

A photograph showing the silhouettes of several people standing in a meeting room, illuminated by a bright light source from the left, creating a strong backlight effect. The room has large windows and a polished floor that reflects the people.

# Unemployment Insurance ADVISORY COMMITTEE



**Employment Security Department**  
WASHINGTON STATE

September 16, 2020

# Washington State Employment Security Department

## Employment Systems 101: Unemployment Insurance Benefits



**Employment Security Department**  
WASHINGTON STATE

# Unemployment Insurance Purpose and Intent

## Created in the Social Security Act of 1935:

- Offers a federal/state program with incentives for states to adopt conforming programs.
- Provides partial income replacement during involuntary unemployment as a matter of right, with dignity and dispatch - reasonable wage restrictions.
- Meets program costs using insurance principles.
- Maintains purchasing power - stabilizes economy.
- Prevents worker dispersal of an employers' trained work force.
- Provides employer incentive to stabilize employment.
- Facilitates access to reemployment services.

# Authority derives from federal and state law

- ▶ United States Code (USC)
  - ▶ Federal Unemployment Compensation Act - Title 26 USC
  - ▶ Social Security Act - 42 U.S.C. §§ 501-504, 1101-1105
  - ▶ Stafford Act (DUA)
  - ▶ CARES Act (multiple areas)
- ▶ Code of Federal Regulations (CFR)
- ▶ Federal Guidance (UIPL, TEGL)
- ▶ Washington Title 50 RCW
- ▶ Washington Title 192 WAC

# Special Types of UI Claims

## Programs in existing law:

- ▶ Training Benefits
- ▶ Shared Work
- ▶ Trade Readjustment Assistance (TRA)
- ▶ Emergency Unemployment Compensation (EUC)
- ▶ Extended Benefits (EB)
- ▶ Self Employment Assistance Program (SEAP)
- ▶ Temporary Total Disability (TTD)
- ▶ Disaster Unemployment Assistance (DUA)

## Enacted as needed with new legislation:

- ▶ *State Additional Benefits, when enacted (Last occurrence 1994-1995)*
- ▶ *State Supplemental Benefits, when enacted (Last occurrence 2010)*
- ▶ *Federal Supplemental Benefit Payments, when enacted*

# ESD Programs Related to COVID-19

## Pandemic Response

### Special UI Payment Programs Enacted

- ▶ Pandemic Emergency Unemployment Compensation (PEUC)
- ▶ Extended Benefits (EB) (100% federally financed)
- ▶ Pandemic Unemployment Assistance (PUA)
- ▶ Federal Pandemic Unemployment Compensation (FPUC) (expired 7/25)
- ▶ Lost Wages Assistance (LWA) (payable for weeks ending between 8/1 and 9/5)

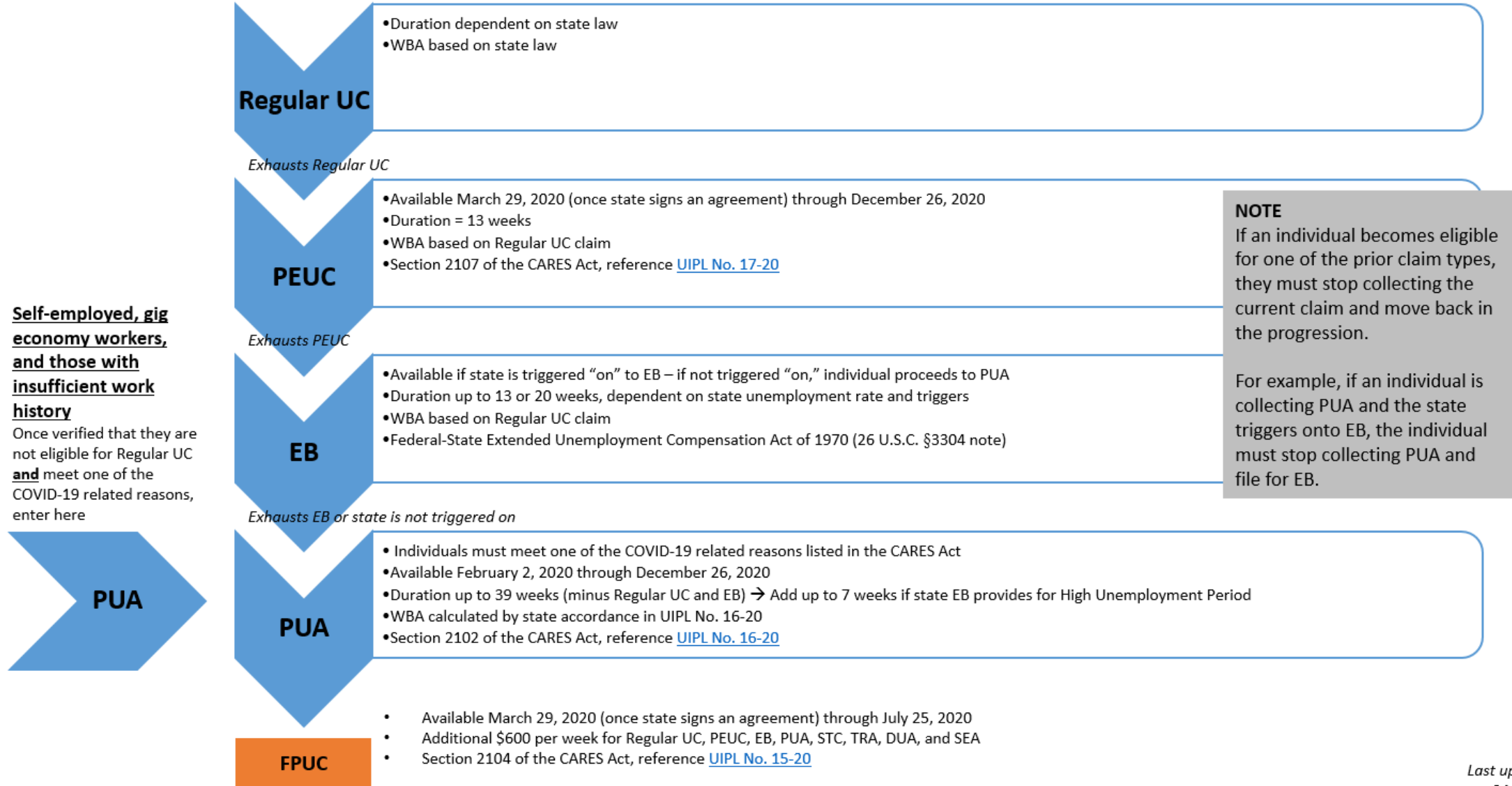
### Other Provisions

- ▶ Benefit Charge Relief Pool (state)
- ▶ Charge Relief for Reimbursable Employers (federal)
- ▶ Waiting week paid by federal funds (federal)
- ▶ Charge Relief for Shared Work (federal/state)

# Coordination of Programs

## UI Program Progression under the CARES Act

Reference [UIPL No. 14-20](#)



# Emergency Rules and Suspended Laws

## Emergency Rules filed by ESD

- ▶ Easing penalties and due dates for claimants and employers
- ▶ Easing requirements for claimants (e.g. job searches)
- ▶ Expanding eligibility for Shared Work
- ▶ Declaring certain separation reasons to be allowable for benefits
- ▶ Holding payment when ESD suspects fraud
- ▶ Relieving benefit charges

## Laws Suspended by Governor Proclamation

- ▶ Job search requirements
- ▶ “Waiting week” (first week of claim being unpaid)
- ▶ Benefit charging for Shared Work



# UI Claims Benefit Eligibility

## Monetary laws set the amount of benefits

- ▶ Recently attached to a job (within last 18 months)
- ▶ Worked more than casually (680 hours in base year = about 17 full-time weeks)
- ▶ Wages only partially replaced (benefits pay up to about 50% of wages)
- ▶ Regular benefits paid for up to 26 weeks if maximum weekly benefit amount is received each week
  - ▶ Extensions and special programs may extend this limit

# Benefit Year and Base Year

## Base Year - when wages/hours were worked

- ▶ Never uses current quarter's wages or hours
- ▶ Never “double dip” or use same wages on two claims
- ▶ Uses first 4 of last 5 completed calendar quarters
- ▶ Sometimes uses the last 4 completed quarters (alternate base year)
- ▶ Result: “**valid**” or “**invalid**” monetary determination

## Benefit Year - when benefits can be paid

- ▶ Starts Sunday of application week; lasts 52 weeks
- ▶ Need not be “unemployed”
- ▶ Only one benefit year at a time

# Monetary Qualifications

## “Valid” Monetary

- ▶ Minimum 680 hours of covered employment in base year
- ▶ Subsequent base years - claimants must requalify by earning at least six times their new weekly benefit amount since prior base year was established

## “Invalid” Monetary

- ▶ Less than 680 hours covered employment in base year, or
- ▶ Cannot requalify based on new earnings in subsequent base year
- ▶ Claimants can reapply the next quarter to try new base year

## Wage Types Used on Claims

- ▶ Washington State Wages - Unemployment Compensation (UC)
- ▶ Wages from Another State - Combined Wage Claim (CWC)
- ▶ Military Wages - Unemployment Compensation for Ex-Military (UCX)
- ▶ Federal Civilian Wages - Unemployment Compensation for Federal Employees (UCFE)

# How much is a claimant paid?

## Weekly Benefit Amount (WBA)

- ▶ Average earnings for the two quarters in the base year with highest earnings
- ▶ WBA is 3.85% of that average amount
- ▶ Subject to maximum/minimum WBA for year
  - ▶ Maximum WBA = \$844; Minimum WBA = \$201 (July 2020)

## Maximum Benefits Payable (MBP)

- ▶ Lesser of 26 times WBA or 1/3 of total base year wages
- ▶ Benefits paid for any given week claimed may be reduced by a portion of any income earned that week

# Benefits Available Depend on Total Gross Wages in Base Year

- ▶ Judy Rodriguez and Tyrone Washington work for \$20 per hour, 40 hours per week
- ▶ Judy worked all year; Tyrone worked six months (April-September)
- ▶ Both earned same weekly benefit amount, but maximum benefits payable differs

	Judy Rodriguez	Tyrone Washington
Total Gross Wages in Base Year	\$41,600	\$20,800
Average of Two Highest Quarters	\$10,400	\$10,400
<b>Weekly Benefit Amount</b>	<b>\$400</b>	<b>\$400</b>
<i>26 times WBA</i>	<i>\$10,400</i>	<i>\$10,400</i>
<i>1/3 total gross wages in base year</i>	<i>\$13,867</i>	<i>\$6,933</i>
<b>Maximum Benefits Payable</b>	<b>\$10,400</b>	<b>\$6,933</b>
<b>Duration if full WBA taken each week</b>	<b>26</b>	<b>18</b>

# UI Claims Benefit Eligibility

**Non-monetary laws determine eligibility from week-to-week. Claimants must:**

- ▶ Be unemployed “through no fault of their own”
- ▶ Be eligible every week
  - ▶ **Able** to work
  - ▶ **Available** to accept work; and
  - ▶ **Actively** seeking work (currently waived)
- ▶ Report every week
  
- ▶ **Claimants are not eligible if they:**
  - ▶ Refuse work, are an illegal worker, are in a baccalaureate program, etc.

# (Job) Separation Issues

## “Unemployed Through No Fault of their Own”

- ▶ Lack of work
- ▶ Fired
  - ▶ But not for misconduct connected to the work
- ▶ Not on strike
- ▶ Quit with good cause
  - ▶ If claimants quit for a reason that is not good cause, they may be denied benefits
  - ▶ Must “purge” the quit denial by waiting seven calendar weeks following the separation, and earning seven times their WBA in covered employment
  - ▶ Mostly work-connected reasons

# Emergency Rule - Lack of Work

The following non-telecommuting employees are deemed separated due to lack of work

- ▶ Employees ordered to stay at home by government official
- ▶ Employees at high-risk of COVID-19
- ▶ Employees in same household as high-risk individuals
- ▶ Employees providing direct care to a high-risk individual
- ▶ Employees at worksite not following government safety rules and guidance to prevent spread of COVID-19



# Voluntary Quit Allowed in Certain Circumstances

## Allowable reasons to “quit with good cause”

- ▶ To accept a bona fide offer of work; or to enter the training portion of an approved apprenticeship program
- ▶ Due to illness/disability of the worker or their family; when relocating for a spouse’s work transfer; or for protection from domestic violence or stalking
- ▶ When usual compensation or hours reduced by 25% or more; if worksite changed to a greater distance or more difficult travel
- ▶ If the worksite safety deteriorated and was reported, or when illegal activities occur in the worksite
- ▶ If work changed and now violates the worker’s religious or moral beliefs
- ▶ Working both a full-time & part-time job, quitting the part-time job, then losing the full-time job involuntarily

# Voluntary Quit Study Bill (ESSB 5473)

Study law and trust fund impacts if the following quits were deemed to be good cause:

- ▶ Separation because care for a child or vulnerable adult became inaccessible
- ▶ The employer, without a commensurate change in pay, either:
  - ▶ Substantially increased the employee's job duties
  - ▶ Significantly changed the employee's working conditions
- ▶ Employee left work to relocate outside the labor market to be closer to their minor child

Report to Legislature and Governor due November 6, 2020

# “Able and Available”

## Able to work and available to accept work

- ▶ Actually be “unemployed” (working less than full-time)
- ▶ Be physically/mentally able to perform work required
- ▶ Available for customary hours and pay for that job market
- ▶ Intends to accept suitable work immediately when offered
- ▶ Can legally work - either a citizen or alien with work visa
- ▶ Not on Workers’ Compensation time loss
- ▶ Not in school, unless with the Commissioner’s approval
- ▶ Registered for work in our automated job bank
- ▶ For PUA - claimants must be *otherwise* able and available *but for* COVID-19 reasons

**Ability and availability for work are not clearly defined in law, but there’s no “good cause” to pay benefits to someone unable or unavailable for work**

# Recent “able and available” permanent rules

- ▶ Hours of availability (proposed rule, not yet effective)
  - ▶ Currently, claimants have to be available for all hours customary for their occupation, even if the customary hours are 24/7
  - ▶ Proposed rule, claimants only need to be available for 40 hours customary for their occupation
- ▶ Out of country (effective July 5, 2020)
  - ▶ A claimant can file a claim while outside of the U.S. IF:
    1. They meet the same able and available criteria as everyone else AND EITHER:
      - 2a. They are legally authorized to work in the country in which they are located
      - 2b. They are immediately available for work in the U.S.
      - 2c. They are a military spouse/domestic partner and are authorized to work on base

# Claimants must file each week to receive UI benefits

## Report as required

- ▶ Send complete information
- ▶ Submit timely claims (not early, not too late)
- ▶ Attend scheduled meetings at WorkSource Center (currently virtual only)
- ▶ Report all work performed
- ▶ Explain income that is reportable

### Deductible income:

- Wages and earned income (including self-employment income)
- assigned holiday and vacation pay
- pay in lieu of notice
- certain pensions (base year employer)
- reservist pay for duty that lasts more than 72 hours

### Not deductible income:

- severance pay unless it is pay in lieu of notice
- non-earned income
- accrued vacation pay
- certain pensions (not from base-year employer)
- jury duty

# Refusing work can mean denial of benefits

## “Work refusal” includes

- ▶ Failing to apply for a job when directed
- ▶ Refusing an offer of work
- ▶ Failing to participate in a bona-fide interview
- ▶ Preventing an employer from offering a job
- ▶ Refusing to return to customary self-employment
  - ▶ *Refusing work may also create questions of availability*

## Claimant may be denied benefits for refusing suitable work without good cause

- ▶ Must “purge” the work-refusal denial by waiting seven calendar weeks following the refusal, and earning seven times their WBA in covered employment

# “Suitable Work”

- ▶ In keeping with the person’s prior work experience, education, and training
- ▶ If there is no prior experience or training, any work is suitable if the person has the physical and mental ability to perform it
- ▶ For those with agricultural work in base year, any agricultural labor is suitable unless deemed specifically unsuitable for that person
- ▶ When considering if work is suitable, must look at
  - ▶ **Degree of risk to health, safety, and morals**
  - ▶ Physical fitness to perform the work
  - ▶ Length of unemployment and job prospects
  - ▶ Distance of available work within customary commute patterns
  - ▶ **Such other factors, including state and national emergencies, as commissioner may deem pertinent**

# “Suitable Work” Special Cases

- ▶ **Part-time eligible claimants** - work is suitable if it is 17 or fewer hours a week or if it is the customary full-time hours for that occupation
- ▶ **COVID-19 isolation or quarantine** - Work is not suitable if you have to break isolation or quarantine to take it
- ▶ **Persons recovering from illness or injury** - when work in the customary occupation is unsuitable, then work is suitable if it is within the claimant’s physical capabilities
- ▶ **Claimant is not able to perform the work** - work that the person cannot physically or mentally perform is never suitable
- ▶ **Self-employed** - individuals making satisfactory progress in an approved Self-Employment Assistance Program need not accept work or be available for work



# What Suitable Work is NOT

## Work is not suitable when:

- ▶ Job is vacant due to a strike, lockout, other labor dispute
- ▶ Wages, hours, or work conditions are substantially less favorable than prevailing conditions for similar jobs in that labor market
- ▶ Job requires worker to join or resign from a company union or bona-fide labor organization

## Work can be considered unsuitable for other reasons if the work:

- ▶ Violates a claimant's sincere religious, moral, or ethical beliefs
- ▶ Resides outside an individual's normal labor market
- ▶ Fall outside an individual's experience, education, and training
- ▶ Causes an undue risk to an individual's health or safety
- ▶ Falls beyond an individual's physical fitness or ability

*Claimant is never required to seek or accept unsuitable work*

# Work-Search Requirements

## Actively seek work - requirement each week

- ▶ Use “customary trade practices” (job search techniques) for that locale
- ▶ Minimum of three contacts per week (with employers, at WorkSource, or a combination)
- ▶ Accept work search directives issued by WorkSource or Claims Center

## Exceptions to active work search

- ▶ On standby or partially employed each week, or in a Shared Work Plan
- ▶ Member of a union where union hall handles job search
- ▶ Escaping domestic violence or stalking, or has anti-harassment order
- ▶ In training with “commissioner approval” (CAT, Training Benefits, Apprenticeship, SEAP)

## Registering for work

- ▶ New UI claimants are automatically registered with local WorkSource office

# Standby

## Two types of standby

- ▶ Short-time layoff when employee expected to go back to same job
- ▶ Time between accepting job and starting job

## Effect of standby

- ▶ Individuals do not have to search for work
- ▶ Individuals only have to be available for work by maintaining reasonable contact in case they need to start work earlier than expected

## Standby during the pandemic

- ▶ Since Governor through executive order made job search optional, the agency through emergency rule placed everyone on standby

# What shall we do with Emergency Rules?

## Emergency Rules filed by ESD

- ▶ Easing penalties and due dates for claimants and employers
- ▶ Easing requirements for claimants (e.g. job searches)
- ▶ Expanding eligibility for Shared Work
- ▶ Declaring certain separation reasons to be allowable for benefits
- ▶ Holding payment when ESD suspects fraud
- ▶ Relieving benefit charges

# Emergency Rules and Suspended Laws

March 9	First batch of emergency rules (standby, suitable work, good cause for missing deadlines) adopted
March 17	Governor signs HB 2965 which creates \$25 million pot of money to help offset benefit charges for employers impacted by COVID-19
March 18	President signs Families First Coronavirus Response Act (FFCRA), authorizes waiting week waivers, job search waivers, and flexibility in administering UI programs
March 18	Governor issues proclamation waiving the waiting week
March 24-25	Governor proclamation and emergency rules waiving job search adopted
March 25	Emergency rule expanding eligibility for Shared Work adopted
March 27	President signs the CARES Act
April 8	Lack of work emergency rule offers UI eligibility to high-risk employees
May 20	Emergency rule pausing benefits for claims that are suspected to be fraudulent
June 10	Began permanent rulemaking process for many emergency rules
June 19	Governor issues proclamation non-charging Shared Work benefits

# Emergency Rules and Suspended Laws

Starting permanent rulemaking keeps the emergency rules effective while normal rulemaking progresses. Follow along at

<https://esd.wa.gov/newsroom/rulemaking>

The following emergency rules currently have an expiration date (which may be suspended by starting new permanent rulemaking):

- ▶ Non-charging employers for benefits paid during the waiting week (expires Oct. 8)
- ▶ Relief of benefit charges if claimant received a direct request to isolate/quarantine (expires Oct. 28)
- ▶ Tweak to suitable work rules for extended benefits to bring us into conformity with federal law (expires Nov. 14)

Questions?