

# Immigrant Workers' Eligibility for Unemployment Insurance

Unemployment insurance (UI) provides periodic payments to eligible workers who are unemployed through no fault of their own and are looking for work. The amount that workers receive depends on the wages a worker earned during a “base period.” Although it varies from state to state, the base period generally covers the past year to 18 months of work.

To be eligible for unemployment insurance (UI), immigrant workers must satisfy the same basic requirements as other workers. First, they must be unemployed “through no fault of their own.” Second, they must have enough wages earned or hours worked in their “base period” to establish a claim. Third, they must be “able and available” to work.

## Immigration Status Requirements for UI Eligibility

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Eligibility for unemployment insurance depends on immigration status during two time periods: first, the time that the worker is applying for and receiving benefits (the “benefits period”); and second, the time that the worker performed the work (the “base period”).

Under the current state and federal systems, undocumented workers are not eligible for unemployment benefits. The general rule is that workers must have valid work authorization during the base period, at the time that they apply for benefits, and throughout the period during which they are receiving benefits.

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### At the time of application

The U.S. Department of Labor says that in order to be “able and available” for work, an immigrant worker must have work authorization at the time they apply for benefits. The Department’s most recent [model notice to employers](#) indicates that workers must have both work authorization and a Social Security number to receive benefits.

Note: There may be room for advocacy around this requirement in individual cases. For example, if work authorization has lapsed due to circumstances beyond the workers’ control, and they can show that they have applied for an extension, a state agency might allow them to receive benefits. Advocates have sometimes, but rarely, prevailed in cases where workers are physically able and available to work and have made efforts to renew their employment authorization documents. Workers whose status allows them to get automatic

work authorization as soon as a job is offered, such as TN visa applicants, have been allowed to receive benefits in some cases.

### **In the base period**

To receive unemployment benefits, workers also must have been in certain immigration statuses in the “base period.” Federal law allows states to credit wages earned by (1) immigrants who were admitted for lawful permanent residence at the time services (i.e., work) were performed, (2) immigrants who were “lawfully present for purposes of performing services,” or (3) immigrants who were “permanently residing in the United States under color of law” (“PRUCOL”). 26 U.S.C. 3304(a)(14)(A). States are free to adopt their own standards, as long as they are not more generous than the federal standard.

Generally, states should accept and credit the work histories of immigrants who had work authorization at the time they performed the work or whose work authorization is inherent in their status.

**Lawfully present for purposes of performing services.** Most states have adopted the second category referenced above (“**lawfully present for purposes of performing services**”). This includes immigrants with work authorization during the base period, and individuals whose work authorization is inherent to their status (e.g., lawful permanent residents, refugees, asylees, migrants who entered under the Compact of Free Association between the United States and the Marshall Islands, Micronesia, or Palau). This also includes anyone who has a valid work permit, including people who have filed an application for adjustment of status, applicants for asylum (if their application has been pending for a certain time), DACA recipients, TPS recipients, and applicants for TPS or for suspension of deportation/cancellation of removal, among others.

**PRUCOL.** A few states do not have in their laws a provision for “lawfully present to perform services.” In those states, the third category, PRUCOL, becomes important. **PRUCOL has been interpreted narrowly** by the U.S.

Department of Labor to mean that immigrant workers must either have currently valid work authorization or have written assurance from the U.S. Department of Homeland Security that it is not seeking to remove the worker from the country. In some individual cases, agencies and courts have interpreted the standard more broadly—for example, holding that workers are PRUCOL where the U.S. Immigration and Customs Enforcement agency knows of their presence in the country and has no plans to remove them.

### **Federally Funded Unemployment Benefits**

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In most states, workers are generally able to receive unemployment benefits for up to 26 weeks. During this time period, the unemployment benefits are funded by state (not federal) dollars. The federal government can decide to use federal funds to extend the availability of unemployment benefits beyond those initial 26 weeks. This distinction becomes important for immigrant workers.

During disasters and recessions, sometimes the federal government approves additional unemployment benefits, through Disaster Unemployment Assistance or Extended Benefits. These are considered “**federal public benefits**” available only to “**qualified**” immigrants. These are lawful permanent residents, or LPRs (i.e., people with green cards); refugees, people granted asylum or withholding of deportation/removal, and conditional entrants; people granted parole by the U.S. Department of Homeland Security for a period of at least

one year; Cuban and Haitian entrants; certain abused immigrants, their children, and/or their parents; and certain survivors of trafficking. It is not yet clear whether this restrictive definition will apply to benefits under the temporary Pandemic Unemployment Assistance program established by Congress in the [Coronavirus Aid, Relief, and Economic Security \(CARES\) Act](#).

## Unemployment Benefits and Public Charge

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The U.S. Department of Homeland Security (DHS) does not list unemployment benefits as public benefits under its [new rules on public charge](#). In fact, the agency clarified that “DHS would not consider federal and state retirement, Social Security Retirement benefits, Social Security Disability, postsecondary education, or [unemployment benefits](#) as public benefits under the public charge inadmissibility determination as these are considered to be earned benefits through the person’s employment and specific tax deductions.” For more information on public charge, go to [www.protectingimmigrantfamilies.org](http://www.protectingimmigrantfamilies.org).

## Sources

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- U.S. Department of Labor, Employment and Training Administration, Unemployment Insurance Program Letter No. 13-20, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=8634](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8634).
- U.S. Department of Labor, Employment and Training Administration, Unemployment Insurance Program Letter No.47-98, [https://oui.doleta.gov/dmstree/uipl/uipl98/uipl\\_4798.htm](https://oui.doleta.gov/dmstree/uipl/uipl98/uipl_4798.htm).
- U.S. Department of Labor, Employment and Training Administration, Unemployment Insurance Program Letter No. 01-86, [https://oui.doleta.gov/dmstree/uipl/uipl86/uipl\\_0186.htm](https://oui.doleta.gov/dmstree/uipl/uipl86/uipl_0186.htm).
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- U.S. Citizenship and Immigration Services, Public Charge Final Rule, <https://www.uscis.gov/greencard/public-charge>.

## Acknowledgments

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