

EMPLOYMENT LAW SUMMARY

Colorado Unemployment Compensation – Employee Eligibility



Because You're Different

Colorado's Unemployment Insurance (UI) is a program that pays benefits to workers who have lost their job through no fault of their own. The program partially replaces an employee's lost wages if certain conditions are met.

The Colorado Employment Security Act (ESA) requires most types of employers to make contributions to the state unemployment compensation fund. Colorado prohibits employers from deducting their UI contribution costs from their employees' wages.

ELIGIBILITY REQUIREMENTS

The [Colorado Department of Labor and Employment](#) (CDLE) determines an individual's eligibility for unemployment benefits on a weekly basis. The CDLE considers monetary and nonmonetary eligibility criteria. To qualify for benefits, individuals must:

- Be totally or partially unemployed through no fault of their own;
- Have earned sufficient wages during a "base period"; and
- Be able to, available for and actively seeking work.

An employee's "base period" is a 12-month timeframe—generally the first four of the last five completed calendar quarters prior to the start date of a UI claim. In order to establish a monetarily valid claim, an employee must have worked in employment subject to the ESA and earned at least \$2,500 during his or her base period.

If an employee did not earn at least \$2,500 during his or her base period, he or she may be eligible for UI benefits using an "alternative base period"—the last four completed calendar quarters before the start date of an individual's claim. To qualify using an alternative base period, an individual must have earned at least \$2,500 during that period.

WEEKLY BENEFIT AMOUNT

Colorado uses two formulas to calculate unemployment benefits. A claimant's actual weekly benefit is based on the formula that results in the highest weekly benefit amount. The maximum weekly benefit amount may be adjusted on an annual basis based on labor market conditions.

Currently, weekly benefit amounts range between \$25 and \$618, based on claimants' past earnings.

EMPLOYMENT SEPARATION

An individual's eligibility for unemployment benefits depends, in part, on the reason for or circumstances surrounding his or her separation from employment. The law lists several reasons and circumstances that will generally qualify an individual for a full award of benefits. Among others, these reasons and circumstances generally include:

- Layoffs for lack of work;
- Certain health-related issues involving the employee or his or her family members;
- Unsatisfactory or hazardous working conditions;
- Substantial change in working conditions;

- Unreasonable reduction in pay;
- Acceptance of a termination, furlough or layoff instead of replacing another worker;
- Employer violation of a written employment contract;
- Refusal (due to reasonable, compelling personal reasons affecting either the employee or his or her immediate family) to work overtime without reasonable advance notice.
- Being instructed or requested to perform a service or commit an act in violation of an ordinance or statute;
- Involuntary retirement;
- Non-job-related personal harassment by the employer;
- Business closure because the employer was called to active military duty; and
- Change in location of employment held by the employee's spouse or civil union partner.

Please note the above list is not exclusive; the law also includes several other reasons for and circumstances surrounding an employee's separation from employment that may also qualify the employee for a full award of unemployment benefits.

Also, in response to the COVID-19 pandemic, the state added to this list, **effective July 14, 2020**. The new additions mean that an employee will qualify for a full award of unemployment benefits if the reason for his or her separation from employment is because:

- The employer required him or her to work in an environment that is not in compliance with:
 - Federal centers for disease control and prevention guidelines applicable to the employer's business and workplace;
 - State and federal laws, rules and regulations concerning disease mitigation and workplace safety; or
 - An order issued by the state or local government requiring the employer to close the business or modify its operation;
- The employee is the primary caretaker of:
 - A child enrolled in a school that is closed due to a public health emergency; or
 - A family member or household member who is quarantined due to an illness during a public health emergency; or
- The employee is immunocompromised and more susceptible to illness or disease during a public health emergency, as evidenced by the employee's health care provider.

DISQUALIFYING EMPLOYMENT SEPARATION

The law also includes several reasons for and circumstances surrounding a separation from employment that may disqualify an employee for benefits. For example, an individual will be disqualified from receiving benefits if he or she is discharged from employment for:

- Gross misconduct, which includes:
 - Conduct evincing such willful or wanton disregard of an employer's interests or negligence or harm of such a degree or recurrence as to manifest culpability or wrongful intent; and
 - Assault or threatened assault upon supervisors, coworkers or others at the work site;
- Insubordination,
- Theft;
- Willful neglect or causing damage to an employer's property;
- Tardiness or absenteeism;
- Shoddy or careless work,
- On-the-job use or distribution of intoxicants or controlled substances;
- Off-the-job use of intoxicating or controlled substances to a degree resulting in interference with job performance;
- Rude or offensive behavior;
- Failing to participate in or complete a rehabilitation program;
- Violating a law or company rule that resulted, or could have resulted, in serious damage to the employer's property or interest, or could have endangered the life of a worker or other person; or
- Loss of license, certification, credential, condition or other professional designation that is essential to job performance.

MAINTAINING ELIGIBILITY

Once an individual has been approved by the CDLE to receive UI benefits, he or she must meet certain requirements on an ongoing basis. Specifically, maintaining eligibility for UI benefits requires an individual to:

- Request UI payments every two weeks;
- Actively seek work and maintain a [work-search log](#);
- Remain physically and mentally able to work;
- Accept any offer of suitable work;
- Not be receiving or seeking unemployment benefits from another state, the federal government or a foreign country;
- Be available to begin work immediately if a job is offered; and
- Report any hours worked and money earned each time a payment is requested.

ACCEPTING SUITABLE WORK

Individuals receiving unemployment benefits must be willing to accept suitable work when offered. The CDLE considers various factors in determining if work is suitable. These factors include, but are not limited to, rate of pay, an individual's prior work experience and length of unemployment.

However, the CDLE may not deem work to be suitable and therefore deny benefits to any otherwise eligible individual for refusing to accept new work if any of the following circumstances exist:

- The position offered is vacant due directly to a strike, lockout, or other labor dispute;
- The wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- As a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

Effective July 14, 2020, this list also includes the following:

- The employer requires the individual to work in an environment that is not in compliance with:
 - CDC guidelines applicable to the employer's business and workplace at the time of the determination;
 - State or federal laws, rules and regulations concerning disease mitigation and workplace safety; or
 - A state or local order to requiring the employer to close the business or modify the operation of the business;
- The individual is the primary caretaker of:
 - A child enrolled in a school that is closed due to a public health emergency; or
 - A family member or household member who is quarantined due to an illness during a public health emergency; and
- The employee is immunocompromised and more susceptible to illness or disease during a public health emergency, as evidenced by the employee's health care provider.

WORKING AND REPORTING HOURS AND EARNINGS

The ESA allows individuals to work part time (fewer than 32 hours a week) while collecting unemployment benefits. Individuals can earn up to 25 percent of their weekly benefit amount and still receive their full unemployment benefit amount. If a person earns more than 25 percent of their weekly benefit amount, he or she may receive a benefit amount that is reduced by one dollar for each dollar earned.

Individuals must report all earnings and hours worked while receiving unemployment benefits each time they request a payment. Claimants may use an [earnings log](#) provided by the CDLE to keep track of earnings and hours worked.

EXEMPTED EMPLOYMENT

Certain employees are not covered by the ESA. As a result, these employees are not entitled to UI benefits. Employers are not required to report wages of these employees and do not have to make contributions based on their wages.

For purposes of the ESA, the term "employment" does **not** include:

- An individual employed by his or her spouse, or a child under age 21 employed by his or her parent;
- Services performed by nonresident aliens while temporarily present in the United States;
- Services performed for tax-exempt organizations;
- Work for the federal government or a foreign government;
- Students employed by a school, college or university at which he or she is enrolled and regularly attending;
- Patients employed by a hospital;
- Service performed by insurance agents or insurance solicitors paid solely by commission;

- Members of a limited liability company, sole proprietors or partners in a partnership;
- Certain agricultural, casual and domestic labor;
- Newsboys under the age of 18; or
- Certain services performed by real estate brokers or direct sellers of goods.

For a complete list of exempted employment, please consult the [full text of the ESA](#).

FRAUD

Individuals who fraudulently obtain unemployment benefits must repay the benefits they receive, in addition to a **65 percent penalty**. These individuals may also be disqualified from receiving future benefits and may be charged criminally in state or federal court. Fraudulent actions include, but are not limited to:

- Failing to report or under-report hours and earnings (for individuals who work while collecting benefits);
- Failing to report employment, including commission, temporary, 1099, part-time employment self-employment, contract or cash jobs;
- Failing to report a job separation;
- Falsifying work-search efforts or failing to conduct a valid work search;
- Refusing work offered or failing to report any job offers;
- Making a false statement or misrepresentation in order to receive or increase benefits;
- Using another person's identity (name and/or social security number) to work and file for unemployment benefits;
- Helping someone to file a claim or request payment fraudulently;
- Failing to report other types of compensation (for example, workers' compensation benefits, retirement account distribution, severance or vacation pay); and
- Failing to report being unable or unavailable to work (for example, illness, injury, out of area, on vacation or incarceration) while collecting unemployment benefits.

The CDLE audits unemployment benefit claims regularly to ensure that benefits are properly paid in accordance with state and federal laws.

APPEALS

The CDLE will notify both the applicant and employer whether a UI claim is accepted or denied. Interested parties have the right to appeal this decision **within 20 days** from the mailing date of the decision. All appeals must include a copy of the decision being appealed and a signed statement detailing the reason why the party disagrees with the decision. Late appeals are generally not allowed, but may be allowed in situations where a party can show good cause for filing a late appeal.

During an appeal, a party may have an attorney or any other representative of the party's choosing to represent him or her. Attorneys are not provided for these hearings.

MORE INFORMATION

Please visit the [CDLE website](#) or contact Heffernan Insurance Brokers for more information on unemployment compensation laws in Colorado.

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