

Immigrant Workers' Rights During the COVID-19 Pandemic

- Unpaid & Paid Leaves
- Economic Assistance
- New Public Charge Rule
- Immigration Enforcement
- Ira Kurzban on The Nationwide Legal Battle

PAID AND UNPAID LEAVE

Families First Act: Paid Sick Leave and Paid Family and Medical Leave

- Requires certain employers to provide workers with paid sick leave and paid family leave.
- Workers able to take up to 10 days of paid sick leave and up to 12 weeks of emergency paid family leave.
- Employer must continue healthcare coverage during leave period.
- Workers may have right to return to their jobs (or equivalent position) after leave period.

Paid Sick Leave and Paid Family and Medical Leave

- No immigration status–related restrictions on eligibility for paid sick leave or paid family and medical leave.
 - Workers entitled to both types of leave, regardless of immigration status.
- Benefits paid directly to employees by employers in same way that wages are paid.

Paid Sick Leave and Paid Family and Medical Leave

- Generally no involvement with government agencies UNLESS employees file claims alleging violations of paid sick or paid family and medical leave laws.
- Emergency paid sick and paid family and medical leave provisions will be enforced by DOL's Wage and Hour Division.
 - Should not ask about workers' immigration status while conducting its enforcement activities.

Family & Medical Leave Act (FMLA): Unpaid Leave

- Up to 12 weeks of unpaid, job-protected leave.
- Leave may be taken to address own serious health condition or of a parent, spouse, minor child, or an adult child who is incapable of self-care.
- A serious health condition may include the flu where complications arise that result in an incapacity of more than three days and ongoing treatment by a health provider.
- Upon end of her leave, worker should be reinstated to previous or similar position.

FMLA: Unpaid Leave

- Workers may take FMLA unpaid leave regardless of their immigration status, provided they meet existing requirements
 - 1250 hours in last 12 months
 - Employer of 50 employees in 75 mile radius

Returning From Leave and Reverification

- Employers should not re-verify workers' I-9 documents, including work authorization, when they return from leave.
 - Includes asking worker to provide I-9 documents again, including work authorization, or using E-Verify.
- Return to work from leave is continuing employment and is not considered a “hiring.”
 - Does not trigger employer's obligation to verify identity and work authorization.

Returning From Leave and Reverification

- Employers who re-verify immigration status upon return to work from leave/layoff run risk of violating:
 - Paid sick, family and medical, and unpaid leave laws;
 - Anti-discrimination provisions of federal immigration law based on national origin;
 - Other state and federal anti-discrimination and anti-retaliation laws;
 - Subjecting themselves to possible enforcement by the DOL or lawsuit.

ECONOMIC ASSISTANCE

Unemployment Benefits

- In California, Employment Development Department (EDD) requires that immigrants
 - Must show
 - Had valid immigration status and work authorization to work in the U.S. during the time period they worked to establish their claim (base period), and,
 - During the entire time period they receive benefits (benefits period).

Unemployment Benefits

- Temporary Protected Status(TPS) and DACA recipients are eligible to receive unemployment benefits as long as TPS/DACA status and work authorization were valid during base period and continue to remain valid during benefits period.
- EDD verifies applicants' immigration status and work authorization through the Department of Homeland Security (DHS).
 - Information should not be used by DHS for immigration enforcement purposes.

Unemployment Benefits

- If EDD receives information that a SSN has been used improperly to file a claim for unemployment benefits, it will flag the SSN.
 - If any person attempts to use that SSN again, EDD will request additional identifying information from the person filing the claim.
- EDD also notifies last, former, and current employers when claim for unemployment benefits is filed and also reports amount of the benefits paid to the IRS.

Unemployment Benefits under the Families First and CARES Act

- It is likely that workers who lack work authorization during base or benefits periods are also ineligible for expanded unemployment benefit programs under the Families First and CARES Act.

Expanded Unemployment Benefits

- CARES Act Additional Unemployment Benefits
 - Extra \$600 per week for 4 months of Pandemic Unemployment Assistance (PUA)
 - Extends Unemployment Benefits from 26 weeks to 39 weeks in California

Economic Stimulus Payments

- Stimulus payment to help taxpayers recover from the economic impacts of COVID-19 crisis.
 - Maximum payment is \$1,200 per person and \$2,400 for persons who file joint tax return.
 - Additional \$500 payment for each child who is claimed as a dependent.

Economic Stimulus Payments

- Social Security Number (SSN) requirements exclude many immigrant and mixed–immigration status families from receiving the one-time checks (\$1200, etc.)
- Persons, including couples filing joint tax return, must have a valid SSN when they filed tax return.
- Exception if one spouse filing jointly was in the armed forces last tax year and one spouse has a valid SSN.
- Children claimed as dependents for the \$500 payment must also have valid SSNs.

Economic Stimulus Payments

- If both partners in married couple used an ITIN to file taxes, no one in household is eligible for return (does not matter whether file jointly).
- If mixed–status married couple files jointly and one partner used an ITIN, no one in household is eligible for payment.
- Couple would need to file separately in order to claim the payment for any eligible household members.
- Filing separately may render a person ineligible for Affordable Care Act subsidies that may be larger than the stimulus payment.

California Disaster Relief Fund

- Governor Newsom announced \$125 million California Disaster Relief Fund to provide assistance for undocumented immigrants who live in California and are ineligible for unemployment employments and benefits under federal law due to their immigration status.

California Disaster Relief Fund

- Approximately 150,000 undocumented adult Californians will be eligible for a one-time cash benefit of \$500 per adult.
 - Cap of \$1,000 per household.
- Disaster Relief Fund will be distributed through regional nonprofits with experience serving undocumented communities.
- Immigrant workers and families can begin applying for these benefits this month.

NEW PUBLIC CHARGE RULE

Public Charge

- A public charge is a person who is dependent on the government for support.
- Under immigration law, a person who is deemed to be likely to become a public charge in the future can be denied:
 - permission to come to the US, or,
 - lawful permanent resident (LPR) status (a green card).

Public Charge

- New rule took effect February 24, 2020.
 - Expands list of publicly-funded programs that immigration officers may consider, when deciding whether someone is likely to become a public charge.
 - Including health, housing, and nutrition programs, including federally-funded Medicaid (exceptions), SNAP benefits (food stamps), and Section 8 housing benefits.
 - Directs immigration officers to consider several factors related to an immigrant's economic situation, education, and health.

Public Charge

- Discourages immigrants and family members from accessing COVID-19-related benefits they are entitled to.
 - Avoid benefits that do not have public charge implications.
 - Persons who are exempt from the rule avoid benefits.

Public Charge

- But USCIS has stated that COVID-19–related medical testing and treatment will not be taken into consideration for purposes of determining whether an applicant for a visa or adjustment of immigration status is likely to become a public charge.

Public Charge

- USCIS announced that it will NOT consider “testing, treatment, nor preventative care (including vaccines, if a vaccine becomes available) related to COVID-19 as part of a public charge inadmissibility determination . . . even if such treatment is provided or paid for by one or more public benefits” (e.g. federally funded Medicaid).

Public Charge

- USCIS also states people who use public benefits because of COVID-19 related factors like quarantine or employer shutdown may submit a letter of explanation.

Public Charge

- Other COVID-19-related benefits that should not factor in assessing public charge:
 - State unemployment benefits
 - Stimulus payment under the CARES Act
 - Paid and Unpaid Leaves

IMMIGRATION ENFORCEMENT

Immigration Enforcement

- Enforcement Includes raids and individual arrests.
- ICE continues to enforce immigration law but says it has “temporarily adjust[ed] its enforcement” to focus on individuals who:
 - Pose public safety risks;
 - Subject to mandatory detention based on criminal grounds.
- For individuals who do not fall under those categories, ICE says it “will exercise discretion to delay enforcement actions until after the crisis or use alternatives to detention, as appropriate.”

Sensitive Locations

- Certain locations are “sensitive” in nature.
- Immigration agents should avoid or limit enforcement actions except in limited circumstances.
- Sensitive locations include, but are not limited to, schools, health care facilities, places of worship, religious or civil ceremonies, and public demonstrations.

Sensitive Locations

- In response to COVID-19, ICE says it will not carry out enforcement operations at or near:
 - “[H]ealth care facilities, such as hospitals, doctors' offices, accredited health clinics, and emergent or urgent care facilities, except in the most extraordinary of circumstances.”
 - “Individuals should not avoid seeking medical care because they fear civil immigration enforcement.”

Immigration Enforcement

- But no provisions in any COVID-19 relief bills that limit ICE from conducting immigration enforcement at sensitive locations or elsewhere.
- ICE has engaged in immigration enforcement actions, ignoring state and local stay-at-home orders and strict social distancing guidelines.

I-9 Audits and Employment Verification

- I-9 Audits.
 - No indication they will discontinue conducting audits of employers.
- Employment Verification.
 - Temporarily allowing employers to review I-9s forms and documents remotely.
 - New I-9 form goes into effect starting May 1, 2020.
 - After 5/1/2020, will only be able to use new form with 10/21/2019 version date.
 - New Form is not cause for re-verification

Preparing for Immigration Enforcement

- Exercise right to remain silent.
 - Ask to speak with attorney.
 - Ask if being arrested or free to go.
- Prepare family safety plan, including contacting immigration attorney ahead of time.
- Any Attempt at Employment reverification.
 - Immediately contact union representative and immigration attorney.

Supporting Immigrant Workers' Rights

- State and local level
 - Support Relief Funds.
 - Enforce local ordinances to retain & recall workers.
- Federal level
 - Fight for Automatic extension of work authorization.
 - Fight for Remove SSN requirement for stimulus payments.

RESOURCES

- General

- <https://www.chirla.org/>

- <https://www.nelp.org/publication/faq-immigrant-workers-rights-and-covid-19/>

- <https://www.nilc.org/resources-covid19-crisis-and-consequences/>

- Relief Funds

- <https://www.gov.ca.gov/2020/04/15/governor-newsom-announces-new-initiatives-to-support-california-workers-impacted-by-covid-19/>

- <https://legalaidthatwork.org/blog/relief-funds/>