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Unemployment Compensation (UC) and Family Leave

Introduction

In general, unemployed workers who voluntarily exit the workforce for the care of a family member—including the birth, adoption, or care of a child—would be ineligible for unemployment compensation (UC) based upon their lack of availability for work. Yet some of these individuals may be eligible for UC benefits once they are available for work. From 2000 until 2004, states had the ability to create a program using UC funds to provide benefits to individuals on leave or otherwise unemployed after the birth or adoption of a child (i.e., to use UC to support workers on parental leave). No state created such a program.

Unemployment Compensation

The joint federal-state UC program provides income support through UC benefit payments. Although there are broad requirements under federal law regarding UC benefits and financing, the specifics are set out under each state's laws. States administer UC benefits with U.S. Department of Labor (DOL) oversight, resulting in 53 different UC programs operated in the states, the District of Columbia, Puerto Rico, and the Virgin Islands. The UC program's two main objectives are to (1) provide temporary partial wage replacement to involuntarily unemployed workers and (2) stabilize the economy during recessions.

UC Eligibility

To receive UC benefits, claimants must meet state eligibility requirements, including

- loss of job through no fault of their own or had to quit job for a “good cause” reason.
- a sufficient, recent work and earnings history.
- must be able, available, and actively searching for work.

Although federal law establishes these broad requirements, state law and regulations determine the specific thresholds and definitions. DOL produces a compilation of state laws and regulations, including state definitions of each of the terms. See DOL, *2017 Comparison of State Unemployment Insurance Laws*, at <https://workforcesecurity.doleta.gov/unemploy/comparison2017.asp>.

UC and Paid Family Leave

Although the Family and Medical Leave Act of 1993 (FMLA; P.L. 103-3, as amended) provides eligible workers with a federal entitlement to unpaid leave for a limited set of family caregiving needs (including the care of and bonding with a new child), no federal law requires private-sector employers to provide paid leave of any kind.

Currently, employees may access paid family leave if offered by an employer, and some workers in certain states

may combine state family leave insurance benefits with unpaid leave. At the state level, there has been interest in using the UC program to provide income support to workers on unpaid leave covered by the FMLA. Currently, states do not have the authority to provide UC benefits to workers who are absent from work or unemployed as a result of family caregiving responsibilities.

For more information on states that offer paid family leave insurance, see CRS Report R44835, *Paid Family Leave in the United States*.

Why UC Benefits Are Not Available to an Individual Not Working Because of the Birth or Adoption of a Child?

Depending on the state's UC laws and regulations, there are three potential reasons why UC benefits may not be available to an individual who is unemployed or on a leave of absence because of the birth or adoption of a child. The individual may be

1. ineligible or disqualified because he or she is categorically excluded in state UC law or regulation,
2. disqualified because the reason the individual left a job is not considered for good cause, or
3. ineligible because he or she is not able, available, and actively searching for work.

Specific State UC Law

To be eligible for UC benefits, individuals generally must be laid off from a job and unemployed with respect to a given week. Under some state UC laws, workers taking family leave or other leaves of absence because of an inability to work due to medical reasons may be considered categorically ineligible for UC benefits.

Did Not Quit for “Good Cause”

In all states, individuals who leave their work voluntarily must meet the state's good cause requirements if they are not to be disqualified from receiving UC. In many states, good cause is explicitly restricted to reasons connected with the work, attributable to the employer, or involving fault on the part of the employer. Some states specifically consider quitting due to family obligations stemming from the illness or disability of an immediate family member a good cause. (For those states, see Table 5.5 in DOL, *2017 Comparison of State Unemployment Insurance Laws*, at <https://workforcesecurity.doleta.gov/unemploy/pdf/uilawcompar/2017/nonmonetary.pdf>.)

Not Meeting the Able, Available, and Actively Searching for Work Criteria

All states require that individuals be able, available, and actively conducting a job search to qualify for UC benefits. Individuals taking unpaid family leave due to family caregiving needs may not meet this availability standard and would, therefore, be ineligible for UC during that time. Once an individual is available for work (as defined by the state), he or she may become eligible for benefits if the underlying cause of unemployment had been considered for good cause (i.e., has not disqualified the worker).

The Birth and Adoption UC Regulation (BAA-UC, “Baby UI”) [Repealed]

For a short time, beginning in 2000 under the Clinton Administration, states had the ability to create a program to provide UC benefits to individuals on parental leave or who were unemployed after the birth or adoption of a child. In qualifying for UC under this program, the individual would not have been required to be able and available for work in the sense traditionally used by DOL and the states. Instead, parents of newborns and newly adopted children would have been viewed as meeting the federal able-and-available requirements (as implemented through state laws) under the premise that the parents’ long-term attachment to the workforce would be strengthened and promoted by the payment of UC benefits. On June 13, 2000, DOL published the Birth and Adoption UC (BAA-UC) Final Rule in the *Federal Register* at 65 *Federal Register* 37210, at <https://www.federalregister.gov/documents/2000/06/13/00-14801/birth-and-adoption-unemployment-compensation>.

The BAA-UC Experiment

The final regulation establishing the voluntary BAA-UC experiment, colloquially referred to as “Baby UI,” went into effect on August 14, 2000. The regulation allowed states to use their UC programs to provide UC benefits to parents who take unpaid leave under the FMLA or other approved unpaid leave or otherwise take time off from employment after the birth or adoption of a child.

States were required to elect the voluntary program by enacting legislation to make BAA-UC a part of their UC programs. DOL provided model legislation to the states in U.S. Department of Labor, *Unemployment Insurance Program Letter No. 26-00*, on May 31, 2000, at <https://wdr.doleta.gov/directives/attach/UIPL26-00.cfm>.

Controversy and Lawsuit

The BAA-UC experiment was highly controversial. Opponents argued that the program changed the fundamental purpose of the UC system by (1) changing the definition of able and available for work and (2) potentially negatively impacting the solvency of state UC programs (i.e., through additional program expenditures). Proponents supported using the program as a tool for expanding the use of family and medical leave. (For examples of the assertions, see the U.S. Congress, House Committee on Ways and Means, Subcommittee on Human Resources, *Unemployment Compensation and the Family and Medical Leave Act*, 106th Cong., 2nd sess., March 9, 2000, 106-114, at <https://www.gpo.gov/fdsys/pkg/CHRG-106hhrg69340/pdf/CHRG-106hhrg69340.pdf>.)

Although as many as 15 states introduced legislation to provide for BAA-UC, their efforts were met with strong opposition from business interests, and little headway was made toward implementation of BAA-UC. No state passed such a BAA-UC law. In Massachusetts, a three-year BAA-UC pilot program was enacted by the legislature as an amendment to a supplemental budget bill, but was vetoed on August 20, 2000. It was returned with instructions to consider Governor Cellucci’s own proposal: an employer tax credit of 50% of wages (up to \$2,550 per employee) paid to employees on leave, with infants or newly adopted children. The state’s legislature adjourned without taking up the governor’s proposal.

On June 26, 2000, a lawsuit was filed in federal court seeking to bar the Clinton Administration from implementing BAA-UC program regulations (see *LPA, Inc. v. Chao*, 211 F.Supp. 2d 160 (D.D.C. 2002)). The lawsuit was rejected by a federal district court in the District of Columbia on July 24, 2002, by which time the Administration had changed. The court ruled that the plaintiffs lacked standing to challenge the rule since no state had implemented a BAA-UC experiment.

Repeal

On December 4, 2002, after a review of the BAA-UC Final Rule as part of a DOL-wide review of all regulations, the Bush Administration proposed a repeal of the BAA-UC regulation. DOL concluded that the BAA-UC experiment was poor policy and a misapplication of federal UC law relating to able-and-available requirements.

The BAA-UC experiment was removed from federal regulations by a final rule published in the *Federal Register* on October 9, 2003, effective November 10, 2003. (See U.S. Department of Labor, “CFR Part 604, Unemployment Compensation—Trust Fund Integrity Rule; Birth and Adoption Unemployment Compensation; Removal of Regulations; Final Rule,” 68 *Federal Register* 58539, October 9, 2003, at <https://www.gpo.gov/fdsys/pkg/FR-2003-10-09/pdf/03-25507.pdf>.)

Paid Parental Leave in the President’s FY2019 Budget

The President’s budget proposal for FY2019 would require states to establish a paid parental leave benefit by 2020 using the UC program as its administrative framework. States would be required to provide six weeks of benefits to a worker on leave or otherwise absent from work for the birth or adoption of the worker’s child. States would have discretion to determine the parameters of eligibility and financing for this new paid parental leave benefit. (The same parental leave proposal was also included in the President’s budget proposal for FY2018.)

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