

# Guidance Document

*Pursuant to Neb. Rev. Stat. §84-901.03*

This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operation of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedures Act. If you believe that this guidance document imposes additional requirement or penalties on regulated parties, you may request a review of the document.

# PUA Eligibility in Accordance with UIPL 16-20, Change 5

## DISCLAIMER:

This Guidance Document is not intended to take the place of the law, but it is intended to provide individuals with a general understanding of some of the requirements related to eligibility for Pandemic Unemployment Assistance (PUA) in Nebraska. For additional information, individuals may consult the CARES Act (Pub. L. 116-136), the Continued Assistance Act (Pub. L. 116-260), and the corresponding federal Unemployment Insurance Program letters, or visit [dol.nebraska.gov](http://dol.nebraska.gov) where information is provided on the Nebraska Employment Security Law (NESL) (*Neb. Rev. Stat.* §§48-601 through 48-683), federal programs, and portions of the Nebraska Administrative Code related to NESL.

## **GUIDANCE DOCUMENT FOR IMPLEMENTATION OF UIPL 16-20 CHANGE 5.**

On February 25, 2020, the United States Department of Labor (USDOL) issued Unemployment Insurance Letter (UIPL) 16-20, Change 5, amending benefit eligibility provisions of the Pandemic Unemployment Assistance (PUA) program. Specifically, USDOL stated that the UIPL “expands PUA eligibility to include three COVID-19 related reasons for which an individual may self-certify ... when an individual is **directly affected** by the COVID-19 public health emergency.” [Emphasis supplied.]

1. The provisions of UIPL 16-20, Change 5, are specific to claims for PUA benefits and **do not** affect determinations of eligibility for regular state unemployment benefits (regular benefits). Determinations of eligibility for regular benefits based upon the circumstances of the individual’s separation[s] from employment during the individual’s base period, work search requirements, refusals of suitable work, and all other eligibility determinations under the Nebraska Employment Security Law will continue to be adjudicated in accordance with state law.
2. UIPL 16-20, Change 5, does not change or amend the PUA eligibility standards set forth in original UIPL 16-20, or Changes 1-4 to original UIPL 16-20, and those prior eligibility standards will continue to be followed.
3. In order to eliminate any confusion that may have resulted from inaccurate reporting, the restated self-certification provisions in UIPL 16-20, Change 5, **do not** change or amend USDOL’s prior interpretations of the provisions of subdivision (a)(3)(A)(ii) of section 2102 of the CARES Act regarding individuals who quit their employment “as a direct result of COVID-19.” UIPL 16-20, Change 5, amendments regarding workplace safety during the pandemic, are limited to certain individuals denied unemployment benefits for refusing to return to work or accept an offer of new work; they do not amend the provisions for determining if a separation from employment with an employer is or is not disqualifying.
  - a. Subdivision (a)(3)(A)(ii) of section 2102 provides that an individual is eligible for PUA benefits if the “individual ... quit his or her job as a direct result of COVID-19.”
  - b. However, quitting employment out of a generalized fear of exposure to COVID-19 at the worksite has not been recognized by USDOL as establishing eligibility for PUA benefits under subdivision (a)(3)(A)(ii) of section 2102.
  - c. In original UIPL 16-20, USDOL provided that there must be additional factors present in order to establish eligibility for PUA benefits under subdivision (a)(3)(A)(ii). The non-exclusive example provided in UIPL 16-20 was “An individual was diagnosed with

COVID-19 by a qualified medical professional, and although the individual no longer has COVID-19, the illness caused health complications that render the individual objectively unable to perform his or her essential job functions, with or without a reasonable accommodation.”

- d. Even the “expanded” reasons for refusing to return to work or an offer of new work provided in UIPL 16-20, Change 5, requires that the claimant is eligible only if they refuse to return to work or refuse an offer of new work because the worksite is not in compliance with local, state, or national health and safety standards directly related to COVID-19. Quitting employment or refusing an offer of new work out of a generalized fear of exposure to COVID-19 is not, in and of itself, sufficient to establish eligibility for PUA benefits.
4. The provisions of UIPL 16-20, Change 5, affect benefit eligibility for a limited set of PUA claimants. Those PUA claimants can generally be described as:
    - a. Claimants who refuse to return to work or accept an offer of employment due to unsafe working conditions,
    - b. Claimants employed by an educational institution or educational service unit, and
    - c. Claimants who experienced a reduction of hours or temporary or permanent layoff as a result of the COVID-19 public health emergency.
  5. Claimants who refuse to return to work or accept an offer of employment.
    - a. UIPL 16-20, Change 5, provides that:

[USDOL] approves the following COVID-19 related reason for an individual to self-certify for PUA eligibility: “The individual has been denied continued unemployment benefits because the individual refused to return to work or accept an offer of work at a worksite that, in either instance, is not in compliance with local, state, or national health and safety standards directly related to COVID-19. This includes, but is not limited to, those related to facial mask wearing, physical distancing measures, or the provision of personal protective equipment consistent with public health guidelines.”

- b. *Neb. Rev. Stat.* §48-628 currently provides that an offer of work is not suitable if returning to work or accepting the newly offered work would endanger the health of the claimant. A claimant who can establish that he or she has refused to return to work or accept an offer of new work because the worksite was not in compliance with local, state or national health and safety standards, has established good cause for failing to return to work or accept an offer of work under current Nebraska law, and the issue is necessarily adjudicated in determining eligibility for regular state unemployment benefits. Relevant considerations necessarily passed upon in determining eligibility for regular state unemployment benefits include any provisions of the local, state or national health and safety standard pertaining to facial mask wearing, physical distancing measures, and the issuance of personal protective equipment.
- i. While the provisions of UIPL 16-20, Change 5, regarding claimants who fail to return to work may affect PUA eligibility for claimants in some states, it does not impact PUA eligibility for Nebraska-based PUA claims because *Neb. Rev. Stat.* §48-628 already recognizes that a claimant has good cause to refuse to return to work or accept an offer of new work if the worksite is unsafe. The specific instances of health reasons described

in UIPL 16-20, Change 5, neither expand nor contract existing Nebraska law as applied to regular state unemployment or PUA claims.

- ii. For the sake of completeness, this guidance also addresses continuing PUA claims where the PUA claimant has refused an offer to return to work or accept an offer of new employment. NDOL has consistently applied the concepts of *Neb. Rev. Stat. §48-628* to PUA claimants during the course of their claims. If a PUA claimant refuses to return to work or accept an offer of work, the claim should continue to be adjudicated in accordance with the well-settled legal principles of *Neb. Rev. Stat. §48-628*, as existing state law already incorporates all the tenets of UIPL 16-20, Change 5, regarding refusals to return to work or accept new work.

6. Individuals providing services to educational institutions or educational service agencies.

- a. The USDOL approves the following COVID-19 related reason for an individual to self-certify for PUA eligibility:

The Department approves the following COVID-19 related reason for an individual to self-certify for PUA eligibility: “An individual provides services to an educational institution or educational service agency and the individual is unemployed or partially unemployed because of volatility in the work schedule that is directly caused by the COVID-19 public health emergency. This includes, but is not limited to, changes in schedules and partial closures.”

- b. The “expansion” of PUA eligibility described in UIPL 16-20, Change 5, regarding individuals providing services to educational institutions and educational service agencies is consistent with NDOL’s prior interpretations of PUA eligibility and no changes in adjudication standards are required.

7. Individuals experiencing a reduction of hours or a temporary or permanent layoff.

- a. [USDOL] approves the following COVID-19 related reason for an individual to self-certify for PUA eligibility: “An individual is an employee and their hours have been reduced or the individual was laid off as a direct result of the COVID-19 public health emergency.”

- b. This provision of UIPL 16-20, Change 5, establishes benefit eligibility standards for PUA claimants that are identical to those already applied by NDOL to regular state unemployment claimants. PUA claims involving an individual whose hours have been reduced or who was laid off from employment as a result of a partial closure of a worksite or place of employment should be adjudicated in accordance with the standards applied to regular state unemployment claims involving reduced hours or layoff as a result of a partial closure. For all weeks ending on or before December 26, 2020, all PUA claims involving a reduction in hours were adjudicated in accordance with UIPL 16-20, Change 5. All claims for weeks beginning on or after December 27, 2020, will be adjudicated in accordance with UIPL 16-20, Change 5. The adjudicator can “no issue” (need not formally redetermine) any week recertified that was correctly determined for a week ending on or December 26, 2020.

8. In order to promote program integrity and prevent fraudulent claims under the expanded eligibility provisions of UIPL 16-20, Change 5, the cross matches described on pages 13-15 of UIPL 16-20, Change 5, shall be performed prior to first payment of PUA claims based upon the expanded eligibility provisions of UIPL 16-20, Change 5. In order to prevent fraud and protect program integrity, when required under the Continued Assistance Act, income and identity verification shall be completed prior to payment of any week recertified.

9. UIPL 16-20, Change 5, generally allows PUA claimants to recertify denied weeks of their PUA claim if they were not allowed to choose multiple reasons for potential eligibility or any of the three additional reasons for PUA eligibility set forth in UIPL 16-20, Change 5. As a part of the crossmatch process encouraged under UIPL 16-20, Change 5, all previously denied weeks recertified under UIPL 16-20, Change 5, will be reviewed for compliance with the reemployment activities requirement applicable to PUA claimants for the week certified. Generally, five reemployment activities have been required for each week of each PUA benefits claimed for weeks beginning on or after July 12, 2020.

10. Notification Requirements:

In order to comply with the notice requirements of UIPL 16-20, Change 5, all individuals disqualified for any week prior to the availability of the full 14 reasons for eligibility on the base system weekly certification will be notified that they may recertify their eligibility for that week on a form placed on the website of the Nebraska Department of Labor. The form will allow a claimant to certify eligibility based upon any or all of the fourteen reasons specified in UIPL 16-20, Change 5. A separate certification must be made for each week previously denied.