

# Immigrants' Eligibility for Unemployment Compensation

# NELP

## Fact Sheet for Immigrant Worker Advocates

Advocating for the working poor and the unemployed

National  
Employment  
Law Project

55 John St., 7th Floor  
New York, NY 10038  
(212) 285-3025  
(212) 285-3044 fax  
nelp@nelp.org  
www.nelp.org

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To be eligible for unemployment insurance, immigrant workers must satisfy the same basic requirements as other workers. First, they must be unemployed "through no fault of their own." Second, they must have enough wages earned or hours worked to establish a claim. Third, they must be able and available to work, and they must be looking for, and not refuse, "suitable" work.

Additionally, under federal law, immigrant workers must be in particular immigration categories in order to qualify for unemployment insurance. Under the law, the state will look at immigrants' status at the time the work was performed, (the "base year") and at the time that the worker applied for benefits, (the "benefit year"). This fact sheet explains the law.

**The basic principle is that an immigrant worker will need to have valid employment authorization both at the time s/he earned the wages and at the time s/he is looking for work. However, there are some arguments that advocates can make to help other immigrant workers qualify for benefits.**

### **A. State-funded benefits.**

Most immigrants receive regular UI benefits funded through a payroll tax on employers. This section explains eligibility for those benefits.

**1. Immigration status during the Base Year.** Federal law says that the following immigrants can use their "base year" wages to qualify for unemployment insurance benefits for the first twenty six weeks of unemployment. (1) Immigrants who were admitted for permanent residence at the time services were performed, (2) immigrants who were lawfully in the United States for the purpose of performing services, and (3) immigrants who were "permanently residing in the United States under color of law."

- a. **Admitted for Permanent Residence.** The first category covers lawful permanent residents of the United States – those who have a "green card," or "MICA," as it is commonly called in Spanish.

- b. Lawfully in the US to perform services.** The second category covers immigrants who have authorization to work in the United States. This category includes Canadian and Mexican immigrant commuters authorized to work in the US, nonimmigrants granted work authorization, such as H2 and H1B workers, and any other immigrant who has “work authorization” from the INS.
- c. “Permanently residing under color of law” or PRUCOL.** The third category, those “permanently residing under color of law,” is much broader. The Department of Labor has issued a series of policies on its definition of PRUCOL. At least the following groups of immigrants will have wages credited to them under DOL’s policy:
- Refugees;
  - Immigrants who have been granted political asylum;
  - Immigrants who have been “paroled” into the US. (This is not “parole” in the sense of on “parole” from a criminal conviction, but a different kind of parole given for humanitarian reasons);
  - Immigrants who have received “withholding of deportation;”
  - People who are “conditional entrants” into the US (this is a category that was used before 1980 to describe refugee status);
  - Cuban/Haitians who have been granted parole, applied for asylum or have not received a final order of deportation;
  - Immigrants who have been notified in writing by the INS that deportation action will not be taken against them or that deportation is indefinitely delayed;
  - Certain immigrants presumed to have been lawfully admitted for permanent residence under 8 CFR 101 (these include narrow categories of immigrants who entered from certain countries at different times, all prior to 1943);
  - Immigrants who have been granted a lawful immigration status that allows them to remain in the US for an indefinite period of time.

Other groups of immigrants should qualify for the first 26 weeks of benefits, even though they are not directly mentioned in Department of Labor policy. These include one group of immigrants who are considered “qualified” under the Personal Responsibility Act of 1996:

- Battered spouses or children approved or with applications pending under the Violence Against Women Act (abused spouses and/or children of US citizens or lawful permanent residents).

**Are there any other groups of immigrants who qualify for unemployment insurance under state laws?**

DOL’s policy on the groups of immigrants who are PRUCOL is much narrower than the court decisions defining PRUCOL. States that have laws that are more generous than DOL’s policy risk sanction of their UI system.

However, at the hearing level, advocates might argue that other groups of immigrants qualify for the first 26 weeks of unemployment benefits. These groups of immigrants are not directly mentioned in the law, but the law generally covers people who are in the United States with the knowledge and permission of the Immigration and Naturalization Service. Advocates might be able to help immigrants qualify for benefits if the immigrant has applied for a particular immigration status, and has some indication that the INS knows about the person and does not intend to deport him or her.

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**DOL's Additional test for PRUCOL: "Permanently residing" in the US.** Immigrants whose base period wages are counted for a claim under the PRUCOL category must also show that they are "permanently" residing in the US. This term means a relationship that is continuing or lasting. The Department of Labor says that only people who have been granted some kind of unconditional permission to be in the US will qualify under this category. This interpretation is not in keeping with the usual meaning of the term "permanently residing." Advocates should argue in individual cases that where an immigrant intends to permanently remain in the US, he or she is "permanently residing" in the US.

**More tests for PRUCOL: Does an immigrant have to have "work authorization" in the base year, in order to have wage credits?** DOL's policies say that a PRUCOL immigrant must also have work authorization in order for base period wages to be counted toward a claim. DOL's policy conflicts with the law itself, which covers immigrants who EITHER have PRUCOL status OR work authorization. Advocates should argue that PRUCOL status in the base year is sufficient to establish a claim.

**2. Immigration status during the benefit year: General "Able and Available."** Under the laws of every state, a claimant must be "able and available" to work in order to receive unemployment compensation. Some immigrants have successfully argued that a person who is not legally authorized to work, but physically capable of doing work, should be considered "able and available." However, most courts, and the Department of Labor, say that in order to show that you are "able and available" for work at the time that you apply for benefits, you will need to have work authorization from the INS. If your status also gives you work authorization, you are "able and available" for work.

**What about immigrants who will receive work authorization as soon as they get a job offer?** Department of Labor policies say that a person must have **current** work authorization in order to be considered "able and available." Nevertheless, immigrants whose status allows them to get automatic work authorization as soon as a job is offered, such as TN visa applicants, have

successfully argued that they are “able and available” for work and therefore been granted UI benefits.

**What about immigrants who have applied to renew their work authorization, but not yet received it?** Sometimes immigrant workers apply for renewals of work authorization, and INS delays issuance of the work authorization card. Again, Department of Labor policies say that a person must have current work authorization in order to be considered “able and available.” Nevertheless, immigrants who can argue that their underlying status allows them to work, and that the reissuance of the card is a simple formality, might be able to convince a state agency to pay benefits.

Base Year				Benefit Year
	Eligibility based on	Required to prove “permanently residing”?*	Required to have work authorization in base year?	Required to have work authorization in order to be able and available?
Lawful permanent resident	DOL policy	No		Yes
Immigrant commuters	“	No		Yes
Anyone with work authorization	“	No	Yes	Yes
Refugees	“	Yes	DOL says Yes. Argue No.	Yes
Asylees	“	Yes	“	Yes
Parolees	“	Yes	“	Yes
Immigrants granted withholding of deportation	“	Yes	“	Yes
Conditional entrants	“	Yes	“	Yes
Cuban/Haitians	“	Yes	“	Yes
Any status that allows an immigrant to remain in the US for an indefinite time period	“	Yes	“	Yes

Any immigrant for whom INS has notified no action will be taken to deport	Case law	Yes	“	Yes
Battered spouses and children under VAWA	Analogy to welfare law	Yes	“	Yes

**B. Unemployment Compensation Benefits funded by the federal government.**

Some unemployment compensation benefits are paid for by the federal government. These include “extended benefits,” paid during times of recession after workers have been unemployed for more than 26 weeks. In order to qualify for these benefits, immigrants must fall into the same categories of “qualified” immigrants that currently are eligible for welfare benefits. The groups of immigrants who qualify for these unemployment benefits are more limited than the regular unemployment insurance groups. They are these:

"Qualified" (for federally-funded UI benefits, such as extended benefits)

- Legal Permanent Residents
- Refugees
- Asylees
- Persons Granted Withholding of Deportation
- Persons Paroled into the U.S. For At Least One Year
- Persons Granted Conditional Entry
- Battered Spouses or Children Approved or With Application Pending Under VAWA
- Cuban and Haitian entrants

**C. Verification of status:**

When immigrants apply for any kind of unemployment compensation benefits, they will be asked to show a social security card, and documents that prove what category of immigrant he or she belongs to. The state may check with INS to make sure that the documents are real. The state can't delay payment of benefits while it waits for INS to respond. If the INS makes a mistake and says that the documents are false, the immigrant must be given the opportunity to prove that INS is wrong.