

TN. DEPT OF LABOR & TENNESSEE ENTERTAINMENT SECTOR Q&A - UNEMPLOYMENT CLAIMS

WRITTEN RESPONSES RECEIVED FROM TN DEPT. OF LABOR ON MAY 7, 2020 TO SUBMITTED QUESTIONS FROM APRIL 30, 2020 MEETING (DOL RESPONSES IN RED)

Industry Participants: AFM 257, IASTE, SAG/AFTRA, NFG, NSAI, Recording Academy, Music Artist Coalition, Artist Rights Alliance, Future of Music, Song Writers of North America

Hosts: Tennessee Entertainment Commission, Department of Labor & Workforce Development, WorkForce Essentials and Department of Economic and Community Development

Q1: Applicant receives W2s AND 1099s. The W2s make the system think that the applicant is an employee, even though they filed as self-employed. Applicant receives a letter from TN dept of labor and workforce asking them to submit a "notice of separation and wage" request. To do this, they need to be registered with the state as an employer and have an EAN number, which they don't have. So, they hit a dead end.

If they are self-employed and receive a notice of separation and wage request on themselves, they don't need to do anything. No response is required to complete the processing of their claim. If they own their own business don't respond to the letter.

Q2: If you apply for state UI are you automatically qualified for and enrolled for the PUA benefits?

If someone files for unemployment and is not monetarily eligible for regular TUC benefits, then they will be automatically enrolled in PUA. If they are eligible for TUC, they will not be automatically registered for PUA.

Q3: Unemployment Extension: Under the CARES Act, states are permitted to extend unemployment benefits by up to 13 weeks under the new Pandemic Emergency Unemployment Compensation (PEUC) program. Several of our members filed for unemployment in January and have recently exhausted their eligibility for regular unemployment and have tried to apply for the 13-week extension. They are unable to find where to do so on the website and, when completing the weekly certification, receive notice that their benefit payment is \$0. Do they need to reapply or will benefits be an automatic extension under the CARES Act and If they are no longer eligible for any unemployment benefits, is there a way for them to still receive the weekly \$600 pandemic payment?

The department is currently working to implement the PEUC program. If claimants have continued to certify weekly since they exhausted benefits, they will automatically be set up once the program is ready. If not, they will need to reapply.

These claimants will be eligible for the FPUC payment beginning 4/4/2020 ending on 07/26/2020 if they are eligible for PEUC program during that time.

Q4: 1099/W2 Income: Under the CARES Act, states are permitted to provide Pandemic Unemployment Assistance (PUA) to individuals who are self-employed, seeking part-time employment, or who otherwise would not qualify for regular unemployment compensation. How do you apply if you have

both self-employment (1099) and employee (W2) income, and how do you apply if you only have 1099 income?

When completing the online application an individual simply needs to answer the questions as they are presented, and they will be put on the appropriate program.

Q5: Returning to Work: If the union has a policy in place instructing members to not return to work until certain safety and health precautions are met, can members refuse work and still draw unemployment? Refusal of works will require further fact finding and a decision from the department.

A general statement cannot be made on approvals and denials until all facts are gathered.

Q6: Do periodic payments such as performance royalties, residual payments, pension, VA, and/or social security benefits, need to be declared when filing for unemployment, and if so, do they count towards any possible benefits?

Payments for past work do not need to be reported during the weekly certification process. claimants are required to report earnings when they work not when they are paid.

Q7: When someone who lives in Tennessee is employed and/or paid by a person or an entity from another state, can they declare that income as part proof of employment in Tennessee, or do they have to go through that state's unemployment process?

They must file in the state they are eligible in. It depends where the money was reported and if it can be combined with other states. This is to general of a question to give a specific answer.

Q8: Freelance workers work for many different people and entities every year, some of whom do not send any end of year tax documentation. If a freelance worker declares such miscellaneous income on their Federal tax return, can it count towards unemployment?

It may count towards PUA benefits depending on when it was earned, but we will need documentation of the earnings.

Q9: If a songwriter is receiving the minimum and they have been pure a 1099 worker, how long should they expect to receive benefits?

PUA is for 39 weeks minus any benefits received on other programs such as TUC/PEUC/TRA starting as of 02/02/2020 thru 12/26/2020

Q10: What is needed from a federal perspective to be able to mix income when processing state UI claims?

Covered employers who pay wages to employees on a W-2 also pay quarterly tax premiums into the unemployment compensation fund otherwise known as the Trust Fund. In order to pay UI benefits paid out of the trust fund self-employed individuals or 1099 claimants would need to contribute to that fund quarterly.

Q11: For people who have a mix of W2 and 1099 or other income. If you qualify for regular UI as a W2 employee, the rest of your mixed income won't be considered when calculating your weekly benefit. But if you don't qualify for regular UI based on your W2, and you instead qualify for PUA, then all of your income will be considered. That results in different benefit amounts for people who otherwise have the same income. So, for example, does the state have the ability to look at all additional income for a W2 employee in the normal UI system, even if that's not the current policy?

No, due to federal guidance/law stating the claimant must draw TUC and PEUC benefits prior to drawing PUA compensation.

Q12. Are regular UI benefits retroactive to the date of unemployment, the same way that PUA is retroactive?

Tennessee Unemployment Compensation (TUC) benefits become effective the first Sunday after the claim is filed, not the date of unemployment. In some instances, TDLWD will approve a claimant's request to backdate a claim if there is evidence the claimant contacted TDLWD for assistance filing the claim and the claimant's issue was not addressed in a timely manner, due to fault of the Department.

Q13. This organization would like to talk through unique circumstances for songwriters and how they make money and making sure that is captured in the PUA application process (including different kinds of documentation to show income).

Any type of documentation showing proof of earnings needs to be sent to the department for consideration. Claimants have the ability to upload that document during the claim filing process if currently filing. If they filed before the PUA application was ready that will be made available to them in the coming days.

Q14: Does an employer who gives a claimant a 1099 need to respond to a Notice for Wage and Separation Request if the claimant selected the employer as their separating employer when they filed their claim? If so, then how does an out of state employer with no SEIN respond?

Employers may (but are not required to) respond to claims filed by independent contractors. However, if the claim is approved and the employer is identified as the separating employer, the employer may file an appeal and raise that issue.