

## UNEMPLOYMENT INSURANCE DURING COVID-19

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### TYPES OF NYS UI AND FEDERAL UI COVID-19 RELIEF

1. **Regular Unemployment Insurance (UI).** Many people may be eligible, and you can now make one application for UI and Pandemic Unemployment Assistance, which will be considered for UI first;
2. **Pandemic Emergency Unemployment Compensation (PEUC)** (for individuals who were recently on UI but who exhausted their benefits)
3. **Pandemic Unemployment Assistance (PUA)** is only for individuals who are ineligible for UI benefits. This includes those with prospective work income only such as students, self-employed workers, and genuine independent contractors (as opposed to employees who are eligible for UI even though their employers misclassify them as independent contractors, as is common in the “gig economy”.)
4. **Pandemic Unemployment Compensation (PUC)** is an additional \$600/week, even if this actually takes the claimant above the amount they were earning). It is applicable to all of the above. So is the extension of eligibility duration, with 13 extra weeks on the back end and no benefitless “waiting week” up front for all Covid-19 crisis related cases—although some DOL postings still make reference to the waiting week.

## REGULAR NY UNEMPLOYMENT BENEFITS

### Basic UI eligibility

- Must be monetarily eligible for benefits
- Must have lost job through no fault of your own
- Must be capable, available and looking for work. (DOL has tweeted that if you would be available and looking for work but for Covid-19, you should answer yes, but has also given other, inconsistent answers. Three documented but hopeless inquiries about available work per week should qualify as an abundance of caution. )

### Examples of Eligibility for Regular UI

- Business closed and laid off or furloughed workers
- Worker's business closed down and their child's school closed down (they can still look for work from home)
- Grocery store worker who has diabetes, asthma or other medical condition that puts that at risk for illness or death asks for a leave and quits for good cause
- Uber driver who has a lack of work due to crisis

### Monetary Eligibility

To qualify for regular UI benefits, you must meet all three of the following earnings requirements during one of your base periods (*basic*, first 4 of the previous 5 quarter years, or *alternate*, last 4 of the previous 5 quarter years).

- You must have worked and been paid wages in jobs covered by Unemployment Insurance in at least two calendar quarters
- You must have been paid at least \$2,600 in one calendar quarter:
- The total wages paid to you must be at least 1.5 times the amount paid to you in your high quarter.

To satisfy these requirements, or to increase your benefit level based on higher earnings, you can request that your *alternate* instead of your *basic* period be used to establish eligibility and benefit rate. You can find the form for this at <https://labor.ny.gov/formsdocs/ui/claimant-forms-and-publications.shtm>, but you will need to print it out, sign it, and mail it in.

### Benefits for Regular UI

are usually about half your average weekly wage, calculated based on the highest earning quarter in your "base period" (the last four or the first four of the five quarter years immediately preceding the quarter in which the application is made). The calculation is based on wages reported on W2s (although someone whose earnings should have been so reported has a chance to qualify by showing this). The minimum is \$104/wk, the max is \$504/wk. With the recent Federal CARES Act you now should get an additional \$600 in Pandemic Unemployment Compensation (PUC) on top of your regular benefit rate, from April 5 through July 31, 2020. It is harder to determine the benefit rate for workers who do not consistently get the same earnings. The NY DOL has an estimation tool at: <https://labor.ny.gov/benefit-rate-calculator/>

No matter how long it takes you to get through to apply, your benefits should be retroactive to your first week of unemployment, with no benefit-less "waiting" week, and they should last up to 39 weeks.

### Frequently asked questions about Regular Unemployment Insurance

- Q. *My most recent job paid more than my previous jobs - can I get a higher benefit rate?*
- A. Yes. By choosing the alternate base period (which includes the most recently completed quarter) you may bring your benefit rate up. Request the alternate base period within 10 days of the date of the monetary benefits determination (MBD) sent to you by the DOL. The MBD tells you how.
- Q. *My hours were reduced, am I eligible for regular UI?*
- A. You can get partial benefits if you worked fewer than four days and made less than the maximum benefit rate (\$504) in a given week. Beware! Under NY's partial unemployment law (the worst in the nation), any work, even for a few minutes a day, counts as a day of work. To the extent possible, concentrate your part-time work into a minimum of days.
- Q. *What if I'm not a citizen?*
- A. If you are a permanent resident or had work authorization (e.g. DACA) during the relevant base period and continue to have work authorization, you may be eligible for traditional UI. In the past H1B visa holders (and others who have work authorization tied to one particular employer) have been held to be unavailable for work and thus ineligible. Arguably, these type of visa holders may be available if temporarily furloughed. If you did not have work authorization before, but you have it now, you may be eligible for PUA. Receiving UI or PUA does not make you a "public charge" and should not prejudice your immigration status in any way.
- Q. *I have incorporated a business, or I have an S corporation. Am I eligible for UI?*
- A. If you have a part-time home-based business, you may be ineligible on the days that you are working. If your business is closed, you may be eligible. If you are not eligible for regular UI, you might be eligible for PUA (more below). Also, a person whose business is dormant or has closed down may also be eligible for regular UI.
- Q. *If I live in one state and work in another where should I apply for unemployment?*
- A. You should apply in the state that you work not where you live. If you work in more than one state, you have the choice of applying in either. Most states around NY (including NJ) have higher benefit rates, so you may want to apply in the other state.
- Q. *The questions on NYS unemployment application don't apply to me because I don't have a single employer/am paid through 1099s. How should I answer the questions or document my income?*
- A. If you have been paid by several employers your W-2 employers usually show up and you should be able to write in at least one of your 1099 employers in the application. If you have been misclassified as an Independent contractor, you can send/fax in a reconsideration form and attempt to have your income counted. However, if you are a legitimate Independent Contractor, you will receive a monetary benefit determination with 0 benefits, you may be eligible for PUA.
- Q. *What is an employer hired me, but has given me no hours?*
- A. No hours equals no work, equals no barrier to eligibility for unemployment benefits.
- Q. *What if I'm afraid my employer will retaliate against me for applying for benefits?*
- A. That kind of retaliation is illegal, but enforcement is frankly weak. You will need to make your own risk assessment of your particular situation.

## Applying For NY UI, the basics

- **By last name**, because the New York Department of Labor (NYSDOL) is overwhelmed.
  - A-F on Monday, G-N on Tuesday, O-Z on Wednesday,
  - and anyone that missed their day, on Thursday through Saturday.
- **Online**, if you can, because getting through to apply by phone is very difficult.
  - at <https://labor.ny.gov/signin>
  - or with new merged UI/PUA application <https://apps.labor.ny.gov/OnlineServices/Ext/onlineforms/>
  - beginning with setting up a NY government ID, for which you need an email address.
  - using the step-by-step process explained at:
    - <https://www.labor.ny.gov/ui/pdfs/Unemployment-Filing-Instructions.pdf>
    - <https://maketheroadny.org/unemployment-insurance-and-covid-19/>
    - <https://maketheroadny.org/seguro-de-desempleo-y-covid-19/>

### By phone if you cannot do so online.

- at 1-888-209-8124
- M-Th 8am - 7:30pm, Friday 8am - 6pm, Saturday 7:30am - 8pm
- You may have to call hundreds of times and/or await a callback. See next page.
- **Translation Services** if you file by phone: Use your phone keypad to enter the phone number for the language you choose, a voice recording will then offer you choices.
- **TTY/TDD for Hearing Impaired:** 888-662-1220 and ask operator to call Telephone Claims Ctr. 888-783-1370

### **Be prepared in advance, using the following checklist, either way.**

Gather information on each employment for the past 18 months (October 2018 - today)

Employer name  
Employer address  
Employer identification number (listed as “EIN” on a W2 form)  
Any paystubs you have  
The total amount you were paid for each Quarter from 10-1-18 to 3/31/20.

Have other personal information ready at hand

Your driver’s license number  
Your social security number  
For Non-U.S. Citizens, Your Alien Registration (A) number, if you have one.  
A phone number  
An address where you can receive mail  
Your bank information, if you have a bank account  
Routing number (the first 9 numbers at the bottom left corner of a check)  
Account number (the second set of 9 numbers at the bottom left corner of a check)

**If you have filed for UI in New York in the past**, you will need the four-digit PIN you created last time you applied. If you forgot your PIN, you can reset it by calling (888) 209-8124 and selecting “for PIN or address changes.”

**More info** in UI Claimant Handbook, available at <https://labor.ny.gov/formsdocs/ui/TC318.3e.pdf>

in Albanian, Arabic, Bengali, Chinese, French, Haitian Creole, Italian, Korean, Polish, Russian, Spanish.

And in answers to Frequently Asked Questions at <https://labor.ny.gov/ui/faq.shtm>.

### **Applying and Certifying Weekly for Benefits, problems.**

Weekly certification to claim benefits for each week should begin as soon as you are able to complete an application and continue as long as you are trying to get benefits, even if you are waiting for DOL or have gotten a denial but are not giving up. You can certify at [www.labor.ny.gov/signin](http://www.labor.ny.gov/signin) , or call 888-581-5812 for UI, or call 833-324-0366 for PUA. If you've been unable to certify, request certification of missed weeks supplying name, last 4 digits of SSN, relevant dates, and reason you did not claim sooner

- by secure message function from your account
- and/or by fax to 518-457-9378
- And/or my mail to NYS Dept. of Labor, PO Box 15130, Albany, NY 12212-5130

DOL says fixing the retro may take up to six weeks, but enabling you to certify going forward should not.

If you are not getting through to apply, or to deal with a problem, you can:

- Keep a log of your efforts, and do not stop if you have not gotten a claim confirmation number.
- Enlist the help of your NYS Assemblymember and/or Senator, identifiable at <https://nyassembly.gov/mem/search/> and <https://www.nysenate.gov/find-my-senator>.
- Complete and submit a form available at [www.schumer.senate.gov](http://www.schumer.senate.gov) (select "Help for New Yorkers", then "Help With a Federal Agency", then "Other").
- Call the Governor's office, 518-474-8390.
- Tweet your problem to <https://twitter.com/NYSLabor>.
- Call the Claimant Advocate office at 855-528-5618.

Even if you are desperate for a call back, be careful that it is from DOL and not an identity thief.

- If the call does not come from 518-704-2704, it *may* yet be authentic.
- The caller should be able to identify the filing date and type of your claim (UI or PUA).
- You should not be pressed for more than the last four digits of your Social Security Number.
- If you need to provide bank info or the like, arrange to do so via the secure message function.

If you get a determination on your eligibility or your benefit amount that you think is wrong, you can request reconsideration within 10 days (which is especially useful for problems with your Monetary Benefit Determination, which comes with a reconsideration request form), or you can request a hearing within 30 days. Hearings have been suspended but will probably begin again in late May. At that point, they will be by phone, and there will be a backlog.

### **PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION (PEUC)**

This is a product of the Coronavirus, Aid, Relief & Economic Security (CARES) Act. If you have exhausted your 26 weeks of regular UI after 7/1/19, and you are still within 365 days of the claim that produced those benefits, you are eligible to restart benefits for up to 13 weeks with the same enhancements as otherwise. The feds say there should be an application but

NYS says just start recertifying weekly on your old claim. In practice, there have been major problems with implementing this.

Certification instructions for claimants who exhausted benefits: <https://twitter.com/NYSLabor/status/1251496163641110530/photo/1>

## PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA)

**Eligibility** for benefits from 1/27/20 - 12/30/20 is provided by PUA (also created by CARES), for individuals who are:

- Already wholly or partly unemployed and working less than four days a week. (Wait for it to happen before applying.)
  - unable or unavailable to work because of the COVID-19 public health emergency,
  - and are not otherwise eligible for benefits, such as individuals
    - who have exhausted their regular benefits and/or PEUC, or
    - who are not traditionally eligible, such as
      - **the self-employed**
        - Although this is subject to confirmation as cases are processed), you can receive PUA while still getting any amount of self-employment income, as long as you are getting less than \$504 weekly *in W2 wages*. These results seem to be dictated less by logical consistency than by the fact that with PUA, the state is putting purely federal dollars into the state economy.
        - When applying, list one employer, named “self-employed. For help, see Detailed instructions for applying as a self-employed claimant can be found online at: <https://www.labor.ny.gov/ui/pdfs/self-employed-ui-guide.pdf>
      - **independent contractors** (real ones, not misclassified employees),
      - **those with insufficient work history.** (PUA eligibility requires *no minimum* earnings prior to application, very unlike regular UI.)
- and, due to Covid-19, have lost *some* work.
  - Due to Covid-19 means: diagnosed, symptomatic and seeking diagnosis, having a household member diagnosed, being primary caregiver for a child whose school or facility is closed, unable to reach work because of quarantine or medical advice, replacing a breadwinner who died, having quit as a direct result of Covid, having lost work when the business closed, or “affected” by Covid while self-employed, or independent, or having insufficient work history, or having difficulty in seeking part-time employment, or otherwise not qualified for UI.
  - The work lost may even be prospective work for which there was a bona fide job offer, Even students who have lost jobs that would have been their principle source of income may qualify.
- and who do NOT
  - do not have the ability to telework with pay (actually meaning the current opportunity, rather than the capacity, to telework with pay; this is tripping up many applicants); and
  - do not still receive paid sick leave or other paid leave benefits (apply after they run out).

As of 4/20, there is a combined UI/PUA application, and you no longer must have been turned down for regular UI *before* applying for PUA.

**Benefits under PUA basically consist of:**

**For a period** of up to 39 weeks (26 + 13) between 1/27/2020 and 12/30/2020, including full retroactive for unemployment beginning on or after 1/27/2020, with the usual unpaid “waiting week” waived, and with previously assessed penalty days waived as of 5/13/20 until the end of the pandemic crisis

**benefits at a combined rate of:**

*\$600/week worth of Pandemic Unemployment Compensation (PUC) ON TOP OF the standard weekly benefit rate (WBR, a.k.a. weekly benefit amount WBA), is calculated like UI at about half of an average earning rate, but it is based on all earnings rather than just employee wages, net rather than gross, and using calendar year 2019 as the “base period”. The maximum WBR is equal to the maximum UI benefit amount under the state program, which is currently \$504/week in New York. The minimum WBA under PUA is equal to 50% of the average weekly payment of regular UI in the state, as determined on a quarterly basis, which means it is currently \$182/week in New York, higher than the state minimum of \$104/wk, and this is the WBA for a claimant who submits no evidence supporting a higher amount.*

*Evidence of non-W2 earnings during 2019 can be most readily shown with a tax return. However, other acceptable forms of proof include check stubs, bank receipts, business records, ledgers, contracts, invoices, and billing statements. Evidence should be supplied within 21 days of the application, but additional documentation supporting a recalculation of the benefit amount can be submitted later at any time.*

New PUA section of DOL website:

<https://www.labor.ny.gov/ui/pandemic-unemployment-assistance.shtm>

Processing of PUA applications has been very slow, but as of 4/22 we'd started seeing approvals.

If you think you *might* be eligible, you will lose nothing but some time and effort by trying, as long as you are truthful in your application. The one exception to that statement, if you are a sole proprietor, is that, having qualified for PUA on the ground that you are not keeping your business going, you may then be unable to get a federal PPP loan to keep your business going.

### **INVISIBILITY OF ECONOMIC STIMULUS PAYMENTS**

These one-time federal payments are NOT wages and do NOT affect your eligibility for unemployment benefits of any kind, NOR the amount of your benefits. It also does not count as income, nor as a resource for 12 months after the month you get it, for purposes of Medicaid eligibility and other programs with income and resource limits such as SSI.

### **REPLACING EMPLOYMENT BASED HEALTHCARE COVERAGE**

If you are losing your health insurance along with your job, your employer should continue it until offering you the chance to continue it at your own cost under the federal COBRA statute. If you cannot afford that, the enrollment period to purchase coverage on the State marketplace has been extended to June 15. <https://nystateofhealth.ny.gov> If you cannot afford that, either, you can apply for Medicaid for yourself, and your family if you have one. If you cannot get that, either, you can apply to enroll in NYC Care for a discounted rate for services from NYC Health & Hospitals. Because this is a City program, you can start by dialing 311.



## PARTIAL UNEMPLOYMENT V. THE SHARED WORK PROGRAM

An employer can always reduce employees' hours in a non-discriminatory fashion if there is no union contract or other agreement to the contrary. An employee can then always apply for partial UI benefits if no longer working four days and no longer earning \$504 in a week. Or, what is more likely in such a scenario, the employee can quit with good cause if the wage cut is more than 10%, and collect full UI benefits while looking for another job.

The Shared Work Program is an alternative way to manage cutbacks. For an entire company, or for some distinct portion of the company designated by the employer, as long the designated entity has at least two full-time employees and is retaining at least 80% of the employees, a qualifying employer can submit a plan to the Department of Labor to reduce the employees' hours anywhere from 20%-60%, and have those employees collect unemployment for the difference—including at present the \$600/week PUC on top of whatever they would otherwise collect. None of the employees designated to participate in the plan can be a corporate officer. Such a plan is good for 26 weeks, and can be renewed. It needs to be submitted to the DOL 1-4 weeks before its effective date. To qualify for this option, the employer must, for four consecutive quarter years, have paid UI contributions to the state or have chosen to reimburse the state for benefits paid to its former employees. Some employers have apparently been given a hard time when the DOL insists that the relevant EIN is the one for the employer's payroll company. For an explanatory video, a thorough FAQ, or an application form, go to <https://dol.ny.gov/shared-work-program-0>

## RETURNING TO WORK

When your boss talks about coming back into the workplace, you may wonder whether you can say no and continue to receive benefits. The references included in the following are the numbers of UI Appeal Board decisions accessible online at <https://uiappeals.ny.gov/searchdecisions>. First, For refusal of an offer of work—part time or otherwise—to be disqualifying, it must first be an unconditional offer of a specific job on a definite date, and not just a general statement of interest inviting the claimant to inquire. AB 541821.

Page 26 of the handbook provides two cutoff amounts below which one need not accept employment, depending on whether you are within, or after, the first 10 full weeks of benefits. Within 10 weeks, you can refuse work if it will not pay at least 90% of the UI prevailing wage for a given occupation (listed on the DOL website). After that, for the job to be mandatory, it must also pay at least 80% of your high quarter base period earnings. Nothing is said in the handbook about being able to refuse work that would pay below your benefit rate, nor is there anything there distinguishing an offer from the previous employer that might be used as an end run around the right to a non-disqualifying quit in the face of reduced terms and conditions. However, these points are addressed in Appeals Board decisions. An offer from the previous employer to rehire, but not to restore to the same job with the same conditions [cannot effect an end run on the rules permitting a quit in the face of a change in terms and conditions, and it] may be refused without disqualification, without reference to the effect the partial employment would have on claimant's eligibility and overall income level. AB 55041, 57557, 542048. A specific and unconditional offer of part time employment from someone other than the former employer will be subject to the analysis set forth in *Matter of Scranton*, 12 NY2d 983. Refusal of such an offer is non-disqualifying if acceptance would cause a loss of income relative to full benefits for total unemployment on account of 1) a complete loss of eligibility due to acceptance (e.g. due to a partial schedule on each of four or five days), or 2) a partial loss of eligibility such that

earnings plus remaining partial benefits would total less than the claimant's benefit rate for total unemployment (e.g. due to hours worked three or less days a week).

Even if the other terms are right, you have good cause to refuse, just as you would have good cause to quit if you were on the job already, if you have genuine and reasonable fears, based on specific facts such as the employer's refusal to commit to necessary safety measures, that the employment would be harmful to your health. Having good cause that qualifies you for benefits does not depend on being advised by a doctor to stay away, although such advice where it exists is obviously powerful evidence in your favor. Good cause may, however, depend on your having made reasonable efforts to get the boss to correct the risk(s). What efforts are reasonable will depend on the amount of effort required and the chances of success. Healthy workers in a New York plant where mercury poisoning made others sick were not required to wait for a clean-up. A useful overview, which is applicable in broad strokes in NY, even though it is from PA and gives specific cites to PA law, can be found at: <https://clsphila.org/wp-content/uploads/2020/05/Checklist-for-Returning-to-Work-During-Coronavirus.pdf>

#### HELPFUL LINKS/GUIDANCE

- <https://www.labor.ny.gov/ui/pdfs/ui-covid-faq.pdf>
- <https://labor.ny.gov/benefit-rate-calculator/>
- <https://labor.ny.gov/ui/cares-act.shtm>
- <https://labor.ny.gov/ui/pdfs/self-employed-ui-guide.pdf>  
(only for people who have only had self employment for the last 18 months)
- Online issues FAQ: <https://www.labor.ny.gov/ui/claimantinfo/sign-in-faq.shtm>
- Blog: <https://www.korderlaw.com/2020/05/unemployment-insurance-covid-19-and-ppp-loans/>
  
- Here are some of the legal help providers who post additional info on their websites and/or have hotlines that you can call for free individual legal advice or representation:
  - Legal Services NYC ; [www.legalservicesnyc.org](http://www.legalservicesnyc.org) ; 917-661-4500
  - UAC; 646-481-8164 UI/PUA for questions; 212-998-6568 for representation
  - Volunteers of Legal Service ; [www.volsprobono.org](http://www.volsprobono.org) ; 347-521-5720
  - Brooklyn Law School PERC (law students starting 5/25/20) ; intake form at <https://docs.google.com/forms/d/e/1FAIpQLSeTInXLRmt3Gol0auXrHeVBMY0faR3psEMHRIEwdx6X6-MmHQ/viewform>
  - NYLAG ; 929-356-9582, 10-1, M-F; or <https://www.nylag.org/hotline/> or <https://www.nylag.org/van> for appointment with mobile center
  - Brooklyn Defender Services ; 646-971-2722 or [communityoffice@bds.org](mailto:communityoffice@bds.org)
  - Legal Aid ; 888-663-6880, 10-3, M-F