

Strengthening Unemployment Insurance Robert Mietlicki

Unemployment insurance is “temporary income for eligible workers who become unemployed through no fault of their own and who are ready, willing, and able to work and have sufficient wages in covered employment.”¹ New York’s eligibility rules and benefit levels are similar to those of most states. The greatest issue facing unemployment insurance is the solvency of the trust funds that finance it. Raising benefit levels and length of eligibility would be beneficial, if it is accompanied by a higher, indexed taxable wage base to keep the fund solvent.



What are the basic eligibility requirements for Unemployment Insurance in New York State?

A person’s eligibility for unemployment insurance in New York State is determined by the New York State Unemployment Insurance Law. A person may be eligible for benefits if he lost his job due to a lack of work, such as the end of seasonal or temporary employment or the downsizing of a company. A person may also be eligible if he was fired because he did not meet an employer’s qualifications for a job. A worker may be denied unemployment benefits if he was fired for cause, quit his job, or was not working because of a work stoppage in violation of a current collective bargaining agreement.

Under the New York State Unemployment Insurance Law, there are two base periods that a person can use to qualify for unemployment benefits.² The Basic Base Period is “[t]he first four of the last five completed

calendar quarters prior to the calendar quarter in which [a person's] claim begins."³ The Alternate Base Period is "[t]he last four completed calendar quarters in which [a person's] claim begins."⁴ To qualify for benefits a person must meet three requirements:

1. He must have worked and received wages in at least two calendar quarters of his base period;
2. He must have been paid at least \$1,600 in one of the calendar quarters of his base period; and,
3. His total wages for his base period must be one and half times his high quarter wages.⁵

There is an exception to the third requirement for people whose high quarter wages are \$8,910 or higher. For these people, their earnings in the other calendar quarters must be at least half of \$8,910, or \$4,455.⁶

How is a person's eligibility determined?

Eligibility is first determined by looking to a person's Basic base period. If he qualifies under his Basic base period, this base period will be used to establish the claim.⁷ If a person does not qualify under his Basic base period, he can try to establish eligibility under his Alternate base period.⁸ If a person qualifies under his Basic base period, but thinks his benefits will be greater under his Alternate base period, he has 10 days from the initial monetary notice to have his rate changed using his Alternate base period.⁹

A person's benefit rate is determined using his actual high quarter wages provided by his employer to the New York State Wage Reporting system.¹⁰ Generally, a person's "weekly benefits rate is one twenty-sixth (1/26) the high quarter wages paid [in his] base period."¹¹ There is an exception for people whose high quarter wages were \$3,575 or less. For people in this situation, their weekly benefit rate is one twenty-fifth of their high quarter wages.¹²



What are the current Unemployment benefits in New York?

The maximum weekly benefit level is \$405.¹³ A person's claim lasts one year, called his benefit year.¹⁴ During this time period, he "can only receive 26 times [his] full benefit rate."¹⁵ Also, a person's weekly benefit payment will be reduced by one-quarter for each day he works or for each day he is no longer eligible to receive benefits.¹⁶ For purposes of adjusting benefits based on work completed, a person is employed on any day he performs services.¹⁷ The person need not be paid on that day for the work.¹⁸ Self-employment or free-lance work for another is considered work.¹⁹ Therefore, work can be defined as "[a]ny activity which brings in or may bring in income at any time."²⁰ Finally, if a person earns more than \$405 in any week during his benefit year, he can receive no benefits for that week.²¹

What must a person do to maintain eligibility?

After becoming eligible for unemployment insurance, a person must maintain his eligibility throughout his benefit year. "To be eligible for benefits, [a person] must be available for work and demonstrate that availability by actively looking for work while [he is] claiming benefits."²² A person will not receive benefits if he does not seek suitable work, which is defined as "work for which [he is] reasonably fitted by training and/or experience."²³ After receiving 13 weeks of benefits, suitable work for a claimant "will also include any work that you are capable of performing whether or not you have any experience or training in such work, unless you obtain work through a union hiring hall or have a definite date to return to work."²⁴ This work must pay a prevailing wage for similar work and must pay the person at least 80% of his high quarter wages.²⁵ Finally, a person must travel a "reasonable distance" for work.²⁶



How do New York's eligibility rules compare to other states?

In terms of eligibility, almost all states use the same formula as New York for determining a person's Basic Base Period, which is the first four of the last five completed calendar quarters preceding the filing of the claim.²⁷ In contrast, Massachusetts uses the four completed calendar quarters

preceding the benefit year, while Minnesota uses the last four calendar quarters as long as the effective date of the person’s claim is not in the immediate month following the fourth calendar quarter.²⁸ Like New York State, 41 other states have provisions for determining an Alternative Base Period or an Extended Base Period.²⁹

States use four different methods for determining a person’s monetary eligibility. The four methods are Multiple of High-Quarter Wages, Multiple of Weekly Benefit Amount, Flat Qualifying Amount and Weeks/Hours of Employment. 25 states use the Multiple of High-Quarter Wages method, 13 states use the Multiple of Weekly Benefit Amount Method, seven states use the Flat Qualifying Amount method and five states use the Weeks/Hours of Employment method.³⁰



How do New York’s current benefits compare to other states?

State benefit levels are a combination of the weekly benefit payment and the number of weeks a person is eligible for benefits. In terms of maximum weekly payments, New York State fits in with a majority of the other states. Most states provide average benefit payments in the range of \$300 to \$500.³¹ The average weekly benefit payment for the 50 states and Washington, D.C. is \$410.³² States that provide the highest maximum weekly benefit payments are:

STATE	MAXIMUM BENEFIT LEVEL
Massachusetts	\$628-942
Rhode Island	\$528-660
Pennsylvania	\$558-566
Connecticut	\$519-594
New Jersey	\$584

³³

States that provide the lowest maximum weekly benefit payments are:

STATE	MAXIMUM BENEFIT LEVEL
Mississippi	\$230
Arizona	\$240
Alabama	\$255
Tennessee	\$275
Florida	\$275

³⁴

While Florida pays one of the lowest maximum weekly benefits, it provides them for the longest, with a maximum of 79 weeks.³⁵

How does New York eligibility length compare to other states?

New York State is slightly above average in terms of the maximum number of weeks a person is eligible for benefits.³⁶ In New York, the maximum length of eligibility is 72 weeks.³⁷ The average maximum number of weeks for the 50 states and Washington, D.C. is 67.33 weeks.³⁸ Seventeen states and Washington, D.C. provide benefits for a maximum of 79 weeks.³⁹ States that provide benefits for the longest are:

STATE	MAXIMUM ELIGIBILITY LENGTH
Rhode Island	79 weeks
Ohio	79 weeks
Alaska	79 weeks
Minnesota	79 weeks
New Jersey	79 weeks

⁴⁰

States that provide benefits for the shortest are:

STATE	MAXIMUM ELIGIBILITY LENGTH
Oklahoma	42 weeks
North Dakota	42 weeks
Nebraska	42 weeks
South Dakota	42 weeks
Louisiana	42 weeks

⁴¹

Only Rhode Island and New Jersey make the top five in terms of maximum weekly benefit payments and maximum number of weeks a person is eligible.⁴² Thirteen other states provide benefits for a maximum number of 72 weeks.⁴³ The 20 remaining states provide benefits for a maximum number of weeks ranging from 49 to 59.⁴⁴ All states in the top five in terms of lowest maximum weekly benefit payments provide benefits for a maximum of at least 59 weeks.⁴⁵



What is the biggest issue confronting New York's Unemployment Insurance system?

Solvency and financing are the main issues New York needs to confront. Unemployment insurance is financed through unemployment insurance trust funds. The U.S. Treasury maintains 59 accounts in the Federal Unemployment Trust Fund, one for each state and nine others.⁴⁶ The state accounts consist of contributions and reimbursements collected by the states.⁴⁷ In New York, the trust fund is mainly funded by a tax on a wage base paid by employers who employ people in areas of covered employment. New York employers must pay a tax on the first \$8,500 earned by each of their employees.⁴⁸ The federal government also imposes an unemployment insurance tax on a federal taxable wage base of \$7,000, which results in an annual federal unemployment insurance tax of \$56 per employee.⁴⁹ Finally, New York employs an experience rating system, where “employers’ contributions are varied based on their experience with the risk of unemployment.”⁵⁰ Basically, employers who have higher unemployment insurance claims filed by their former employees will have to pay higher taxes in the future.



According to the National Employment Law Project, New York's unemployment insurance trust fund is insolvent. The current balance of

the trust fund is -\$3,001,000,000.⁵¹ New York, however, is not alone. Thirty-three other states and the U.S. Virgin Islands are currently insolvent.⁵² California has the lowest trust fund balance at minus \$8,409,000,000.⁵³

How can New York strengthen its unemployment benefits?

The only way to strengthen New York's unemployment insurance benefits is to solve the trust fund solvency issue. New York State is in no position to increase the maximum weekly benefit payments or the maximum number of weeks a person is eligible for benefits until the financing issue is resolved. The insolvency can be attributed to two factors. First, through the course of the recent recession, unemployment has risen dramatically. As unemployment insurance claims rise and the length that people are receiving unemployment insurance lengthens, states have to pay more out of their trust funds.⁵⁴ Second, as companies have downsized and businesses have failed, the tax contributions of employers into the trust funds have decreased.⁵⁵



The first step New York can take towards solving its unemployment insurance financing problems is to raise the level of the taxable wage base. Most of the states with solvency problems have low taxable wage bases. For example, Michigan, with a taxable wage base of \$9,000, has a current trust fund balance of minus 3,783,000,000.⁵⁶ States in the best financial shape, however, have higher taxable wage bases. Washington, which has a current trust fund balance of \$2,108,000,000⁵⁷, has an indexed taxable wage base of \$36,800.⁵⁸ Generally, “[o]f the 33 states and the Virgin Islands that are currently insolvent, 20 have a taxable wage base of \$10,000 or less and 26 have taxable wage bases that are less than \$15,000.”⁵⁹

Therefore, New York should pass legislation that would raise its taxable wage base and annually adjust it upwardly based on the overall growth in average wages throughout the state, creating an indexed taxable wage base. “[O]f the 13 states likely to remain solvent during 2010, 10 states

have an indexed taxable wage base.”⁶⁰ Even Louisiana, which has a low taxable wage base of \$8,000,⁶¹ has a current trust fund balance of \$1,022,000,000 because it the base is indexed and has kept up with the times.⁶² An indexed taxable wage base makes sense for New York employers and employees. It would put an end to the regressive nature of the unemployment tax that, regardless of wage level, caps all taxes at \$8,500.

How would increased benefits help unemployed workers?

If New York can make its trust fund solvent, an increase in benefits to unemployed workers would be extremely beneficial. Increased benefits would prevent workers from slipping into poverty and place money in the hands of those people most likely to spend it, which would in turn fuel economic growth. Several bills that would increase unemployment benefits are in front of the New York State legislature. For example, Assembly Bill 04920A would amend the current unemployment insurance law to provide gradual increases in the maximum benefit level to \$525 in 2010, \$575 in 2011, \$625 in 2012 and then indexed to one-half the weekly benefit rate from 2013 onward.⁶³ The bill would also increase the taxable wage base to \$11,500 in 2010, \$13,000 in 2011, \$15,000 in 2012 and then indexed with inflation from 2013 onward.⁶⁴ The last action on the bill was on January 6, 2010 when it was referred to the Labor Committee.⁶⁵ Passage of the bill would help unemployed workers while fixing the financing problems.

¹ New York State Department of Labor, Unemployment Insurance Information for Claimants: A Handbook for Persons Claiming Benefits under the New York State Unemployment Insurance Law at 1, http://www.labor.state.ny.us/formsdocs/ui/TC318_3e.pdf.

² *Id* at 2.

³ *Id.*

⁴ *Id.*

⁵ *Id* at 3.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id* at 4.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id* at 5.

¹⁵ *Id.*

¹⁶ New York State Department of Labor, Before You Apply for Unemployment: Frequently Asked Questions,

<http://www.labor.state.ny.us/ui/claimantinfo/beforeyouapplyfaq.shtm#9>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² New York State Department of Labor, *supra* note 1, at 8.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ United States Department of Labor, Comparison of State Unemployment Laws, Monetary Entitlement,

<http://www.ows.doleta.gov/unemploy/pdf/uilawcompar/2010/monetary.pdf>.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ File Unemployment, Unemployment Benefits Comparison by State,

<http://fileunemployment.org/unemployment-benefits-comparison-by-state>.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ United States Department of Labor, Comparison of State Unemployment Laws, Financing,

<http://workforcesecurity.doleta.gov/unemploy/pdf/uilawcompar/2010/financing.pdf>.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ National Employment Law Project, Understanding the Unemployment Trust Fund Crisis of 2010, Appendix, <http://www.nelp.org/page/-/UI/solvencyupdate2010.pdf?nocdn=1>.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* at 1.

⁵⁵ *Id.*

⁵⁶ *Id.* at appendix.

⁵⁷ *Id.* at appendix.

⁵⁸ United States Department of Labor, *supra* note 43.

⁵⁹ National Employment Law Project, *supra* note 43, at 3.

⁶⁰ National Employment Law Project, *supra* note 48, at 3.

⁶¹ United States Department of Labor, *supra* note 43.

⁶² *Id.* at appendix.

⁶³ New York State Assembly, A04920 Summary,
http://assembly.state.ny.us/leg/?default_fld=&bn=A04920&Summary=Y&Actions=Y&Votes=Y&Memo=Y&Text=Y.

⁶⁴ *Id.*

⁶⁵ *Id.*