



*A Union of Professionals*

AFT Higher Education

# **Unemployment Insurance and the Contingent Academic**



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## **OUR MISSION**

The **American Federation of Teachers** is a union of professionals that champions fairness; democracy; economic opportunity; and high-quality public education, healthcare and public services for our students, their families and our communities. We are committed to advancing these principles through community engagement, organizing, collective bargaining and political activism, and especially through the work our members do.

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PRESIDENT

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SECRETARY-TREASURER

Evelyn DeJesus  
EXECUTIVE VICE PRESIDENT

American Federation of Teachers, AFL-CIO • 555 New Jersey Ave. N.W. • Washington, DC 20001 • 202-879-4400 • [www.aft.org](http://www.aft.org)



Adjunct and graduate assistant employment—including part-time and other non-full-time faculty, and other student/employees—is precarious in the best of times. As the COVID-19 health crisis continues, both academic and nonacademic jobs for these workers are being affected. This document is meant to inform AFT members of the changes to unemployment insurance as it relates to adjuncts (sometimes called part time or other non-full-time faculty) and graduate assistants (or other student/employees) if who experience full or partial unemployment at the conclusion of the spring semester.

Even with the significant changes in federal and state rules detailed below, which favor benefit awards to individuals affected by COVID-19, unemployment insurance (UI) eligibility determinations can be very fact-intensive and are made on a case-by-case basis. Changes to UI programs are happening quickly, and states are experiencing an unprecedented volume of applications. Most states have yet to issue guidance regarding eligibility and the application process for some of the new federally funded unemployment insurance programs detailed below.

Members are encouraged to be persistent and patient in filing if they experience full or partial unemployment. No matter how you file, you become eligible for benefits starting the day after you separated from employment. If you are eligible and apply in a timely way, you will be paid for all benefits due. You should look [here](#) to find your state agency that administers unemployment insurance and to see when the additional programs referenced in this document are up and running. Members can also check with their locals for resources on applying for unemployment insurance.

Many state websites, phone numbers and unemployment systems are overwhelmed by extremely high levels of traffic. State unemployment agencies ask that you have patience if you have trouble getting to a website or filing your claim. They suggest trying at different times of the day and say to keep trying; some states have recommended specific days of the week and blocks of time for people to apply, based on the first letter of their names. Members are also advised to be sure to save passwords when they apply for UI, as there appear to be ongoing issues with people being shut out of systems because they don't remember passwords. If you don't see updated information yet on your state website related to the recent federal law changes detailed below, the Department of Labor says you should still apply. If you have already applied, then once your state updates its information you will receive your full benefits or be notified that your state needs more information.

## **HOW HAVE ADJUNCTS TRADITIONALLY BEEN TREATED BY STATE UNEMPLOYMENT INSURANCE PROGRAMS?**

Adjuncts, part-time faculty and other non-full-time faculty have historically had difficulty accessing unemployment benefits under the prevailing rules in many states, and there is still no automatic nationwide answer to this question.

Federal law precludes the collection of unemployment between academic years if an education employee has “a ‘contract’ or ‘reasonable assurance’ of performing services in such educational employment in the following year, term, or remainder of a term.” In some states—but not all—adjuncts have historically been denied unemployment benefits

between spring and fall semester because the school has offered them a contract to teach courses in the fall and that contract or other circumstances provides them with a “reasonable assurance” of fall employment. While this contract may be contingent on a number of factors outside the employee’s control, such as enrollment numbers or seniority rights of other faculty, and the employee may have previously not been offered courses in the fall after promises from the employer in the spring, some states’ unemployment insurance programs still deny benefits.

[Guidance by the Department of Labor](#) to state unemployment insurance programs explicitly addressed this issue in 2016. It explained that state unemployment systems should only deny benefits between semesters of school breaks for adjuncts when the offer of employment (1) is genuine and made by an individual with authority to offer employment; (2) is in the same capacity; and (3) does not offer earnings that are significantly less than the amount earned for the preceding year or term (generally, the offer must be for at least 90 percent of the previous year’s or term’s earnings). The guidance also details factors a state should consider when looking at an adjunct’s contract and determining whether reasonable assurances exist between semesters even if those three factors prerequisites are met. This is merely guidance, though, and states still have a lot of latitude in determining what is and is not a reasonable assurance of future employment between academic terms. Some states, [like California](#), provided certain part-time faculty with access to unemployment even before this guidance was issued. Other states may still find that adjuncts with assignments for the next semester have a “reasonable assurance” of employment under these guidelines and deny benefits. Nonetheless, adjuncts should arm themselves with the guidance if a state agency questions them about their employment situation during their application for benefits.

### **HOW HAVE GRADUATE ASSISTANTS TRADITIONALLY BEEN TREATED BY STATE UNEMPLOYMENT INSURANCE PROGRAMS?**

Graduate assistants and other student employees have likewise historically had difficulty accessing unemployment benefits under the prevailing rules in many states. Along with the “reasonable expectation of employment” problem detailed above, graduate assistants have been excluded by state law as “students” in many states and have more trouble accumulating the work history, generally 18 weeks of covered employment, necessary to qualify for regular state UI.

### **HOW HAS UNEMPLOYMENT INSURANCE CHANGED IN REACTION TO THE COVID-19 HEALTH CRISIS?**

Prior to federal action, states developed special instructions for filing for unemployment for COVID-19-related reasons and liberalized some rules to provide easier access to benefits for workers affected by COVID-19. Under federal reforms enacted in response to the crisis, additional money for states from the federal government has provided support for partial unemployment payments to workers who have hour cutbacks instead of layoffs, and has incentivized states to waive the one-week waiting periods for benefits without penalty, ease eligibility requirements such as work search requirements, and extend unemployment benefits for individuals for longer periods.

Since these major reforms, eligible workers are entitled to an extra \$600 per week in addition to a normal state-calculated benefit, until July 21, 2020, and extended benefits for an additional 13 weeks after they exhaust all their regular state unemployment insurance benefits. States will also administer a new emergency unemployment assistance program: the Pandemic Unemployment Assistance program. The PUA program covers any individual who: (1) is not otherwise eligible for, or has exhausted all rights to, unemployment benefits, and (2) is unemployed, partially unemployed, or unable to work because of any of the following COVID-19-related circumstances:

- The individual has been diagnosed with COVID-19, or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
- A member of the individual's household has been diagnosed with COVID-19.
- The individual is providing care for a family member or household member who has been diagnosed with COVID-19.
- The individual is the primary caregiver for a child or other person in the household who is unable to attend school or another facility that has been closed as a direct result of COVID-19, and such school or facility care is required for the individual to work.
- The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of COVID-19.
- The individual is unable to reach the place of employment because a healthcare provider has advised the individual to self-quarantine due to COVID-19 concerns.
- The individual was scheduled to begin employment and does not have a job or is unable to reach the job as a direct result of COVID-19.
- The individual has become the breadwinner or major support for a household because the head of household has died as a direct result of COVID-19.
- The individual has been forced to quit a job as a direct result of COVID-19.
- The individual's place of employment is closed as a direct result of COVID-19.
- The individual meets any additional criteria established by the secretary of labor.

Excluded from the PUA program are any individuals able to telework with pay or currently receiving paid sick leave or other paid leave benefits. Benefits under the PUA program are available for the duration of the covered individual's period of unemployment, partial unemployment or inability to work, beginning retroactively on Jan. 27, 2020, and ending on Dec. 31, 2020, up to a maximum of 39 weeks. People are not eligible for both state unemployment insurance and the PUA program.

All of these new programs and program enhancements will be run through state unemployment insurance agencies, so adjuncts and graduate assistants should check their state agency website for details on eligibility and applications. Adjuncts and graduate assistants will likely be eligible for PUA in every state once the program is set up, assuming they are presented with one of the COVID-19 circumstances described above. Otherwise-ineligible adjuncts and graduate assistants may still need to show they don't

have a contract or reasonable assurances of employment between semesters, but need not worry about establishing traditionally required work histories, or worry about being excluded under state law, as long as they can show one of the 11 COVID-19 reasons for their unemployment, partial unemployment or inability to work listed above.

### **HOW DO I APPLY FOR UNEMPLOYMENT BENEFITS?**

State-specific information on unemployment insurance and how to apply can be [found here](#). You can file online, over the phone or in person. States are currently dealing with an unprecedented number of applications online and over the phone, and some have recommended specific days of the week and blocks of time to apply depending on your last name. Members are also advised to be sure to save passwords when they apply for UI, as there have been ongoing issues with people being shut out of systems because they don't remember passwords. If you don't see updated information yet on your state website related to recent federal law changes, the Department of Labor says you should still apply. If you have already applied, then once your state updates its information, you will receive your full benefits or be notified that your state needs more information.

Adjuncts should apply in a timely manner, preferably the day the current term ends. You are eligible for benefits after your last day of employment. An adjunct's last day of employment is typically regarded as the last day of the semester or the last day of an adjunct's contract. It is very important that adjuncts applying for UI provide complete information regarding what you have been told by the college about the fall semester: whether your school will be closed, whether you have an assignment, whether your workload will be reduced, etc. This includes written and oral communications. You should collect any evidence that shows an assignment or appointment is tentative, or that the employer has indicated that fall semester classes are not assured. You should also have basic personal information (state ID, pay history, employment history, etc.), information about your employer, and information about any of the COVID-19 circumstances detailed above that could qualify you for a benefit under the new Pandemic Unemployment Assistance program.

Graduate assistants should likewise apply in a timely manner and gather the same information prior to applying as described above. Graduate assistants are much more likely to be ineligible for traditional unemployment insurance under state law, and therefore will likely rely more on the PUA program. This means they will need to link their unemployment, partial unemployment, or inability or unavailability to work to one of the 11 COVID-19 reasons detailed above.

PUA is generally not payable to individuals who have the ability to telework with pay, such as teaching classes online.

### **I WAS REJECTED FOR UNEMPLOYMENT IN THE PAST. SHOULD I APPLY?**

Yes, not only could you be eligible for PUA benefits, but even without COVID-19-related circumstances you may still qualify for full or partial benefits given the nature of higher education employment and the health crisis.

## **IN ADDITION TO MY ACADEMIC JOB, OR BETWEEN SEMESTERS, I WORK A PART-TIME, TEMPORARY OR "GIG" JOB THAT IS AFFECTED BY COVID-19. CAN I FILE?**

Yes, PUA is available for temporary, part-time or "gig" jobs affected by one of the 11 COVID-19 reasons detailed above and traditionally excluded from state unemployment compensation programs. This includes individuals who had a bona fide offer to start working on a specific date and were unable to start due to one of the COVID-19-related reasons. PUA is generally not payable to individuals who have the ability to telework with pay, such as teaching classes online, or who are receiving paid sick leave or other paid leave benefits. In its instructions to the states on the PUA program, the Department of Labor says, for example, a driver for a ridesharing service who receives an IRS Form 1099 is newly eligible for the PUA benefit "if he or she has been forced to suspend operations as a direct result of the COVID-19 public health emergency, such as if an emergency state or municipal order restricting movement makes continued operations unsustainable."

## **WHAT WILL MY BENEFIT BE?**

Weekly benefits are determined at a state level and depend on your wages over the past year. Most states have a benefits calculator on their website to provide you with an estimation of your benefit. Recently enacted federal law provides an additional \$600 on top of a state determined-benefit until July 21, 2020. Under federal law, individuals may receive a total equal to an amount that is 13 times their average weekly benefit (including the additional \$600 weekly compensation) in any single benefit year.

## **HOW LONG WILL MY BENEFIT LAST?**

Available weeks for regular state unemployment benefits vary, but states have been incentivized by the federal government to extend their maximum available weeks an additional 13 weeks. PUA benefits will be paid for a maximum duration of 39 weeks without a waiting period.

## **HOW SOON WILL I GET MY BENEFIT?**

It depends. States are currently handling an unprecedented number of applications, and PUA is not yet set up by the states. This is why it is important to file as soon as you are eligible. If you are eligible, you will be paid for all benefits due. The Department of Labor has instructed states that if an individual's eligibility for regular UI is questionable, then the state must first require the individual to file a regular UI initial claim. If the individual is subsequently disqualified, then the state may consider the individual for PUA eligibility. This could affect the processing of your claim and the speed with which you get your benefit. The Department of Labor advises to apply if you are unemployed, even if your state has yet to release information on the new federal law changes. If you have already applied, then once your state updates its information, you will receive your full benefits or be notified if your state needs more information.

## **WHAT IF I DON'T LIVE AND WORK IN THE SAME PLACE?**

You should file for unemployment benefits in the place where you work.

## **WHAT CAN MY UNION DO?**

Local unions and activists should continue to push state officials to take advantage of the new flexibility provided by the federal government and to allow as much participation as possible for union members and members of the public whose lives are affected by the coronavirus. This includes encouraging state leaders to:

- Clarify that the “reasonable assurance” test will not be used in PUA benefit determinations;
- Waive the one-week waiting period;
- Waive requirements that workers actively search for work;
- Ensure employers will not be penalized with higher UI tax rates in future years because of pandemic-related layoffs;
- Extend state benefits to provide for 26 weeks of UI; and
- Extend eligibility to workers reduced to part-time hours, and extend access to work-sharing programs.

Unions can also push state officials to quickly increase administrative capacity to handle the large number of claims and set up the PUA program. At the employer level, unions and members can push universities and colleges to agree not to protest unemployment claims from members affected by COVID-19.