

COVID-19 AND WORKERS' RIGHTS

FREQUENTLY ASKED QUESTIONS FOR OREGONIANS

*There are rapid changes to the law in response to COVID-19. This information was compiled by Oregon Law Center and Legal Aid Services of Oregon and is current as of **June 10, 2020**.*

Please visit oregonlawhelp.org for updated information, as eligibility for supports may have expanded and new benefits/programs may have become available.

Novel coronavirus (“COVID-19”) has disrupted many people’s ability to work and earn income. Among other reasons, COVID-19 may affect you because you or someone in your family gets ill, your employer cuts hours or is forced to shut down, you are in a high-risk category and need to take special steps to protect yourself, or you must stay home because of school or daycare closures. The following are common questions and answers about help available to people whose ability to work is affected by COVID-19.

1. Due to COVID-19, my employer has cut my hours, forced me to take unpaid leave, or ended my employment. What can I do?

You may be able to collect unemployment. To get Unemployment Insurance benefits (“UI benefits”), you only need to meet certain minimum requirements, including having sufficient past earnings and an immigration status that allows you to work. You may be able to get partial UI benefits if your hours are cut and you are still working part-time.

Both Oregon and the federal government made temporary changes to the UI benefits laws in response to COVID-19. Some of the most important changes are:

- An increase in the amount of money people can receive. People whose unemployment claims are approved will now receive an extra \$600 per week in benefits, so they can get between \$751 and \$1248 per week depending on their past earnings and the type of work they’ve been doing.
- Extension of the time period people can receive benefits, which are now available for up to 39 weeks;

- Relaxation of the requirement to “look for work,” so that employees with an agreement to return to the same employer do not have to look for other work while collecting benefits. People without the option to return to the same employer need only **certify willingness to look for work after the stay-home order is lifted** to meet the requirement (OAR 471-030-0070(5)(d));
- Changes to the requirements that a person be “able to work” and “available for work,” so that a person can collect UI benefits if they are unable to work because of COVID-19, for example because they are sick, they are subject to quarantine, or they have to stay home to care for children due to school or daycare closures (OAR 471-030-0070(1) through (5); and
- Creation of a new unemployment benefit called Pandemic Unemployment Assistance (PUA) for people with less work history, people who seek only part-time work, self-employed or “gig” workers (see Question 9), independent contractors, people otherwise disqualified from receiving regular UI benefits (for reasons other than immigration status), and people who already received all the allowable UI benefits in the past year may get PUA benefits. Note: As of June 9, 2020, Uber and Lyft drivers may be eligible for regular Unemployment Insurance benefits (not PUA) in Oregon, and should apply for a UI eligibility determination.

Although UI benefits are taxable income, \$600 per week of the benefit is excluded from income when determining eligibility for the Oregon Health Plan (government-funded health coverage).

For more information about UI benefits, including eligibility requirements and how to file a claim, please visit <https://www.oregon.gov/employ/Pages/COVID-19.aspx>. Due to the large number of people applying for UI benefits right now, you may experience a long wait time on the phone or online; keep trying until you successfully submit your application.

You can use any accrued sick leave. Oregon law gives all full-time employees at least 40 hours of sick leave per year. You can use sick time for many reasons, including if you or a family member is sick, injured, experiencing mental illness, or need to visit the doctor. Employees can use also this leave when their workplace

closes or scales back operations due to an order from a government official during a public health emergency. Although very small employers may choose to provide unpaid leave, most people are entitled to be paid their full regular rate of pay when using sick time. If your employer has at least 10 employees (at least 6 employees if the employer has a location in Portland), you have a right to paid sick leave. You can use your accrued leave if you have worked for your employer for at least 90 days.

The amount of leave you have accrued depends on your employer's leave policy and how long you have been employed. Some employers give employees the full 40 hours at the start of the year; others have a policy where the employee accrues leave with each hour worked. You may have additional paid sick leave hours left from a prior year if you did not use all of your leave last year. Check your latest pay stub for your sick leave balance, or ask your employer about the amount of leave you have accrued, and tell them you want to use your sick leave while you are out of the office.

Your employer may be able to resume paying you your regular wages. The federal CARES Act made loans available for small business affected by COVID-19. The loans are forgivable (businesses don't have to pay them back) if they comply with certain requirements, including that they continue to employ and pay a substantial portion of their employees, even if the nature of the business means that the employees cannot work during the public health emergency. If you have been laid off or furloughed, be sure your employer knows how to contact you.

The Oregon Employment Department has posted helpful videos on how to complete an application for unemployment benefits.

- Filing Claims During COVID 19 <https://youtu.be/E82E6ApKiko>;
- Filing a New Claim Application During COVID 19 <https://youtu.be/1JTPHuRlxyQ>;
- Presentación de Informes de Reclamo Semanales Durante el Estado de Emergencia COVID-19 <https://youtu.be/ewvf-Ov1v7c>.

2. Since the COVID-19 emergency began, my employer treated me differently than coworkers because I am Asian (or otherwise because of my race/nationality). What can I do?

An employer who treats you worse than other workers because of your race, national origin, or ethnic background is violating **federal and state antidiscrimination laws**. This includes employer actions that single you out because of negative stereotypes, and it includes an employer who fails to take action against coworkers who are singling you out because of negative stereotypes. If you are being treated differently at work because of your race or ethnicity and COVID-19, you should talk to a lawyer. You can find contact information for your local legal aid office by visiting <https://oregonlawhelp.org//resource/oregon-legal-aid-offices>.

3. I have a disability; is my employer required to provide me with reasonable accommodations related to COVID-19?

Maybe. Depending on the severity of your illness, COVID-19 infection and related symptoms may qualify as a disabling condition under **state and federal disability protections**. In addition, if you have another disabling impairment that puts you at a higher risk of COVID-19 infection and illness, you may be entitled to accommodations (such as teleworking) to minimize that risk. If you ask for an accommodation and your employer says no, you should talk to a lawyer. You can find contact information for your local legal aid office by visiting <https://oregonlawhelp.org//resource/oregon-legal-aid-offices>.

4. I have COVID-19 and cannot work because I am sick, or someone in my family has COVID-19 and I need to stay home to provide care or due to a quarantine order. What can I do to receive income while I'm not working?

Oregon's sick leave law gives all full-time employees at least 40 hours of sick leave per year. Most employees have a right to be paid while using this leave. See Question 1 above for more information about how to use your accrued sick leave.

The **federal Families First Coronavirus Response Act** also gives employees of certain governmental entities and most employees who work for employers with fewer than 500 employees the right to **up to two weeks' paid sick leave** if the employee or an immediate family member is sick or quarantined/isolated due to

COVID-19. This leave is in addition to the sick leave available under state law, which means that many Oregon employees will be able to receive three weeks or more of paid sick leave. Under the federal law, an employee who must take time off because the employee is sick with COVID-19 will receive full replacement of their wages for up to two weeks. An employee who takes time off work to care for an immediate family member who has COVID-19 will receive 2/3 wage replacement for the same time period. Contact your employer to see if you qualify for federal paid sick leave.

If you contracted COVID-19 at work, you may be able to get paid while you are out sick under your employer's **worker's compensation policy**. You should tell your employer that you want to make a claim for worker's compensation or ask your doctor to report your COVID-19 as an on-the-job injury. Ask your employer for the name of its worker's compensation insurance company so you can follow up directly about your claim.

5. Can I lose my job if I miss work because I'm sick with COVID-19?

Your employer cannot fire or otherwise retaliate against you because you asked for or used protected sick time, protected family leave, or reasonable accommodations for your disability. These **anti-retaliation protections** apply to employees exercising their rights under federal or state law. If your employer takes action against you for any of these reasons, contact a lawyer. You can find contact information for your local legal aid office by visiting <https://oregonlawhelp.org//resource/oregon-legal-aid-offices>.

If you work for an employer with at least 25 employees and have been working for at least a six-month period leading up to getting sick, you also have rights under the **Oregon Family Leave Act ("OFLA")**. OFLA does not provide paid leave, but it protects employees' jobs while they take up to 12 weeks off because they or a family member develop a "serious health condition" or because a child develops any illness or injury that requires home care. You should notify your employer that you want to take OFLA leave within 24 hours of missing a shift or day of work due to COVID-19.

6. Can I lose my job if I'm staying home to care for a family member who has COVID-19?

If you meet the requirements for OFLA protection (see Question 5 for more information), have accrued sick leave available (see Question 1 for more information), and/or qualify for paid sick leave under the federal Families First Coronavirus Response Act, then no. You can use sick time if anyone in your house gets COVID-19, even if they are asymptomatic or their symptoms are mild. You can use OFLA leave to stay home to care for a child who has COVID-19, even if their symptoms are mild. And you can use OFLA to stay home if you or any family member develops a serious health condition and requires care. **It is against the law if your employer fires you for asking about or using any of these benefits.**

7. My child's day care or school is closed because of the coronavirus threat. Can I take time off to care for my child?

Yes. Employees have a right under state law to use **accrued sick time** for a closure of their child's school (or place of care) by order of a public official due to a public health emergency. Governor Brown has closed public schools across Oregon for the rest of the academic year, so parents/guardians can use available paid sick leave during that time. See Question 1 for more information about how to use your accrued sick time.

In addition, the federal Families First Coronavirus Response Act provides qualifying employees with the right to **three months' paid leave** to care for children because of school closures due to COVID-19. Employees eligible for federal paid family leave will receive at least 2/3 of their usual pay while they are at home, up to \$200 per day or \$10,000 total.

OFLA (see Question 5 for more information) also gives some employees the right to take protected time off to care for their children during official school closures to limit the spread of COVID-19. OFLA does not require this leave to be paid (unless you have accrued leave available), but your job is protected while you stay home. (Paid family leave is coming to Oregon in 2023.)

Finally, temporary changes to rules about **UI benefits** (see Question 1 for more information) mean that some people can collect benefits even though they

cannot accept work because they have to stay home with children due to school or daycare closures.

8. My employer closed down because of COVID-19. What are my rights?

You may be able to receive UI benefits; see Question 1 for more information.

If your employer temporarily closes its business because of the Governor's "stay home, save lives" order, you should be able to use your accrued sick time.

If your employer closes its business and terminates your employment, **you have a right to all your wages that are still owed to you up until the date you stopped working.** Depending on your employer's policy or the terms of your employment agreement, this may include a right to be paid out for unused vacation pay and bonuses.

If your employment is terminated, you should receive your full final paycheck by the end of the next business day after your last day of work. If your employer does not pay you on time, or does not pay you in full, you may have a right to penalty wages for each day your paycheck is late.

If your employer closes its business and is unable to pay you, or pays only a part of what you are owed, you may be able to receive your unpaid wages (up to \$10,000) from the state **Wage Security Fund**. Contact the Oregon Bureau of Labor and Industries ("BOLI") at 971-673-0844 to apply for unpaid wages from the Wage Security Fund.

If you believe you are owed wages or paid sick leave, you can contact BOLI at 971-673-0844 or talk to a lawyer. You can find contact information for your local legal aid office by visiting <https://oregonlawhelp.org//resource/oregon-legal-aid-offices>.

9. I am self-employed or an independent contractor. What are my rights?

Ordinarily, independent contractors and self-employed workers do not have access to the same employment protections that employees do. Generally, independent contractors and self-employed workers are not eligible for paid sick time, UI benefits, protected family leave such as OFLA, or the Wage Security Fund.

Under COVID-19 changes to the law, however, **a self-employed worker may be able to claim a tax credit for days they were unable to work for COVID-19-**

related sick leave or family leave reasons. (See Questions 4 and 7 above for more information about the federal law.) The tax credit would be the same amount that they would receive for paid sick leave and family leave if they were employees working for an employer. The tax credit may be used only for leave taken after April 1, 2020, and before January 2021, and workers should receive a refund if their credit is more than the taxes they paid.

In addition, **self-employed workers who meet other eligibility requirements can now qualify for new Pandemic Unemployment Assistance (PUA) benefits.** Self-employed and “gig” workers can receive between \$805 and \$1,248 per week. See Question 1 for more information about UI benefits. Note: As of June 9, 2020, Uber and Lyft drivers may be eligible for regular Unemployment Insurance benefits (not PUA) in Oregon, and should apply for a UI eligibility determination.

Even if a worker is treated like an independent contractor, they may still be eligible for full UI benefits and other employment protections. In some situations, workers are misclassified as “independent contractors” when they are actually “employees” under the law. For example, a worker may receive a 1099 instead of a W-2, but that does not automatically mean that they are not covered by employment protections such as UI benefits or sick leave. If you have questions about whether you have the right to employment protections as an employee, you should talk to an attorney. You can find contact information for your local legal aid office by visiting <https://oregonlawhelp.org//resource/oregon-legal-aid-offices>.

10. I am planning to apply for Lawful Permanent Residency (a green card) in the future. Can getting any of the benefits described above affect my application?

No. None of the programs described in this fact sheet count as “public charge” benefits. Receipt of any of the supports described above – paid sick leave, paid family leave, UI benefits, worker’s compensation payments, or wage security fund – is safe and will not negatively affect your chances of getting permission to stay in the U.S. permanently.

11. My job is considered “essential” and my employer has required me to keep working. What does my employer need to do to keep me safe?

You have a right to a safe and healthy workplace. Depending on your workplace and the job that you do, your employer may need to make changes to ensure that the risk to you from COVID-19 is minimized. Employers have been instructed to move to telework whenever possible, and to maintain social distancing standards. The Oregon Occupational Health and Safety Administration (“OSHA”) has stated that employers also may fulfil their duties during a pandemic by installing physical barriers (for example, clear plastic sneeze guards), conducting business in a different manner (for example, use drive-through service windows or implement telework arrangements), improving ventilation (for example, install high-efficiency air filters, increase ventilation rates), and installing additional hand sanitizer dispensers, providing facial tissues, and having workers use personal protective equipment.

You have the right to be proactive in reporting hazards and requesting protection. It is against the law for an employer to retaliate against you for opposing unsafe working conditions. You can report unsafe working conditions and any retaliation you have suffered from speaking out about hazards at <https://osha.oregon.gov/Pages/contactus.aspx>.

If you believe your working conditions are unsafe or unhealthful, you may have the right to refuse to do a task. To protect your right to refuse, you should take the following steps: (1) Ask your employer to correct the hazard, or to assign other work; (2) Tell your employer that you won't perform the work unless and until the hazard is corrected; and (3) Remain at the worksite until ordered to leave by your employer. You can find more information about your right to refuse at <https://www.osha.gov/right-to-refuse.html>.

12. My employer has closed during the public health emergency. When the business reopens, will I have the right to be reinstated?

It depends. Employers who get forgivable small business loans under the CARES Act (see Question 1) have to meet certain requirements, including keeping employees on the payroll through the end of June. People who get COVID-19 at work may have special reinstatement rights under Oregon’s worker’s compensation law. People who take family leave under OFLA or federal law

generally have the right to return to the same position or an equivalent position at the end of their leave. And individuals who experience discrimination or retaliation for exercising their rights (see Questions 5 and 6) can seek reinstatement as a remedy in court. However, none of these rights protect you against layoffs that happen for “legitimate business reasons,” for example if a business closes certain worksites permanently. For more information about your reinstatement rights, you should talk to an attorney. You can find contact information for your local legal aid office by visiting <https://oregonlawhelp.org//resource/oregon-legal-aid-offices>.

13. What if I am not eligible for Unemployment Insurance because of my immigration status?

Oregon workers who lose income for reasons related to covid-19 but are not eligible for Unemployment Insurance or certain other federal pandemic money because of their immigration status may be able to receive money from the brand-new **Oregon Worker Relief Fund**. You do not need to have a social security number or work authorization for this Fund. Money received from this Fund does not count in a "public charge" test for immigration purposes and will not negatively affect your chances of getting permission to stay in the U.S. permanently.

To be eligible you must (1) be an undocumented immigrant (2) live in Oregon (3) be 18 years of age or older, (4) have worked in Oregon on or before February 1, 2020 (5) have lost wages due to the COVID-19 pandemic, and (6) have experienced financial hardship due to the pandemic. Each individual meeting these requirements can apply, so multiple people in the same household can apply if they each meet the 6 criteria above.

To apply, contact a community navigator listed at www.workerrelief.org/find-a-navigator/ on or after June 15. If nobody answers, leave a message with your name, phone number, and the language you speak to receive a call back. The navigator will collect information and documentation necessary to determine eligibility. **Information supplied to navigators will be kept secure and confidential.**