



GUTWEIN
LAW

COVID-19 RELIEF

Unemployment Benefits For Independent Contractors

April 10, 2020



GUTWEIN
LAW

AGENDA

- Changes to Unemployment Benefits
- Additional Funding Options
- Employer Considerations
- Questions





GUTWEIN
LAW

CHANGES TO UNEMPLOYMENT BENEFITS



UNEMPLOYMENT BENEFIT CHANGES

- Unemployment Compensation Benefits are now available to freelancers and **independent contractors** due to the CARES Act.
- Available for reduction in hours as a result of COVID-19.
- If the individual self-certifies that he or she is able and available to work within the meaning of applicable state law and is “unemployed, partially unemployed or unable or unavailable to work” because of a COVID-19–related reason:

ELIGIBILITY REASON FOR INDEPENDENT CONTRACTORS, SUCH AS REALTORS:

The individual is self-employed, is seeking part-time employment, and does not have sufficient work history or otherwise would not qualify for unemployment benefits under another state unemployment program



INDEPENDENT CONTRACTOR

- The general rule is that an individual is an independent contractor if the payer has the **right to control or direct only the result of the work** and not what will be done and how it will be done.
- If you are an independent contractor, you are self-employed.
- The earnings of a person who is working as an independent contractor are subject to Self-Employment Tax.



SELF-EMPLOYED

- Generally, you are self-employed if any of the following apply to you:
 - You carry on a trade or business as a sole proprietor or an independent contractor.
 - You are a member of a partnership that carries on a trade or business.
 - You are otherwise in business for yourself (including a part-time business).
- Self-employed individuals generally must pay self-employment tax quarterly as well as annual income tax.

INDIANA DEPT. OF WORKFORCE DEVELOPMENT WEBSITE

- Independent contractors and self-employed individuals are not engaged in covered employment for the purposes of UI, so regular UI benefits would not be available.
- **You will be eligible for Pandemic Unemployment Assistance (PUA) under the federal CARES Act. More information on that program will be provided as soon as available.**
- For now, an individual can file a regular claim for benefits, as it is necessary to file a state claim, **even if you know you will be denied**, before you can be considered eligible for Pandemic Unemployment Assistance.
- Instructions on how to add your employer can be [found here](#).



PROCESS

1. File an individual claim for unemployment, here:
<https://www.unemployment.in.gov>
2. Get denied, so that you can apply for **Pandemic Unemployment Assistance (PUA)** under the federal CARES Act
3. Add yourself or your sole proprietorship as an employer:
 - https://www.in.gov/dwd/files/Uplink_Self-employment_Add_Indiana_Employer_Instructions.pdf
4. Watch tutorials and wait for more guidance



HOW LONG?

WEEKS OF UNEMPLOYMENT BENEFITS:

- Indiana typically provides 26 weeks, and the CARES Act gives an additional 13 weeks of UI to all eligible workers = **totaling 39 weeks**.
- Typically, Indiana has a one-week waiting period and individuals can expect their **first check in 3 weeks** from filing.
 - However, states have been incentivized to waive the one-week waiting period — BUT processing may take a while due to the steep increase in claims.



HOW MUCH WILL YOU RECEIVE?

- Depends on Indiana's implementation of the CARES Act *and* what your income has been
 - The benefits typically are 20% to 50% of what you previously earned, together with the extra \$600 per week provided by the CARES Act.
 - The minimum benefit must be equal to half of the state's average weekly unemployment compensation amount.
 - Indiana's minimum weekly benefit amount is \$50 and the maximum weekly benefit amount is \$390.
 - The extra \$600 payment will last up to 4 months, covering weeks of unemployment ending July 31.

DOL guidance is expected to be issued soon regarding proper calculation of unemployment benefits for independent contractors, and the documents necessary to support those calculations.



TAX IMPLICATIONS

- Unemployment benefits are taxable.
- These expansions of unemployment insurance are counted as income and taxable.
- Taxpayers will be required to disclose all of their unemployment insurance benefits when filing their taxes.



\$1,200 STIMULUS CHECK

- This stimulus check will be available* to freelancers and **independent contractors** due to the CARES Act.
 - Based on 2018 tax returns, if 2019 not yet filed.
 - You will not have to pay income tax on the amount of stimulus payment received.

**To receive the full \$1,200 check, you must have an adjusted gross income of less than \$75,000 per year (or \$112,500 per year for heads of households or \$150,000 per year for married couples). If you're earning more than that, you may receive a reduced check or no check at all.*

ECONOMIC INJURY DISASTER LOAN FROM SBA

- An independent contractor experiencing financial hardship due to COVID-19 may be eligible to apply for an **Economic Injury Disaster Loan (EIDL)** from Small Business Administration (SBA).
 - <https://covid19relief.sba.gov/#/>
 - **Up to \$2 million**
 - **Up to 30 years**
 - Interest rates: 3.75% for profit company / 2.75% nonprofit corporation
- The \$10,000 Emergency Grant does *not* need to be repaid.
- Funds allocated for these grants are limited. **Applications are flooding in. Act fast!!**

See our webpage article: <http://gutweinlaw.com/economic-stabilization-loans-loan-guarantees>



PAYCHECK PROTECTION PROGRAM LOAN BACKED BY SBA

- Beginning Friday, April 10, 2020, independent contractors and self-employed can apply for the Paycheck Protection Program – these are 100% forgivable loans.
- REQUIREMENTS: (1) You must have been in operation on February 15, 2020, (2) your business must have been harmed by the COVID-19 pandemic, and (3) you must submit the required documentation along with your loan application.
- Independent contractors will likely need to rely upon an estimate of their average monthly earnings for the preceding 12-month period (as supported by 1099-MISCs), and multiply that sum by 2.5 to determine their eligible loan amount.
 - The SBA has not yet provided any guidance with respect to how to calculate the amount of an independent contractor's PPP loan.



PAYCHECK PROTECTION PROGRAM LOAN BACKED BY SBA

- Based upon the SBA's guidance, any cash compensation in excess of \$100,000.00 annually may not be included in determining the loan amount.
 - Maximum monthly cash compensation that an independent contractor may claim is \$8,333.33 (or $\$100,000.00 \div 12$)
 - Presumably PPP loan amounts of **no more than \$20,833.33** ($\$8,333.33 \times 2.5$) are available for independent contractors.
- Assumed that independent contractors will have to follow these restriction to have loan forgiven: 75% of the loan proceeds be used for "payroll costs" and remaining 25% of the loan proceeds may be used to pay rent, utilities or interest on existing business debt within the eight week period following loan funding.
- Need to properly document how the loan proceeds were used to seek loan forgiveness.

SUMMARY OF PPP TERMS

See our webpage article: <http://gutweinlaw.com/payroll-protection-program-ppp>

- **Loan Amounts:** The lesser of \$10 million or 2.5 months of payroll cost per small business (based on trailing 12 months payroll costs)
- **Use of Loan Amount:** Loan proceeds may pay the following costs:
 - Payroll support (such as: paid sick leave*, medical, family and costs related to continuation of group health care benefits during periods of leave)
 - Employee salaries, commissions and other compensation
 - Mortgage interest
 - Rent (including rent under a lease agreement)
 - Utilities
 - Interest under debt obligations incurred before February 15, 2020
- **Interest Rate:** 1% percent
- **Length of Loan:** 2 years
- **No Loan Guarantees, Collateral or Credit Elsewhere Requirements**
- **Deferral of Payments:** All payments of principal, interest and fees are deferred for at least 6 months and up to one year
- **Forgiveness:** "Payroll costs" must constitute at least 75% of the forgiven amount; non-payroll costs (qualifying mortgage interest, utility costs and rent) may constitute no more than 25% of the forgiven amount
- **Payroll Cap:** Payroll costs are capped at \$100,000 per employee



RENT DEFERRAL

- Request your landlord to defer your rent for a few months until you start earning money again.
- Another option: apply security deposit to cover the rent due for the next month or ask to pay half of the rent.
- Indiana may not pass laws to prohibit evictions . . . but courts are closed.



SAMPLE LANDLORD REQUEST LETTER

Dear Mr./Ms. _____,

I hope you are staying safe and healthy during this difficult time. It has affected everyone and every business.

Unfortunately, the crisis has also badly affected me financially. As a self-employed realtor, my sources of income immediately plummeted when the crisis hit, and it has not gotten better. Likely, the real estate market will take a long time to rebound from this crisis.

I am forced to ask for assistance from you. Would you consider letting me defer rent for the next two months? I am hoping by then that I will be able to earn income again and pay the rent. I am a very responsible person, and absent these extraordinary circumstances, I would not be asking this of you.

Please let me know if you can assist me. I would be tremendously grateful. Thank you for your consideration.

All the best,



GUTWEIN
LAW

**IF YOU HAVE
EMPLOYEES...**



FAMILIES FIRST CORONAVIRUS RESPONSE ACT (“FFCRA”)

- FFCRA was signed on March 18, 2020 with effective date of April 1, 2020.
- **Two important pieces for employers with fewer than 500 employees, SO ALMOST all private employers will be covered.** *Health care providers or emergency responders may be excluded.*

Emergency Paid
Sick Leave Act
(EPLSA)

Emergency Family
and Medical Leave
Expansion Act
(EFMLEA)



PAID LEAVE AVAILABLE FOR SELF EMPLOYED

- The FFCRA provides tax credits for self-employed individuals if the self-employed individual would be entitled to receive paid leave under the EPSLA or Expanded FMLA if the individual were an employee of an employer (other than him or herself).



EMERGENCY PAID SICK LEAVE ACT (“EPSLA”)

- Effective date of April 1, 2020.
- Almost all private employers will be covered.
- All employees NO MATTER HOW LONG THEY’VE WORKED FOR EMPLOYER.
- Cannot require employee use PTO, vacation, or other forms of paid leave first.
- *GOOD NEWS: The Department of Labor has announced that it will not bring enforcement actions in the first 30-days of enactment so long as employers act reasonably and can show good faith compliance efforts.*



FMLA VS. EFMLEA

- The Family and Medical Leave Act (FMLA) applies to employers with **50 or more employees** for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year.
- Employees were not eligible to receive FMLA benefits until they had worked at their employer for **12 months**.
- Due to the public health emergency of COVID-19, the expansion of leave enacted under EFMLEA applies to **employers with fewer than 500 employees**.
- Like with EPLSA, almost all private employers will be covered.
- Employees that have worked for employer for **30 days** are eligible to take leave under EFMLEA.



EMERGENCY FAMILY MEDICAL LEAVE EXPANSION ACT ("EFMLEA")

- Effective date of April 1, 2020.
- The first 10 days for EFMLEA leave may consist of unpaid leave.
- Employee *may elect* to substitute accrued PTO, vacation leave, personal leave, or medical or sick leave he/she has for the unpaid leave under EFMLEA (including leave available under the Emergency Paid Sick Leave Act).
- Employers *must not require* an employee to substitute any accrued vacation leave, personal leave, or medical or sick leave for unpaid leave under EFMLEA.



WHO IS ELIGIBLE FOR EMFLEA LEAVE?

WORKING PARENTS

- An employer must provide EFMLEA leave for an employee with a **“qualifying need related to a public health emergency”**
 - This means an employee is **unable to work (or telework)** due to a need for leave to **care for the son or daughter of such employee** if the school (elementary or secondary) or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency related to COVID-19.



GUTWEIN
LAW

QUESTIONS?

Karen Young

Karen.Young@gutweinlaw.com

317.777.7920

Shannon Middleton

Shannon.Middleton@gutweinlaw.com

765.423.7900