

## Unemployment Benefits Now Available for Self-Employed Workers Under the CARES Act

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The federal Coronavirus Aid, Relief, and Economic Security (CARES) Act has expanded unemployment insurance benefits eligibility to include the “self-employed” through December 31, 2020. Now for the first time ever, New Jersey’s self-employed workers may qualify for unemployment insurance benefits.

Prior to the expansion of unemployment insurance benefits by the CARES Act, New Jersey did not provide unemployment insurance benefits for officers of a corporation or any person who owns more than a 5% equitable interest in a corporation. Thus, sole proprietors, shareholders and owners of various types of corporations were not entitled to unemployment insurance benefits under New Jersey law. There are some exceptions to this general rule, including if a corporation formally ceased operations and filed for formal dissolution under the New Jersey Business Corporation Act or filed for bankruptcy under Chapter 7 of the United States Bankruptcy Code.

The CARES Act does not define self-employed, but according to IRS regulations, there are multiple types of workers that fall into this category, including freelancers, independent contractors, sole proprietors and shareholders in a corporation. However, the CARES Act does not include a specific provision explaining how to calculate a self-employed person’s unemployment benefits. That formula is included in the Stafford Act, an emergency disaster relief act passed in May 2019 in preparation for circumstances constituting a national disaster, and accompanying guidance. Many of the Stafford Act unemployment insurance benefit provisions are contained in the CARES Act, including those related to the expansion of unemployment insurance benefits to the self-employed.

### **Calculating Unemployment Benefits for Self-Employed Workers**

The Stafford Act includes guidance on calculating unemployment insurance benefits for self-employed workers according to state of residence. That is, each state should determine a self-employed worker’s unemployment insurance benefit amount by using the state’s regular computation process for determining unemployment insurance benefits. However, without data from an employer, state departments of labor do not know how to calculate benefits for self-employed using their regular processes because that process is dependent upon information from the employee’s employer and/or the employee’s W-2 Form. Accordingly, most state unemployment online application forms request documents that the self-employed do not possess, such as a W-2 form, causing many self-employed to experience problems when applying for unemployment insurance benefits. One suggestion for those who are self-employed and filing for unemployment insurance benefits online is to upload a tax return instead of a W-2 form when asked for documentation about earnings.

Guidance from the United States Department of Labor has not yet been published to assist state labor departments in calculating unemployment insurance benefits for the self-employed, but is expected to be released later this week. In the meanwhile, many states are providing self-employed people with the minimum unemployment insurance benefit under the Stafford Act, rather than calculating their true benefit amount.

### **Minimum Calculation of Benefits Under the Stafford Act**

The Stafford Act calculates the minimum weekly benefit for the unemployed as half of the average unemployment insurance benefit per week in each particular state. So, the default position of the New Jersey Department of Labor when a self-employed person applies for unemployment insurance benefits may be to provide half of the average unemployment insurance benefit per week, at least until the federal guidance is published. Fortunately for the self-employed, they will also receive an additional \$600 per week through July 31, 2020, as provided for by the CARES Act, in addition to unemployment insurance benefits as calculated above.

**Takeaway: Self-employed workers can now receive benefits under the CARES Act.**

If you are an employer and need help navigating the CARES Act or any other employment laws during this COVID-19 crisis, contact [Stephanie Gironda](#) or any member of the Wilentz [Employment Law Team](#).

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