

U.S. Department of Labor

Employment and Training Administration
200 Constitution Avenue, N.W.
Washington, D.C. 20210



January 8, 2026

Dear State Administrators and UI Directors,

To preserve the integrity of the nation's Unemployment Insurance (UI) system, I am writing to clarify the requirements of federal UI law with respect to the UI eligibility of individuals during a strike.

Federal law establishes requirements for state UI programs, including broad coverage provisions, benefit provisions, experience rating requirements, and certain administrative requirements.¹ A state's failure to follow these requirements may lead to conformity or compliance issues. A state's law must conform to the requirements of federal UI law in order for the state to receive grants to administer their UI programs and for employers in the state to receive credits under the Federal Unemployment Tax Act (FUTA).²

Please find attached a series of questions and answers that can help states remain in conformity and compliance with federal UI law on the issue of striking workers.

I hope this information is helpful. If you have additional questions or would like further technical assistance on proposed legislation, please contact your ETA Regional Office.

Sincerely,

A handwritten signature in blue ink that appears to read "M Beebe".

Michelle Beebe
Administrator
ETA Office of Unemployment Insurance

Attachment(s): Questions and Answers

¹ See, 26 U.S.C. 3301, et seq., 42 U.S.C. 501, et seq.

² See, 20 C.F.R. Part 601 *et seq.*

Questions and Answers

Question #1. Is it a violation of federal UI law for states to provide UI benefits to striking workers?

Response #1.

The only provision in federal law that addresses UI coverage in the context of a labor dispute is [Section 3304\(a\)\(5\) of the Federal Unemployment Tax Act \(FUTA\)](#), which requires, as a condition for employers in a state to receive credit against the federal tax, that UI benefits shall not be denied to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (A) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;*
- (B) if 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;*
- (C) if 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.*

In 1979, the Department published [Unemployment Insurance Program Letter \(UIPL\) No. 24-79](#), which addresses this topic. The UIPL discusses the U.S. Supreme Court's decision not to disturb New York's law allowing payment of UI benefits to striking workers after an extended eight week waiting period in New York. See, *Telephone Company v. New York State Dept. of Labor*, 440 U.S. 519 (1979).

Question #2. If state law permits the payment of UI benefits to striking workers, what are the federal requirements for making such payments?

Response #2. States must require claimants to be able to work, available for work, and actively seeking work. [Section 303\(a\)\(12\)](#), of the Social Security Act (SSA), requires that state UI law provide "as a condition of eligibility for regular compensation for any week, a claimant must be able to work, available to work, and actively seeking work." A state may not exempt individuals from the requirements of Section 303(a)(12), SSA.

While activities constituting "actively seeking work" are not defined in federal UI law, State UI law must require, at minimum, some evidence of work search activity for each week received. Thus, **an individual who is on strike must engage in activities that demonstrate to the state UI agency that he or she is able and available for work and actively seeking work under State law.**

The state UI agency must also monitor in accordance with state policies and procedures whether the claimant is able and available for work and actively seeking other work for

each week UI benefits are received. The state UI agency must, in accordance with state policies and procedures, examine the claimant's activity to make sure the effort to secure other work is genuine in nature and that the claimant has not withdrawn from the labor market, including by engaging in activity, such as picketing, to the exclusion of seeking other work.

With respect to the work search requirement, states must establish active work search requirements "consistent with the strong expectation that [UI] beneficiaries will be engaged in concerted and effective efforts calculated to find a suitable job in the shortest period of time that is practicable." See, [UIPL No. 05-13](#).

Question #3. Do the terms "available to work" and "actively seeking work" mean the claimant has to be looking for a new job and able to take one if offered? Or does it mean that at some time in the future they will be willing to return to a job once the union is satisfied with the term of a contract offer from the employer?

Response #3. Section 303(a)(12), SSA provides that the Secretary of Labor shall make no certification for payment to any state unless the Secretary of Labor finds that the law of such state, approved by the Secretary of Labor under the Federal Unemployment Tax Act, includes provision for "a requirement that, as a condition of eligibility for regular compensation for any week, a claimant must be able to work, available to work, and actively seeking work." See, 42 USC 503(a)(12). A state may not, consistent with Section 303(a)(12), SSA, exempt individuals from these requirements. As a result, the state UI agency must monitor whether the worker is able and available for work and actively seeking other work for each week benefits are claimed. The state UI agency must examine the claimant's activity to make sure the effort to secure other work is genuine in nature and that the claimant has not withdrawn from the labor market by engaging in activity (e.g., picketing) to the exclusion of seeking other work.

With respect to the work search requirement, states must establish active work search requirements "consistent with the strong expectation that [UI] beneficiaries will be engaged in concerted and effective efforts calculated to find a suitable job in the shortest period of time that is practicable." See, [UIPL No. 05-13](#).

States may not provide for blanket exemptions from the work search requirement. In addition, the Department has long held that states must consider an individual who satisfies the following criteria to meet the work search requirement: (1) the individual is members of a union with a union hiring hall; (2) the individual is eligible to receive work from the union hiring hall (e.g., is a member in good standing); and (3) the individual complied with the union's requirements, where the hiring hall is the only permissible way for them to seek work in accordance with the terms of their current union contract/membership. The Department has taken this position because applying the work search requirement in a different manner to these individuals would conflict with Section 3304(a)(5), FUTA, which prohibits states from denying UI benefits to an individual for refusing to accept work that would require the individual to resign from or refrain from joining a bona fide labor organization.

Question #4. Are workers who are involved in a strike “actively seeking work” if their only work search activity is remaining in contact with their union?

Response #4. No. The worker must satisfy the criteria in **Question #3**.

Question #5. What does federal UI law require in a situation where an employer asks an employee to come back to work before the labor dispute is resolved and the employee refuses? Would that refusal have an impact on an employee’s eligibility for unemployment benefits?

Response #5. Depending on the circumstances of the scenario described, the employer’s request could be considered an offer of work and the state would need to adjudicate the issue in accordance with state law regarding refusals of work.

Before a state could adjudicate the issue, the agency would need to confirm that the offer of work meets the labor standards requirements of 3304(a)(5), FUTA, including that is not a position that is open due to the strike. The labor standards contain a minimum threshold that any offers of new work must meet in terms of labor/management relations and prevailing wages, hours or other conditions of work in the locality. The state must consider whether the “*wages, hours, or other conditions of work are substantially less favorable than those prevailing for similar work in the locality*” even when the offer of work comes from an employer the claimant previously or most recently worked for. Similarly, it makes no difference that the claimant may have previously worked at a job “*below*” the conditions prevailing in the locality. See, [UIPL No. 41-98](#), and [UIPL No. 41-98, Change 1](#).

Question #6. If a state’s law exempts striking workers from having to conduct a job search, would the state be in violation of federal unemployed compensation law?

Response #6. Yes.

Question #7. What are the potential consequences if a state is out of conformity or compliance with Section 303(a)(12), SSA requirements are met?

Response #7. A finding that the state is not in substantial compliance could result in the loss of their administrative grants under Title III, SSA.

Requesting Additional Assistance. Should your office or the relevant state agency have questions about federal conformity or the Department’s position on labor dispute disqualifications, ETA remains available to provide technical assistance.

Please also note the ongoing requirement to transmit proposed and enacted legislation and regulations to the Department using Form MA 8-7, *Transmittal for Unemployment Insurance Materials*. See, [UIPL No. 26-13](#).