

Child Care Provider FAQs Unemployment and FMLA Based on March 27 and Other Recent Webinars

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Q: How can my employees get unemployment?

A: Employees should apply for benefits [here](#). Even if your employees believe they aren't eligible to receive benefits, they still should apply immediately. The 1-week waiting period has been eliminated, and benefit eligibility rules are ever-changing.

Employees seeking to determine if they qualify for unemployment compensation benefits can go [here](#) to review the general eligibility requirements.

The ultimate decision on whether employees receive unemployment and the benefit amount is with the Department of Job and Family Services. However, it is likely that an employee separated due to COVID-19-related business closures will receive unemployment. There is no reason not to apply.

Q: What about the new (and additional) \$600 weekly federal unemployment benefit under Congress' economic relief plan? Shouldn't a child care worker choose to go on unemployment?

A: Combining state and temporary federal unemployment benefits adds up to more than a typical child care worker earns. But the federal \$600 per week benefit is set to last only for 4 months. Moreover, workers must be eligible for state unemployment to receive federal unemployment benefits. Employees can't decline a job offer and elect to take the \$600.

Q: What if we are a religious organization and don't pay into the unemployment system?

A: If a religious organization opted to pay into the unemployment fund, employees likely are eligible for benefits. But even if an employer has not been contributing to the fund, laid-off employees still should apply immediately because rules could change. Moreover, employers can participate in the fund retroactively. Doing so could result in the State seeking reimbursement for unemployment payments paid to former employees, but that practice also may change.

Q: Are child care owners eligible for unemployment?

A: Definitely apply. Historically, a decision to award benefits has depended largely on the wages you earned over a requisite period. But, under new federal law in response to COVID-19, unemployment is being expanded to individuals who previously were not covered.

Q: Are family care providers eligible for unemployment benefits?

A: Employees working in Type A providers are subject to a 3-prong analysis to determine eligibility. There are requirements related to their earnings, their work history during a set

period, and whether the provider has been paying into the unemployment fund. Employees should apply. They have nothing to lose.

Type B providers are essentially self-employed. Whether they receive benefits will be decided on a case-by-case; much depends on the provider's wages. There is no reason not to apply. Let the agency decide. New federal law has been expanded to include self-employed individuals.

Q: What if an employee chooses not to work out of fear of contracting COVID-19? Is she/he eligible for unemployment benefits?

A: Generally, no. If a worker's employer closes or the employee is ordered to stay home by an employer or healthcare provider for health reasons, that employee is considered unemployed and is eligible for benefits. If the employee is out of work voluntarily, he/she is unlikely to qualify under the current rules. Again, today's situation is unprecedented. Rules could change.

Q: Can I pay my employees the difference between their pay and what they receive in unemployment benefits?

A: Laid-off workers must report any wages they receive on a weekly basis (and re-apply for benefits each week). If after they apply for benefits, their earnings from any source are equal or less than 20% of their calculated benefit, their benefits will not be affected. If the earnings or compensation is greater, they are risk of having their benefits reduced dollar-for-dollar. Make sure you don't unintentionally create a situation where a former employee loses benefits or sees a reduction because of your eagerness to assist them.

Q: How much will my employees receive in unemployment benefits?

A: A good rule of thumb is 50% of their previous salary. But the amount depends on each individual's circumstances and complicated benefit formulas.

Q: How does the new Families First Coronavirus Response Act, providing for paid sick leave and family leave, affect me and my employees?

A: Here is an analysis from [The New York Times](#). The law applies to employers with fewer than 500 employees, while employers with fewer than 50 employees may be exempt if compliance threatens a business' viability. The fine print hasn't been worked out yet. The Department of Labor is expected to publish regulations on or around April 2. There is no concrete guidance until then.

Q: What if an employer lays off employees and then has fewer than 50 employees? Do employers still have to pay benefits?

A: The Families First Coronavirus Response Act contemplates a possible exemption for employers with fewer than 50 employees. However, this exemption is not automatic, as we currently understand it. In its recently released guidance, the Department of Labor did not provide the specific process for small employers to seek an exemption (we anticipate it will do so on or around April 2), but it did suggest that employers with fewer than 50 employees be prepared to explain (via documentation) why they cannot comply with the paid sick leave or emergency FMLA provisions because it would jeopardize the viability of the business.

Note: The size of the employer, i.e. less than 500 employees for the FFCRA to apply, will be measured **at the time the employee takes leave**. Though we do not have clear guidance on the timeline for small employers with fewer than 50 employees, we anticipate it to be similar.

Q: What about FMLA vs. unemployment?

A: FMLA is available only to current employees. So, the decision whether they receive FMLA or unemployment depends on whether the employer is going to continue employing the person during this time.

In general, an employee may apply for unemployment compensation benefits if they have been separated from employment, furloughed, or have experienced a significant reduction in hours. In addition, there are other requirements to eligibility such as length of employment and average weekly compensation.

FMLA is available to only current employees and only under certain circumstances.

In the wake of COVID-19, Congress has passed the Families First Coronavirus Response Act (FFCRA) to expand the reach of the FMLA to include employees who must care for children as a result of school closures or the unavailability of a child care provider through 12/31/20. The FMLA has, and continues, to cover employees who have serious health conditions or who must care for family members with serious health conditions (for which COVID-19 is likely to be). A summary of the FFCRA can be found [here](#).

Q: Are part-time employees eligible for unemployment?

A: Yes. But benefits will be based on the employees' part-time hours.

Q: Do I have to be looking for a job to receive unemployment?

A: That requirement has been waived. But when this emergency passes, laid-off workers likely will have to be seeking employment to be eligible for benefits.