

MORE STATES CONSIDER UNEMPLOYMENT BENEFITS FOR STRIKING WORKERS: WHAT EMPLOYERS SHOULD KNOW ABOUT THIS GROWING TREND

Insights
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Lawmakers in at least six states are pushing to make striking employees eligible for unemployment benefits rather than being disqualified for participating in the work stoppage, as is the case in all but two states. This trend is particularly important considering the sharp rise in major work stoppages in 2023 and last year's number of high-profile strikes. We'll explain everything you should know about the potential sea change that could disrupt labor negotiations and union dynamics across the country.

Quick Background

Unemployment insurance (UI) is a joint state-federal program that pays temporary cash benefits to qualifying unemployed workers. While all states must follow certain federal guidelines, each state administers its own UI program and sets its own eligibility requirements.

A [May 2024 report](#) from the U.S. Department of Labor describes the social insurance program as "designed to provide benefits to most individuals out of work, generally through no fault of their own, for periods between jobs," and states that "to be eligible for benefits, jobless workers must demonstrate workforce attachment, usually measured by amount of wages and/or weeks of work, must be able and available for work, and must be actively seeking work." At the core of eligibility is whether work is available and whether the employee chooses not to come to work. So, if a strike occurs and the employer continues to operate, historically, striking employees are ineligible for UI benefits.

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Currently, most states do not allow striking workers to receive UI benefits, except for New Jersey and New York:

- **New Jersey.** Since 2018, New Jersey has offered unemployment benefits to workers who are engaged in certain labor disputes, including strikes. The state enacted another law in 2023 that eased UI eligibility requirements so that workers could be entitled to benefits after only 14 days (rather than 30 days) of a labor dispute.
- **New York.** Since 2020, New York has allowed striking workers to access UI benefits if the strike lasts longer than 14 days.

Lawmakers in other states have tried, but failed, in past years to enact similar legislation – such as a California bill passed by state lawmakers but [rejected by Gov. Newsom](#) in 2023 and a [proposed federal law](#) that stalled out that same year.

In contrast, many existing state laws permit UI during other types of labor disputes. For example, UI is available during lockouts in at least half of all U.S. states and during conditional strikes (“strikes triggered by an employer breaking labor law or union contract”) in a handful of states, according to an [October 2024 report](#) by the National Employment Law Project.

Latest Developments

Lawmakers in at least six states (including [Connecticut](#), [Delaware](#), [Hawaii](#), [Massachusetts](#), [Oregon](#), and [Washington](#)) have introduced legislation that would make striking workers eligible for UI benefits. Generally speaking, the proposed bills would allow striking employees to access benefits if they otherwise meet the eligibility requirements and the strike lasts longer than a specified time period (which varies among the proposed bills from as few as seven days to as many as 30 days). At least some of the bills would waive the waiting period if certain conditions were met, such as if the labor dispute was caused by the employer’s failure or refusal to comply with union contract.

Hot Debate

- **Business groups and other opponents** argue that giving striking workers access to UI benefits is at odds with the

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basic principles under federal UI guidelines, such as the aim to benefit individuals who are willing to return to work and where work is available. In contrast, for example, workers who strike may have a federal right to return to work during the strike or at the conclusion of the labor dispute. Opponents also point to financial strains this change would have on the system. This could be exacerbated by the recent rise in striking workers and the financial toll on state UI systems. In fact, Gov. Newsom cited California's outstanding debt owed to the federal government for UI loans as one of the main reasons for not signing the bill that passed in 2023. Those opposed also claim that receiving UI benefits could lower union workers' motivation to engage in good faith bargaining.

- **Labor advocates**, however, argue that making UI benefits available to striking workers is necessary to level the playing field during labor negotiations and comes at a very little cost. According to a [recent report](#) from the Economic Policy Institute (EPI), "extending employment insurance to strikers would cost less than 1% of total UI expenditures in each state that has considered such legislation." The EPI report also claims that such policies "help stabilize the economy by keeping dollars flowing to communities where a strike is taking place," and that such policies would oblige employers to "engage workers more earnestly at the bargaining table, knowing that they can't rely on threats to starve workers out by forcing a strike."

What's Next?

Stay tuned to see to see whether any of these proposed bills gain momentum or if this growing trend expands into other states. In the meantime, make sure you are aware of the UI eligibility rules applicable to your state, including whether employees may access benefits even when they are subject to labor disputes such as lockouts or strikes.

We will continue to monitor the new wave of bills under consideration across the country – and we will provide further analysis and compliance assistance for the top bills that are enacted. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. For more information about this legislation, feel free to contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Labor Relations Practice Group](#).

