

## Your COUNSEL

# Demystifying unemployment insurance benefits

More than ever before, we who practice law limit ourselves to a finite number of areas. Notwithstanding, people come to us with many problems that fall outside our expertise.

Although a little knowledge is dangerous, the goal of this column is to share practical information so that you can assist people with employment, disability benefit, workers' compensation and related problems.

Most employers in New York participate in the New York Unemployment Insurance (UI) benefit system. Here are the basics for lawyers who represent workers and employers:

**1. Employers pay for UI benefits, not workers.** There are no deductions from wages owed to workers to pay for UI benefits.

**2. Workers can collect UI benefits for up to 26 weeks** during a one-year period. The amount of the worker's weekly UI benefit depends on how much they earned during a base period, which is one year (four calendar quarters) of work and wages.

**3. The current maximum weekly UI benefit is \$435;** the current minimum weekly UI benefit is \$100.

**4. Employers do not determine whether an employee collects UI;** that's the responsibility of the New York State Department of Labor (NYS DOL). NYS DOL employees decide the UI application initially. If the worker or employer is unhappy with this decision, they can



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**application unless they have a specific (and reasonably achievable) goal.**

**a.** In my experience, challenging a UI application inspires a worker to get legal advice about many issues, including but not limited to: (i) whether there was unlawful discrimination, (ii) whether the employer violated wage and hour laws by, for example, improperly classifying the worker as exempt from overtime compensation, (iii) whether the worker is owed for unused paid time off, and (iv) whether the worker is aware of any fraud committed by the employer on a governmental entity.

**b.** Employers who challenge a worker's UI application must produce documents and testify under oath. In my experience, employers do not prepare for UI hearings like they prepare for other legal proceedings. The documents and sworn testimony in the UI case, however, can be used against the employer in a more

request a hearing and appear before a UI judge.

**5. Employees usually are approved for UI benefits** because these benefits are deemed a necessary safety net for someone who has lost their job.

**6. Employers should NOT challenge a worker's UI**

**application unless they have a specific (and reasonably achievable) goal.**

serious legal proceeding (e.g., a claim of unlawful discrimination before the New York State Division of Human Rights).

**c.** Why risk more liability by challenging a UI application given that the worker usually wins and the increased cost to the employer from a successful UI claim is small?

**d.** One exception is when you are confident the worker will take further legal action. The UI process, especially the hearing, gives you free discovery and may help you to gain valuable admissions under oath from an ill-prepared worker or other adverse witness.

**7. Employees are entitled to UI unless they quit without good cause or were fired for misconduct as defined in New York law.** To read summaries of UI cases decided on these and related issues, visit <http://www.labor.state.ny.us/ui/aso/interpservice.shtm>

**8. Unless you like working for free, do not represent a worker in a UI case.**

A lawyer may not receive money directly from a worker in a UI case. A lawyer earns a fee only if the worker wins the case *and* the NYSDOL approves the fee (usually after months of waiting). NYS DOL does not protect your approved fee by, for example, withholding it from UI benefits owed to your client and paying it to you.

One exception is when your client is contemplating other legal action against the employer (e.g., claim of unlawful discrimination). The UI process, especially

the hearing, gives you free discovery and may help you to gain valuable admissions under oath from ill-prepared adverse witnesses.

**9. UI judges are not excited to see lawyers at UI hearings.** In my experience, UI judges run their hearings like judges in Small Claims Courts. They do the questioning and largely discourage the participation of lawyers.

Employers and workers should read NYSDOL's helpful FAQ about the UI hearing process: [https://www.labor.](https://www.labor.ny.gov/ui/claimantinfo/hearingprocess.shtm)

[ny.gov/ui/claimantinfo/hearingprocess.shtm](https://www.labor.ny.gov/ui/claimantinfo/hearingprocess.shtm).

**10. Once approved for UI benefits, workers have several responsibilities.**

**a.** Workers must be ready, willing and able to work.

**b.** Workers must be prepared to take a job immediately.

**c.** Workers must not be under a physical or mental disability that would prevent them from working.

**d.** Workers must be actively seeking work and keeping a record of their work

search activities (online or written) for each week that you claim benefits.

For more about the work search requirement, visit <http://modicalawfirm.com/unemployment-insurance-benefits-job-search-requirement>.

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