

Understanding Unemployment Benefits and Paid Sick Leave Amidst COVID-19



Frequently Asked Questions

ACNJ conducted a survey to evaluate the impact the COVID-19 pandemic has had on the child care community to date. To address the concerns raised, we held multiple Q&As with leading authorities to help navigate the resources available to the child care community. Following is a list of questions from the surveys and Q&As, as well as emails, conversations with members in the community and information found on the [New Jersey Child Care for COVID-19 website](#).

Regular Unemployment Insurance (UI) Benefits

Eligibility Criteria:

- Worked 20 weeks @ \$200+ per week or earned \$10,000 in base year

Weekly benefits:

- 60% of average earnings, max of \$713 per week
- Partial benefits for 20% (or greater) reduction in hours
- 26 weeks max

Apply online at www.nj.gov/labor

- Straightforward layoffs – should be processed quickly
- Terminations, voluntary quits, etc. – may experience some delay
- Must claim benefits each week

Three new unemployment programs

1. Federal Pandemic Unemployment Compensation (PUC)

- During the period of: week ending March 29, 2020 to week ending July 25, 2020
- Provides an additional \$600 flat amount to everyone getting unemployment benefits: “Regular” UI, PUA, partial UI/PUA, PEUC (but not

ABT)

- No separate application
- Automatic payment (payment is separate from regular UI or PUA)
- First payment - week of April 14, 2020
- Does not affect eligibility for Medicaid or Children’s Health Insurance Program
- No recoupment of PUC benefits for overpayments

2. Pandemic Unemployment Assistance (PUA)

- Must first apply for regular UI then denied to be considered for PUA
- During the period of: January 27, 2020 to December 31, 2020 (possible retroactive benefits)
- Max of 39 weeks, paid weekly
- Weekly benefit rate = minimum ~\$200/week, max \$713
- Partial PUA available
- For workers unemployed (or under-employed) due to COVID-19 and ineligible for regular UI:
 - * self-employed
 - * independent contractors
 - * “gig” economy employees (*should be eligible for regular UI)
 - * people unable to start a new job due to the pandemic
- Persons who are otherwise not eligible for regular unemployment benefits (like insufficient base year earnings)

3. Pandemic Emergency Unemployment Compensation (PEUC)

- During the period of: week ending April 5, 2020 to December 31, 2020
- Additional 13 weeks of unemployment benefits
 - * Regular UI claimants now eligible for 39 weeks instead of 26 weeks
- Application uncertain – check NJDOL website for updates: <https://www.nj.gov/labor/>

- Available to those who exhausted benefits after July 1, 2019
 - o States have to notify those who may be eligible
 - o Claimants will get PEUC first, then (potentially) PUA
- Still have to meet eligibility criteria (with some flexibility)

Frequently Asked Questions Related to Unemployment Benefits

1. Can non-profit religious-based preschool employees receive unemployment insurance?

These employees should be eligible for Pandemic Unemployment Assistance.

2. Who qualifies for the additional \$600 per week?

The \$600 additional payment is for those receiving regular Unemployment, including any state (Extended Benefits) or federal extension (Pandemic Extended Unemployment Compensation), those receiving Pandemic Unemployment Assistance (PUA), and those paid through Trade Act (TRA). Regular Unemployment payments include those with federal or military wages as well.

3. Are staff eligible for the additional \$600 unemployment insurance if their work hours have been reduced?

Anyone receiving unemployment, Pandemic Unemployment Assistance, or partial benefits under either of those programs will be eligible for Pandemic Unemployment Compensation (the extra \$600/week until 7/31/20). These \$600 payments are automatic.

4. If an employer lays off employees in April or May, will the employees still qualify for unemployment and will they receive the additional \$600?

In New Jersey there are set requirements to determine the validity of a claim. If you do not have a valid claim, then your claim will be evaluated for Pandemic Unemployment Assistance (PUA). Whether receiving Unemployment or PUA, you will be eligible for the \$600 additional payment.

5. Can a family child care provider, who is self-employed and receives a 1099, collect unemployment? Is the process for applying different? What benefits will they receive?

Anyone self-employed, or paid through a 1099, who does not meet the qualifications for a regular unemployment claim, may be eligible for Pandemic Unemployment Assistance (PUA). The instructions on how to file for PUA is available [here](#). The claimant must first be denied regular unemployment before being considered for PUA.

6. Can business owners, who are not on payroll, qualify for unemployment?

Business owners will not qualify for unemployment; however, they may be entitled to Pandemic Unemployment Assistance (PUA). They would still need to file a claim for unemployment and be denied first in order for their application to be considered for PUA.

7. Is unemployment insurance charged to an employer?

An employer's tax experience rating may be affected by the receipt of unemployment benefits by an employee or former employee, but tax impact depends on the particular circumstances of the case.

8. Can a person collect unemployment if state unemployment insurance was never withdrawn from his/her salary?

It depends. A worker in this situation should apply for UI benefits, and the NJDOL will investigate the matter to determine whether or not the worker is eligible for benefits. The worker will have to supply documentation regarding the employment.

9. Can employees who receive a 1040 qualify for unemployment?

Yes. If you are working in covered employment you may be entitled to Unemployment.

10. Can an employee apply for unemployment if the employer has not issued a 1099?

A 1099 worker is generally an independent contractor; not an employee (unless they've been misclassified). Independent contractors experiencing unemployment or under-employment related to COVID-19 may be eligible for PUA benefits. The worker should go ahead and apply for benefits, even if they don't have the 1099 yet.

11. If an employee, such as a pregnant employee, quits her job due to COVID-19 concerns, can she collect unemployment?

Potentially, this would require adjudication to determine eligibility for Unemployment or Pandemic Unemployment Assistance.

12. Can an employee collect unemployment if they have been laid off, then subsequently offered their job back and they then reject the offer?

Potentially, this would require adjudication to determine eligibility for Unemployment or Pandemic Unemployment Assistance.

13. Can an employee of a center that closed prior to Executive Order 110 and was laid off receive unemployment if the center reopens to provide child care to essential service employees, but the employee does not wish to return to work?

Potentially, this would require adjudication to determine eligibility for Unemployment or Pandemic Unemployment Assistance.

14. An employee has been laid off, then is rehired after their employer received a loan through the Payroll Protection Program, and then laid off again when the loan runs out eight weeks later. Can the employee re-apply for unemployment?

You are able to reopen your unemployment claim as many times as necessary during the one year benefit period.

15. How should an employer proceed if their center closed because of Covid-19 but hopes to reopen when allowable?

While an employer is not paying an employee, the employee should apply for benefits. If the center later reopens and calls the employee back to work, s/he may or may not be eligible for continued benefits, if s/he chooses not to return to the job. Such a determination requires a fact-specific analysis – it depends on the particular circumstance of the case.

16. If a person is denied unemployment, what is the appeals process?

A claimant who receives a Notice of Determination stating they are ineligible for benefits must appeal within 7 days from receiving the notice or within 10 days

of the mailing date of the Notice of Determination. The appeals process is explained on the Notice of Determination. The appeal, at this stage, is to the Appeal Tribunal, which will then hold a phone hearing.

17. Is a person receiving unemployment required to pay the amount back in their income taxes?

Unemployment benefits must be reported for tax purposes, and claimants may choose to have deductions taken from the benefits up front, but they are not required to repay unemployment benefits through taxes.

18. How does someone apply for the extension for PEUC?

That information should be published on the NJDOL's website soon. We do not know the process for this yet. Eligible claimants will be notified of the process.

19. If local government does not allow the center to re-open but your staff is working remotely part time, can they apply for partial unemployment benefits?

Yes. If a worker's hours have been reduced by 20% or more, they should be eligible for benefits.

20. If there are less than 20 employees at the center do the unemployment rules apply?

The same rules for unemployment apply regardless of the size of the employer.

21. What is the best way to contact the state's unemployment office?

To file a claim visit: <https://myunemployment.nj.gov/labor/myunemployment/covidinstructions.shtml>. The claimant should receive a confirmation number. The claim will be reviewed by Unemployment Insurance staff. NJDOL system is experiencing record levels of demand and all in-person services statewide are currently closed due to COVID-19. If your application was not successful, please keep trying. You will not lose a day's benefits as all claims will be backdated to your first day of employment loss. If getting through by phone is not possible, send an email through the "contact us" link on the NJDOL's website.

22. How does workshare apply to child care providers and their ability to keep their employee salaries whole?

Workshare is a program which allows employees experiencing a reduction in hours to collect a percentage of their unemployment compensation (UC) benefits to replace a portion of their lost wages. In order to be eligible, the employer must have an approved Short Term Compensation (STC) plan in place with Unemployment. In order to qualify for STC, employees must first be determined to be eligible for UC. While receiving UC benefits under an STC plan, employees are not required to meet availability or work search requirements, but they are required to be available for their normal workweek. An alternative to the work share program and requiring a STC plan, is if the employee's hours are reduced, then they can receive partial unemployment benefits. The employee would report their gross income and would receive the difference, up to the defined partial benefit rate. Partials do not require any set plan, and can just be set up by filing a claim and reporting wages.

NJ Earned Sick Leave

- Employers, regardless of staff size, must provide employees with up to 40 hours a year of paid sick leave per year.
 - This applies to full-time, part-time or temporary workers (*regardless of immigration status)
 - 1 hour of earned sick leave for every 30 hours worked (employer can also give 40 hours up front)
 - Up to 40 hours of unused sick time can be carried over to the next year, but employer does not have to allow more than 40 hours of leave per year.
- Time can be use for employee's own illness or to care for a sick family member (broad definition)
 - Employer can request medical documentation after 3 days
- Also covers time off due to school closure because of a public health emergency
- Enforced by NJDOL, Wage and Hour

Find more information at <https://www.nj.gov/labor/worker-protections/earnedsick>.

Federal Paid Sick Leave

- Covers employees that work for private employers with less than 500 employees (and certain public employers)
- Available even if worker already used up Federal Family Medical Leave (FMLA)
- Supplements any paid sick leave that an employer already offers
- If an employee is ill or quarantined by a doctor or government order:
 - Eligible for up to two weeks (80 hours) of paid sick leave at the employee's regular rate of pay (up to a maximum of \$511 per day)
 - No intermittent leave – stay home!
- If an employee cannot work because he is caring for someone with COVID-19 or a child whose school/day care is closed:
 - Eligible for up to two weeks (80 hours) of paid sick leave at 2/3 the regular rate of pay (up to a maximum of \$200 per day)
 - Leave may be intermittent if employer and employee agree
 - NOTE: Employers with less than 50 employees may seek an exemption from these child-care related provisions of PSL or expanded FMLA

Expanded Federal Family and Medical Leave Act (Emergency Childcare FMLA)

- Covers workers caring for child out of school/day care
 - Must have been on payroll for at least 30 days prior to leave
- Up to 10 additional weeks of partially paid leave
 - 2/3 of the employee's regular rate of pay, up to a maximum of \$200 per day/\$10,000 max
- Leave may be intermittent if employer and employee agree
- Not available if worker already exhausted FMLA leave
- NOTE: Employers with less than 50 employees may seek an exemption from these child-care related provisions of PSL or expanded FMLA

Frequently Asked Question Related to Earned Sick Leave

Refer to the NJ Department of Labor Guides on COVID-19 scenarios with related benefits at <https://www.nj.gov/labor/worker-protections/earnedsick/covid.shtml>

1. If an employer has less than 50 employees, how do they file for the FMLA exemption and paid sick time?

An employer with under 50 employees IS NOT exempt from providing emergency paid sick time, only the emergency FMLA. Find more details here:

[Combined flyer and Emergency Paid Sick Leave](#)
[Find How businesses are "reimbursed" via tax credits](#)

2. If I receive 10 sick days per year from my full time job, am I entitled to an additional 1 hour of earned sick leave per 30 hours for my part time job?

The New Jersey Earned Sick Leave law does not require an additional number of paid sick days if the employer is already complying with the minimum number of days for the covered reasons of taking leave.

The Federal Emergency Paid Sick Days requires employer pay workers for an additional 10 days during the pandemic for COVID19 related reasons.

So yes, a part time job would also need to provide you with 1 hour of paid sick time for every 30 hours you work and be required to allow you to take at least 5 paid sick days a year.

3. Can employees who choose not to work at an opened child care center - use their 40 hours of sick leave?

Yes, if the reason for taking sick leave is covered under the Earned Sick Leave law. To learn more visit <https://myleavebenefits.nj.gov/labor/worker-protections/earnedsick/law.shtml> and scroll down to How Can I Use My Earned Sick Time?

Also, if the employer is covered under the Federal Emergency Paid Sick Days and FMLA and if the worker has a protected reason for taking leave, the worker can access that time.

[See list of reasons.](#)
[NJ Department of Labor guides](#)

4. Can an employer direct an employee to use paid time off prior to using NJ family leave?

An employer cannot require an employee to use their paid time off prior to using NJ Family Leave Insurance. [Click here to learn more.](#)

5. If a child care provider laid off staff and rehires them after receiving a loan under the Payroll Protection Program, how will the employees' eligibility for Emergency Family and Medical leave be affected?

PPP is not under the scope of Unemployment, however if an employee is being paid full pay from their employer, they are not entitled to Unemployment or PUA benefits.

6. Many public school employees who work in before or after care are still getting paid for their regular school job, but are no longer getting the additional pay for before or after care. Can they apply for unemployment? Do they have separate sick leave benefits under their position in before or after care?

If they are still being paid for their full time position they are not entitled to Unemployment or Pandemic Unemployment Assistance. Any earnings received for a week claimed would have to be reported. If you are earning more than your partial benefit allowed (defined on the monetary determination they would receive) then you would be ineligible for any benefits.

7. If employees are on unemployment can they also apply for the FMLA extension?

FMLA is not related to Unemployment.

8. Which paid leave benefit takes precedence - those under Family First Act or those available under Emergency FMLA Expansion?

FMLA is not a paid program. Worker's Compensation, Family Leave Insurance, Unemployment, and Disability are all examples of a paid program. To determine which program you may be entitled to depends on your personal circumstances. You can see the department of labor site for a breakdown on which program is most likely right for you.