

## Federal Coronavirus Aid to Independent Contractors

By Dan Eaton

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The Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 makes enhanced federally funded unemployment benefits available to a self-employed individual and others who “otherwise would not qualify for regular unemployment benefits.” Working as an independent contractor is one form of self-employment. The entitlement to unemployment benefits includes access to the federally funded \$600 per week of additional benefits under the “Federal Pandemic Unemployment Compensation” (FPUC) program.

Ordinarily, unemployment compensation benefits are limited to properly classified employees. By expressly extending these benefits to the self-employed, the law makes it unnecessary for a regulator to decide whether the worker should have been classified as an employee of the hiring entity instead.

To qualify for the additional \$600 per week in unemployment benefits, a displaced independent contractor, like a displaced employee, must self-certify they are otherwise able to work and available for work and are “unemployed, partially unemployed, or unable or unavailable to work” for one of about a dozen pandemic-related reasons. Someone diagnosed with COVID-19 qualifies, as does someone whose place of work has been closed due to the COVID-19 public health emergency. The supplement ends on July 31. Further information on the program is available on the California Employment Development Department’s [website](#).

Under California law, an eligible recipient may receive partial unemployment benefits for partial unemployment. The Labor Department’s recent guidance confirms that “if the individual is eligible to receive at least one dollar (\$1) of underlying benefits for the claimed week, the claimant will receive the full \$600 FPUC.” The EDD confirms this on its website, saying that a claimant will receive the \$600 supplement “as long as [the claimant is] eligible for at least \$1 in a regular payment each week.”

Be warned, however. A worker who idles himself just to access these federal benefits may be engaged in fraud and subject to repaying the benefits and to federal prosecution.

In addition to unemployment benefits for which they otherwise would not qualify, independent contractors are eligible for federally backed small business loans through federally insured financial institutions under a popular feature of the CARES Act labeled the Paycheck Protection Program. Independent contractors also are eligible for small business advances of up to \$10,000 directly from the Small Business Administration “to help overcome the temporary loss of revenue they are experiencing as a result of the COVID-19 pandemic” under the separate Economic Injury Disaster Loans program.

Separately, the Families First Coronavirus Response Act makes the self-employed sidelined for coronavirus-related reasons eligible for paid sick leave in the form of substantial refundable tax credits.

Many of the temporary rules developed in response to the rapidly moving coronavirus crisis are coming from the federal government, with its massive resources, and from state executive officials such as governors and regulators who can respond in real time to rapidly changing developments. That makes one of the best sources for information about the unfolding rules the daily newspaper and the best sources for guidance on those rules the frequently updated websites of federal and state labor agencies.

While the California Legislature is shuttered for now, California state and federal courts continue limited operations.

In an April 7 ruling, U.S. District Judge Vince Chhabria cited the temporary federal benefits to independent contractors in denying an emergency motion filed by a few Lyft drivers to require the company immediately to reclassify them as employees under AB 5, the new independent contractor law. The drivers argued immediate reclassification would enable them to earn paid sick leave under California law, without which they would feel compelled to work even with COVID-19 symptoms.

The judge saw the drivers' motion as a defective attempt "to capitalize on the coronavirus pandemic." In contrast to substantial federal benefits now available to independent contractors which may be jeopardized by reclassification, the judge observed that 41 percent of Lyft drivers qualify for no paid sick leave at all under California's paid sick leave law and many who do qualify are eligible for four hours of leave or less.

Even as he denied the drivers relief on technical grounds, however, the judge said he believed AB 5 required Lyft drivers to be classified as employees because "Lyft drivers provide services that are squarely within the usual course of the company's business, and Lyft's argument to the contrary is frivolous. But rather than comply with a clear legal obligation, companies such as Lyft are thumbing their noses at the California Legislature, not to mention the public officials who have primary responsibility for enforcing AB 5."

Policies to address coronavirus at all levels of government are temporary. Coronavirus itself is not known to leave lasting marks on the body. But coronavirus is destined to leave lasting marks on the law. Coronavirus is destined to leave lasting marks on everything.

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