

Unemployment Insurance Benefits - An Employer's Guide

The New York State Unemployment Insurance (UI) Program provides weekly income for people who are out of work through no fault of their own. This guide reviews the rules under which your former employees can collect UI benefits and tells you what to do when a former employee files a claim for benefits.

This guide offers general information. Its statements do not have the effect of law or regulation. You may review the New York State Unemployment Insurance Law (Article 18 of the New York State Labor Law) on our website www.labor.ny.gov/legal/ or at your local library.

Rules for Receiving UI Benefits

To qualify for UI benefits, claimants must:

- Prove a recent work history
- Be out of work through no fault of their own
- Be ready, willing and able to work
- Be actively seeking employment

The requirement to actively seek employment may be waived if the claimant is attending a training course approved by the Commissioner of Labor.

Employment and Earnings Requirements

Persons who worked in New York State within the last 18 months have the right to file a claim for UI benefits. To qualify for benefits, the law requires that a person must have earned wages of at least \$3,300, for claims filed in 2024, (this amount is an increase from \$3,100 for claims filed in 2023) in the quarter with the highest wages, either in the basic base period or the alternate base period.

The **basic base period** is the first four of the last five completed calendar quarters prior to the calendar quarter in which the claim is effective.

The **alternate base period** is the last four completed calendar quarters prior to the calendar quarter in which the claim is effective.

1. They must have worked and been paid wages for work in at least two calendar quarters in the base period. The total wages paid to them in the base period must be one and one-half times the high quarter wages.

We use no more than \$11,088 of their high quarter earnings to determine if they qualify. They must have earned at least half that amount (\$5,544) in the other base period quarters.

If they qualify using the basic base period, we use that period to establish the claim.

2. If they do not qualify in the basic base period, we will calculate using the alternate base period instead.

3. If they do not qualify using either base period and they received Workers' Compensation payments or Volunteer Firefighters' benefits during the basic base period, we may extend the base period back up to two calendar quarters. This will depend on how many base period quarters they received these benefits.

Please note: Once employees use wages to establish a claim, they cannot be used for the next claim.

Conditions That Affect Eligibility for Benefits

Claimants are ineligible for benefits in these cases:

Voluntary Quit and Discharge

- Left job without good cause
- Left due to marriage
- Dismissed for job-related misconduct

To qualify, they must work again and earn an amount equal to at least ten times their weekly benefit rate, and lose that job through no fault of their own. A claimant may or may not be eligible if the reason for leaving their employment is to follow a spouse.

Refusal

- After filing for benefits, refused suitable employment without good reason

Availability

- Not ready, willing and able to work
- Not actively seeking employment that they are fit for by training and experience

We deny benefits for as long as any of these conditions exist.

NOTE: After receiving 10 weeks of benefits, claimants must accept employment they are capable of performing if they do not:

- Have a definite date to return to work
- Obtain employment through a union hiring arrangement

This applies even if they are not suited for the job by training or experience, as long as the position pays:

- The prevailing local wage for the job
- Not less than 80% of the claimant's high quarter earnings in the base period

Strike or Other Industrial Controversy

- Unemployed because of a strike or other industrial controversy at the workplace

Claimants are suspended from receiving benefits for 14 days, unless the dispute ends earlier. The suspension does not apply if:

- The employee is not involved in the dispute, or
- The employer has hired replacement workers

Criminal Misconduct

- Loss of job because a claimant committed a felony in connection with their job

We do not pay benefits for a year after discharge.

Total Unemployment

We do not pay benefits for any day in which:

- They performed some work, full-time, part-time, self-employed or freelance basis
- They are corporate officers who devote any time or effort to the corporation's business, even though wages or salaries may not be paid at that time
- They are receiving vacation or holiday pay for a previously designated period

Educational Institutions

- They are employees of educational institutions, such as teachers, bus drivers or staff performing research

These individuals may not file for benefits using wages based on such employment between academic years or terms and during customary vacation or holiday recesses, provided they have a contract or reasonable assurance of employment in the following academic period.

How Much Can a Jobless Worker Receive?

The weekly benefit rate equals 1/26 of a claimant's highest quarter earnings in all covered employment during the base period used to establish the claim, unless the claimant's highest quarter earnings are \$3,575 or less. Then, the weekly benefit rate will be 1/25 of these earnings, with a minimum benefit rate of \$132 for claims effective after January 1, 2024. This is an increase from the minimum benefit rate of \$124 for claims effective in 2023. The base period is the first four of the last five completed calendar quarters prior to when a claim is filed. The maximum weekly benefit rate is \$504.

Beginning January 1, 2014, if the claimant has earnings in all 4 base period quarters (or alternate base period quarters), the benefit rate will continue to be calculated in the same way. However, if the claimant has earnings in only 2 or 3 base periods (or alternative base period quarters), the benefit rate will be calculated as follows:

- If high quarter is > \$4,000 benefit rate is 1/26 of the average of the two highest quarters
- If high quarter is > \$3,575 and <= \$4,000, benefit rate is 1/26 of the high quarter (with a minimum weekly benefit rate of \$143)
- If high quarter is <= \$3,575, benefit rate is 1/25 of the high quarter

The first week of unemployment after they file a claim is a waiting week for which no benefits are paid.

In any week when a claimant works no more than 3 days and earns no more than the maximum benefit rate, they can receive partial benefits. The state's regular UI program pays benefits for:

- Up to 26 weeks of total unemployment at the full weekly rate, or
- The equivalent dollar amount over a greater number of weeks if the claimant is partially employed

The claimant may collect on a given claim during the benefit year – the 52-week period following the week in which they filed the claim.

Someone who qualifies for benefits under the quarterly wage criteria may apply to have the weekly benefit amount recomputed. The recomputed amount is based on 1/2 of his or her average weekly wage for all employment during the base period that established the claimant's eligibility. The maximum amount used to set high quarter earnings for entitlement is \$11,088 (22 x \$504). The claimant must prove these earnings. They must apply within 10 days of notification.

During periods of high unemployment, Extended Benefits or Emergency Benefits may be payable.

Claimants who qualify for regular benefits while they attend a training course approved by the Commissioner may also collect up to 26 more weeks of benefits, if their regular benefits expire during the training and funding is available. These 26 weeks are not chargeable to the employer's account.

Pension Reduction

Individuals who:

- Are eligible for UI and
- Receive a retirement pension financed by a base-period employer *may* have their weekly benefits reduced, if their base-period employment with that employer resulted in:
 - Eligibility for the pension
 - An increase in the amount of the pension

Benefits are reduced as follows:

1. If a base period employer contributed any amount to a claimant's pension plan, the weekly benefit will be reduced by the largest number of whole dollars which is not more than the pro-rated weekly amount of the pension.
2. If a base period employer did not make any contributions to the pension, retirement, annuity or other similar periodic payments, no pension reduction shall apply.

Dismissal Pay

If a base period employer pays a claimant dismissal/severance pay, the claimant may be ineligible for benefits if the weekly amount paid to the claimant exceeds the state's maximum benefit rate and the initial payment of dismissal/severance pay was made within 30 days or less after the claimant's last day of employment.

Social Security benefits are not deductible from the benefit rate.

Workers' Compensation Limitation

The UI benefits a claimant can collect are limited to:

- 100% of the claimant's average weekly wage
minus
- The amount of Workers' Compensation benefits

Shared Work

Shared Work is a voluntary program providing an alternative to layoffs.

Rather than laying off a percentage of the workforce to cut costs, an employer can reduce the hours and wages of all or a particular group of employees. The employees with reduced hours and wages can receive partial UI benefits to supplement their lost wages.

The Shared Work Program helps employers avoid some of the burdens that accompany a layoff situation. If they retain employees during a temporary slowdown, employers can quickly gear up when business conditions improve. This spares employers the expense of recruiting, hiring and training new employees; and spares employees the hardships of full unemployment.

For more information about Shared Work go to www.labor.ny.gov, select Businesses, under Unemployment Insurance select the Employer Overview link, from the Employer Overview page, select The Shared Work Program link in the left side navigation menu.

To download the Shared Work Program The Layoff Alternative (SW1) and other Shared Work forms and publications go to www.labor.ny.gov, under Unemployment Insurance select the Forms and Publications link.

Benefit Claims Information

Reporting Earnings

We determine claimant entitlement and benefit rates based on wages reported by employers on their *Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return*.

In some cases, we may ask for more wage details on a claim. Employers should file all employment and wages timely and report them correctly. Errors can cost employers because they may:

- Result in incorrect charges to an employer's account
- Increase UI rates in future years
- Delay the payment of benefits to the claimant

We may impose penalties for failure to:

- File reports
- File complete, accurate, and timely reports

Notice to Employees Leaving the Job

An employer must give written notice to any employer who:

- Is permanently, indefinitely, or temporarily laid off
- Discharged
- Quits
- Has their hours reduced to 30 or less each week

The notice must include:

1. Employer's name
2. New York State Employer Registration Number
3. Mailing address where payroll records are kept
4. Instructions to employees to give the information on the form to the UI Claims Center

To print the *Record of Employment* (IA 12.3) form from our website, go to www.labor.ny.gov, under Unemployment Insurance select the Forms and Publications link.

You may also ask the Liability and Determination Section to approve your own form.

The information on this form helps ensure that we mail notices and requests to you:

- Promptly
- To the correct address
- With accurate experience rating charges

Charging of Benefits

Base Period

When someone files a claim for benefits, we establish a base period. This period is either:

- The first four of the last five completed calendar quarters
- or
- The last four completed calendar quarters before they filed the claim

We base a claimant's entitlement and benefit rate on the amount of earnings during the base period.

Notification of Entitlement

When we determine that a claimant filing for benefits is entitled, we send the following notices to all employers whose experience rating accounts might be charged for their benefits:

- A Notice of Potential Charges (LO 400)
- A Notice of Protest (LO 400P)

It is important for employers to respond to these Notices timely and adequately with any:

- Discrepancies in wage information
- Potentially disqualifying information

Otherwise, their experience rating accounts may not be fully credited for benefits paid the claimant.

Do not return the form(s), unless you:

- Wish to change the wage data
- Know of any reason why the claimant should not collect

New or Corrected Information: If an employer does not provide new or corrected information in a timely or adequate manner in response to the initial Form LO400, Notice of Potential Charges or any other request for information, in most cases, adjustments to benefit rates or experience rating charges are effective as of the date the information was received by the Department. However, the adjustments will be retroactive to the start of the claim if the new information results in a higher benefit rate.

Charging Formula

1. First, we charge benefits to the account of the last employer for whom the claimant worked before they filed the UI claim. The last employer is charged seven times the claimant's weekly benefit. Next, we charge benefits to all base-period employers proportionately to how much of the claimant's total base-period wages were paid by each employer.

You may be entitled to a credit if you:

- Are the last employer
and
- Paid the claimant less than or equal to six times the claimant's benefit rate

If you believe you are due a credit, return the Notice of Potential Charges (LO 400) within 10 days of receipt. Include the amount of wages paid to the employee.

2. Exceptions to this formula may occur because employees worked for:
 - Out-of-state employers
 - The Federal Government
3. A claimant may collect up to 26 times their weekly benefit rate. All of these payments are chargeable to employers' accounts. During periods of high unemployment, claimants may collect more weeks of benefits. Emergency Benefit payments are not chargeable to an employer's account. Extended Benefit payments are chargeable:
 - One half to the Federal Government
 - The other half to the base period employers or the Federal Government, depending on Federal Law

Government employers must fund the full amount of the Extended Benefit payment.

4. Under the Self-Employment Assistance Program, there may be benefits available to help certain unemployed claimants start a business. People in the program are engaged full time in activities, which may include training, that prepare them to start a business and become self-employed.
5. Under the 599 Program, claimants may participate in a training program while collecting UI benefits. The Commissioner of Labor must approve any training courses and the requirement to look for work is waived. Benefits are charged to base period employers. If their regular benefits expire while they are still in training, claimants may be eligible for up to 26 more weeks of benefit payments that are not chargeable to base-period employers.

Notification of Charges

We advise employers monthly on the *Notice of Experience Rating Charges* (Form IA 96) about all benefit payments to former employees that are charged to their accounts. The charges shown represent weekly payments. We show any payments made under the Interstate Plan for Combining Wage Credits as **quarterly** amounts.

We notify employers that select the Benefit Reimbursement Option* on the *Notice of Benefit Reimbursement Charges* (IA 96R).

** Nonprofit organizations organized and operated for religious, charitable, scientific, literary or educational purposes (those exempt under Section 501 (c) (3) of the Internal Revenue Code), Indian Tribes and governmental entities may elect to discharge their obligation under the UI Law by reimbursing the UI Trust Fund for benefits paid to their former employees in lieu of UI contributions. A request to elect the reimbursement option must be submitted in writing to the UI Division. Additional information on the benefit reimbursement option is available on our website at www.labor.ny.gov or in the publication *Benefit Reimbursement* (IA 318.13).*

Exceptions to the General Charging Formula

Misconduct: A claimant who was discharged for reasons that constitute misconduct under the UI Law may not use wages earned with that employer to establish a claim for benefits. The account of that employer will not be charged under these circumstances provided the employer responds in a timely and adequate manner to Form LO 400, Notice of Potential Charges.

Leaving Employment Without Good Cause: An employer's account will not be charged if:

- A claimant voluntarily left employment for reasons that did not constitute good cause, provided the employer responds in a timely and adequate manner to Form LO 400, Notice of Potential Charges.

Work Release Program: An employer's account will not be charged for benefits that are based on work done by a claimant as part of a work-release program while the claimant was an inmate of a correctional institution, as long as the work-release employment was terminated **solely** because the inmate:

- Relocated to another area as a condition of parole, or
- Voluntarily relocated to another area immediately after release from the correctional institution

If you have questions about charges to your account based on:

- A discharge for misconduct
- Leaving employment without good cause
- Work release issues

Write to:

NYS Department of Labor
PO Box 15130
Albany, NY 12212-5130

Provide details, including a copy of any relevant determination issued by the Department.

Claimant Who Continues to be Employed Part-time: An employer's account will not be charged for a claimant's benefits if:

1. The claimant worked for the employer on a part-time basis
2. The part-time employment for that employer included work during the four weeks immediately before they filed the claim and
3. The claimant continues to work for that employer on a part-time basis without significant interruption and to the same extent as during the weeks immediately before they filed the claim

Combined Wage Claims: Under the Interstate Plan for Combining Wage Credits, a claimant who has covered employment and earnings in more than one state that participates in this plan may have the claim determined based on combined employment and earnings in all participating states. Then, the laws and regulations of the state where they file will determine the claimant's entitlement to benefits.

New York State participates in the Interstate Plan for Combining Wage Credits. Under this plan, New York State:

- Transfers wages (remuneration) under the New York State Unemployment Insurance Law to other participating states
- Accepts employment and earnings covered under the laws of other participating states to determine a claimant's entitlement to benefits

The paying state then periodically bills each participating state:

- For a portion of the benefits paid to the claimant
- In proportion to its part of the total earnings used to determine the claimant's benefits

Benefits charged to New York State under the Interstate Plan for Combining Wage Credits are then charged to the experience rating accounts of the New York State employers.

Effect of Charges on UI Rates

Benefit payments charged to an employer's experience rating account may increase that employer's UI rate in future years. When a former employee files for UI and is determined eligible to collect benefits, the Department of Labor sends the employer a *Notice of Potential Charges* (LO 400).

- If the wages shown on the form are incorrect, or
- If you know any reason why the former employee should not receive benefits

Provide the information and return the form to:

NYS Department of Labor
PO Box 15130
Albany, NY 12212-5130
or
Fax to: (518) 402-6175

If you are able to reemploy a claimant, contact the claimant directly. The claimant's address appears on the initial *Notice of Potential Charges* (LO 400). If the claimant refuses rehire or fails to report to work, notify us in writing at the address above. When you notify us, provide:

- The date the claimant refused work or failed to report to work
- The type of employment offered
- The wages offered for the position

We consider an employment offer acceptable to the claimant if it offers the prevailing wage for similar work, even if:

- The amount is less than the claimant earned on the last job
- The amount is less than the salary desired

After collecting 13 full weeks of UI benefits, the claimant may also be required to accept any employment that he or she is capable of performing if:

- It offers the prevailing wage
- The pay is at least 80% of the claimant's base period high quarter wages

If you believe that benefits **were improperly charged** (for example, a claimant never worked for you), write to:

NYS Department of Labor
Liability and Determination Section
Harriman State Office Campus
Albany, NY 12240-0322
or
Call the Employer Hotline: (888) 899-8810

Please provide:

- Claimant's name
- Claimant's Social Security Number
- The reason you believe the charges are incorrect

If you believe that **the claimant was working while collecting UI**, or has otherwise fraudulently collected benefits, write to:

NYS Department of Labor
Liability and Determination Section
Fraud Control Unit
Harriman State Office Campus
Albany, NY 12240-0322
or
Call the 24-hour toll-free hotline: (866) 435-1499

Additional Information

The *Employer's Guide to Unemployment Insurance, Wage Reporting and Withholding Tax* (NYS-50), provides details on UI including:

- What constitutes employment under the UI Law
- Who is a liable employer
- Record-keeping requirements
- Reporting requirements
- Your right to a hearing on UI determinations
- How we compute UI rates
- How you can control UI costs

You can download a copy of the Employer's Guide and other forms and publications from our website at www.labor.ny.gov. Follow the link to forms and publications. You can also make your request through the mail, by fax or by phone.

NYS Department of Labor
Registration Subsection
Harriman State Office Campus
Albany, NY 12240-0339

Call the Employer Hotline: (888) 899-8810
Fax: (518) 485-8010