

Workplace Leave and Unemployment Insurance for Individuals Affected by Monkeypox

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This Insight discusses workplace leave that may be available to workers affected by the 2022 outbreak of the [monkeypox virus](#), as well as unemployment insurance (UI) benefits. It also discusses leave and UI policy responses to COVID-19 that might inform the congressional response to monkeypox.

Workplace Leave

Some workers affected by monkeypox may seek workplace leave for their medical needs or to care for family members. Leave, even if unpaid, may be preferable to a complete separation from employment if it allows for continuation of health care benefits and facilitates the employee's return to work following recovery. Most federal civil service employees are entitled to [paid sick](#) and annual leave. In 2021, most private-sector workers had some access to employer-provided (or state-mandated) [paid sick leave \(77%\)](#) or [paid vacation days \(79%\)](#) (federal law does not require private-sector employers to provide paid leave of any kind).

Family and Medical Leave Act

The [Family and Medical Leave Act \(FMLA\)](#) entitles eligible workers to unpaid, job-protected leave for certain medical and family caregiving needs, with continued group health plan coverage; eligible employees may use up to 12 workweeks of leave in a 12-month period. FMLA coverage and eligibility are not universal. Governments are covered employers, but private-sector employers employing fewer than 50 workers are not. Employees must also meet tenure, hours-of-service, and work-site staffing requirements.

FMLA leave may be claimed for some, but not all, monkeypox-related needs. FMLA leave for medical needs is generally limited to [serious health conditions](#), which require inpatient care or [continuing treatment](#) by a health care provider. Continuing treatment generally describes several days of incapacitation and multiple in-person treatments by a health care provider (including examinations to seek a diagnosis). Hospitalization and, potentially, testing for monkeypox may be FMLA-qualifying needs.

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However, a monkeypox-affected worker who is sent home to rest and take over-the-counter medications is unlikely to qualify for FMLA leave for the period of home recovery. Federal law and regulations do not provide FMLA leave to address general needs related to public health emergencies (e.g., quarantine following exposure to a virus).

State Leave Laws

Some states have enacted family and medical leave laws (similar to FMLA) that entitle workers to unpaid leave in certain instances. In addition, eight states currently operate [leave insurance programs](#), which provide cash benefits to eligible workers who are absent from work for certain medical and family reasons. The extent to which state leave entitlements and leave insurance benefits may be claimed by monkeypox-affected workers depend upon the worker meeting criteria set out in state law.

Some states have paid sick leave or paid time-off laws that require covered employers to allow employees to accrue and use several days of leave per year. Paid sick leave can generally be used for the employee's own medical needs or those of certain family members. Some states allow accrued sick leave to be used for selected needs related to a public health emergency.

Policy Options

Should Congress seek to provide enhanced support for affected workers, it might consider legislation to expand access to public health emergency leave. Such proposals may provide leave for a broad set of public health emergency needs (e.g., testing, illness recovery, quarantine needs, caregiving, school closures) or for a more limited set of needs (e.g., only testing and quarantine needs). Proposals could provide such leave during all [declared public health emergencies](#), or address a specific concern (e.g., COVID-19, monkeypox). Potential legislative approaches include expanding the set of FMLA-qualifying needs, creating a new (non-FMLA) leave entitlement, and providing incentives to employers to voluntarily offer public health emergency leave. Congress could also consider pairing leave policies with employer assistance (e.g., through state grants or tax credits to help cover the costs of workplace leave).

In response to the COVID-19 pandemic, Congress created temporary entitlements for some workers to [paid sick and family leave for certain COVID-19 related needs](#) and entitled [eligible employers to payroll tax credits for wages paid during the mandated leave](#). These leave entitlements expired on December 31, 2020, and were not subsequently extended. Congress extended the payroll tax credit for leave for eligible employers who voluntarily offered paid leave during April-September 2021.

The Federal-State Unemployment Insurance System

Two programs within the federal-state unemployment insurance (UI) system—Unemployment Compensation (UC) and Disaster Unemployment Assistance (DUA)—may respond to some types of unemployment caused by monkeypox or could be modified to provide weekly income replacement for individuals unavailable to work or unemployed as a result of monkeypox. Unlike FMLA, the UI system generally treats public-sector workers similarly to private-sector workers.

Unemployment Compensation

The [joint federal-state UC program](#) provides income support through weekly benefit payments. Although there are broad requirements under federal law regarding UC benefits and financing, the specifics are set out under each [state's laws](#). States administer state-funded 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.

To receive UC benefits, claimants must generally have been laid off through no fault of their own; have enough recent earnings to meet their state's requirements; and be able, available, and actively searching for work. The UC program generally does not provide UC benefits to the self-employed, those who are unable or unavailable to work, or those who do not have a recent earnings history.

UC Policy and Monkeypox Considerations

Individuals laid off for monkeypox-related reasons would be subject to UC laws regarding benefit eligibility in the state where the previous work was performed. As described above, some categories of workers would not meet state eligibility requirements for UC benefits. Additionally, individuals who are unavailable for work due to monkeypox—whether they are quarantined or caregiving for affected family members—may be ineligible for UC benefits because they may not meet state requirements regarding being able to work and available for work. However, states have latitude on how they define these terms.

In March 2020, DOL issued [guidance](#) reminding states of existing flexibilities in interpreting state UC eligibility requirements, including scenarios in which an individual is quarantined and will return to an employer. This DOL guidance responded to the COVID-19 pandemic, but it could also be relevant to monkeypox. Additionally, Congress created [several temporary \(now-expired\) UI benefits](#) for workers affected by COVID-19, which could serve as models for a UI response to monkeypox.

Disaster Unemployment Assistance

DUA is authorized under the [Robert T. Stafford Disaster Relief and Emergency Assistance Act](#) (the Stafford Act) and provides federally funded unemployment benefits to individuals who are unable to work as a result of a federally declared major [disaster](#) and otherwise ineligible for regular UC benefits. DUA benefits may be available to the self-employed and workers unable to reach their place of employment as a direct result of a major disaster, among other [categories of DUA eligible employees](#).

DUA Policy and Monkeypox Considerations

One of the temporary, COVID-19 UI programs—[Pandemic Unemployment Assistance](#) (PUA, expired September 4, 2021)—was modeled on the DUA program. PUA, which could serve as an approach to a UI response to monkeypox, provided UI benefits to individuals who were (1) not otherwise eligible for UI benefits (e.g., self-employed); (2) unemployed, partially unemployed, or unable to work due to a specific COVID-19-related reason; and (3) unable to telework and not receiving any paid leave.

Additionally, President Trump issued a nationwide Stafford Act emergency declaration in March 2020 under Section 501(b) of the Stafford Act for the COVID-19 pandemic. President Trump subsequently issued a [presidential memorandum](#) authorizing [lost wages assistance \(LWA\)](#), which temporarily provided grants to states to supplement the weekly benefits of certain eligible UI claimants in participating states (LWA effectively terminated on September 6, 2020). LWA also provides an example of a potential UI response to monkeypox.

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