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Unemployment Compensation, Labor Disputes, and Strikes

Introduction

Labor disputes among workers and employers may involve temporary work stoppages. Strikes occur when workers initiate the work stoppage. Lockouts happen when employers refuse to allow employees to work.

For 2023, the U.S. Bureau of Labor Statistics (BLS) reported that a total of 33 major work stoppages involving 1,000 or more workers began, impacting approximately 458,900 workers. This is the largest number of major work stoppages since 2000 (when there were 39). Because of the complexity of most labor disputes, BLS' estimates do not distinguish between strikes and lockouts in its work stoppage statistics.

Workers involved in a strike or lockout may or may not be members of a union. In the case of strikes or lockouts involving union members, unions may provide their members with payments in the form of strike assistance if they have the financial resources to do so. Additionally, there has been state and federal legislation introduced to provide striking workers with income replacement through the Unemployment Compensation (UC) program.

This In Focus discusses the role of UC in labor disputes and strikes, including current UC eligibility and disqualification related to labor disputes as well as examples of recent state and federal legislation to expand UC access in labor dispute situations. It also summarizes the role of union strike assistance.

Unemployment Compensation

The joint federal-state UC program provides income support through UC benefit payments. The UC program is financed through employer taxes imposed by the Federal Unemployment Tax Act (FUTA) and state payroll taxes required under each state's State Unemployment Tax Act (SUTA). Although there are broad requirements under federal law regarding UC benefits and financing, state 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 U.S. 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.

For additional background on UC, see CRS In Focus IF10336, *The Fundamentals of Unemployment Compensation*.

UC Eligibility and Disqualification

The UC program generally does not provide UC benefits to the self-employed, individuals who are unable to work, or individuals who do not have a recent earnings history. Eligibility for UC benefits is based on attaining qualified wages and employment in a position that is subject to unemployment payroll taxes (i.e., Federal Unemployment Tax Act or state unemployment taxes) as well as most state and local government employment. To receive UC benefits, claimants must be able, available, and actively searching for work. UC claimants generally may not refuse suitable work, as defined under state laws, and must maintain their UC eligibility. The methods states use to determine *eligibility* vary across state UC programs. An ineligible individual is prohibited from receiving UC benefits under a state's laws until the condition serving as the basis for ineligibility no longer exists. UC eligibility is generally determined on a weekly basis.

In addition, states may *disqualify* claimants who lost their jobs because of inability to work, voluntarily quit without good cause, were discharged for job-related misconduct, or refused suitable work without good cause. In this situation, which is distinct from ineligibility, an individual has no rights to UC benefits until she or he requalifies under a state's laws, usually by serving a predetermined disqualification period or obtaining new employment. In some situations, UC benefits may be reduced or wage credits may be cancelled for disqualified individuals.

Work Stoppages and UC

Federal law does not specify whether an individual experiencing a period of unemployment due to a labor dispute should be considered ineligible or disqualified for UC benefits. Most state laws will find that claimants who voluntarily left the job due to a labor dispute are subject to disqualification and would not be eligible for UC until the labor dispute is resolved. Unions generally oppose this approach and assert that access to UC is beneficial to the economy by supporting striking workers while they exercise their right to strike for better pay and workplace conditions. In contrast, employers generally oppose expanding UC benefits to actively striking workers, arguing that such entitlement would punish employers by effectively funding the strikes through increases in the employers' state UC taxes, which help fund the UC program.

In most states, when a striking worker is deemed disqualified for UC because of the labor dispute, there is no reduction or cancellation of UC benefit entitlement. Instead, the denial period remains in place until the dispute is resolved. Once resolved, the worker may be eligible to receive UC if she or he continues to be unemployed. Table

5-11 in DOL, Employment and Training Administration, *2023 Comparison of State Unemployment Insurance Laws*, provides a broad summary of how states disqualify individuals involved in a labor dispute. (Table 5-12 of the same document provides a broad summary of exclusions from disqualification.)

Striking

Striking involves walking off the job or refusing to report to work. Most state UC laws typically require that an individual be treated as disqualified for UC until the resolution of the labor dispute. States generally have exceptions for workers who are not participating in the dispute but have lost work because of it (e.g., nonunion office workers who were laid off might not be disqualified since they had no control or voice in the union strategy.) In some states, a worker not involved in a labor dispute who refuses to cross a picket line during the dispute would be considered to have voluntarily left work and might also be disqualified from receiving UC.

Exceptions to Strike Disqualification

In two states, New Jersey and New York, striking workers are no longer disqualified for UC once a waiting period of 14 days has been met.

Lockouts

A lockout occurs when an employer refuses to allow employees to work. Employers may use a lockout to attempt to obtain more leverage in collective bargaining negotiations. Depending on the circumstances, when an employer locks out workers from the job site, some states may allow those locked-out workers to begin to receive UC.

Other Situations

Some states may authorize payment of UC benefits for striking workers if the strike is because an employer failed to conform to federal or state labor laws or the employer did not follow the collective bargaining agreement.

Legislative Proposals: UC for Striking Workers

During 2023, several states considered state-level legislation that would have provided UC to striking workers after a waiting period: California (14 days), Connecticut (14 days), Illinois (14 days), Massachusetts (30 days), and New York (reducing from 14 to 7 days). None of these bills have been enacted. For example, the California bill passed both chambers before being vetoed by Governor Newsom. The governor stated that an expansion of UC eligibility would increase California's outstanding UC federal loan (which was already at approximately \$20 billion), and thus was one reason for his veto.

A New Jersey proposal to reduce the state disqualification period for UC benefits for striking workers from 30 to 14 days was enacted (signed into New Jersey law on April 24, 2023; retroactively effective for UC benefit claims on or after January 1, 2022). Additionally, in 2024 at least one state is considering state-level legislation to provide UC to striking workers after a waiting period: Washington (seven days).

At the federal level, Representative Adam Schiff introduced the Empowering Striking Workers Act of 2023 (H.R. 6063) in the 118th Congress. The bill would require states to pay UC to individuals who were unable to work due to a labor dispute as defined by the National Labor Relations Act (29 U.S.C. §152). UC benefits under this proposal would be required to be paid to a claimant the earlier of (1) 14 days after the date the strike began, (2) the date the lockout began, (3) the date the employer hired permanent replacement workers, or (4) the date the strike or lockout ended and the worker became unemployed.

Also in the 118th Congress, S. 3140 and H.R. 6071, both called the Unemployment Insurance Modernization and Recession Readiness Act, were introduced by Senator Ron Wyden and Representative Donald Beyer, respectively. Among other provisions, Section 216 of S. 3140 /H.R. 6071 would prohibit states from denying UC benefits in certain situations based on strikes or lockouts or the failure of an employer to follow certain federal or state labor laws.

Union Strike Assistance

Because most strike actions will disqualify union members from receiving UC benefits, established unions sometimes have a strike fund, paid by members' dues, to help support union members during strikes. If a strike is authorized, union members may be eligible to receive strike benefits. For example, in the 2023 United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW) strike against Ford, General Motors, and Stellantis, the UAW provided up to \$500 per week as a strike pay, payable beginning at the end of the first week of unemployment. Other unions offer more limited support for some striking members, such as the Screen Actors Guild-American Federation of Television and Radio Artists (SAG-AFTRA) Emergency Financial Assistance/Disaster Relief Fund, which provided limited grants to members who were experiencing an "urgent financial need" because of the SAG-AFTRA 2023 strike.

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