



Workplace Leave and Unemployment Insurance for Individuals Affected by COVID-19

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This Insight provides a brief overview of the current availability of job-connected assistance to individuals, which may be relevant to the outbreak of [coronavirus disease 2019 \(COVID-19\)](#). Specifically, this product discusses workplace leave, paid and unpaid, that may be available to workers affected by the virus, as well as unemployment insurance (UI) benefits. It also discusses policy options to amend or expand existing UI programs to be more responsive to the effects of COVID-19.

Workplace Leave

Workers affected by COVID-19 may seek to use paid or unpaid workplace leave for their own medical needs or to care for family members. Leave, even if unpaid, may be preferable to a complete separation from employment if it allows for continuation of health care benefits and facilitates the employee's return to work following recovery. Most federal civil service employees are entitled to paid sick and annual leave, but no federal law requires private-sector employers to provide paid leave of any kind.

Family and Medical Leave Act

The [Family and Medical Leave Act \(FMLA\)](#) provides an entitlement to eligible workers to unpaid, job-protected leave for a limited set of family caregiving and medical needs, with continued group health plan coverage; eligible employees may use up to 12-workweeks of leave in a 12-month period. FMLA coverage and eligibility is not universal. Federal, state, and local governments are covered employers, but private-sector employers employing fewer than 50 employees are not. Employees of covered employers must also meet tenure, hours-of-service, and work-site coverage requirements before using FMLA-leave. No other federal law creates a leave entitlement for private-sector workers.

FMLA and COVID-19 Considerations

A key consideration is whether FMLA-leave can be claimed for COVID-19-related needs, such as testing, quarantine, treatment, and caregiving. In most instances, FMLA-leave for medical needs (the employee's

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own or a family member's) is limited to *serious health conditions*, which require overnight inpatient care or *continuing treatment* by a health care provider. Continuing treatment generally constitutes several days of incapacitation and multiple in-person treatments by a health care provider; a single in-person treatment may suffice if the employee is prescribed a regimen of continuing treatment (e.g., prescription medication). As such, hospitalization and, potentially, testing for COVID-19 may be FMLA-qualifying needs. However, a worker who tests positive for the virus and is sent home to rest and take over-the-counter medications is unlikely to qualify for FMLA-leave for the period of home recovery. Federal law and regulations do not provide for FMLA-leave to address general needs related to public health emergencies (e.g., school closures).

State Leave and Leave Insurance Laws

Some states have enacted family and medical leave laws (similar to FMLA) that entitle workers to unpaid leave in certain instances. In addition, five states currently operate *state leave insurance programs*, which provide cash benefits (a percentage of the employee's usual earnings, up to a maximum amount) to eligible workers who are absent from work for certain medical and caregiving reasons. As with FMLA, the extent to which state leave entitlements and leave insurance benefits may be claimed by COVID-19-affected workers will depend upon the worker meeting the criteria set out in state law.

Some states have paid sick leave or paid time-off laws that require covered employers to allow employees to accrue and use several days of leave per year. Paid sick leave can generally be used for the employee's own medical needs or to attend to the medical needs of certain family members. Some states, like [New Jersey](#), allow that accrued sick leave may be used for workplace or school closures due to a public health emergency or because a public health official has determined that the employee should be quarantined.

Policy Options

As noted, the extent to which employees may use FMLA-leave for COVID-19 related needs is limited and must be assessed on a case-by-case basis. Congress may consider expanding FMLA-qualifying needs to include those related to a declared public health emergency or expanding the act's employer coverage (e.g., including some employers with fewer than 50 employees). Given the likelihood that such changes will complicate employers' scheduling and otherwise disrupt business activity, Congress may also consider pairing them with employer assistance (e.g., through state grants or tax credits to help cover the costs of hiring replacements for workers on leave).

The Federal-State Unemployment Insurance System

Two programs within the federal-state unemployment insurance (UI) system may either respond to some types of unemployment caused by COVID-19 or could be modified to respond more broadly to provide weekly income replacement for individuals unavailable to work or unemployed as a result of COVID-19. Unlike workplace leave, the UI system generally treats public-sector workers similarly to private-sector workers.

Unemployment Compensation

The [joint federal-state Unemployment Compensation \(UC\) program](#) provides income support through weekly UC benefit payments. Although there are broad requirements under federal law regarding UC benefits and financing, the specifics are set out under each [state's laws](#). States administer state-funded UC benefits with U.S. Department of Labor (DOL) oversight, resulting in 53 different UC programs operated in the states, the District of Columbia, Puerto Rico, and the Virgin Islands.

To receive UC benefits, claimants must generally have been laid off through no fault of their own; have enough recent earnings (distributed over a specified period) to meet their state's requirements; and be able, available, and actively searching for work. The UC program generally does not provide UC benefits to the self-employed, those who are unable or unavailable to work, or those who do not have a recent earnings history.

UC and COVID-19 Considerations

Individuals who are laid off for COVID-19-related reasons would be subject to UC laws regarding benefit eligibility in the state where the previous work was performed. As described above, some categories of workers would not meet state eligibility requirements for UC benefits. Additionally, individuals who are unavailable for work due to COVID-19—whether they are quarantined or caregiving for sick or quarantined family members—would likely be ineligible for UC benefits because (1) they may not be separated from employment, and thus would not meet state definitions of unemployment or (2) may not meet state requirements regarding being able and available for work.

Disaster Unemployment Assistance

Disaster Unemployment Assistance (DUA), which is authorized under the [Robert T. Stafford Disaster Relief and Emergency Assistance Act](#) (the Stafford Act), provides federally funded unemployment benefits to individuals unable to work as a result of a federally declared major disaster and otherwise ineligible for regular UC benefits. For example, DUA benefits may be available to the self-employed and workers unable to reach their place of employment as a direct result of a major disaster, among other categories of DUA eligible employees.

DUA and COVID-19 Considerations

The current law definition of *major disaster* for the purposes of DUA, however, does not include a disease outbreak or other public health emergency. (No public health incident has ever been declared as “major disaster” under the Stafford Act.) Therefore, DUA benefits would not be available in response to unemployment or unavailability for employment related to COVID-19.

UI Policy Options to Respond to COVID-19

Unlike some other federal or state programs, UC and DUA have the ability to rapidly respond and provide immediate income support. Thus, Congress may consider amending or expanding current unemployment benefits for individuals affected by COVID-19. For example, the [DUA authority](#) under the Stafford Act could be a model for responding to public health emergencies. More generally, in response to the 2007-2009 recession, UC benefits were temporarily [augmented](#) and [extended](#), with some costs temporarily assumed by the federal government.

Author Information

Julie M. Whittaker
Specialist in Income Security

Sarah A. Donovan
Specialist in Labor Policy

Katelin P. Isaacs
Specialist in Income Security

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