



# Labor & Employment Issues Client Alert

Pitta LLP  
For Clients  
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## CLIENT ALERT

### NEW YORK STATE UNEMPLOYMENT BENEFITS DURING THE COVID-19 CRISIS

With the sudden and explosive spread of COVID-19 over the last 2 weeks, the New York State Department of Labor has seen a 65 percent increase in calls about unemployment benefits, a number which undoubtedly will rise. In response to the crisis, New York has made one dramatic change: the state has waived the 7-day waiting period to receive benefits. As such, any worker who has been laid off, not simply who expects to be laid off, should IMMEDIATELY apply for unemployment. The dramatic increase in inquiries and claims makes it that much more important that the claim be made immediately, as there may be delays in the process. Indeed, this past Monday, the Department of Labor website actually crashed as it was experiencing a level of traffic similar to that post 9/11. The Department of Labor has issued assurances that, despite any delays, all eligible applicants will receive benefits in a timely manner.<sup>1</sup>

Initially, as a general rule, one should apply for unemployment in the state where one works, not the state where one lives, if it is different. In New York, this can be done online at <https://applications.labor.ny.gov/IndividualReg/>. The Department of Labor Unemployment Division can be reached at (888) 209-8124.

Any break in employment permits an application for unemployment benefits, even if it appears to be a “temporary” layoff. In order to be eligible for unemployment benefits, the following two requirements must be met: First, unemployment must not have been due to misconduct or termination “for cause.” However, if the discharge is for “misconduct,” one should still apply for benefits, as they will likely still be granted unless the employer affirmatively opposes the application.

Secondly, to be eligible for benefits: one must have worked and been paid wages for work in at least two calendar quarters in the base period (the base period is one year back from one quarter before your application. For example, if filing an unemployment claim in January through March, the base period is January through September of the previous year as well as October through December of the year prior to that.); and for claims filed in 2020, one must have been paid at least \$2,600 in wages in one of the calendar quarters; and the total wages paid in the base period must be one and one-half times your high quarter wages.

When applying for unemployment benefits whether online or by phone, certain information should be readily available: social security number, driver license or other government ID number, complete mailing address, an active phone number, a list of all employers for the past 18 months (even if the job was outside

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<sup>1</sup> For more information you can visit: <https://labor.ny.gov/unemploymentassistance.shtm>

of New York State), and the most recent employer's Employer Registration Number or Federal Employee Identification Number (FEIN), (which you can find on your W-2.)

When applying, it is very important to answer questions properly. In the current scenario, where there are likely to be widespread layoffs due to the spread of COVID-19, the proper answer is "lack of work." A different answer may delay benefits or even result in a denial of benefits. If translation is required, both the website and the telephonic approach provide myriad language options. Once an application is approved, benefits are sent weekly. The Department of Labor provides a calculator to help estimate your benefits. (<https://labor.ny.gov/benefit-rate-calculator/>)

The general rule is that one is entitled to 26 weeks of unemployment benefits over a 12 month period. It does not have to be 26 consecutive weeks, so if one is working sporadically, the benefits can start and stop. If a worker had enough work during that period, they may qualify for a claim in the subsequent period. Once benefits are approved, the applicant must contact and "certify" to the Department of Labor each week that they are not employed and that they are actively searching for work in order to get the next week's benefits. If an applicant works 4 or more days in a week or earns \$435 or more in a week, they are ineligible for benefits for that week; three days, receive 25% of the benefit, 2 days, 50% of the benefit, and 1 day 75% of the benefit.

It should also be noted that legislation passed this week in Albany which takes effect immediately requires all employers to offer some measure of time off to their workers in response to the COVID-19. It also provides job protection for all workers who are required to take such leave. The legislation covers those under quarantine or actually infected by COVID-19 and is a separate matter from unemployment benefits. That said, under New York state law and under most collective bargaining agreements, employees are entitled to paid leave, whether it's for holidays, vacations, sick time, or miscellaneous. In the event of layoff, these items can be used as a negotiating point to mitigate damage to the workers. For example, a Union can negotiate to permit laid off employees to exhaust their other paid benefit days prior to accessing full unemployment benefits.

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