

March 19, 2020

Dear Governor Cuomo, Senate Majority Leader Stewart-Cousins and Speaker Heastie:

We, the undersigned organizations, wish to thank you for yesterday's legislation and the Governor's Executive Order last week speeding up access to vital unemployment insurance (UI) benefits during the COVID-19 outbreak. We write to respectfully urge that the New York State Department of Labor (NYS DOL), and the New York State legislature take additional swift emergency steps to ensure that workers who have been left without paychecks during the COVID-19 crisis receive urgently needed benefits immediately.

New York's current UI benefit levels and rules for qualifying for them are simply not adequate to provide most jobless New Yorkers with the support they will need to weather the immediate crisis and the recession that will follow. And for other workers such as misclassified independent contractors, NYS DOL's system for processing their claims currently can take months before they receive benefits – a system that is inhumane and unworkable at a time when thousands such workers have now been thrown out of work.

We therefore respectfully urge the administration and the legislature to implement the following crucial reforms:

**1. The Legislature Should Pass Partial Unemployment Reforms**

Many workers have had their work hours slashed, but may still be working a few hours each week. But New York has the most restrictive "partial UI" rules in the nation – which determine UI benefits for workers who lose full-time employment but still manage to work part time. We urge the legislature to adopt S05754/A00446 to finally fix this major obstacle to UI benefits in New York. Workers who find part-time work after being laid off or who experience a reduction in hours but are still working should be supported, not punished by the UI system.

Unless this problem is addressed, many workers whose hours are cut during the crisis will receive no UI benefits at all. New York's current partial UI law reduces benefits by one quarter for each day worked and disallows any benefits if a worker works more than 3 days in a week. This means that a worker whose hours are reduced but whose hours are spread over several days loses substantial income but does not have the ability to access crucial benefits. \

New York is an outlier because every other state in the U.S. has a partial UI system which calculates benefits based on the amount of wages received. Senate Bill S05754/A00446 would allow a claimant who is receiving less than one-and-one half times their weekly benefit rate to disregard 50% of their earnings. For example, a driver who now only gets a few jobs a day and has seen her paycheck plummet from \$1000 to \$400 would still be able to collect \$250 in unemployment benefits or \$650 altogether. Under current NY law, the driver would get just \$400 in reduced pay and no UI benefits. We urge the legislature to act quickly to adopt this reform to ensure that workers whose hours have plummeted but are still working a few hours a week are not shut out of urgently needed UI benefits.

## **2. NYS DOL Should Exercise the Maximum Flexibility to Afford Benefits Allowed by New Federal Guidelines**

Guidelines recently published by the US DOL allow states to provide benefits where:

- An employer temporarily shuts down due to COVID-19
- A worker is quarantined, with the expectation of returning to work after quarantine
- A worker leaves work due to the risk of exposure or infection or to care for a family member.

Also, the US DOL notes that a worker doesn't need to quit in order to receive benefits due to COVID-19's impact. As New York did after 9/11, we urge that NYS DOL use its full grant of flexibility to provide UI benefits to as many affected workers as possible. This includes, as noted below, implementing expedited processes for getting benefits out the door to misclassified workers.

## **3. The Legislature Should Increase the Maximum Benefit Rates Immediately to an Amount that Can Meaningfully Replace Lost Income**

New York has one of the lowest UI benefit rates in the region, capping out at just \$504 per week. This crisis requires a real income substitute so that people can pay their grocery bills and their rent. Unemployment has to serve as a real, life-sustaining income replacement right now. Connecticut pays up to \$631; New Jersey pays up to \$713/week (56 2/3% of the Average Weekly Wage) while Massachusetts pays up to \$823/week (57.5% of the AWW). New York has to do more to keep workers' heads above water during this unprecedented crisis.

First, New York should raise its UI maximum weekly benefit rate to the level provided for Paid Family Leave under the recently approved New York paid leave legislation -- 60% of Average Weekly Wages, currently \$840.70/week -- to provide more meaningful income support during this time of crisis and recession.

Second, New York should raise the UI minimum weekly benefit too. Currently New York's minimum weekly benefit is just \$100/week -- far, far less than even the poverty level even for a single person, which is \$245/week. Other states have far higher minimum benefit level, including Washington State at \$178. In light of its exceptionally high cost of living, New York should raise its minimum benefit level to \$200.

Third, New York should fix another basic omission in its UI system by providing a "dependents' allowance" in the amount of \$25 extra per dependent. Approximately thirteen other states including New Jersey and Massachusetts provide dependents' allowances, to help ensure that UI benefits provide more support to jobless workers who are supporting families.

## **4. NYS DOL Should Expedite Access to UI Benefits for Misclassified Workers**

Workers who are paid under the table or who have been misclassified by their employers as independent contractors face tremendous difficulties when they apply for unemployment because their employers fail to report their wages. Their employers should not be allowed to cheat the system in a way that hurts their workers and the whole economy by nonparticipation in important safety net programs. Currently, these mostly low-wage workers are forced to wait several months and jump through numerous bureaucratic hoops before receiving benefits,

resulting in extreme economic hardship. Many will not be eligible for paid sick days coverage, making it all the more urgent that the state implement expedited procedures for ensuring their access to UI benefits. DOL should immediately implement new procedures that presume misclassified workers are employees entitled to UI benefits once they make a threshold showing of eligibility.

Where the DOL or the UIAB has already decided the employee status of workers for a specific company, the DOL should process such applications immediately based on the prior decisions determining eligibility. For example:

- Handy cleaners must be considered eligible, where the DOL has already determined Handy to be an employer for UI purposes in an initial determination.
- Lyft drivers must be considered eligible, where the Unemployment Insurance Appeal Board has already found Lyft to be an employer after an ALJ decision.
- Uber drivers must be considered eligible, where the Unemployment Insurance Appeal Board has already found Uber to be an employer after an ALJ decision, and after an appeal-level decision by the Board.

For other cases, where employment status may be in question, the DOL should extend a presumption of employment based on information provided in the initial application, with no additional administrative steps required. Since these companies do not report wages, the DOL should immediately streamline the method they use to calculate earnings by allowing claimants to upload earnings information online at the time of application.

In sum, there are specific steps that New York can take in the face of this unprecedented crisis to protect workers directly impacted by the coronavirus, to ensure that eligible workers get the benefits they need when those payments are due, to support workers who find part-time work, and to ensure that workers affected by the economic impact of the coronavirus are paid enough to sustain them through the crisis.

We are eager to work with you to help develop and adopt these important new protections as soon as possible. Thank you very much for your consideration.

Respectfully submitted,

National Employment Law Project  
The Legal Aid Society  
Strong Economy for All Coalition  
SEIU 32BJ  
UFCW Local 1500  
New York Taxi Workers Alliance  
Make the Road New York  
NY Nail Salon Workers Association  
NY NJ Regional Joint Board, Workers United, SEIU  
Asian American Legal Defense and Education Fund  
National Writers' Union  
Authors Guild  
Freelancers Union  
Center for New York City Affairs  
National Employment Lawyers Association/New York  
Fiscal Policy Institute