not be eligible for PUA.** To request an extension, send an email to PUA@dwd.in.gov with this information:

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- First and Last name
- Last 4 digits of your SSN
- Reason why you will not be able to provide documentation by the date above

You will be sent an email within 10 days informing you if your deadline has been extended. If you are granted an extension, the email will provide a new deadline.

Q21. What are the timeframes to submit my proof of employment?

A21. You will receive a notice on your Uplink correspondence page with the due date. Under the Continued Assistance Act, the documentation is due based on these guidelines:

- Individuals filing a new PUA claim on or after Jan. 31, 2021 (regardless of whether claim is backdated) must provide documentation substantiating employment or self-employment **within 21 days** of application or when instructed by the state (whichever is later), or show good cause to have such deadline extended; and
- Individuals with an existing PUA claim who receive a payment of PUA on or after Dec. 27, 2020 (regardless of which week ending date is being paid) must provide documentation substantiating employment or self-employment **within 90 days** of application or when instructed by the state (whichever is later), or show good cause to have such deadline extended.

Q22: I was receiving Pandemic Unemployment Assistance (PUA) benefits, but now have a Pandemic Emergency Unemployment Compensation (PEUC) claim. My vouchers moved from the PUA claim to the PEUC claim and I now have an overpayment. Is there anything I can do about the overpayment?

A22: Based on federal guidance, DWD must pay benefits from claims in a particular order. If eligible, PEUC benefits must be paid before PUA benefits. You may qualify for the overpayment to be waived. Claimants must submit an Overpayment Waiver Request application for consideration. The Department will evaluate the request and issue a determination to the claimant. The application can be found at www.unemployment.in.gov under "Forms and Downloads." Certain exclusions apply. Please see DWD Policy 2020-04 for more information about the waiver process. More FAQs on overpayments can be found at: [https://www.in.gov/dwd/indiana-unemployment/individuals/overpayment-fag/](https://www.in.gov/dwd/indiana-unemployment/individuals/overpayment-faq/)

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SECTION C

PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION (PEUC)

Q1. I exhausted my 26 weeks of regular unemployment insurance benefits. Am I eligible for PEUC?

A1. Unemployment benefits are typically available to eligible claimants for up to 26 weeks. With the federal CARES Act passage, unemployment benefits have been temporarily extended through a program referred to as Pandemic Emergency Unemployment Compensation (PEUC). PEUC payments originally ended with week ending December 26, 2020. The Continued Assistance Act increased the maximum amount of benefits available under the PEUC program for an additional 11 weeks (from 13 times your

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average weekly benefit amount to 24 times your average weekly benefit amount. The American Rescue Plan Act further extended PEUC benefits an additional 25 weeks.

Q2. I believe I am eligible for PEUC, but I received a PUA application. What should I do?

A2. PEUC claims are created in Uplink when the claimant files a voucher on Sunday. The Uplink system determines whether the claimant meets the basic eligibility requirements to go to this claim level. If the regular UI claim exhausts before a PEUC claim sets up, a PUA application will be generated. If you do not believe you are eligible for PUA, you can continue filing your weekly voucher and see if the PEUC claim establishes. If it does not, you should file the PUA application. You can also file the PUA application right away as it will not slow down PEUC benefits.

Q3. How much will I receive in PEUC benefits?

A3. You will receive the same weekly benefit amount as your most recent regular UI claim. You will receive a monetary determination showing your weekly benefit amount.

Q4. How do I apply for PEUC under the Continued Assistance Act or the American Rescue Plan Act?

A4. There is no new PEUC application that must be filed to receive this benefit. Continue to file your weekly voucher for the PEUC program if you remain unemployed. You will also need to complete the To-Do on your Claimant Homepage to File a New UI Claim.

Q5. When do PEUC benefits begin under the Continued Assistance Act and the American Rescue Plan Act?

A5. PEUC initially ended on Dec. 26, 2020. PEUC benefits under the Continued Assistance Act may only be collected for weeks ending on or after Dec. 27, 2020 (so week ending Jan. 2, 2021) through week ending March 13, 2021. PEUC benefits under the American Rescue Plan may only be collected for week ending March 20, 21 through week ending September 4, 2021. For example, if you had no remaining benefit under PEUC in November 2020, you will not be able to start collecting the benefits as of November. You will have a gap in payments until week ending Jan. 2nd when the new PEUC program begins. Also, if you had no remaining benefit under PEUC in Feb 2021, you will not be able to start collecting the benefits as of Feb. You will have a gap in payments until week ending March 20, 2021 when the new PEUC program begins (unless you are eligible for PUA during those weeks).

Q6. How long does PEUC last under the Continued Assistance Act and the American Rescue Plan Act?

A6. The PEUC program expired under the Continued Assistance Act with week ending March 13, 2021. With the American Rescue Plan Act, PEUC expires Sept. 4, 2021.

Q7. I was actively filing for PUA week ending 12/26/20 but previously had a PEUC claim. Which program would I be eligible for under the Continued Assistance Act? OR I was actively filing for PUA week ending 3/13/21 but previously had a PEUC claim. Which program would I be eligible for under the American Rescue Plan Act?

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A7. You may only collect PUA if you have exhausted any entitlement to PEUC (e.g., used up your benefits). Because of the additional PEUC benefits available, you are no longer eligible to receive PUA. If you continue to be unemployed or partially unemployed, you will automatically be moved to your existing PEUC claim. Note that your PEUC claim may have a different weekly benefit amount because the program uses a different look-back period for your prior earnings. When you file your weekly vouchers, add employment history for any employment you have had after the last voucher you filed. If you later exhaust benefits under the PEUC program and continue to be unemployed, partially unemployed, or unable or unavailable to work because of COVID-19, you may be eligible to resume collection of your existing PUA benefits if the PUA program is still in effect.

Q8. I was receiving PEUC benefits but had to file a new UI claim. The new UI claim opened with a lower WBA than the PEUC claim. Can I stay on the PEUC claim?

A8. You will stay on the PEUC claim if:

- The UI claim your PEUC is based on expired on or after 12/27/2020 and,
- You are eligible for benefits and,
- The newly filed UI claim has a WBA that is at least \$25 less than your PEUC claim WBA.

Each week, we identify claimants who meet these requirements. If you are one of these claimants and will be staying on PEUC, DWD will send you an email when your vouchers have been moved back to the PEUC claim. In the meantime, continue to file vouchers each week.

Q9: I was receiving Pandemic Unemployment Assistance (PUA) benefits, but now have a Pandemic Emergency Unemployment Compensation (PEUC) claim. My vouchers moved from the PUA claim to the PEUC claim and I now have an overpayment. Is there anything I can do about the overpayment?

A9: Based on federal guidance, DWD must pay benefits from claims in a particular order. If eligible, PEUC benefits must be paid before PUA benefits. You may qualify for the overpayment to be waived. Claimants must submit an Overpayment Waiver Request application for consideration. The Department will evaluate the request and issue a determination to the claimant. The application can be found at www.unemployment.in.gov under "Forms and Downloads." Certain exclusions apply. Please see DWD Policy 2020-04 for more information about the waiver process. More FAQs on overpayments can be found at: <https://www.in.gov/dwd/indiana-unemployment/individuals/overpayment-faq/>

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SECTION D

FEDERAL PANDEMIC UNEMPLOYMENT COMPENSATION (FPUC)

Q1. Am I eligible for the additional CARES Act federal pandemic unemployment compensation (FPUC) benefits?

A1. If you are eligible for regular UI, PEUC, Extended Benefits (when they are available), or PUA, you will receive the additional FPUC payment. There is no application. FPUC was initially in the amount of \$600 effective from week ending April 4, 2020, to week ending July 25, 2020. With the Continued Assistance Act, FPUC was reinstated at \$300 a week effective week ending January 2, 2021, to week ending March

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13, 2021. With American Rescue Plan Act, FPUC is available from week ending March 20, 2021, to week ending Sept. 4, 2021. The FPUC benefit is taxable and is subject to child support withholding.

Q2. How do I get the additional FPUC payment each week?

A2. The additional weekly payment will automatically be applied to any eligible payments. There are no additional steps you need to take.

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SECTION E

WHAT HAPPENS AFTER I FILE FOR UNEMPLOYMENT INSURANCE BENEFIT?

Q1. I filed a claim, and the Uplink online system shows that I have an issue holding my payments. What does that mean?

A1. This means that your claim or voucher needs further analysis. This could be due to your earnings, your answers during filing, information from your employer, or information from other sources. Do not be worried. This is the normal process for many claims. A DWD Claims Investigator may have to contact you and/or your employer for more information. They also may be able to make a determination without contacting you. Under normal circumstances, decisions are typically made within 21 days but due to the high volume of claims, it could take longer to review claims that have issues that need to be reviewed. Common issues are (these are not an exhaustive list but are the most common):

- **Deductible Income** – the department received information that the claimant received some type of income from his/her employer during the week at issue, such as payments from employment, vacation, sick, or other paid time off.
- **Employed Full Time** – We have received information from the employer or the claimant that indicates the claimant is employed either full or part-time.
- **No Reasonable Assurance or School Worker** – The claimant was a school employee or had school wages reported during the base period. There are state and federal guidelines requiring analysis on under these circumstances.
- **Not A&A or Availability** – The agency received information that the claimant was not able and available to accept full time work that week.
- **Other Discharge** – The agency received information that the claimant was discharged from their job for a non-specific reason.
- **Temporary Service** – The agency received information that the claimant worked for a temp service.
- **Work Performance** – The agency received information that the claimant was discharged from a base period employer for work performance issues.
- **Work Refusal** – The agency received information that the claimant was offered work and refused the offer of employment.

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- **Gross Misconduct** – The agency received information that the claimant was discharged for a reason that is legally defined as gross misconduct.
- **Personal Reasons** – The agency received information that the claimant had quit their job.
- **Job Attachment** - Claimant has requested to backdate their PUA claim, and more information is needed to verify employment at the date of impact. See more information on how to resolve this issue under the PUA FAQ section below.
- **Eligibility** – The agency received information on a PUA claim that needs additional investigation to determine if the claimant is eligible for PUA.
- **PUA Multistate Verification** – The agency received information on a PUA claim that the claimant worked or filed taxes in another state in the last two years.
- **PUA Earnings Verification** – This issue does not hold payment; it allows a claimant to provide proof of earnings to adjust their PUA weekly benefit amount (WBA).
- **Identity Verification** – The agency needs to verify your identity. You will have a TO DO item on your claimant homepage that says, “Identity Verification Needed.” Click on that link and it will walk you through the steps to verify your identity through ID.me. For instructions on how to use ID.me, [visit this page](#).
- **Claim Investigation issue** - more information is needed to verify details about eligibility for benefits. To resolve this issue, claimants should visit their Uplink homepage and download State Form 57031. This form must be filled out completely with the requested supporting documentation and mailed or faxed to the department. Failure to return the form and the supporting documentation to the department could result in an investigation of your claim and/or suspension of benefits that results in an overpayment on your claim.

Q2. Do I need to file anything else after the initial claim application for unemployment insurance (UI) benefits?

A2. Yes. You must file a voucher EACH WEEK through the Uplink online filing system and comply with the terms of the weekly vouchers to continue to be eligible for and receive benefits each week. You must submit your weekly voucher during the week following your initial application and then every week after for as long as you remain unemployed. You must file the weekly vouchers even if you have not received a determination regarding eligibility for benefits.

Q3. Is the one week waiting period for unemployment insurance benefits being waived?

A3. Yes. The one-week waiting period for payment of unemployment insurance (UI) was waived by the Governor’s Executive Order. The waiver is retroactive to the week of March 8, 2020. This means that benefits will be paid for the first week you are eligible.

Q4. When will I receive my first unemployment insurance (UI) payment?

A4. You should receive your first payment within three weeks if there are no issues with your initial claim application for benefits.

Q5. Am I required to search for work?

A5. Yes. While the requirement to search for work was waived for a period of time, this requirement has been restarted based on the Governor’s Executive Order 21-13. Beginning the week of June 06-12, 2021,

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you must complete a work search activity or benefits can be denied for that week. For more information on what qualifies as a work search activity, please see [Work Search](#).

Q6. If I receive a "Check Stub Coversheet" asking me to send a copy of my pay stubs to DWD via mail or fax, but I do not have a fax machine, can I email these?

A6. You likely received a form called "Check Stub Coversheet." If so, this is automatically sent to a claimant who might have a deductible income issue (you reported receiving vacation pay, sick pay or the like from your employer) on a regular UI claim. If you fax the information, then it goes to the DWD imaging department to be imaged under your claim. When it gets assigned to a DWD claims investigator, then they will have the information. If you don't have access to a fax machine, then you can wait until the claims investigator contacts you. There is even a chance that the claims investigator won't need to contact you. You will not be penalized by not sending the pay stub information via fax.

Q7. How do I get paid if I am eligible?

A7. At the end of the claim filing process, you will make a payment election. You will be directed to Key Bank's website as Key Bank is the DWD payment vendor. You can choose between: (1) Direct Deposit to a U.S. checking/savings account, or (2) a Key2Benefits prepaid MasterCard. If you do not make a choice, you will receive a Key2Benefits prepaid MasterCard at the mailing address on file for you on CSS. As to when you will receive payment:

- Direct deposit: money will be deposited in the bank account provided within two business days **of the weekly voucher being approved.**
- Debit Card: money will be deposited on the Key2Benefits card within a day **of the weekly voucher being approved.**

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SECTION F

IDENTITY VERIFICATION, IDENTITY THEFT AND OTHER INFORMATION ON POSSIBLE FRAUD?

Q1. I have an "Identity Verification" issue on my claim. What does that mean and how do I resolve it?

A1. Due to the national fraud scheme that is occurring, DWD has taken some additional steps to verify claimant's identities. For your unemployment claim to move forward, DWD must verify your identity. To complete the identity verification process, click on the TO DO item on your claimant homepage that says, "Identity Verification Needed." Click on that link and it will walk you through the steps to verify your identity through ID.me which is a quick and secure identity verification process. For instructions on how to use ID.me, [visit this page](#). Once your identity is successfully verified and matches the records on file at DWD (which can take up to 72 hours to resolve in Uplink), we can move forward with any other issues on your claim that may be holding benefits. Continue to check your Uplink account regularly for the most current status. NOTE: Do not submit any other personal documentation through other means as this will only delay the resolution of your issue and subject you to potential theft by criminals.

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Q2: What if I can't click the button to go to ID.me?

A2: You cannot verify through ID.me if you do not have an open claim. **You will need to wait until your claim is in open status** in order to complete identity verification. To check if your claim is in open status, look at the Claims section of your Claimant Homepage. Under the Claim Status column, you will see the word "Open". If you see "Deny", "Expired", or "Pending" you will not be able to access Identity Verification through ID.me. (See red box below for where to look)

The screenshot shows the Claimant Homepage interface. At the top, there are buttons for "Confirmation History" and "Correspondence History". Below these is a "TO-DO" section with a red arrow pointing to "File a New Unemployment Insurance Claim". The main content area is divided into two sections: "PAYMENTS" and "CLAIMS".

PAYMENTS

Benefit Week	File Date	Last Payment Date	Entitlement	Total Paid	Additional Details
12/13/2020 - 12/19/2020	12/25/2020		\$0.00	\$0.00	Click here for additional details
12/06/2020 - 12/12/2020	12/18/2020		\$0.00	\$0.00	Click here for additional details
11/29/2020 - 12/05/2020	12/08/2020		\$0.00	\$0.00	Click here for additional details
11/22/2020 - 11/28/2020	11/29/2020		\$0.00	\$0.00	Click here for additional details
11/15/2020 - 11/21/2020	11/29/2020		\$0.00	\$0.00	Click here for additional details

CLAIMS

Claim Status	Program	BYE ⓘ	Paid to Date ⓘ	MBA ⓘ	WBA ⓘ	RBA ⓘ
Deny	UI	10/02/2021	\$0.00	\$0.00	\$0.00	\$0.00
Deny	UI	07/03/2021	\$0.00	\$0.00	\$0.00	\$0.00
Deny	UI	05/15/2021	\$0.00	\$0.00	\$0.00	\$0.00
Expired	PUA	12/26/2020	\$2,235.00	\$5,811.00	\$149.00	\$3,576.00

Q3. What does it mean when my account is "revoked", or I have a message on my CSS home page that states there is a problem with my account and to call the contact center?

A3. Due to the national fraud scheme that is occurring, DWD has taken some additional measures to detect suspected fraud and locked certain accounts for suspicious activity. If you have a message that states there is a problem with your account, you should first ensure you check your correspondence to see if you received a notice requiring you to submit additional documentation to the department. You should also check to see if there are any to-do items on your homepage, including a request to verify your identity through ID.me. If you have sent in all required documentation and resolved any outstanding to-do items and your account is still locked, please contact DWD at 1-800-891-6499 for more information on next steps.

If you have a message that states your account has been revoked and you are unable to login, please contact DWD at 1-800-891-6499 for information on next steps. Do not submit any personal documentation to DWD unless specifically requested as this will only delay the process and subject you to potential theft by criminals. See DWD's latest fraud alert for important steps to protect yourself. <https://content.govdelivery.com/accounts/INDWD/bulletins/29861eb>

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CLAIMANT FREQUENTLY ASKED QUESTIONS for COVID-19 work-related issues

Q4. What do I do if information in my UI Uplink account is changed without my knowledge?

A4. DWD issued a fraud alert on June 16, 2020 to notify those who have filed for unemployment insurance benefits in 2020 that they need to protect their personal information from potential scammers. As a result of continued attempts by fraudsters, on August 2, 2020, DWD asked that you do the following two things before filing further vouchers:

- Change your password in Uplink to something no one else will know and something that you have not used in the past on other sites (use the password reset option on the Uplink homepage); AND
- Check your payment election status to ensure it is the payment election that you chose; if you chose direct deposit to your bank account, ensure that the correct bank account is listed. If it is not, immediately fix it. It is recommended that you check this each week prior to completing your weekly voucher.

If you are unable to access your account using the “forgot username” or “forgot password” process, please contact DWD at 1-800-891-6499 for information on next steps.

Q5. What do I do if someone changed my banking information, and my payments were wrongfully sent to another account?

A5. If you believe that your payments were wrongfully diverted to another bank account, follow the steps below. Then file an electronic report with the Indiana State Police by filling out the form available at <https://www.in.gov/dwd/2464.htm> and emailing it to uifraud@isp.in.gov. Please do not contact Key Bank as they are unable to assist in the recovery of these funds.

- Change your password in Uplink to something no one else will know and something that you have not used in the past on other sites (use the password reset option on the Uplink homepage); AND
- Check your payment election status to ensure it is the payment election that you chose; if you chose direct deposit to your bank account, ensure that the correct bank account is listed. If it is not, immediately fix it. It is recommended that you check this each week prior to completing your weekly voucher.
- Fill out [State Form 57068](#) and mail or fax it to the department. Upon receipt of this form, DWD will initiate an investigation and issue a determination.
- If you are requesting payments be re-issued, you must also file an electronic report with the Indiana State Police by filling out the form available at <https://www.in.gov/dwd/2464.htm> and emailing it to uifraud@isp.in.gov. Include a copy of the report when you submit the above form.

Q6: I received a text message regarding an unemployment insurance claim or account advising me to click a link. What do I do?

A6: Do not click on the link provided in the text message. These text messages are from fraudsters attempting to obtain personal information from individuals to perpetrate fraud. These text messages are being sent both to individuals who have never filed an unemployment claim and to individuals who have filed. The DWD Unemployment Insurance division does NOT send claimants text messages regarding their unemployment insurance claim. Individuals who receive this text message should notify the department by sending an email to AskUIContactCenter@dwd.IN.gov. A screenshot of the text message would be helpful as we work to have these fraudulent sites shut down. If you clicked on the

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link and your unemployment insurance account was compromised, please call the DWD Contact Center immediately for further assistance. If payments were wrongfully diverted to the fraudster, you will need to fill out State Form 57068 as discussed above so that we can investigate the matter and repay the funds to the legitimate claimant.

Q7. What do I do if someone has stolen my identity and filed an account using my personal information?

A7. If you believe you are a victim of ID theft, please do the following:

- Fill out [State Form 57068](#) and mail or fax it to the department. Upon receipt of this form, DWD will lock the account from further use and initiate an investigation and issue a determination.
- If you are currently employed, contact your employer's human resources department so that they can protest your claim with DWD
- Report to Law Enforcement:
 - File an electronic report with the Indiana State Police by filling out the form available at <https://www.in.gov/dwd/2464.htm> and emailing it to uifraud@isp.in.gov.
 - File an identity theft complaint with the Indiana Attorney General's Office at <https://www.in.gov/attorneygeneral/2895.htm> or by calling (800) 382-5516.
 - The FBI also encourages victims to report fraudulent or any suspicious activities to the Internet Crime Complaint Center at <http://www.ic3.gov>. You may consult <http://identitytheft.gov> for help in reporting and recovering from identity theft.
- Protect your credit: Notify the Credit bureaus (Equifax, Experian, and TransUnion)
- Understand identity theft and taxes: For more information about identity theft and the taxes/the 1099-G, please visit:
 - a) Indiana: <https://www.in.gov/dwd/indiana-unemployment/individuals/1099g/>
 - b) IRS: <https://www.irs.gov/identity-theft-fraud-scams/identity-theft-and-unemployment-benefits>

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SECTION G

WHAT IF I REFUSE TO RETURN TO WORK OR REFUSE AN OFFER OF EMPLOYMENT?

Q1. I have a general fear of work due to COVID-19. If I quit or refuse to return to work, would I be eligible for benefits?

A1. No. You will not be eligible for any unemployment benefits (UI, PEUC or PUA) based solely on a general fear of COVID-19. Please contact your employer regarding potential telecommuting, paid time off or other options they may be offering.

Q2. I am called back to work but either myself or a household member has COVID-19 or are quarantined. Can I not return to work and continue to be eligible for unemployment benefits during this time period?

A2. You will not be eligible for regular UI effective with week ending June 6, 2021. You may be eligible for PUA. See the PUA section for more information.

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Q3. I do not have childcare due to my child's school or daycare being closed from COVID-19. I am called back to work (either after being off of work or after teleworking due to Covid-19) or quit due to my childcare situation. Am I eligible for unemployment benefits?

A3. You should work with your employer to identify whether they can make accommodations to your job (such as a shift change or telework) to allow you to work. However, if your employer is unable to do this, you will no longer be eligible for regular unemployment insurance benefits as of May 23, 2020. You may be eligible for PUA. See more information on PUA in these FAQs. If you receive a Determination of Eligibility that you are denied regular unemployment benefits due to this issue, you can then apply for PUA on your Claimant Homepage.

Q4. I am called back to work but am high risk as defined by the CDC and have been advised to quarantine by my medical provider. Am I eligible for unemployment benefits if I do not return to work?

A4. You should work with your employer to identify whether they can make accommodations to the workplace or your job to ensure that your specific medical issues are addressed. However, if your employer is unable to do this, you will not be eligible for regular unemployment insurance benefits, but you may be eligible for PUA if one of the PUA reasons applies to you for each week you claim. See more information on PUA in these FAQs. If you receive a Determination of Eligibility that you are denied regular unemployment benefits due to this issue, you can then apply for PUA on your Claimant Homepage.

Q5. I was offered to return to my job or was offered a new job but refused it. Will it impact my unemployment insurance, PEUC or PUA benefits?

A5. Refusing a suitable job offer can impact your eligibility for benefits. A suitable job offer is a job under substantially the same terms and conditions as your previous job. Other factors that are looked at when determining if a job offer is suitable are:

- 1) the risk involved to your health, safety, and morals;
- 2) your physical fitness and prior training and experience;
- 3) how long you have been unemployed and how likely you are to receive a better job offer; and
- 4) whether the work is more than 30 miles from your home or most recent worksite.

Once you have claimed benefits for more than five weeks in a row, there are rules about the amount of pay you must accept.

- If you have been unemployed for more than five weeks, the work is suitable if it pays 90% or more than your most recent regular weekly wage and meets all the other standards for suitable work.
- If you have been unemployed for more than eight weeks, the work must pay 80% or more than your most recent regular weekly wages and meet all the other standards for suitable work.

There are three reasons that a job offer is not suitable work:

- 1) The job is available because of a strike, lockout, or other labor dispute;
- 2) The job requires you to join a union, resign from a union, or prohibits joining a union;

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3) You would have to drop out of DWD approved training to take the job.

Even if the job offer is considered suitable, you can refuse it for work related reasons if you have good cause. Work related reasons could be pay, hours, type of work, or distance. Good cause will be determined based on your length of employment, prior pay, conditions of work, additional or new education or skills, prospect of other employment, and availability of work and pay. Personal reasons will not usually be considered good cause because they are not related to the job.

Q6. If an employer reports my refusal to return to work or my refusal to accept a suitable job offer, what happens next?

A6. You will receive a notice on your Uplink correspondence page that an employer has made a report. The Department will investigate the work refusal, and you will receive a Determination of Eligibility (DOE) in Uplink. The DOE will state whether you are qualified or ineligible for UI benefits and explain why the decision was made. If the DOE denies or reduces your UI benefits, you have the right to appeal the DOE. The instructions for appealing are on the DOE.

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SECTION H

THE LOST WAGES ASSISTANCE (LWA) PROGRAMS

Q1. What is the Lost Wages Assistance (LWA) program?

A1. The federal Lost Wages Assistance (LWA) Program was created through a Presidential Executive Order to provide temporary FEMA benefits to unemployed workers impacted by the COVID-19 pandemic. Because this program is administered through FEMA, it is not an unemployment insurance program. The program lasted 6 weeks, from August 1 through September 5, 2020.

Q2. Who was eligible for the \$300 in LWA funding?

A2. To be eligible to receive an additional \$300 per week, all the conditions below had to be met:

- 1) Your weekly benefit amount was at least \$100 under regular state unemployment insurance (UI), Pandemic Unemployment Assistance (PUA), Pandemic Emergency Unemployment Compensation (PEUC), or other eligible federal UI programs; and
- 2) You certified that you were unemployed or partially unemployed due to disruptions caused by the COVID-19 pandemic; and
- 3) DWD determined that you were eligible for an underlying benefit payment for the week; and
- 4) The LWA program was available funding from FEMA.

Q3. Where can I find additional information on the LWA program?

A3. You can find additional information on the FEMA website at;

<https://www.fema.gov/disasters/coronavirus/governments/supplemental-payments-lost-wages-guidelines>

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SECTION I

OTHER QUESTIONS

Q1. What are Extended Benefits (EB)?

A1. The Extended Benefits (EB) program is a program that triggers on during periods of high unemployment. During the COVID-19 pandemic, EB extended benefits were available after UI and PEUC was exhausted, during the following period: June 7 – November 14, 2020.

Q2. What happens if I have Extended Benefits remaining on my claim when the program ends?

A2. If there were benefits remaining on your claim when the Extended Benefits program ended, you will not be able to collect them. Depending on your circumstances you may be eligible for Pandemic Unemployment Assistance (PUA).

Q3. I had a previous unemployment insurance claim that is still open. What do I do?

A3. If the claim is still open, you only need to start filing vouchers again. This will reopen the claim.

Q4. If my employer continues to provide health insurance, will it impact my benefits?

A4. No.

Q5. If my employer lays me off and pays for my healthcare insurance coverage through COBRA, how does that impact my unemployment insurance benefits?

A5. If your employer pays for your COBRA coverage, this is considered deductible income and must be reported to DWD and could impact the amount of UI benefits you are eligible to receive.

Q6. Do I have to use all my paid time off (PTO), such as vacation, sick and personal time, before filing for benefits?

A6. No, but you must report any PTO that has been paid to you by your employer. This is considered deductible income and will be used to calculate your weekly unemployment insurance benefit.

Q7. Do I need to do anything if I reported other state employment on my claim and it is not showing on my monetary determination?

A7. If you chose the state where you physically worked, you do not need to do anything else. A request has been sent to the other state. The other state will send your wages for use in your Indiana claim. If your claim amount changes, you will be sent a new monetary determination.

Q8. Do I need to do anything if I reported Federal Civilian or Military employment and have received a monetary determination that does not show those earnings?

A8. You received a monetary determination because you have enough Indiana wages to open claim. Please follow the instructions on the Federal Employment Coversheet and/or Military Employment Coversheet you received to submit proof of earnings. We can then add those wages to your claim. If your claim amount changes, you will be sent a new monetary determination.

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Q9. Do I need to do anything if I reported Federal Civilian or Military employment and have not received a monetary determination?

A9. Please follow the instructions on the Federal Employment Coversheet and/or Military Employment Coversheet you received to submit proof of earnings. We can then add those wages to your claim. If your claim amount changes, you will be sent a new monetary determination.

Q10. What should I do if I did not report out-of-state, Federal Civilian, or Military employment and should have?

A10. Please follow the instructions on the monetary determination to file an appeal.

Q11. I received my federal stimulus payment from the Internal Revenue Service (IRS). Will this impact my unemployment insurance benefits?

A11. No. The federal stimulus payment from the IRS is not considered deductible income for unemployment insurance benefit purposes so it will not impact your weekly benefits.

Q12. I filed my initial claim late. What can I do?

A12. Under the Indiana Administrative Code and the Governor's Executive Order (which is ending on June 1, 2021), backdating of initial UI claims is not permitted except for limited circumstances. Currently, it is if you filed late due to DWD error or if COVID-19 prevented you from being able to file your claim electronically (e.g., you were sick or quarantined and could not access a computer to file your claim timely). Not knowing that you needed to file or could be eligible are not COVID-19 related reasons. Beginning June 1, 2021, claims will no longer be backdated if COVID-19 prevented you from being able to file your claim electronically and will be approved only when there is a verified agency error that prevented you from filing on time. If you believe you may be eligible for a backdated initial claim, you must complete this form: Request to File a Late initial Claim for Unemployment Insurance Benefits. You must provide complete information, or the request will be denied. If the claim is back dated, DWD will contact you to file back vouchers. You will receive a call from DWD at 1-800-298 6650 or 1-800-891-6499.

Q13. My employer received a small business PPP loan to maintain payroll. If my employer paid me full or partial wages with the PPP loan, will this impact my unemployment insurance benefits?

A13. Yes. If you are receiving wages from your employer, whether the wages come from a PPP loan or elsewhere, you must disclose the wages to DWD on the weekly voucher. The wages will impact the weekly benefit amount. You could still be eligible for some UI benefits depending on the amount of wages being paid.

Q14. If I am working part-time, how will that impact my benefits?

A14. Part-time employment during the week claimed will reduce the amount of benefits paid for that week. If you do work while receiving benefits, you **must** report any money you earned on the voucher **for the week you worked** (not the week you ultimately get paid for the work). You will report GROSS earning on your weekly voucher (this is for both regular UI, PUA and PEUC). Failure to report money you earned is fraud and can result in denial of benefits, collections actions, and criminal prosecution. If you earned wages from a Base Period Employer (see your Monetary Determination of Eligibility), then a dollar-for-dollar deduction will be taken from your Weekly Benefit Amount (WBA). If you earned wages from an

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employer who is NOT on your Monetary Determination of Eligibility or in your Base Period, then the following calculation applies. If you earn 20% or less of your WBA from an employer that is not listed on your Monetary Determination of Eligibility, no deduction will be made from your benefit payment. If you earn more than 20% of your WBA from an employer that is not listed on your Monetary Determination of Eligibility, a dollar-for-dollar deduction will be made from your benefit payment for all wages earned in excess of 20% of your WBA. If you work odd jobs for anyone other than your base period employer(s), a dollar-for-dollar deduction will be made after an amount equal to 20% of your weekly benefit amount has been earned.

Q15. I was appointed as a poll worker for Indiana’s June 2, 2020 Primary Election or the November 3, 2020 Election. Should I report the stipend I was paid as income when filing my claim or voucher?

A15. No. Under Executive Order 20-27 and 20-45, stipends paid to those appointed as poll workers for Indiana’s June 2, 2020 Primary Election and November 3, 2020 Election (work beginning with early absentee in-person voting and ending with tabulation of mailed-in ballots) are not considered deductible income under Indiana unemployment compensation law and should not be reported as income. Reporting your poll worker stipend as income will result in the reduction of your benefits and a delay in claims processing. Any income other than the poll worker stipend should continue to be reported in the weekly filing process.

Q16. I received an overpayment notice. Can my overpayment be waived?

A16. In certain circumstances, a claimant may be eligible to have his/her overpayment waived. In accordance with Ind. Code §22-4-13-1(i), an overpayment may be waived upon the request of the individual only if the following criteria are met:

1. the benefits were received by the individual without fault of the individual;
2. the benefits were the result of payments made:
 - a. during the pendency of an appeal before an administrative law judge or the review board under IC 22-4-17 under which the individual is determined to be ineligible for benefits;
OR
 - b. because of an error by the employer or the department; AND
3. repayment would cause economic hardship to the individual.

Claimants must submit an Overpayment Waiver Request application for consideration. The Department will evaluate the request and issue a determination to the claimant. The application can be found at www.unemployment.in.gov under “Forms and Downloads.” Certain exclusions apply. Please see DWD Policy 2020-04 for more information about the waiver process. More FAQs on overpayments can be found at: <https://www.in.gov/dwd/2345.htm>

Q17. I owe an overpayment for unemployment insurance payments. If I receive the 3rd Economic Impact Payment under American Rescue Plan Act of 2021, will it be offset to pay my outstanding UI overpayment?

A17. DWD is required to send certain overpayment debts to the IRS for offsetting of federal tax returns once the debt is a year old. Pursuant to the IRS, if the Economic Impact Payment is paid as an advance, then no, the Economic Impact Payment is not subject to offset for the unemployment insurance debt. If

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the Economic Impact Payment is added to your return, then it would be subject to offset if the debt meets the criteria above. See <https://fiscal.treasury.gov/top/faqs-for-the-public-covid-19.html>

Q18. I already have an active claim, but there is a “To-Do” on my Uplink Claimant Homepage with the message to “File a New Unemployment Insurance Claim”. Do I have to file a new claim?

A18. YES, you will need to file a new Unemployment Insurance claim in order to continue to be eligible to be paid. Unless you are within the 52-week period of an active unemployment insurance (UI) claim, DWD is required to have you file a new claim each quarter of the year to ensure you do not meet the minimum eligibility requirement for wages earned. You should click the link to file any outstanding vouchers before you file the new UI claim. Filing a new claim is required under the federal CARES Act. If you are receiving any CARES Act benefits, such as PUA or PEUC, this is required from you each quarter change (e.g., July, October). If you have enough wages, you would be eligible for a regular UI claim, and DWD will automatically put your vouchers on the correct claim. Continue to file your vouchers each week if you are unemployed.

Q19. What happens after I file a quarter change UI claim?

A19. The below are the most common scenarios that will occur after you file your quarter change UI claim:

- A: The claimant has been receiving PUA because all prior UI claims filed on or after 01/27/2020 were denied monetarily. The new quarter change UI claim opens monetarily. Any issues on the UI claim will need to be decided before weekly vouchers can be paid. This is because the UI separation and other UI issues were not originally investigated because the UI claim was denied monetarily. The claimant was only determined eligible for PUA based on PUA eligibility requirements.
- B: The claimant has been receiving PUA because all prior UI claims filed on or after 01/27/2020 were denied monetarily. The claimant’s new quarter change UI claim is again denied monetarily. The claimant will remain on PUA.
- C: The claimant has been receiving PUA because they were denied UI on a non-monetary issue (e.g., a discharge, voluntary quit, work refusal or the like). These claimants will only file a quarter change claim if their monetarily eligible UI claim expired. If the newly filed claim monetarily opens, scenario A would apply.
- D: The claimant has been receiving PEUC. The new quarter change opens monetarily. The issues will need to be resolved before payment can occur on the new UI claim. In some cases, the claimant may be able to stay on PEUC. See the PEUC section.
- E. The claimant has been receiving PEUC. The new quarter change claim is denied monetarily. The claimant will remain on PEUC.

Q20. Do I have to pay taxes on unemployment insurance benefits, including pandemic benefits?

A20. Yes. We will issue you a 1099G for benefits earned in the calendar year. For more information, please visit <https://www.in.gov/dwd/indiana-unemployment/individuals/1099g/>. Please NOTE that pursuant to the IRS webpage, the following now applies to your federal taxes: “If your modified adjusted gross income (AGI) is less than \$150,000, the American Rescue Plan enacted on March 11, 2021, excludes from income up to \$10,200 of unemployment compensation paid in 2020, which means you don’t have to pay tax on unemployment compensation of up to \$10,200. If you are married, each spouse receiving unemployment compensation doesn’t have to pay tax on unemployment compensation of up

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to \$10,200. Amounts over \$10,200 for each individual are still taxable. If your modified AGI is \$150,000 or more, you can't exclude any unemployment compensation." For more information, see <https://www.irs.gov/faqs/irs-procedures/forms-publications/new-exclusion-of-up-to-10200-of-unemployment-compensation>

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SECTION J

MIXED EARNERS UNEMPLOYMENT COMPENSATION (MEUC)

Q1. Am I eligible for the Mixed Earners Unemployment Compensation (MEUC) benefits?

A1. You may be eligible for an additional \$100 payment under MEUC if you received or are receiving:

- Unemployment Insurance (UI) benefits,
- Pandemic Emergency Unemployment Compensation (PEUC) benefits, or
- Trade Readjustment Allowance (TRA) benefits
- **And** you were self-employed.
- **And** earned at least \$5,000 net income in self-employment during the applicable tax year.

MEUC is not available for the Pandemic Unemployment Assistance (PUA) program. You must have applied by June 19, 2021, to be considered for this program.

Q2. How much will I receive in MEUC benefits?

A2. If eligible, you will receive an additional \$100 each week you receive UI, PEUC, or TRA from 01/02/2021 – 06/19/2021 as the MEUC ended 6/19/21 in Indiana

Q3. How do I get the additional MEUC payment each week?

A3. The additional weekly payment will automatically be applied to any eligible payments. There are no additional steps you need to take.

Q4. How do I apply for MEUC under the Continued Assistance Act?

A4. **Step 1:** On your Claimant Self-Service homepage click on the To-Do: Mixed Earners Unemployment Compensation Question(s)

Step 2: Answer the question for each applicable tax year listed - Did you earn \$5,000 net self-employment income in the year before you filed your UI claim?

Step 3: You will receive a document in your Correspondence History titled "Mixed Earners Unemployment Compensation Application." Follow the instructions to send proof of net earnings. If you do not send in your earnings following these instructions, your application processing may be delayed.

Q5. For what weeks can MEUC benefits be paid?

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CLAIMANT FREQUENTLY ASKED QUESTIONS for COVID-19 work-related issues

A5: MEUC is payable for weeks ending January 2, 2021 through June 19, 2021.

Q6. What year of self-employment earnings is used to determine eligibility?

A6. Eligibility is determined based on the year before you filed your UI claim. It is called the applicable tax year. Examples:

- You are currently receiving PEUC. You filed your UI claim in 2020. Eligibility is determined based on self-employment from 2019.
- You are currently receiving UI. You filed your UI claim in 2020. Eligibility is determined based on self-employment from 2019.
- You are currently receiving PEUC. Your PEUC claim is based on a UI claim you filed in 2019. Eligibility is determined based on self-employment from 2018.
- You are currently receiving TRA. Your TRA claims are based on a UI claim you filed in 2018. Eligibility is determined based on self-employment from 2017.

Q7. What do I send as proof of self-employment?

A7. You must send your Mixed Earners Unemployment Compensation Application and your entire tax return for the applicable tax year. The tax return must clearly show net self-employment, which is often shown on Schedule C and SE.

Q8. What happens if I have a PEUC claim during the MEUC payable period, then open a new UI claim.

A8. MEUC eligibility will be determined for the PEUC claim and the new UI claim. Eligibility will be based on the applicable tax year as mentioned above.

Q9. I have several MEUC Questions to answer on my CSS Homepage. What should I do?

A9. Answer each question honestly.

Q10. I accidentally chose No to the MEUC Question on my CSS Homepage. I meant to say Yes. What do I do?

A10. Log-in to your CSS homepage and click on the dropdown menu next to your name. Go to the MEUC question and answer it again.

Q11. I chose Yes to the MEUC Question, but do not want to apply. What should I do?

A11. Since you chose Yes, you are able to apply for MEUC benefits. If you choose not to apply, do not send in the barcoded document.

Q12. I applied for MEUC. What happens next?

A12. Your application will be reviewed. You will be contacted if additional information is needed. You will receive a determination of eligibility. If you are eligible, MEUC payments will begin. If you are not eligible, you can appeal the decision.

Q13. My determination tells me that MEUC is payable for applicable weeks during the MEUC period, which began January 2, 2021. How are payments issued?

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CLAIMANT FREQUENTLY ASKED QUESTIONS for COVID-19 work-related issues

A13. If you are eligible for MEUC, you will likely receive a lump sum payment for past weeks. For weeks after you are determined eligible for MEUC, you will see an additional \$100 added to your weekly benefit amount.

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SECTION K

RESTART OF PUA, PEUC AND FPUC

Q1. When will PUA, PEUC and FPUC be restarted?

A1. You will be able to access weekly vouchers for PUA and PEUC no later than Friday, July 16, 2021. If you are eligible for UI, PEUC or PUA for any weekly vouchers, then FPUC will be payable also. NOTE: Due to the quarter change on July 4, 2021, you will be required to file a new UI claim if you have not already done so. We are required to ensure you are not eligible for regular UI prior to making PUA and PEUC vouchers available. If you are eligible to set up a new UI claim as of July 4, 2021, you will receive vouchers for PUA or PEUC (whichever is applicable) for weeks ending June 26, 2021, and July 3, 2021, but those will be delayed until approximately July 23, 2021.

Q2. Will PUA, PEUC and FPUC be available back to June 19, 2021, when the program was originally ended?

A2. Yes. PUA, PEUC and FPUC will be restarted effective benefit week ending June 26, 2021 (June 20-26, 2021). This means that there will be no gap in the programs.

Q3. Will I need to take any action to receive PUA, PEUC or FPUC if I received it previously?

A3. Yes. All unemployment insurance benefits, whether the regular UI program, PUA PEUC, or FPUC, can only be paid if the claimant submits a weekly voucher attesting to being unemployed/partially unemployed, able and available and actively searching for work (as long as other statutory requirements are met). For PUA and PEUC, the claimants must also have a valid COVID-19 reason for each week being requested. Additionally, for the regular UI program, PUA and PEUC, claimants must disclose wages received each week (e.g., if they had part time employment or earnings from self-employment) as those wages are required to be deducted from the weekly benefit amount. This is a week-by-week requirement and evaluation. FPUC can only be paid in a week if the claimant is found eligible for the underlying benefit program (i.e., UI, PUA or PEUC).

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Aug 16 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Hon. R. Lawton McIntosh, Circuit Court Judge

Case No. 2021-CP-40-03774

Sheena Brannon, Shane Stencil, Tina Sullivan, and Brandon Beaty

Appellants

v.

Henry Dargan McMaster, in his official capacity as Governor of the State of South Carolina, and G. Daniel Ellzey, in his official capacity as Director of the South Carolina Department of Employment and Workforce

Respondents

CERTIFICATE OF SERVICE

I certify that I have served Appellants' MOTION FOR EMERGENCY REVIEW AND EXPEDITED CERTIFICATION on Henry Dargan McMaster and G. Daniel Ellzey by E-mail to their counsel of pursuant to *In Re; Operation of the Appellate Courts During the Coronavirus Emergency (as Amended May 29, 2020)*, Appellate Case No. 2020-000447 on August 16, 2021.

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August 16, 2021

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Sent: Monday, August 16, 2021 6:06 PM
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Cc: Sue Berkowitz; jkassel@kassellaw.com
Subject: Brannon v. McMaster - Notice of Appeal and Motion for Certification
Attachments: Notice of Appeal_FINAL.pdf; Mot for emerg review and cert_FINAL.pdf

Counsel,

I hope all of you are well. Please find attached and served upon you pursuant to *In Re; Operation of the Appellate Courts During the Coronavirus Emergency (as Amended May 29, 2020)* a notice of appeal and motion for emergency review and expedited certification in this case.

Kind regards,
Adam Protheroe

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