

UNEMPLOYMENT INSURANCE FAQs RELATED TO THE COVID-19 PANDEMIC

During these unprecedented times, many practice owners and leaders are having to make difficult employee decisions, including furloughs and layoffs. As a result, they are needing to **field important and urgent questions** from impacted employees about potential **eligibility for unemployment support**.

BSM has developed this resource to provide some key information and considerations on this topic. This includes **basic information on unemployment benefits**, together with **references to recent COVID-19 legislation** (CARES act, Families First Act). This new legislation is important to understand since it expands employee eligibility to cover additional unemployment scenarios specific to the ongoing pandemic. Please keep in mind that **individual state laws and guidelines vary** and that **policies are changing rapidly**. Practices should seek additional guidance from their HR attorney, and employees should be referred to their respective state's unemployment office for assistance.

DEFINITIONS

1. What is traditional unemployment insurance (UI)?

- Unemployment insurance, also called unemployment benefits, is a state-run insurance plan that provides money to employees who lose their jobs through no fault of their own.
- To qualify, the applicant must meet certain requirements.
 - Applicants must have met minimum-earnings or job-tenure requirements. For example, an employee that has been with the practice for only one month may not have met the tenure requirement to be eligible for benefits.
 - Applicants are also typically required to show proof of ongoing work searches and report any freelance or other wages they might have received.
 - The applicant must not be receiving other wages by way of paid time off or severance. *(There are some exceptions. See Furlough section below.)*
- Typically, unemployment benefits are not paid to individuals who quit their job or, in some cases, are fired for cause.

ABOUT UNEMPLOYMENT INSURANCE

2. Does unemployment insurance vary from state to state?

- Yes. The Department of Labor (DOL) oversees the country's unemployment insurance arrangement, but each state is responsible for managing its own unemployment program.

3. Who pays the unemployment insurance premiums?

- Practices are required to collect and pay a FUTA (Federal Unemployment Tax Act) tax and a state unemployment tax through payroll. A few states also require employees to pay into the unemployment system as part of their payroll taxes deducted from each payroll check.

4. What benefits are covered by unemployment insurance?

- Unemployment insurance provides cash help for qualified individuals.
- The payment amounts vary by state, but typically equal about half the applicant's previous wages.
- Education and training programs may be offered to help the applicant to find work. These programs are usually free or low-cost.
- Unemployment insurance does not cover other employer benefits such as health insurance, retirement funding, and pensions.

ELIGIBILITY

5. How long can applicants **collect unemployment benefits?**

- Unemployment benefits typically last for 26 weeks and require participants to report in weekly or bi-weekly.
- Some states will extend benefits when the unemployment rate is high. Applicants may apply for extensions.

6. Are unemployment benefits available for doctors or **business owners?**

- In general, it depends on the practice's corporate structure. To be eligible for unemployment benefits, applicants must have been on payroll, been able to work, and are now seeking new employment. For example, if an owner or a doctor who was on salary is continuing to work for the practice for free and is not seeking other employment, that individual will probably not qualify for unemployment benefits. Owners and doctors might qualify only if the business has closed.
- Some states have strict prohibitions on collecting employment benefits if you have terminated yourself. It is best to check with your state's unemployment office to determine if self-employed individuals may apply under certain conditions.

7. How does **furloughing an employee impact their unemployment benefits?**

- Furloughed employees, including those furloughed to zero hours/no pay, and those only partially furloughed (working reduced schedules) can typically collect unemployment benefits, and states may waive waiting periods to assist unemployed people during emergency situations. The purpose of unemployment benefits is to help these people bridge the financial gap until they can resume full-time work. This type of arrangement varies by state.
- If a full-time furloughed employee is required to take several weeks off without pay, the practice should encourage the staff member to file for unemployment benefits right away. In most cases, states do not allow employees to file for unemployment until they have consumed any paid-leave benefits, such as paid-time-off (PTO) or vacation. However, some states now allow employees to file for unemployment before having completely consumed their PTO or vacation.
- An employee that has been furloughed should show the state documentation of the furlough period.
- In some states furloughed employees may not have to show proof of job searches, because furloughed employees are technically still employed.
- Practices should consult an HR attorney with state-specific knowledge of and experience with these issues.



Some states have also implemented **work-sharing programs**, considered to be a type of unemployment insurance (UI). The program allows an employer to reduce the number of hours an employee works during a week, while unemployment compensation makes up some of the difference in income. This arrangement helps employees to suffer less financial hardship than they would during a furlough. Your practice HR attorney or your state's unemployment office will provide details of your state's offering and eligibility requirements.

8. Are **part time employees eligible to for unemployment benefits?**

- Part time employees who lose their job by no fault of their own may be able to collect unemployment benefits if they have met the state's earning requirements.
- The employee should also contact the unemployment office to see if their state requires the employee to look for similar part-time work.

UNEMPLOYMENT INSURANCE IN THE CURRENT PANDEMIC

9. How does the CARES Act, passed at the federal level to influence the state-run UI programs, support unemployment benefits during COVID-19?

- Under the Department of Labor's (DOL's) guidance, this new federal law permits significant flexibility for states to amend their laws to provide UI benefits in multiple scenarios related to COVID-19.
- For example, the act allows states to pay benefits where:
 - An employer temporarily ceases operations due to COVID-19, preventing employees from coming to work;
 - An individual is quarantined with the expectation of returning to work after the quarantine is over;
 - An individual leaves employment due to risk of exposure or infection or to care for a family member.
- If an employee is out-of-work due to COVID-19, they are not required to look for another position, and they are permitted to find work elsewhere. If they do find work with another employer (even part-time), the employee must report this income to their state's unemployment office. The practice should indicate that they expect furloughed employees to return to work when the clinic has work for them to complete.

10. Which employees would not be eligible for unemployment insurance?

- If an employee is on paid leave, they may not be eligible for benefits. An individual receiving paid sick leave or paid family leave is still receiving pay, and according to the DOL, a person receiving paid leave is not "unemployed." Therefore, the individual is not eligible for benefits.
- Some states are requesting employees exhaust all paid leave before filing for unemployment.
- Practices should continue to check with their state's unemployment office, as the Department of Labor will provide ongoing guidance to the states regarding eligibility.

11. How much can employees earn in unemployment benefits, and how are benefits paid?

- Unemployment benefits vary by state. However, the CARES Act has increased unemployment benefits by \$600 in every state for up to four months. For example, if a state's weekly unemployment benefit is \$500, the maximum benefit available would now be \$1,100.
- States will often base the benefit amounts on the employee's earnings reported during a specified time.
- Once approved for unemployment benefits, the employee will receive a debit card or direct deposit. States pay unemployment benefits weekly or bi-weekly.
- Practices should consult with their HR attorney or state unemployment office to know the maximum benefit allowed in their state.

12. If my practice has furloughed or laid off employees, what can I do to help them file for unemployment?

- Employees can apply for unemployment by phone, in person, or online. Given the many "shelter in place" guidelines implemented by states, practices should encourage employees to apply online. States are also receiving an unprecedented number of phone calls, and the DOL is requesting employees use the online services.
- The furloughed or laid-off employee can expect to receive benefits within 2 – 4 weeks. However, some states are indicating that their higher volumes of applications may delay this process.
- The application process will vary by state, but employees will need their last date worked, as well as personal demographics such as their address, date of birth, and employer information.

13. Are there unemployment provisions in the Families First Coronavirus Response Act (FFCRA)?

- Yes. The FFCRA provides additional funding to states.
- The federal government is permitting states to change their laws to provide unemployment insurance benefits related to COVID-19. Notable changes include waiving work-search requirements and waiting periods to receive benefits. Applicants should contact their state's unemployment office for details.