

Unemployment for Treaty Fishers

The information in this article is not intended to be legal advice and you should not consider it legal advice. Reading this Article does not establish an attorney-client relationship. This Article is providing information only. You should contact an attorney for specific advice about your situation.

If you are a Treaty fisher and are either self-employed or an independent contractor, you may be eligible for unemployment benefits. Please read the following.

Due to COVID-19 Pandemic restrictions, Squaxin Treaty fishers and shellfishers (“fishers”) may have seen a decrease in treaty fishing income. Treaty fishers rely on this income to support themselves and their families. Their economic losses may have occurred due to falling markets, closed or delayed fisheries, and postponed openings. These losses may also occur due to social distance requirements or recommendations that limit the number of people per clam dig or per boat. Typically, no replacement income source is available to Treaty fishers in times of hardship. In response to the Pandemic, however, the federal government extended unemployment benefits to self-employed individuals and independent contractors through Pandemic Unemployment Assistance (PUA). Treaty fishers may be eligible for unemployment benefits as they are either self-employed or independent contractors.

Eligibility:

Are Treaty fishers eligible for unemployment benefits because of the COVID-19 pandemic, even though they are not employed by a government or business?

Generally, yes. The federal CARES legislation expanded unemployment benefits to freelancers, independent contractors, and other self-employed workers who have lost income due to the COVID-19 pandemic. This is called Pandemic Unemployment Assistance or PUA. This category includes Treaty fishers who have lost income sources due to the pandemic. Reasons may include closure of Treaty fishing areas, reduced sales of fish resulting in decreased income, or inability to participate in Treaty fishing due to a government isolation order.

I’m on the ABON program and receive Social Security Income (SSI) due to a disability while also participating in clam digs. Will claiming unemployment for my lost Treaty income harm my SSI benefits?

Possibly. Claiming PUA for lost Treaty fishing income may put you over the allowed monthly unearned income for SSI eligibility, and could result in a disruption in or termination of your SSI benefits. Additionally, there may be concerns about your ability to work under disability. You should contact a private attorney to discuss your situation. Northwest Justice Project assists low-income individuals with legal concerns, including SSI and unemployment, and can be contacted at 1-888-201-1014.

My Treaty fishing work is seasonal. I haven’t worked since last fall. My fishing season is supposed to have already started, but hasn’t yet, or was delayed or limited, due to the Pandemic. Am I eligible for PUA benefits?

Possibly. You must have been able to work but haven't due to the seasonality of the Treaty fishing and a delayed opening of the fishery for reasons related to the pandemic, and not for other reasons (such as an injury). On your application, use either the date that the fishery opened or the date that you were unable to fish or suffered a loss because of limits on fishing caused by the Pandemic, whichever is later. Benefits should be retroactive to either the date you first experience an income loss due to COVID-19 or February 2, 2020, whichever is later.

I am employed by the Tribe or another employer and also participate in Treaty fishing. Are PUA benefits available to me?

Not likely. In order to be eligible for PUA when you continue to receive one income source, your lost income must have been a substantial portion of your total income. You can use the Washington Economic Security Department's benefit calculator to determine if your lost income would result in eligibility for PUA. You can find this calculator at <https://esd.wa.gov/unemployment/calculate-your-benefit>.

If my Treaty business income is reduced, but not eliminated, am I still eligible?

Possibly. If your income is reduced as a result of the Pandemic but not entirely eliminated, you may be eligible for PUA benefits. Complete the claims forms discussed below.

PUA Application

Who administers PUA?

The Washington State Economic Security Department (WESD) administers both regular unemployment and PUA.

How do I apply for PUA benefits?

You must first apply for regular unemployment benefits. If you did not have an employer, WESD will deny your application. A denial may happen right away or could take several weeks. Once you've received the denial for regular unemployment benefits, you will need to apply for PUA by completing the COVID-19 PUA Claim. While you are waiting for a denial, you'll need to file a weekly claim as described below to maintain eligibility and receive retroactive pay.

You may apply for unemployment benefits at <https://esd.wa.gov/> or by calling 1-800-318-6022 (toll free). Additional information regarding unemployment related to COVID-19 (coronavirus) is located at <https://esd.wa.gov/newsroom/covid-19> and <https://www.esd.wa.gov/unemployment/self-employed>.

Use this step-by-step guide for completing the PUA claim form.

https://esdorhardstorage.blob.core.windows.net/esdwa/Default/ESDWAGOV/Unemployment/Guide_f_or_expanded_benefits_COVID.pdf

If I participated in Treaty fishing and am also employed full-time by the Tribe, do I have to include my employment with the Tribe on my application?

Yes. You must include on your application your employment with the Tribe and any and all other employment you've held in the last 18 months. If you do not and an award of benefits is later reversed,

you will likely have to pay back all unemployment benefits that should not have been awarded to you and may also be subject to penalties.

What documents do I need to submit to WESD to show proof of income?

You'll need to submit a 2019 federal tax document to support your claim (2018 tax documents won't be accepted). Such documents could be:

- 1040-Single Filing
- 1040 – Joint Filing
- 1040-SE3
- 1065 Schedule K-1
- W-2
- 1099-Misc
- 1125-E
- Schedule C
- Schedule F

I'm a Treaty fisher. I and didn't include my fishing income on my federal tax return and don't receive an IRS 1099 Form. Is there something else I can submit as proof of income? *The Squaxin Island Tribe Natural Resources Department can issue a Statement of Income to you that documents all Treaty fishing income you earned in January –December 2019. If you meet the other requirements of PUA but do not file a federal tax return, please contact Julie Owens to request a Statement of Income prior to applying for PUA. You'll need to upload the Statement of Income as part of the application process.*

Why am being asked for my employer's information when I don't have an employer?

The PUA application will ask for a list of your employers (in any state) for the last 18 months. If you've only worked for yourself for the last 18 months, select "No" for this question. If you've had an employer at any time during the past 18 months, list all employers as well as your self-employed status.

If I am waiting for a denial of regular unemployment benefits before I can complete the PUA claim form, do I need to do anything while I wait?

Yes. You will need to submit your weekly claim during this time period. If/when you are approved for PUA benefits, doing this will ensure that you receive pay dating back to the week that you were initially unable to work.

Is there a waiting period to receive PUA benefits?

No. Once approved, your benefits will be retroactive to the week that you were unable to work or February 2, 2020, whichever is later.

Payments:

How soon will I begin receiving unemployment benefits after I submit the PUA application?

It may take several weeks for WESD to verify, approve, and begin paying your claim. All benefits will be retroactive to the week that you were unable to work or experienced a loss in income.

Will I receive the extra \$600 per week under the federal CARES Act?

Yes. If you have been approved for unemployment benefits and that benefit is at least \$1 per week, you will receive the additional \$600 a week retroactive to March 29 or the week you became unemployed, whichever is later. This will automatically be included in your weekly unemployment benefit amount each week through July 25, 2020 or when you stop filing weekly claims, whichever is sooner.

Weekly Claims for Benefits

How long can I receive the PUA benefits?

You will receive the PUA benefits until one of the following happens, whichever is soonest: (1) December 30, 2020, (2) at the end of 39 weeks of benefits, or (3) you otherwise lose eligibility or fail to file a weekly claim, whichever occurs sooner. The extra \$600 per week ends July 24, 2020, but you'll continue to receive your calculated unemployment benefits amount for the remainder of your eligibility period.

Do I have to search for work through an employer while receiving PUA benefits?

Due to the pandemic closures, all work search requirements are waived and you are not required to search for work. However, when work search requirements are eventually required, you will have to search for work, either through an employer or through self-employment.

If I'm still receiving payments for services I rendered prior to the Pandemic, will that make me ineligible for unemployment in a given week?

Maybe. You'll need to report this income when you certify for the week. If you do not receive a PUA payment one week due to the income you received that week, you may still be eligible for ongoing benefits the following weeks.

I'm still receiving some income from clam digs, but less than I used to earn due to less frequent digs during the Pandemic. Do I still file a weekly claim?

Yes. You should continue to file weekly claims.

I had a period of lost treaty income related to the pandemic. I have since started earning treaty income again. Do I need to report the Treaty income I earn to Unemployment?

Yes. You are required to report all unearned and earned income, including any Treaty income earned in the benefit week. Failure to report income to Unemployment, including treaty income, may result in a repayment requirement and penalties.

Taxes and Repayment

Do I need to repay any unemployment benefits since I don't have an employer that pays into the unemployment system?

No. There is no repayment requirement for unemployment benefits (unless you are overpaid for some reason).

Treaty Fishing income is tax exempt under Section 7873 of the Internal Revenue Code. Do I need to pay taxes on the unemployment benefits that are replacing my tax-exempt Treaty income.

Yes. Unemployment benefits, including PUA, are taxable.

I've been notified that I received an overpayment and must repay all or a portion of the benefits I received. How did this happen?

An overpayment happens when unemployment or PUA benefits were paid and then the claim was retroactively denied or the award amount diminished. This can be a result of inaccurate information given in the initial application or the weekly claims or a calculation error. You will be required to repay any benefits overpayments. You may want to consult a private attorney concerning any request for repayment.

I've already started receiving PUA related to loss of treaty income due to the pandemic. However, I have not reported either earned income from employment or earned income from treaty income since I started receiving these benefits. What should I do?

You are required to report any earned and unearned income to WESD in filing your weekly claim. If you failed to do so, contact an attorney to determine how to report the error to WESD and what repayment requirements or penalties you may be responsible for.

I have additional questions and may need to contact a private attorney who specialized in unemployment. Who should I contact?

The Unemployment Law Project (888-441-9178) or the Northwest Justice Project (888-201-1012) may be able to assist. Both of these organizations provide legal advice and/or representation and well versed in Pandemic Unemployment Assistance benefits.