Unemployment Compensation (UC) for Individuals Affected by COVID-19

Unemployment Insurance Program Letter (UIPL) 10-20, released March 12, 2020

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Summary and Background

- Unemployment Insurance (UI) requires individuals to be able to, available for, and actively seeking suitable work.
- States have significant flexibility in implementing these requirements.
- An individual may be quarantined or otherwise affected by COVID-19 but still eligible for UC, depending on state law.
- The UI program is not intended to be used as paid sick leave.
“Unemployed” Status

- “Unemployment” includes a reduction of both work hours and earnings
- An individual receiving paid sick leave or paid family leave is still receiving pay and would generally not be considered “unemployed” for purposes of collecting UC

and
UIPL 08-98
“Able/Available/Actively Seeking Work” Requirement

- As a condition of eligibility for UC in any week, “a claimant must be able to work, available for work, and actively seeking work”
  - “Able and available” requirements were codified in federal regulation at 20 CFR 604.4 in 2007
  - “Able, available, and actively seeking work” requirements were inserted into Section 303(a)(12) of the Social Security Act (42 USC 503(a)(12)) in 2012
- Federal UC law makes some exceptions, such as for state-approved training or participation in the Short-Time Compensation program
“Able/Available/Actively Seeking Work” Requirement

20 CFR 604.5(a) Application—availability for work

A State may consider an individual to be available for work during the week under any of the following circumstances:

□ “(1) The individual is available for any work for all or a portion of the week claimed, provided that any limitation placed by the individual on his or her availability does not constitute a withdrawal from the labor market.”

□ “(2) The individual limits his or her availability to work which is suitable for such individual as determined under the State UC law, provided the State law definition of suitable work does not permit the individual to limit his or her availability in such a way that the individual has withdrawn from the labor market.”

□ “(3) The individual is on temporary lay-off and is available to work only for the employer that has temporarily laid-off the individual.”
“Able/Available/Actively Seeking Work” Requirement

20 CFR 604.4 Application—ability to work

(b) If an individual has previously demonstrated his or her ability to work and availability for work following the most recent separation from employment, the State may consider the individual able to work during the week of unemployment claimed despite the individual's illness or injury, unless the individual has refused an offer of suitable work due to such illness or injury.
State Flexibility within the Parameters of Federal UC Law

- States have flexibility to determine what type of work is suitable for an individual and what it means for that individual to be able, available, and actively seeking work even when quarantined or otherwise affected by COVID-19.

- The UIPL provides 3 examples that states may consider when reviewing their laws in light of COVID-19’s effects. Other scenarios than these may arise.
  - Scenario #1: Employer temporarily ceases operations
  - Scenario #2: Individual is quarantined and will return to employer
  - Scenario #3: Individual is not returning to the employer
Example for Assessing UC Eligibility

Scenario #1: Employer temporarily ceases operations

An employer or employing unit temporarily shuts down due to COVID-19 with the expectation that the individual will return when business resumes.

- Is the individual “unemployed”? Yes, state law may find that because the individual has reduced hours and pay, they are unemployed.

- Is the job separation allowable? Yes, federal law permits states to consider this a temporary layoff as the employer does not currently have suitable work and intends to call the individual back to work.
Scenario #1 (cont’d.): Employer temporarily ceases operations

An employer or employing unit temporarily shuts down due to COVID-19 with the expectation that the individual will return when business resumes.

- Is the individual “Able, Available, and Actively Seeking Work?” Yes, as provided under 20 CFR 604.5(a)(3), state law may find the individual meets these requirements if the individual is able & available to work for that employer once suitable work becomes available again and that the individual is taking reasonable steps to preserve contact with the employer.
Example for Assessing UC Eligibility

Scenario #2: Individual is quarantined and will return to employer

An individual is quarantined by a medical professional or under government direction, and the employer has instructed the individual to return to work after the quarantine is over or has not provided clear instruction to do so.

- **Is the individual “unemployed?”** Yes, state law may find that because the individual has reduced hours and pay, they are unemployed.

- **Is the job separation allowable?** Yes, federal law permits states to consider this a temporary layoff as the employer does not currently have suitable work and intends to call the individual back to work.
Scenario #2 (cont’d.): Individual is quarantined and will return

An individual is quarantined by a medical professional or under government direction, and the employer has instructed the individual to return to work after the quarantine is over or has not provided clear instruction to do so.

Is the individual “Able, Available, and Actively Seeking Work?” Yes, as provided under 20 CFR 604.5(a)(3), state law may find the individual meets these requirements if the individual is able & available to work for that employer once suitable work becomes available again and that the individual is taking reasonable steps to preserve contact with the employer.
Example for Assessing UC Eligibility

Scenario #3: Individual is not returning to the employer

An individual is quarantined or leaves employment due to a reasonable risk of exposure or infection (i.e., self-quarantine) or to care for a family member and either does not intend to return to the employer or the employer will not allow the individual to return.

- Is the individual “unemployed?” Yes, state law may find that because the individual has reduced hours and pay, they are unemployed.

- Is the job separation allowable? Maybe, state law will determine whether the separation here is a quit or discharge and whether the circumstances are allowable under the state’s good cause/just cause provisions.
An individual is quarantined or leaves employment due to a reasonable risk of exposure or infection (i.e., self-quarantine) or to care for a family member and either does not intend to return to the employer or the employer will not allow the individual to return.

Is the individual “Able, Available, and Actively Seeking Work?” Maybe, as provided under 20 CFR 604.5(a)(1), state law may find that the individual is still able, available, and actively seeking work that is suitable for an individual with these circumstances and that such a limitation does not constitute a withdrawal from the labor market.
Employer Charging

- When determining, in the context of COVID-19, whether certain unemployment benefits should be charged to employers, states should consider how to fairly distribute costs to employers.

- If states consider changing their laws to increase availability of UC in the context of COVID-19, they should also consider the impacts on trust fund solvency.
  - 21 states and jurisdictions are below the recommended solvency standard
  - Only 31 states meet the eligibility criteria for interest-free borrowing
Eliminating the Waiting Week

- The waiting week is a longstanding practice in the UI program that may give states time to assess eligibility and deter fraud.

- In light of the emergent need to cover individuals impacted by COVID-19 and to allow the UI program to act as an economic stimulus, states should consider temporarily waiving such requirements.

If a state triggers onto Extended Benefits (EB) while the waiting week is waived, they will not be reimbursed for the first week of all EB claims

*(Section 204(a)(2) of the Federal-State Extended Unemployment Act of 1970)*
The Short-Time Compensation (STC) program can be an important tool for employers whose business temporarily declines as a result of a downturn in the economy or other circumstances.

**What does it do?** Employers with a state-approved STC plan can reduce the hours of their employees in lieu of layoffs, while permitting these employees to receive payment for partial unemployment.

**Advantage for Employees:** They do not suffer a complete loss of income and are paid STC when their hours are reduced.

**Advantage for Employers:** They are able to reduce labor costs for the period while still maintaining their skilled workforce.
Email covid-19@dol.gov with your questions

CC to your regional office

If proposing changes to state laws or rules, include your Division of Legislation state team member (Regions 1 and 6 roberson.Nicole@dol.gov; Regions 2 and 5 massey.steve@dol.gov; and Regions 3 and 4 wells.agnes@dol.gov)

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Unemployment Compensation for Individuals Affected by the Coronavirus Disease 2019 (COVID-19)


State Unemployment Insurance Fund Solvency Report (PDF)

Provides assistance in evaluating a state’s trust fund solvency


Guidance on Short-Time Work

WorkforceGPS Landing Page

https://stc.workforcegps.doleta.gov/UIPL22-12, plus Change

Thank You!

WorkforceGPS
Navigate to Success

Need help? Email: Support@workforceGPS.org
Any Questions?

Please send your questions to covid-19@dol.gov