

NEW YORK EMPLOYMENT LAW Unemployment Compensation – Employee Eligibility



New York unemployment insurance (UI) benefits provide income to individuals who have lost work through no fault of their own. The program partially replaces lost wages if certain conditions are met.

The New York Unemployment Insurance Law (NYUIL) requires most types of employers to make contributions to the state unemployment insurance fund (UI Fund). New York law prohibits employers from deducting their UI contribution costs from their employees' wages.

STATE RESOURCES

**New York State
Department of Labor
[website](#)**

Law Text

Text of New York's Unemployment Compensation Law is available [here](#).

Employer Rate Information

Information about unemployment insurance rates is available [here](#).

EMPLOYEE ELIGIBILITY REQUIREMENTS

The [New York State Department of Labor](#) (NYSDOL) determines individual eligibility for benefits on a weekly basis. The NYSDOL considers monetary and non-monetary eligibility criteria. To qualify for benefits, individuals must:

- Be totally or partially unemployed through no fault of their own;
- Have received enough wages during the base period to establish a claim;
- File an initial claim for benefits during the first week of unemployment;
- Be physically able to work, available for work and actively looking for work during each week in which benefits are claimed; and
- After waiting through an initial four-day waiting period, request payment weekly using the NYSDOL unemployment benefits [web](#) or telephone system and maintain eligibility for each week in which benefits are claimed.

An employee's "base period" is a 12-month period of time, generally the first four of the last five completed calendar quarters prior to the beginning date of the UI claim. To establish a monetarily valid claim, an employee must have earned at least:

- **\$1,600** in any one of the calendar quarters in his or her base period; and
- Total base period earnings of **one and one-half times** his or her high quarter wages (unless the high quarter wages equal \$8,910 or more, in which case earnings in the other base period quarters must total at least \$4,455).

EXEMPTED EMPLOYMENT

Certain employees are **not** covered under the NYUIL. As a result, these employees are not entitled to UI benefits. Employers are not required to report the wages of these employees and do not have to make contributions based on their wages.



For unemployment insurance purposes, the term “employment” does **not** include:

- Work performed for a spouse, or by a child under age 21 for his or her parent;
- Golf caddies;
- Part-time work for any person performed by a day student of an elementary or secondary school;
- Employment subject to the federal Railroad Unemployment Insurance Act;
- Work performed on vessels engaged in interstate or foreign commerce when performed outside of New York;
- Baby sitters who are minors working in their employer’s home;
- Casual labor (yard work and household chores) performed by individuals under 21 years of age in and about a residence or nonprofit, non-commercial organization (so long as the labor does not involve the use of power-driven machinery);
- Work performed by a child under the age of 14;
- Work performed for an educational institution by a student in regular attendance, or by the student’s spouse if the spouse’s employment is under a program of assistance to the student (except work performed by a fellow, resident or intern physician at a health care facility);
- Students who are enrolled at a nonprofit or public educational institution in a full-time work-study program (except programs established for or on behalf of an employer or group of employers);
- Freelance shorthand reporters working for a freelance shorthand reporting service (that is, subcontracted employees who record oral statements by a written system of shorthand and are compensated on a fee per page basis);
- Licensed real estate brokers, insurance brokers or agents, or sales associates who are not treated as employees for state tax purposes, if substantially all of the individual’s compensation comes from sales rather than hours worked;
- Certain full-time students working for an organized camp (must meet certain requirements);
- Recreational bowlers in a league where an individual may occasionally win prize money;
- Professional athletes;
- Work performed by illegal aliens; and
- Consulting work performed as an independent contractor.

Nonprofit organizations, Indian tribes and some government services also have limited employment situations that are exempt from coverage when performed in those industries. Employers engaged in these types of businesses should also inform themselves of these additional exemptions when calculating their liability for unemployment insurance payments.

As of Jan. 1, 2020, the law clarifies that if services performed by an individual constitute employment, but the supervision, direction and control are exercised by one or more entities, and one entity places the individual with, or provides the individual to, another entity to perform the services, then the entity that pays the individual for the services is considered the employer. However, the other entity may be considered the employer if the parties specify this by contract.

Also effective Jan. 1, 2020, the law no longer exempts certain agricultural employers from coverage. (Previously, employers of workers engaged in agricultural labor were liable to make contributions to the UI Fund only if they had fewer than ten employees and paid less than \$20,000 in wages in any of the eight preceding calendar quarters.)



DISQUALIFICATION

While an individual may make enough in wages to establish a valid unemployment claim, he or she may still be disqualified from receiving benefits. Disqualification may prevent an individual from collecting benefits for specified periods of time or from collecting the full amount of regular benefits.

Individuals will be disqualified from receiving unemployment benefits if they:

- Voluntarily quit without good cause in connection with work;
- Are discharged for misconduct or criminal acts in connection with work;
- Fail to accept a referral from the NYSDOL or fail to accept suitable employment;
- Participate in a labor dispute other than a lockout;
- Receive alternative benefits (such as deductible retirement, temporary partial disability, any earnings equal to or more than the weekly benefit amount, vacation pay or holiday pay);
- File a fraudulent unemployment claim;
- Seek or receive unemployment benefits from another state or from a federal unemployment claim while also receiving benefits from New York;
- Fail to reasonably search for available work;
- Are not ready, willing and able to work, prepared to take a job immediately, or physically or mentally capable of employment; or
- Were self-employed (in certain circumstances).

APPEALS

If an unemployment claim is denied, the NYSDOL will send a written Notice of Determination to the applicant. Interested parties have the right to appeal this decision within **30 calendar days** of the mailing date of the decision. All requests for appeals must be made in writing, signed and mailed to the NYSDOL. Late appeals are generally not allowed, but may be allowed in situations where a party can show good cause in a hearing for the late appeal.

During an appeal, a party is allowed to have an attorney or any other representative of the party's choosing to represent him or her. Attorneys are not provided for these hearings; however, New York's Unemployment Insurance Appeal Board provides a list of legal resources (including attorneys, registered representatives, legal services programs and pro bono attorneys' organizations) on its [website](#).

MORE INFORMATION

For more information on unemployment compensation laws in New York, visit the NYSDOL [website](#), or contact your The Team Companies, LLC representative.