

**Research Report**

# **Access to Unemployment Insurance Benefits for Family Caregivers: An Analysis of State Rules and Practices**

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# Executive Summary

A rapidly growing number of older people and adults with chronic illness and disabling conditions receive care from unpaid family members. Many of these family caregivers are also employed outside the home. While some are able to alter their work schedules or take time off from their jobs to provide hands-on care, such as help with bathing, eating, and managing medications, others are compelled to leave their jobs, or are fired for reasons related to their family caregiving responsibilities. In these cases, family caregivers may be able to seek assistance from some state unemployment insurance (UI) programs. Yet few resources are available to help family caregivers and advocates understand the intricacies of these programs.

Drawing on legal analysis, in-depth interviews with advocates and UI officials, and analysis of available data, this paper presents detailed information on the policies and practices in place in state UI programs that provide potential temporary financial assistance to family caregivers.

## HIGHLIGHTS OF FINDINGS

- **State and federal UI data show that family caregivers are claiming UI, but at very low rates.** With more than 65 million Americans acting in caregiver roles across the lifespan and nearly 10 percent reporting that caregiving responsibilities have led them to leave their jobs,<sup>1</sup> it is clear that even where caregiver-friendly UI provisions exist, many family caregivers are not applying for and receiving UI benefits.
- **Three categories of UI rules apply to working family caregivers seeking unemployment benefits.** These are rules about voluntarily leaving work, discharge for misconduct (or just cause), and availability for work. The specifics of UI caregiving rules in each state determine the extent and nature of support UI programs can offer to working family caregivers.
- **Claimants are unlikely to meet availability for work conditions while they are engaged in full-time family caregiving.** For this reason, UI benefits are not a substitute for paid leave. However, if family caregiving is provided on a part-time basis and the caregiver is available to work at other times of day, he or she may remain eligible for UI benefits. A worker may also wait to apply for UI until caregiving responsibilities lessen or end.
- **All states limit UI benefits to a 1-year period.** A caregiver who files a claim at the time of voluntary job termination will have only 52 weeks in which to draw any benefits under that claim. In most cases, once that claim expires, any claim in a later benefit period would require additional employment earnings to qualify for UI benefits.
- **In 2009, under the federal UI Modernization program, 19 states expanded UI eligibility to allow benefits for separations from work due to “compelling family circumstances.”<sup>2</sup>** The federal government offered financial incentives to states that adopted the provision, which include the need to care for a family member experiencing illness or a disability. Some other states have rules predating UI Modernization that protect eligibility for UI benefits for caregivers.
- **Almost half of states have UI rules that accommodate workers who leave their jobs voluntarily to act as family caregivers;**

1 National Alliance for Caregiving (NAC) and AARP, “Caregiving in the U.S. 2009,” Bethesda, MD: NAC and Washington, DC: AARP, funded by the MetLife Foundation (cited hereafter as NAC 2009 survey) (2009), [http://www.caregiving.org/data/Caregiving\\_in\\_the\\_US\\_2009\\_full\\_report.pdf](http://www.caregiving.org/data/Caregiving_in_the_US_2009_full_report.pdf).

2 In most states, compelling family reasons and circumstances associated with voluntary separation from work include caring for oneself or an immediate family member who is ill, has a disability, or is a victim of domestic violence or sexual assault; or an individual who moves because a spouse has relocated to another location for employment.

**however, a favorable decision to grant UI benefits is far from automatic.** Nine states have UI rules that permit any compelling reason (not just work-related reasons), including compelling family reasons, to serve as good cause for voluntarily quitting a job. Twelve states and the District of Columbia have UI rules that accept compelling family reasons as good cause for quitting a job. Three states have UI rules with other favorable provisions that accommodate family caregivers. In the remaining 26 states, personal reasons, including compelling family circumstances, are disqualifying.

- **Awareness of UI rules that accommodate family caregivers is very low.** Interviewed agency officials and advocates agreed that many people assume they are ineligible for UI when they quit their jobs, and few are aware of caregiving-friendly provisions.
- **Even where UI rules that accommodate family caregivers exist, implementation is sometimes lacking.** Advocates described agency staff (including adjudicators, who make eligibility decisions) lacking training in compelling family circumstances provisions, and state UI “cultures” that lead agencies to disregard the rules. Many UI claimants have no access to legal counsel and limited ability to appeal adverse decisions.
- **Unreasonable requirements for family caregivers to engage with their employers prior to quitting often result in denial of benefits even when states have caregiving-friendly rules.** Many states have stringent rules in place requiring working caregivers to request accommodations from their employers prior to quitting, sometimes even when such requests would prove futile. Agency officials cited failure to comply with employer engagement rules as one of the most common reasons for denying benefits.
- **Employers may be less likely to contest family caregiving–related voluntary quits because they are not directly taxed for employees who quit due to compelling family circumstances. In contrast, when a worker is fired for reasons related to family caregiving concerns, the employer’s UI tax rates are increased.** The UI system’s

experience rating mechanism, which increases UI employer payroll taxes based on employee usage of UI, makes exemptions for voluntary quits for caregiving reasons. These exemptions may not extend to workers who are discharged (fired) for family caregiving–related reasons, so employers may be more likely to contest such claims.

- **In most states, when workers are discharged for reasons not within their control, including caregiving responsibilities, they are generally eligible for UI benefits.** UI rules appear to favor workers who are terminated from their jobs for reasons related to caregiving over those workers who voluntarily quit their jobs under similar circumstances. In addition, the compelling family circumstances provisions that some states implemented under UI Modernization also extend to discharges.
- **In most states, eligibility to work on a part-time basis is permitted only if the claimant had a recent history of part-time work.** While 20 states allow benefits for claimants showing part-time availability, rules apply only to people with a prior history of part-time work. Though some family caregivers could hold a part-time job while performing their caregiving duties, many would be disqualified from receiving benefits while seeking such work because of these rules.

## RECOMMENDATIONS

- **Expand public education regarding family caregiving responsibilities and UI rules.** States and family advocacy organizations should launch outreach campaigns to inform workers about their rights and responsibilities when they must leave work to care for a family member who is ill or has a disability.
- **Permit “voluntary quits” for compelling family circumstances.** States should excuse workers who are compelled to voluntarily separate from their job for caregiving reasons from provisions that would otherwise disqualify them from being eligible to receive UI benefits.
- **Allow limits on availability for compelling family circumstances.** States should allow individuals with compelling family

circumstances to limit their availability to part-time work as long as they remain available for a minimum weekly number of work hours.

- **Change restrictive administrative agency interpretations.** States should review and modify restrictive interpretations of existing statutory language and/or pursue regulatory or legislative action to encourage more favorable interpretations of UI rules. In some cases, narrow administrative interpretations of
- statutory language—such as the definition of care—restrict effective implementation of UI rules relating to family caregiving issues.
- **Reform excessively strict rules requiring claimants to explore alternatives to quitting their jobs.** States should pursue regulatory or legislative changes to clarify the requirements for employees to make efforts to preserve employment, and these requirements should not apply where efforts would clearly be futile or unreasonable.

# Introduction

## CAREGIVING RESPONSIBILITIES AFFECT MANY FAMILIES<sup>3</sup>

Family caregivers play a central role in the lives of older people and those with disabilities. Increasingly, older adults or others with chronic or disabling conditions rely on family members to provide the care they need. More than 90 percent of older people receiving care in the community rely on unpaid family care, either alone or in combination with paid help, with two-thirds receiving all their care from family members.<sup>4</sup> Family caregivers provide a broad range of assistance, including help with personal care and daily activities (such as bathing, dressing, paying bills, or providing transportation), carrying out medical/nursing tasks (such as complex medication management or wound care),<sup>5</sup> arranging and coordinating services and supports, and communicating with health and social service providers.<sup>6</sup>

In 2009, more than 42.1 million U.S. family caregivers provided care to an adult with limitations in daily activities.<sup>7</sup> Many of these caregivers also work in the paid labor market. According to a 2009 report by the National Alliance for Caregiving (NAC) in collaboration with AARP, 46 percent of all family caregivers were employed full time with another 11 percent employed part time and 7 percent unemployed

and looking for work. Overall, 73 percent of family caregivers surveyed were employed at some time while they were also engaged in caregiving.<sup>8</sup>

## WORKING CAREGIVERS FACE CONSIDERABLE CHALLENGES

Workers who juggle family caregiver responsibilities often experience significant stress balancing dual responsibilities; indeed, many must also manage care for minor children, while caring for older adults in their families. In 2009, two-thirds of working caregivers surveyed said that their caregiving responsibilities affected their work. Working caregivers described the following effects: arriving late, leaving work early, or taking a day off work (66 percent); taking a leave of absence (20 percent); reducing work hours or taking a less demanding job (12 percent); giving up work entirely (9 percent); and taking early retirement (3 percent).<sup>9</sup> Two-thirds of caregivers are women; thus, the availability of work supports for family caregivers has important implications for gender equity. While caregivers bear significant financial burdens on their own families, their uncompensated care saves the health care system billions of dollars.<sup>10</sup>

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3 The authors would like to acknowledge the following people for invaluable feedback on this paper: Jodie Levin-Epstein, Elizabeth Lower-Basch, David Socolow, Enid Kassner, Claire McKenna, and Lynn Friss Feinberg.

4 Susan C. Reinhard, Enid Kassner, Ari Houser, Kathleen Ujvari, Robert Mollica, and Leslie Hendrickson, "Raising Expectations: A State Scorecard on Long-Term Services and Supports for Older Adults, People with Physical Disabilities, and Family Caregivers, 2nd edition," AARP Public Policy Institute (June 2014), <http://www.longtermscorecard.org>.

5 Susan C. Reinhard, Carol Levine, and Sarah Samis, "Home Alone: Family Caregivers Providing Complex Chronic Care" (2012), <http://www.aarp.org/home-family/caregiving/info-10-2012/home-alone-family-caregivers-providing-complex-chronic-care.html>.

6 Lynn Feinberg, "Keeping Up with the Times: Supporting Family Caregivers with Workplace Leave Policies," AARP Public Policy Institute (June 2013), p. 2, <http://www.aarp.org/home-family/caregiving/info-06-2013/supporting-family-caregivers-with-workplace-leave-policies-AARP-ppi-ltc.html>.

7 Lynn Feinberg, Susan C. Reinhard, Ari Houser, and Rita Choula, "Valuing the Invaluable: 2011 Update. The Growing Contributions and Costs of Family Caregiving," AARP Public Policy Institute (June 2011), <http://assets.aarp.org/rgcenter/ppi/ltc/i51-caregiving.pdf>.

8 NAC 2009 survey, pp. 9 and 52, and Figure 49.

9 NAC 2009 survey, p. 54 and Figure 50.

10 Lynn Feinberg, Susan C. Reinhard, Ari Houser, and Rita Choula, "Valuing the Invaluable: 2011 Update. The Growing Contributions and Costs of Family Caregiving," AARP Public Policy Institute (June 2011), <http://assets.aarp.org/rgcenter/ppi/ltc/i51-caregiving.pdf>.



## UNEMPLOYMENT INSURANCE FOR FAMILY CAREGIVERS AND PUBLIC POLICY

Working caregivers must often make changes to their work schedules or take time away from their jobs to perform caregiver duties. Sometimes, accommodations including paid or unpaid leave or workplace flexibility are sufficient. But when caregiving responsibilities exceed available leave and flexibility accommodations, workers may have to leave their jobs entirely to care for their family members. Often these workers seek to return to work once the immediate crisis has passed. For them, access to unemployment insurance (UI) benefits can be a crucial safety net while they search for a new job.

UI is a federal-state social insurance program that provides weekly benefits based on previous earnings for up to 6 months to unemployed workers, paid through employer-paid taxes.<sup>11</sup> Every state's UI program is founded on model laws distributed soon after the 1935 passage of the Social Security Act. Therefore, while the details of eligibility and disqualification rules, as well as benefit amounts, vary across states, some general concepts apply across states:

- UI recipients must have a history of recent work.
- UI programs are focused on providing benefits to those individuals who are considered involuntarily unemployed.
- UI recipients must show, on an ongoing basis, that they remain able to work and that they are making themselves available for a range of jobs in their local labor markets.
- Individuals who quit their jobs voluntarily will not get UI benefits unless they can show that they left work for good cause, which is defined differently across states.
- Workers who are fired for conduct that is intentional or willful will generally not get UI

benefits, while those fired for reasons of poor performance or circumstances beyond their control are not disqualified.

Within this broad framework, however, a variety of complicated and divergent state policies exist, driven by a mixture of statutes passed by legislatures; rules, regulations, and interpretations issued by agencies; and court decisions in appeals concerning these statutes and administrative rules. As shorthand for all three sources of UI law, in this paper we refer to the combination of these three sources as “UI rules” or “UI caregiving rules.”

Because of these requirements, only about one in four U.S. unemployed workers now receive unemployment benefits. The percentage of people unemployed who are collecting unemployment benefits varies significantly across states, from 47 percent in Alaska to 12 percent in South Dakota.<sup>12</sup>

This paper builds on the findings of “Raising Expectations 2014: A State Scorecard on Long-Term Services and Supports for Older Adults, People with Physical Disabilities, and Family Caregivers”<sup>13</sup> to examine state laws, regulations, and practices regarding access to UI for people who leave their jobs for family caregiving reasons. Like the State LTSS Scorecard, it focuses on caregivers who assist family members who are older adults or have a disability (typically spouses, adult children, parents, or grandparents) while holding employment outside of the home.<sup>14</sup>

Through legal analysis, in-depth interviews with legal services advocates and UI officials, and analysis of available data, we provide detailed information on the policies and practices in place in states' UI programs to meet the needs of family caregivers. Finally, we recommend policy changes that would address the shortcomings of existing UI programs and reduce the economic burdens placed on caregivers, their families, and their communities.

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11 Stephen A. Woodbury, “Unemployment Insurance,” Working Paper 14-208, Kalamazoo, MI: Upjohn Institute, (January 2014), [http://research.upjohn.org/up\\_workingpapers/208](http://research.upjohn.org/up_workingpapers/208).

12 U.S. Department of Labor, UI Quarterly Data Summary (2nd Quarter 2014), [http://www.oui.doleta.gov/unemploy/content/data\\_stats/datasum14/DataSum\\_2014\\_2.pdf](http://www.oui.doleta.gov/unemploy/content/data_stats/datasum14/DataSum_2014_2.pdf).

13 Susan C. Reinhard, Enid Kassner, Ari Houser, Kathleen Ujvari, Robert Mollica, and Leslie Hendrickson, “Raising Expectations: A State Scorecard on Long-Term Services and Supports for Older Adults, People with Physical Disabilities, and Family Caregivers, 2nd edition,” AARP Public Policy Institute (June 2014), <http://www.longtermscorecard.org>.

14 This paper does not address issues raised by paid caregivers, such as home health aides or visiting nurses, who are individuals providing paid services to recipients of caregiving. We also do not focus on policy issues related to caregivers for children under 18.

## Key Legal Terms

- ADJUDICATOR** A state unemployment insurance (UI) agency staff member responsible for applying UI rules to the facts of a benefits claim.
- AVAILABILITY FOR WORK** A UI rule that requires a claimant to demonstrate willingness to accept jobs. The claimant shows such willingness by not unreasonably restricting the kinds of jobs, their locations, or the hours or days he or she will work.
- CLAIMANT** An individual who files a claim for UI benefits.
- COMPELLING FAMILY REASONS AND CIRCUMSTANCES** Family-related situations that would motivate a reasonable person to quit a job under similar circumstances. In most states that have rules pertaining to such circumstances, they apply to individuals who leave their jobs due to personal illness, to provide care for a member of their immediate family who is ill or has a disability, or to accompany a spouse who is relocating.
- DETERMINATION** A written UI agency decision.
- DISQUALIFICATION** A penalty imposed under UI rules related to voluntary quits and discharges for misconduct. In many states, the penalty requires claimants to find other work and earn a designated amount of wages in that new job before drawing UI benefits. For example, in California, an individual fired for misconduct or leaving work without good cause must earn at least his or her weekly benefit amount for 5 or more weeks. Disqualification penalties vary among states.
- GOOD CAUSE** A compelling reason that would make a reasonable person quit a job under similar circumstances. In many states, a good cause for leaving work must be “work-related” (that is, “attributable” to the employer) in order for the claimant to avoid a disqualification. Compelling family reasons and circumstances are a form of good cause, accepted in some states, which need not be work-related.
- INELIGIBILITY PERIOD** The weekly or biweekly penalty period in which claimants are not eligible to receive UI benefits due to circumstances such as not meeting the availability for work requirement. The ineligibility period ends when circumstances change and the claimant has demonstrated this to the satisfaction of the state agency.
- MISCONDUCT DISCHARGE** A firing or other separation from work initiated by an employer that results in a disqualification. A discharge is due to misconduct only if the employee showed a willful or intentional disregard of the employer’s interests as opposed to making a mistake or being unable to properly perform the work. In the caregiving context, this means that when absences due to caregiving result in a discharge, so long as the employer is aware of the reasons for the absences, there should be no finding of misconduct. In some states, the UI rules are phrased in terms of “just cause” instead of “misconduct discharge,” but roughly the same approach should apply.
- VOLUNTARY LEAVING (OR QUIT)** A separation in which the employee initiates the separation from work. In all states, if the reasons for leaving are work-related and constitute Good Cause, then there should be no disqualification. In some states, workers facing certain circumstances—such as family caregiving—that leave them with no alternative but to quit, may be able to avoid disqualification if they discuss their circumstances with the employer. Regardless of specific state UI rules, workers who discuss their circumstances with their employers prior to leaving work are more likely to avoid disqualification.

# Findings

## UI AND FAMILY CAREGIVING

State-specific UI rules will decide whether a family caregiver is eligible to receive unemployment benefits while he or she is not working in paid employment. State rules vary with regard to treatment of

- **Voluntarily leaving work.** Workers may be forced to quit a job to care for a family member. For example, if a daughter must move to another city to care for her ailing parents, she may quit her job or take a leave of absence.
- **Discharge for misconduct.** Workers are sometimes fired for reasons related to their caregiving responsibilities. For example, if a worker misses work due to a hospitalization of his spouse or parent, he may be fired for violating his employer’s attendance policies.
- **Availability for work.** Availability rules require that UI claimants demonstrate their continuing willingness to work. This means caregivers must remain open to a reasonable number of jobs in the local labor market. Limitations on overall work hours, times of day, or days of the week imposed by caregiving responsibilities can prevent caregivers from receiving UI benefits.

Because of the availability requirement, UI benefits are not a substitute for paid family leave<sup>15</sup> for caregivers engaged in full-time caregiving throughout the week. But UI can offer temporary support depending on the specific limits placed on caregivers’ hours and times by their care responsibilities, and their remaining availability for paid work. For example, if a worker is available for the night shift work and her occupation offers a reasonable number of jobs with such work, she may be eligible for benefits while seeking night shift work. As well, UI can offer support once

caregiving responsibilities have ceased, and the caregiver is seeking a new job and available for work.

*UI benefits are not a substitute for paid family leave.*

As described further below, under UI rules, it is nearly always best for a caregiver to make his or her employer aware of any underlying caregiving situation causing conflicts with work, as soon as they arise. Some workers may fear that disclosing their caregiving responsibilities exposes them to potential discrimination. Legal protections against “Family Responsibility Discrimination” (FRD) would reduce this risk. However, few jurisdictions currently have this protection in place.<sup>16</sup> Despite this absence of legal protection, our research found that UI rules will rarely forgive an employee who quits or is fired due to caregiving responsibilities if the employee failed to communicate with the employer about the situation prior to the caregiver’s separation from work. For this reason, despite the potential risk of discrimination—even in jurisdictions without FRD protections—most caregivers facing a discharge or considering quitting are best served by letting their employers know about their caregiving responsibilities in advance.

## OVERVIEW OF UI CAREGIVING RULES

There are a variety of reasons why a worker who is unemployed for reasons related to caregiving may be ineligible to receive UI benefits. Typically, workers who leave their jobs voluntarily or who are fired for misconduct are disqualified from

15 Lynn Feinberg, “Keeping Up with the Times: Supporting Family Caregivers with Workplace Leave Policies,” AARP Public Policy Institute (June 2013), p. 2, <http://www.aarp.org/home-family/caregiving/info-06-2013/supporting-family-caregivers-with-workplace-leave-policies-AARP-ppi-ltc.html>.

16 Joan C. Williams, Robin Devaus, Patricija Petra, and Lynn Feinberg, “Protecting Family Caregivers from Employment Discrimination,” AARP Public Policy Institute (August 2012), <http://www.aarp.org/home-family/caregiving/info-08-2012/insight-protecting-family-caregivers-from-employment-discrimination-AARP-ppi-health.html>.

receiving UI. Therefore, individuals who quit or request a leave of absence due to caregiving responsibilities may be found to be ineligible for UI benefits for “voluntarily leaving work,” and caregivers who are fired because they were late or absent from work may be ineligible because they are found to have been discharged by their employers due to “misconduct.” And, as noted above, availability requirements mean that working caregivers seeking UI benefits may face ineligibility when their caregiving activities prevent them from being available to accept work for enough days and hours each week.

UI rules affecting caregivers who leave work have evolved over the years. All states have rules that disqualify people who voluntarily quit their jobs from receiving UI, but some provide an exception for people who leave work due to family-related responsibilities. For many decades, the conflicts between family responsibilities and UI rules have been subject to debate in legislatures and court cases.<sup>17</sup> Growing awareness of these conflicts, especially their disparate impact on women, over the past couple of decades has led to increasing awareness of the need to relax these rules.<sup>18</sup> At the beginning of the 21st century, only a minority of states had rules that were more accommodating to caregiving realities. More commonly, states had UI rules that prevented working caregivers from receiving UI benefits.<sup>19</sup>

In February 2009, the federal government offered states a total of \$7 billion in financial incentives to expand eligibility for state UI programs

*Three categories of UI rules apply in most situations in which working caregivers seek unemployment benefits. These are rules about voluntarily leaving work, rules about discharge for misconduct (or just cause), and rules about availability for work. In combination, how state policies frame UI caregiving rules is key to ensuring that UI programs offer more support for working caregivers.*

under what was popularly known as the UI Modernization program.<sup>20,21</sup> Among other features, the UI Modernization program offered incentives to states for granting benefits when an individual was separated from work due to “compelling family circumstances.” States that adopted these provisions and accepted the incentives were required to include in their definition of compelling family circumstances workers who leave work due to domestic violence, relocation to accompany a spouse, or the need to care for an immediate family member who is ill or has a disability.<sup>22</sup> As a result of accepting this option,

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- 17 Margaret M. Dahm and Phyllis H. Fineshriber, “Women in the Labor Force,” in National Commission on Unemployment Compensation, *Unemployment Compensation Studies & Research* (1980), v. 3, p. 737, [http://www.ows.doleta.gov/dmstree/misc\\_papers/advisory/ncuc/uc\\_studies\\_and\\_research/ncuc-vol3.pdf](http://www.ows.doleta.gov/dmstree/misc_papers/advisory/ncuc/uc_studies_and_research/ncuc-vol3.pdf).
- 18 Richard McHugh and Ingrid Kock, “Unemployment Insurance: Responding to the Expanding Role of Women in the Work Force,” *Clearinghouse Rev.* (April 1994), v. 27, p. 1492; Deborah Maranville, “Feminist Theory and Legal Practice: A Case Study on Unemployment Compensation Benefits and the Male Norm,” *Hastings Law J.* (1992), v. 43, p. 1081.
- 19 National Employment Law Project, *Between a Rock and a Hard Place: Confronting the Failure of State Unemployment Insurance Programs to Serve Women and Working Families* (July 2003), [http://nelp.3cdn.net/ebba1e75e059fc749d\\_0um6idptk.pdf](http://nelp.3cdn.net/ebba1e75e059fc749d_0um6idptk.pdf) and *Laid Off and Left Out: Part-Time Workers and Unemployment Insurance Eligibility* (February 2002), [http://nelp.3cdn.net/d25bef7d43091bea3a\\_3hm6i2tad.pdf](http://nelp.3cdn.net/d25bef7d43091bea3a_3hm6i2tad.pdf) (showing that all but 10 states restricted eligibility to those available for full-time work with only narrow exceptions).
- 20 Section 2003(a), Division B, Title II of Public Law No. 111-5 (February 17, 2009) (codified at 42 United States Code Sec. 1103[f][3][B]).
- 21 The FY 2016 Congressional Budget Justification: Employment and Training Administration, State Unemployment Insurance and Employment Service Operations, includes an unemployment insurance modernization proposal to provide \$5 billion in federal incentives. To become eligible to receive payments, states would be required to enact five mandatory administrative provisions and adopt two new eligibility options that can include voluntary quits for family reasons, allowing recipients to seek part-time work, and two new “connection to work” strategies. <http://www.dol.gov/dol/budget/2016/PDF/CBJ-2016-V1-09.pdf>.
- 22 Details are provided in “Special Transfers for Unemployment Compensation Modernization,” U.S. Department of Labor, Unemployment Insurance Program Letter No. 14-09 (February 26, 2009), Appendix III, pp. 3-7, <http://wdr.doleta.gov/directives/attach/UIPL/UIPL14-09c.pdf>. Cited hereafter as UI Program Letter No. 14-09, Appendix III.

19 states adopted compelling family circumstances exceptions to disqualification rules for quits.<sup>23</sup> In addition, some UI misconduct rules, which predate the 2009 reforms, protect UI benefits eligibility of individuals who are fired for reasons related to absences caused by family circumstances.<sup>24</sup> As explained in greater detail below, these caregiver-friendly provisions offer potential support for working caregivers who must leave their jobs.

Taken together, the UI Modernization changes represented an advance in the protection offered by state UI programs for caregivers in some states. However, findings from this study show that state UI programs still fall well short of offering reliable support for working caregivers who lose employment because of their caregiving responsibilities.

## STATE UI CAREGIVING RULES AND PRACTICES

As discussed above, three categories of rules affect UI eligibility for caregivers: leaving voluntarily, misconduct discharge, and availability. To explain how these three categories of UI rules apply to caregivers in all 50 states and the District of Columbia, this paper is based on a state-by-state legal survey of UI rules applied to voluntary quits, misconduct discharges, and availability issues. In addition, to better understand the on-the-ground implementation of UI rules that are favorable to caregivers, 30 in-depth interviews with advocates and state UI agency officials were conducted in 10 states where preliminary research showed some flexibility toward accommodating compelling family circumstances.

Interviews revealed a number of themes regarding common obstacles that family caregivers encounter when trying to access benefits. Some obstacles reflect problems related to poor implementation of rules, while others highlight the effects of restrictions within the statutes and/or regulations themselves. These accounts indicate the need for further changes within UI rules to better support working caregivers. Finally, administrative data from some states provide additional information regarding

how frequently compelling family circumstance and good cause provisions have been used by UI claimants who left their jobs for caregiving-related reasons.

## VOLUNTARY QUILTS

### Voluntary Quits – Formal Rules

All states disqualify those who voluntarily quit their jobs without good cause. Good cause is defined as a compelling reason that would motivate a reasonable person to leave their job under similar circumstances. A majority of states have an additional limitation on good cause for leaving; they require that any valid cause for leaving work must involve reasons related to employment (usually by limiting potential good causes in their UI laws to only those reasons “attributable to” employers, such as an employer-initiated change in work location or situations in which the employer requires workers to do something illegal). Non-work-related reasons are often called “personal reasons” for leaving in UI law.

### *UI Programs for Working Family Caregivers Fall Short*

We find that UI programs overall fall short in supporting caregivers, even after the progress made under UI Modernization. The map in Figure 1 summarizes state UI rules regarding acceptance of compelling family reasons as good cause excusing workers who voluntarily quit their jobs to care for a family member (herein referenced as “voluntary quit to care” or “quit to care”).

Thirteen states (in blue) have compelling family circumstances exceptions in their voluntary leaving disqualification provisions adopted under UI Modernization. In addition, nine states (in green) have UI rules that do not limit their consideration of reasons for good cause to work-related reasons. These nine states permit any compelling reason to serve as good cause excusing a quit. In addition to their broad good cause definitions, some of the nine states also adopted the compelling family circumstances exception

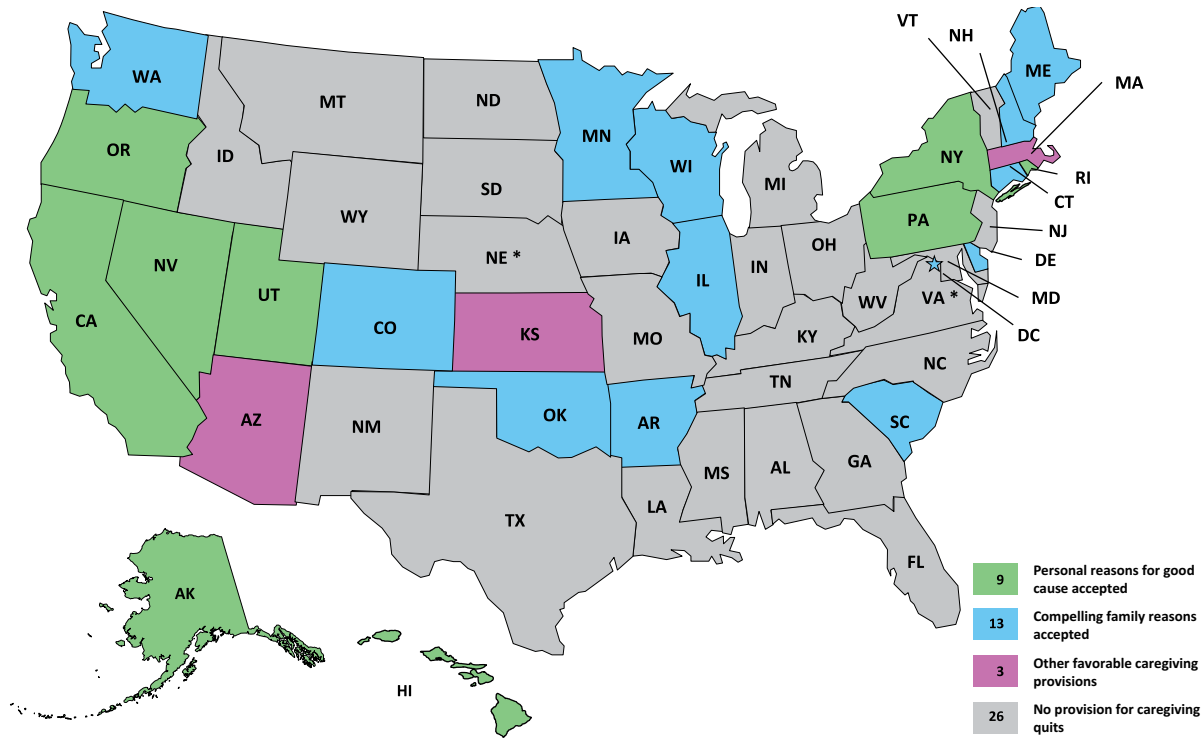
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23 U.S. Department of Labor, “UI Modernization Incentive Payments—Approved Applications” (September, 14, 2011), [http://www.ows.doleta.gov/unemploy/docs/app\\_form.doc](http://www.ows.doleta.gov/unemploy/docs/app_form.doc) (showing that 21 jurisdictions received UI Modernization payments for provisions related to compelling family circumstances. Here, we subtract North Carolina, which repealed its provision in 2013, and the Virgin Islands which is not included as a “state” in this paper).

24 This is confirmed in UI Program Letter No. 14-09, Appendix III, Question III-10, pp. 4-5, cited in note 21.

FIGURE 1

Unemployment Insurance Rules on Quits for Caregiving, September 2014



\* NE and VA have quit statutes that do not explicitly limit reasons for good cause to those related to employment; however, both states have court decisions that judicially impose that limitation. Therefore, neither state applies the statutes to recognize personal reasons for leaving work, including caregiving. For this reason, they are not treated as states that accept personal reasons for good cause.

provision under UI Modernization. In addition, three states (in pink) have specific UI laws that provide similar protection for those leaving work due to family emergencies. Overall, 25 states have rules indicating that they should not disqualify individuals who leave work due to compelling family circumstances.

Among the remaining 26 states (in gray), personal reasons, which include compelling family circumstances, remain disqualifying. In these states, a caregiver who quits to provide care for a family member who is ill or has a disability, including a spouse or aging parent, cannot receive UI benefits when he or she becomes available

and is searching for work, regardless of whether the reasons for leaving were compelling and documented.

To summarize, in almost half the states, caregivers have an opportunity to avoid a disqualification for UI benefits when compelled to leave work. In these 25 states, quitting a job for a reason related to caregiving responsibilities does not automatically disqualify a worker from receiving UI benefits. The individual voluntarily leaving employment must be prepared to show good cause for quitting by proving both compelling circumstances and, in many of these states, that the employer offered no accommodations<sup>25</sup> that could have prevented

25 Lynn Feinberg and Rita Choula, “Understanding the Impact of Family Caregiving on Work,” AARP Public Policy Institute (October 2012), <http://www.aarp.org/home-family/caregiving/info-10-2012/understanding-the-impact-of-family-caregiving-and-work-fs-AARP-ppi-ltc.html>.

*Even in the 25 caregiving-friendly states, the reasons for leaving must be documented, they must be compelling, and individuals must typically show that the employer offered no reasonable alternative to quitting work. This means, then, that prior discussion with the involved employer is required unless the futility of these efforts can be proven.*

the worker from leaving the job. For this reason, even in states that recognize compelling family circumstances, a favorable decision avoiding disqualification for voluntarily leaving work is far from automatic.

### **Voluntary Quits – In Practice**

Despite the existence in some states of caregiver-friendly UI rules on paper, interviews with agency officials and advocates suggest that accessing benefits is not straightforward, and in some cases, is extremely difficult.

#### **Lack of Awareness**

In states that have adopted the compelling family circumstances provisions since 2009, few agencies have publicized the new rules, and advocacy groups reported only limited outreach. Some agency officials indicated that such outreach is not typical for UI agencies. One agency official in Colorado suggested that outreach about the rule could be perceived as “pre-adjudication,” potentially implying a promise that a worker in a given situation would receive benefits without knowing all the facts of that situation. Although some states have rules in place that require employers to notify all employees that are separating from employment of their UI rights, these rules are rarely enforced. Officials in California acknowledge that their notification requirement is “not something we actively enforce to a high degree.”

In part because of this lack of awareness, workers may not realize that they are eligible for UI benefits if they quit due to caregiving responsibilities, and therefore they may never apply. Previous research has shown that the largest single reason that unemployed workers do

not get UI benefits is because they do not apply.<sup>26</sup> Although no survey data are available regarding awareness of family caregiving provision in UI rules, many advocates and officials believe it to be quite low. Several respondents attributed lack of awareness to a broad assumption among workers that voluntarily quitting a job (rather than being laid off) deems one ineligible for benefits. One legal advocate in Connecticut explained, “I think that people have the sense that, ‘Well, if I quit, of course, I can’t get unemployment.’ They might not even think to be looking for answers from [a legal services organization].” An advocate in Oregon agreed, saying, “[A] lot of people...feel like if they quit their job, then they’re not entitled to [UI].” Workers are often not aware of the exceptions to this general rule.

#### **Improper Implementation**

In addition, advocates in some states felt that UI rules regarding voluntary quits to care for family members were not being properly implemented. Advocates in Wisconsin, Arizona, and California felt that many adjudicators and/or administrative law judges (ALJs) in their states are not well versed in the rules related

*Workers may not realize that they are eligible for UI benefits if they quit due to caregiving responsibilities, and therefore they may never apply.*

26 Alix Gould-Werth and H. Luke Shaefer, “Unemployment Insurance Participation by Education and by Race and Ethnicity,” *Monthly Labor Review* (October 2012), p. 28, <http://www.bls.gov/opub/mlr/2012/10/art3full.pdf>.

to caregiving responsibilities. As a result, they inappropriately deny claims in which workers have quit to care for a family member who is ill or has a disability. Advocates also suggested that beyond simply lacking training, some agencies disregard the rules or create barriers to their proper implementation through the adjudication process. An advocate in Wisconsin suggested that ALJs asked leading questions or otherwise manipulated claimants in such a way that they ended up being disqualified. Workers who appear before ALJs without counsel, as is often the case, are particularly vulnerable. State UI “culture” also plays a role in fostering decisions that disregard the rules on the books. For example, an Arizona advocate suggested that in her state, quits are almost automatically disqualified, despite exceptions in the rules, including those for caregivers. She saw this as a reflection of an agency culture that was inherently suspicious—and largely intolerant—of approving claims by workers who have quit their jobs.

In the best of cases, flawed decisions are later overturned by higher bodies, but in other cases, some advocates say, even repeated appeals have not led to correct application of the compelling family circumstances rules. Moreover, for many workers, the time and energy necessary to endure the appeals process is prohibitive, especially given their caregiving responsibilities. An advocate explained, “A lot of times, these [‘quit to care’ cases...] get reversed on appeal [...]. It’s good that things are getting reversed [...] but in the meantime, you’ve been out of benefits for weeks and weeks.”

### ***Employer Engagement Requirements***

Rules adopted in some states that require workers to explicitly discuss their caregiving/work conflicts with employers prior to quitting may also be a source of confusion and disqualification. The standard for adequate engagement with employers prior to quitting is not always explicit in the statutory language or clear to workers. From our interviews, we found that UI officials sometimes appear to be setting the bar high, requiring workers to completely exhaust all possible accommodations available to them through their employers before quitting. An adjudicator in New Hampshire explained, “The person does have to communicate with their employer. They can’t just up and quit and say,

‘oh, yeah, by the way, I’m leaving because I have to go take care of my family member.’” An official in South Carolina also noted, “You can’t just, you know, call up one day and say ‘I quit.’ [...] You have to show some good faith effort [...] to try to work something out.” Several agency officials expressed or implied that, too often, workers’ decisions to quit in the face of caregiving responsibilities are not well thought out. “Nine times out of 10, this was a rash decision,” explained another South Carolina agency staff member. Though the urgency of the situation may seem evident to the worker—especially in a time of heightened emotional distress related to a loved one’s illness—he or she may not be able to produce the evidence the UI agency requires to verify a lack of alternatives to quitting. UI officials we spoke with reported that workers often failed to meet this standard.

***For many workers, the time and energy necessary to endure the appeals process are prohibitive, especially given their caregiving responsibilities.***

In some states, employees must ask for leave regardless of whether they believe or know such leave will not be available. The South Carolina agency staff member said, “It doesn’t matter whether or not you can get [leave] granted; you still need to have asked.” Similarly, a Wisconsin agency staff member said asking the employer for leave no matter what was important: “You never know when that employer will just say, ‘Oh, in this case, we’re going to give it [leave] to you.’”

California agency staff also stressed the importance of discussing the situation with the employer in case an exception could be made, though they said they would not force someone to pursue leave if the pursuit was obviously futile. An adjudicator in Arkansas said that if an individual hadn’t asked for leave but it was obvious that the person was not entitled to it, it would be “appropriate” not to have asked, since



the request would be futile. In Connecticut, voluntary quits for family caregiving reasons were allowed prior to UI Modernization. However, the law was tweaked to accord with the American Recovery and Reinvestment Act of 2009 requirements, including the addition of a provision requiring workers to explore alternatives with their employers. Advocates pushed back against the requirement and were ultimately successful in clarifying that if such explorations are clearly going to be futile, they are not required.<sup>27</sup>

### **Definition of Care Varies by State**

Though the states where we conducted interviews all made allowances for quits related to caregiving, the definition of “care” varies. Officials in Wisconsin explained that caring referred primarily to physical care, such as “putting people to bed, bathing and dressing, grooming, and feeding.” California officials noted that care had to extend beyond what might be called “emotional care” (e.g., care based on the worker’s feelings of sympathy for an elderly relative who is alone); it must refer to care that the family member is incapable of managing on his or her own.

In some states, workers are required to show that they are the only one in the family able to provide the needed care to the family member who is ill or has a disability. An advocate in California recounted a story of a worker whose wife needed to care for her brother who was located in a different part of the state. Since his wife could not drive, he had quit his job to help her to care for her brother. However, a judge found that he was not compelled to take care of his brother-in-law; he could have driven his wife to the location where the brother was located and she could have taken public transit, according to the decision. This restrictive approach remains in place in some states, but officials in Oregon and Wisconsin noted that their states’ adoption of UI Modernization provisions removed the requirement.

### **Employer Tax Liability**

Another factor that affects the success of UI claims based on caregiving responsibilities is how vigorously employers contest claims. In turn, employers are influenced by state policies on whether UI claims related to quits affect taxes that employers pay to support the UI system. States that recognize personal reasons or compelling family circumstances for quitting jobs commonly have experience rating rules that do not charge benefits paid in those cases to the separating employers, but essentially spread the costs of these benefits over all payroll tax-paying employers. This is known as “noncharging.”<sup>28</sup> Some advocates and officials noted that this makes employers less likely to contest decisions that favor the employee. A New Hampshire official explained that in cases related to compelling family reasons, “We charge the unemployment fund [...]. When we charge the fund, [employers] are actually happy [...] they don’t dispute it.” An adjudicator in Arkansas also said she saw few appeals from employers in these cases because “they’re mostly concerned about the charges.” However, a Wisconsin advocate noted that since nonprofit and governmental employers must reimburse the UI trust fund, what she called “pay as you go,” they fight all cases “tooth and nail.” An official in Wisconsin corroborated this claim to some extent, noting that employers often come back saying that the worker had failed to ask for leave. In contrast, California officials said that, in their experience, employers typically say, “[The worker has] personal problems. I really don’t mind that they receive benefits.”

## **DISCHARGES**

### **Discharges – Formal Rules**

UI rules appear to favor workers who are discharged for reasons related to caregiving over those who quit their jobs under similar circumstances. While workers who quit are ineligible for UI benefits unless they meet an

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27 Unpublished document. Legal Assistance Resource Center of Connecticut, “Facts about Proposed Regulation 2010-036, The Quit-to-Care-For Provisions of the Unemployment Compensation Law” (2010). Via personal correspondence with a legal advocate in Connecticut.

28 Experience rating is a process through which UI payroll tax rates on private-sector contributing employers are adjusted in relation to layoffs of individual firm’s employees or former employees. In other words, as UI benefit costs to a firm’s employees rise, tax rates on the firm are increased in subsequent years. In contrast, state, local, and nonprofit employers do not pay UI payroll taxes, but instead are treated as “reimbursing employers,” and they are billed quarterly for any benefits paid to former employees. In both cases, there is a financial incentive to oppose UI claims filed by former employees. See <http://www.ows.doleta.gov/unemploy/pdf/uilawcompar/2014/financing.pdf>.

exception, for workers who are “discharged,” or fired, the assumption is generally that they are involuntarily unemployed and eligible for benefits. Discharge separations from work are most commonly decided under a legal standard that is usually termed “misconduct.” Some states use a “just cause” standard or added words like “willful” or “gross” misconduct in their UI laws.<sup>29</sup> Regardless of the statutory language in specific states, courts and the U.S. Department of Labor have consistently differentiated between those fired for intentional, willful, or reckless reasons—who are properly subject to disqualification from receiving UI benefits—and individuals discharged for reasons that amount to negligence, inadvertence, or reasons not within the control of the individual—who are considered involuntarily unemployed and are eligible to receive benefits.

Under this legal standard, many discharges related to caregiving responsibilities can be treated as non-disqualifying involuntary unemployment. The caregiver is likely to be eligible for benefits as long as the employer is aware of the caregiving situation and understands the circumstances of the situation leading to the firing (i.e., lateness or absences). The federal UI Modernization law asked states to ensure that an “individual shall not be disqualified for separating from employment” for compelling family circumstances.<sup>30</sup> Thus, the statute addresses not only quits, but discharges as well. As a result, states that accepted the compelling family circumstances option agreed that family caregivers who miss work and inform their employers that the absence is due to a compelling family reason are not subject to a disqualification when they are fired. This approach was reaffirmed by the U.S. Department of Labor in guidance concerning UI Modernization.<sup>31</sup>

But this favorable result for discharges due to compelling family circumstances should apply in any state regardless of whether it has adopted a compelling family circumstances rule for quits. This is because analyses of misconduct rules in

virtually every state exempt discharges related to factors that are outside of an employee’s control or are not willful and intentional.<sup>32</sup> Nonetheless, some variation in application of the rules can arise due to administrative approaches or specific state rules or cases that have expanded the boundaries of misconduct. In particular, state agencies sometimes permit employers to use workplace rules to extend the reach of disqualifications. For example, an employer might have an attendance policy stating that *any* three absences automatically lead to discharge. This means that discharges arising from absences due to urgent caregiving responsibilities could potentially lead to disqualification from UI benefits, even if those absences were for reasons that are not traditionally viewed as willful.

## Discharges – In Practice

### *Fired vs. Quitting*

Officials and advocates in some states agreed that workers who have been discharged or fired for reasons related to their caregiving responsibilities may be in a better position to receive benefits than those who quit. Oregon agency officials explained, “In general, if you are fired, it’s an uphill battle for employers to show that [you] should not get benefits.” The officials said that, by law, misconduct does not include absences due to one’s own illness or care for another. In contrast, they added, the burden of proof is on the employee in voluntary quit situations. An advocate in Colorado said that she would always advise a worker against quitting; applying for benefits after being fired is simpler. An advocate in Arizona—who also noted the tendency to rule against quits, regardless of the situation—agreed that caregivers who are fired are more likely to get benefits.

### *Employer Engagement Requirements*

As with voluntary quit cases, UI agency officials in several states emphasized that a worker’s attempts

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29 U.S. Department of Labor, Comparison of State Unemployment Insurance Laws, Chapter 5 “Nonmonetary Eligibility,” (2014), pp. 5–12 to 5–20, <http://workforcsecurity.doleta.gov/unemploy/pdf/uilawcompar/2014/nonmonetary.pdf>.

30 42 United States Code Sec. 1103(f)(3)(B).

31 Details are provided in Unemployment Insurance Program Letter No. 14-09, Appendix III, Question III-10, cited above in note 21.

32 As the Department of Labor noted in its guidance to states, “The Department anticipates that these [existing state misconduct provisions] are generally expected to meet the conditions pertaining to compelling family reasons since separations for compelling family reasons do not in themselves constitute a willful and wanton disregard of the employer’s interest.” *Id.*

to make arrangements with his or her employer to accommodate caregiving responsibilities factor into UI benefit decisions related to discharges. This is the case both in states where such discharges are assessed under the compelling family circumstances rules, and in states where they are assessed simply as a discharge.

### ***Applying Compelling Family Circumstances Rules to Discharges***

Officials in Oregon, Colorado, and South Carolina said that as long as the worker made efforts to communicate with her employer about the caregiving situation, she would likely be assessed under the compelling family circumstances rules. An adjudicator in Oregon explained that the case would fall under the state’s compelling family reasons rule if the worker had previously asked for time off in relation to the caregiving responsibilities. A Colorado official noted, “We used the term ‘separate’ rather than ‘quit’ when we put the statute into place, [which] allowed for either situation.” A South Carolina official said, “If they took the steps necessary for a compelling family reason [such as calling in, trying to take leave], then it would be adjudicated under that [compelling family reasons statute] for eligibility.”

In Connecticut, the compelling family circumstances rules refer only to voluntary quits, not discharges. Nonetheless, an advocate in Connecticut pointed to the fact that in a situation related to firing for family caregiving–related absences, “The absences aren’t going to be disqualifying if you can show you had good cause. And caring for a seriously ill family—close family member—could be considered good cause.” An agency official in Connecticut also explained, “As long as the person has been [...] reporting their absences and they’ve been doing [...] what the employer requires as far as [...] any documentation [...] then we wouldn’t necessarily find misconduct. So it’s possible that the person could be approved for benefits.”

### ***Disqualifications***

If an agency deems the worker to have not taken the necessary measures to communicate with her employer about accommodations, she may be still subject to disqualification. The South Carolina official said, “If the person just doesn’t show up and never [told] the employer why,

that would most likely be a reason for discharge and then that would be a denial of benefits.” In some cases, the UI official may apply a modified penalty. The South Carolina official estimated that “excessive absenteeism” typically results in a 17-week disqualification, but noted, “if it’s a medical reason for the individual that they’re missing or for a family member, we typically err on the side of a 5- to 10-week disqualification.” An adjudicator in Arkansas also pointed to the state’s rules related to misconduct, which she said had been strengthened in recent years. She noted that if an employer has a “*bona fide* attendance policy” and it is violated, the worker will be disqualified. However, she added, in cases where the employee was absent for several days prior to the discharge, adjudicators typically inquire as to whether the absence was for reasons related to his own or a family member’s illness. If this is the case and the employee made efforts to call in, the case would be seen as falling under the compelling family circumstances rule.

### ***Employer Tax Liability***

While generally our interviewees agreed that the legal standards were easier for fired workers to meet than for workers who quit, some respondents noted that employers had more of a financial incentive to dispute such claims. Under experience rating, employers are typically charged (through higher taxes) for benefits granted to workers after they are discharged. As a result, employers may be more likely to contest these claims.

## **AVAILABILITY**

### **Availability – Formal Rules**

#### ***Federal Regulations Require Availability Conditions***

A remaining hurdle to UI benefit distribution arises from the UI eligibility standard referred to as availability. Regardless of the reasons for a separation from work—whether a quit, discharge, or layoff—UI claimants must remain available for work on an ongoing basis to get UI benefits. All states are required by federal regulation to include availability as a condition of UI eligibility. In addition, a majority of states require all or most claimants to show availability for and seek full-time work. For this reason, even for those claimants who avoid disqualifications

related to their reasons for separating from work, availability is a substantial barrier to receiving UI benefits. Despite this barrier, once caregiving responsibilities end, or if they fall within limits deemed reasonable by state agencies, then UI programs can accommodate working caregivers in some cases.

### **Objective and Subjective Elements**

UI programs are not a substitute for paid leave. Generally, availability for work is defined as requiring that UI claimants remain attached to the labor market by making themselves available for a range of suitable jobs that exist in that market. As a legal rule, availability includes both objective and subjective elements that are applied on a case-by-case basis. The objective element concerns the days and hours of the week during which a claimant is willing to work, the geographic areas where the claimant is willing to work, and the kinds of jobs a claimant is willing to accept. In other words, does a market exist for the services this claimant is offering? The subjective element involves understanding a claimant's attitude about willingness to work and diligence in seeking work based on the individual's statements and behavior. In sum, does the claimant want to work?<sup>33</sup>

### **Caregivers' Challenges with the Availability Requirement**

Questions about availability are likely to arise for working caregivers. Because most states adjudicate the separation and availability aspects of UI claims separately, when agencies review availability, they will often already know that the underlying job loss happened for reasons other

*All states are required by federal regulation to include availability for work as a condition of UI eligibility.*

than a layoff. Further, if an employer advocates for disqualification, contesting the worker's reasons for leaving work, the employer is also free to raise objections about availability. Finally, each claim filed by a UI claimant is treated by the state agency as a statement under oath, and claimants are asked on a weekly or biweekly basis to affirm that they were available to accept work, with corresponding criminal and civil penalties for false statements or misrepresentations.

Working caregivers cannot assume that UI benefits will cushion the loss of a job. Clearly, an individual will face challenges showing availability for work if she plans to provide full-time caregiving assistance. But, if caregiving is provided by a claimant only on weekends and/or evenings to supplement the assistance offered by other family members or to relieve paid home care workers, there is a higher probability that eligibility can be shown. And, if caregiving involves more limited responsibilities like providing transportation to medical appointments, picking up prescriptions, and helping with meals and housecleaning, then the odds are higher that UI eligibility can be favorably decided. Finally, a worker may hold off on applying for UI until caregiving responsibilities lessen or end and he becomes available to work. (Such a "time lag" in applying for benefits can raise issues of monetary eligibility. See further discussion below.)

Another challenge posed by the availability requirement for working caregivers arises in some state UI laws and agency interpretations that require availability for full-time work. Many caregivers could simultaneously hold a part-time job while balancing caregiving responsibilities, but could not provide care and hold a full-time job at the same time. Thus, in states that require full-time availability for work as a condition of UI

*UI can offer support once a caregiver's responsibilities have lessened or ended and the caregiver is seeking a new job and is available for work.*

33 This explanation of availability as essentially raising two related questions is found in Lee G. Williams, "Eligibility for Benefits," *Vanderbilt L Rev.* (1955), v. 8, p. 286 at 294. Similar elements are found in the federal regulations on availability at 20 Code Fed. Reg. Sec. 604.3(b) and Sec. 604.5(a) (2014) and in many state court cases interpreting this eligibility requirement.



been resolved and the caregiver is again available for work, then she can resume filing UI claims. This means that even in states with availability limited to those who can accept full-time work, caregivers whose responsibilities have ended no longer face the eligibility barriers posed by the availability requirement. However, all states limit a claim to UI benefits to a 1-year period, meaning that a caregiver who filed a claim at the time caregiving responsibilities led to unemployment will have only 52 weeks in which to draw any benefits under that claim. And, once that claim has expired, any claim in a later benefit period would require additional earnings for qualification in most cases.

### **Availability – In Practice**

Issues related to availability were among those most frequently cited by advocates and agency officials as reasons for denial of benefits.

#### ***Availability for Full-Time Work***

A UI official in South Carolina explained, “The main reason [for relatively low use of the family caregiving exception] I think is it is a challenge for people to comply [with requirements that they be available and actively seeking work].” An adjudicator in Oregon also noted, “[P]eople who are caring for their relatives still need to be fully available for work as far as our rules go. [Claimants] run into obstacles with being available for work because they need to be there for the relative and we don’t have any exceptions in our rule for caring for anyone other than a minor child.” The adjudicator described a situation in which a worker was fired for missing too much work after she had to travel to a hospital out of town with her daughter for medical procedures. Because the worker needed to continue to travel to the out-of-town hospital on a regular basis, often for several weeks at a time, and she was the only one who could authorize medical care for her child, she was denied UI benefits for failure to meet the availability rules.

As noted above, in many states part-time availability is generally not acceptable, unless the worker previously held a part-time job. A Wisconsin official described a situation in which a woman was caring for her terminally ill husband. “In this instance, the woman said that she would

*In only 10 states, where part-time flexibility to work is broadly permitted, can working caregivers have some realistic options for receiving UI benefits while engaged in caregiving responsibilities.*

not be available for full-time work—only for no more than 10 hours per week. That did not meet the requirement that we had,” she explained. The official also described situations in which people claim to have full-time availability, but when asked to disclose their schedule with regard to caregiving obligations, their claims to full-time availability are not deemed to be credible.

#### ***Flexibility to Work and Alternate Schedule***

Some UI agency officials point to degrees of flexibility within the system that could enable a worker engaged in caregiving to claim some availability. For example, willingness to work a different shift—if feasible within a worker’s occupation or industry—can count as availability. The Wisconsin UI official explained that, while under normal circumstances a worker’s availability would need to match “customary” work hours, when family caregiving is involved, the worker could seek full-time work (in Wisconsin, more than 32 hours) that fits around his or her caregiving obligations. If no such work exists in the worker’s field; however, this option would not be available. An adjudicator in New Hampshire likewise explained that if a caregiver can work some shifts and her occupation allows for variability in shift work, then she may become eligible for UI.

#### ***Paid Family Leave Insurance***

Officials in California, the only state in our qualitative study (and only one of three in the country)<sup>34</sup> to offer paid family leave insurance to eligible workers, noted that some workers can use the two programs in succession. For example, the officials described a “fairly likely” scenario:

34 California, New Jersey, and Rhode Island are the only states that offer paid family and medical leave to eligible workers.

A worker leaves his job to take care of a relative, having no alternative available from his employer (such as leave, transfer, etc.). The worker may receive paid family leave. (California allows for up to 6 weeks of partial wage replacement.) When the family caregiver becomes available for work and begins to seek out employment, he may file for UI. This sequence means that for caregivers who are initially unavailable for work (and thus ineligible for UI), some financial support is available.

### SUMMARY OF UI LEGAL LANDSCAPE FOR CAREGIVERS

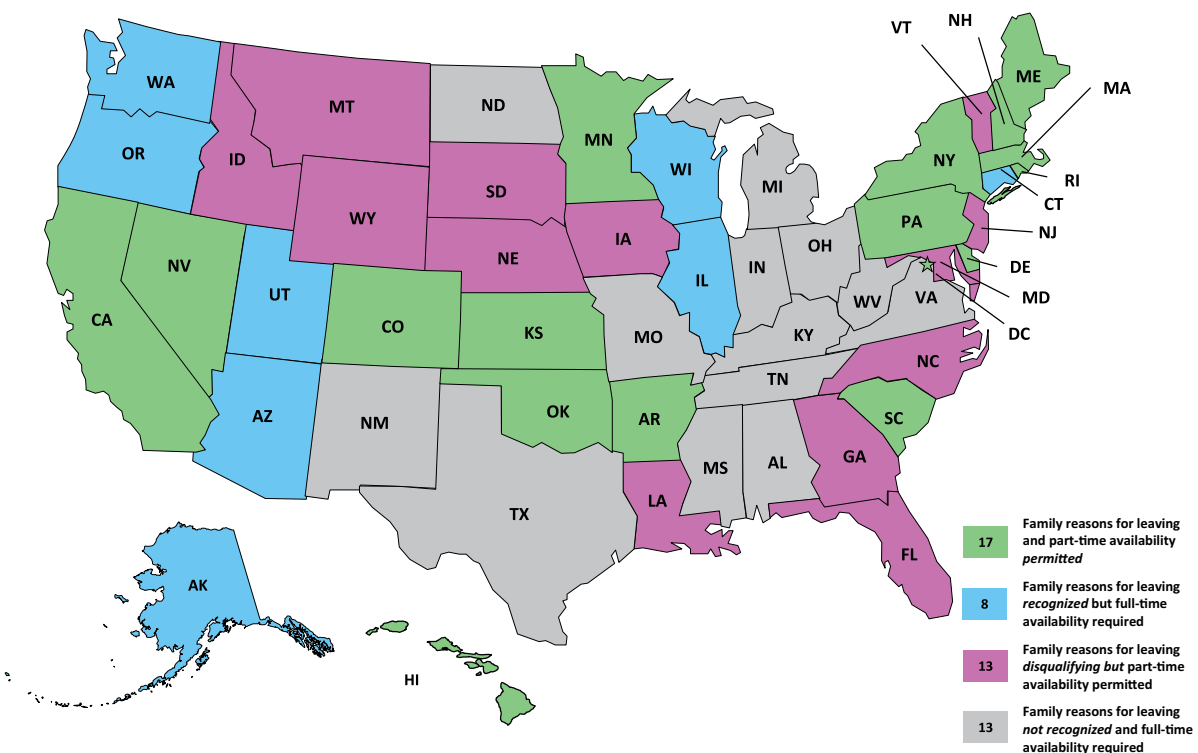
In most states, UI programs do not provide sufficient support to caregivers to reduce the financial burdens of caregiving. As shown in Figure 3, 17 states (in green) have *both* a caregiving-friendly rule regarding quits *and* an availability rule permitting a caregiver to seek part-time work and remain eligible for benefits. Eight states (in blue) have rules that exempt those leaving work for compelling family reasons

from disqualification, but do not permit part-time availability. Thirteen states (in pink) allow for part-time availability in some situations, but have rules indicating that they would likely disqualify a caregiver who left work for family reasons. Finally, 13 states (in gray) have rules *both* disqualifying workers who leave their jobs due to compelling family reasons *and* requiring full-time availability. In summary, only 17 states (in green) have policies that best facilitate caregivers' receipt of UI benefits—although even in those states, caregivers will need to document their reasons for leaving work, discuss these reasons with the employer prior to separating from work, and appeal any unfavorable rulings.

### ADMINISTRATIVE DATA

Unemployment insurance agencies in 7 of 10 states included in the study provided available data on claims related to family caregiving. However, since UI agencies do not report family caregiving claims and exceptions in a

FIGURE 3  
Summary of State Unemployment Insurance Rules and Family Caregiving, September 2014



uniform manner, it is difficult to make cross-state comparisons. Further, no agency reports on claims that were not perceived by adjudicators to fall under the family caregiving exception, but may have nonetheless involved family caregiving circumstances. Also, agencies do not collect data on discharges related to caregiving (with the exception of Wisconsin). Finally, we do not have any data on public awareness of caregiving provisions within UI rules.

Despite these limitations, the administrative data summarized in Appendix B provide useful information. To add context, state-level data on voluntary quit claims adjudicated (column 2) and approvals (column 3) as reported to the U.S. Department of Labor<sup>35</sup> were included to highlight the low probability that a voluntary quit claim of any kind, not just caregiving-related claims, will result in a worker receiving benefits. For example, in Arkansas, over a 3-year period, approximately 47,000 voluntary quit claims were adjudicated, with fewer than 5,200 approved (about 11 percent). In Wisconsin, annual voluntary quit claims between 2009 and 2013 ranged from approximately 38,000 to 51,000, with approvals for voluntary quits ranging from about 10,000 to 18,000 (roughly 28–36 percent). Where available, data on the total number of voluntary quits to care adjudicated in each state (column 4) show that these claims represent a small percentage of the total voluntary quits adjudicated. As well, approvals for voluntary quits related to caregiving (column 5) make up a small fraction of the already limited number of total approvals.

With more than 65 million Americans acting in caregiver roles across the lifespan and nearly 10 percent reporting that caregiving responsibilities have led them to leave their jobs, it is clear that the number of “quit to care” cases adjudicated and/or approved by states is likely far below the number of caregivers who have actually quit their jobs to care for their family members. Thus, although the data are limited, they serve to reinforce a point made throughout this paper: even where caregiver-friendly UI provisions exist, many individuals who left their job due to caregiving responsibilities are likely not applying for and receiving UI benefits.

### What a Family Caregiver Should Know about Seeking UI Benefits

- In general, caregivers facing a discharge or considering quitting are best served by letting their employers know about their caregiving responsibilities in advance. Under state UI rules, it is nearly always best for a caregiver to make his or her employer aware of any underlying caregiving situation causing conflicts with work, as soon as they arise.
- Know the employer’s attendance policy and inform the employer of scheduled and unscheduled absences from work.
- Communicate with the employer about workplace accommodations and alternative work schedules, including options to telework, job share, part-time and flexible work schedules, use of sick leave, family and medical leave, and family support benefits that could alleviate the need to quit work to care for a family member.
- As of this writing, caregivers in California, New Jersey, and Rhode Island should contact state agencies to inquire about paid family leave insurance options prior to quitting their job to care for a family member. In some cases, workers can use paid family leave and UI benefits in succession.
- All states limit claims to UI benefits to a 52-week period. Within that benefit year, caregiving claimants can draw their available weeks (typically 26) during weeks they meet eligibility rules while not claiming benefits in weeks when they are fully engaged in caregiving responsibilities.
- Caregiving responsibilities can pose a substantial barrier to receipt of UI because all states require that claimants maintain availability for work. When caregiving responsibilities involve daily duties that preclude a good-faith representation that the caregiver can accept work, the best course is to file a claim soon after separation from work in order to establish eligibility and then forego further claims. Once caregiving responsibilities lessen or end, the caregiver can begin to file claims for any weeks remaining in the 52-week benefit year.

35 NELP analysis of U.S. Department of Labor ETA 207 Report data, Regular State UI Programs, <http://ows.doleta.gov/unemploy/DataDownloads.asp>.



# Recommendations

UI can provide an important safety net for caregivers who leave their jobs to care for a family member experiencing illness or a disability. Yet, our research on UI rules affecting family caregivers finds that a majority of states do not have caregiver-friendly formal legal rules. Moreover, as the qualitative component of our study shows, even in states with UI rules that could accommodate working family caregivers, often both the substance and implementation of those rules present barriers for caregivers seeking benefits. Further, for many workers who must leave their jobs to care for family members on a full-time or close-to-full-time basis, availability requirements mean that UI does not provide the needed safety net that would help caregivers. Given these findings, our recommendations point to the need for wider adoption of caregiver-friendly UI rules; better implementation of existing caregiver-friendly rules; and consideration of broader policy changes to provide a more comprehensive safety net for working caregivers.

## 1. EXPAND PUBLIC EDUCATION REGARDING CAREGIVING AND UI RULES

States should launch outreach campaigns to inform workers about their rights and responsibilities when they must leave work to care for a family member who is ill or has a disability.

## 2. PERMIT VOLUNTARY QUILTS FOR COMPELLING FAMILY CIRCUMSTANCES

States should excuse workers who are compelled to leave work for caregiving reasons from voluntary quit disqualifications.

*Significant barriers remain in place for caregivers seeking UI benefits.*

## 3. ALLOW LIMITS ON AVAILABILITY FOR COMPELLING FAMILY CIRCUMSTANCES

States should allow individuals with compelling family circumstances to limit their availability so long as they remain available for a minimum weekly number of hours of work.

## 4. CHANGE RESTRICTIVE ADMINISTRATIVE AGENCY INTERPRETATIONS

States should review and modify restrictive interpretations of existing statutory language and/or pursue regulatory or legislative action to encourage more favorable interpretations of the rules.

## 5. REFORM EXCESSIVELY STRICT RULES REQUIRING CLAIMANTS TO EXPLORE ALTERNATIVES TO QUITTING WITH EMPLOYERS

States should pursue regulatory or legislative changes to clarify the requirements for employees to make efforts to preserve employment, and these requirements should not apply where such efforts would clearly be futile or unreasonable.

## Conclusion

This paper provides a comprehensive review of UI rules affecting working family caregivers, as well as an analysis of advocates' and agency officials' accounts of how state UI agencies are implementing the rules. Our findings indicate that while a growing number of states have rules in place to accommodate the needs of workers who must leave their jobs to care for family members who are ill or have a disability, significant barriers remain for caregivers seeking UI benefits. These include inadequate outreach to and education for workers who may be eligible for benefits in states with caregiver-friendly UI rules; overly stringent requirements related to engaging with employers prior to quitting or being fired; disqualification on the basis of part-time availability, unless a worker has a part-time work history; and problematic

agency interpretations of statutory language and regulations. Furthermore, our qualitative study suggests that many states are not fully implementing the UI rules they have on the books, which are meant to accommodate caregivers. As our recommendations indicate, to make caregiving exceptions within UI rules truly “caregiver-friendly,” action is needed to improve both the letter and implementation of many state laws.

Many states have yet to adopt any provisions in their UI rules to support caregivers who quit work to care for a family member and receive temporary financial assistance from UI benefits once they become available to work. The demographic realities in the United States argue for reforms to the UI system.

## Appendix A. Methodology

Qualitative data summarized in this paper were obtained from over 30 interviews with advocates and UI agency officials from 10 targeted states that have “caregiver-friendly” UI rules in place (Arizona, Arkansas, California, Colorado, Connecticut, Maine, New Hampshire, Oregon, South Carolina, and Wisconsin.) Interviews with UI agency officials included both senior-level officials and adjudicators who encounter caregiving-related claims on a regular basis. Advocates were primarily legal services lawyers that work with clients on UI-related issues. Interviews were conducted to better understand how the states are implementing these rules and what obstacles caregivers may encounter when trying to access benefits.

Interviews with advocates included questions about the scope of advocates’ work on UI; general climate of UI administration; interpretation of UI rules related to caregiving; examples of clients who sought UI benefits after leaving work for caregiving reasons; common obstacles caregivers encounter when seeking UI benefits; and suggestions for reforms. Interviews with agency officials focused on similar questions, but included discussion of UI claims related to caregiving that the officials or their colleagues had adjudicated. Since the interviews were semi-structured, we were able to expand or modify the scope of interviews depending on the specific knowledge

and experience of particular respondents. Interviews were transcribed and then coded thematically in HyperResearch, a qualitative data analysis software package. In addition to conducting interviews with state officials, we also requested administrative data from each of the 10 states. Seven states provided data summarized in Appendix B.

Legal analysis draws on reviews of states’ statutory and regulatory language relevant to workers who leave work to carry out family caregiving responsibilities, as well as court decisions interpreting those rules. Analysis of the 10 targeted states was conducted with more rigor and augmented by information from qualitative interviews and data collection. Specific sources included legal annotations, Commerce Clearing House’s *Unemployment Insurance Reporter*, and prior legal reviews conducted by the National Employment Law Project and cited in this paper. In addition, in a few specific cases where ambiguity remained, we consulted knowledgeable advocates in those states.

While every reasonable effort has been made to ensure accuracy, the results predicted in a specific state or in a particular situation are not guaranteed and cannot serve as a substitute for individual legal advice.

## Appendix B. Administrative Data on Unemployment Insurance Access for Caregivers

| State          | Column 1<br>Time Period Reported | Department of Labor-Reported Data             |   | State-Reported Data                             |  |  |   |
|----------------|----------------------------------|---|---|---|--|--|---|
|                |                                  | Column 2<br>Total Voluntary Quits Adjudicated | Column 3<br>Approved Voluntary Quits for Any Reason | Column 4<br>Voluntary Quits to Care Adjudicated | % of Total Voluntary Quits for Any Reason <sup>a</sup> | Column 5<br>Approved Voluntary Quits to Care | % of Total Approved Voluntary Quits for Any Reason <sup>b</sup> |
| Arizona        | 2013 <sup>c</sup>                | 17,770  | 7,578   | *   | *  | 299  | 3.9   |
| Arkansas       | 2011–2014 <sup>d</sup>           | 46,846  | 5,167   | *   | *  | 3,600 <sup>e</sup>                           | 67.7 <sup>e</sup>   |
| California     | †                                | †   | †   | *   | *  | *  | *   |
| Colorado       | †                                | †   | †   | *   | *  | *  | *   |
| Connecticut    | 2008                             | 16,361  | 5,410   | 222   | 1.4  | 123  | 2.3   |
|                | 2009                             | 14,913  | 5,200   | *   | *  | *  | *   |
|                | 2010                             | 14,773  | 4,922   | *   | *  | *  | *   |
|                | 2011                             | 14,306  | 4,492   | *   | *  | 193  | 4.3   |
|                | 2012                             | 13,695  | 4,291   | *   | *  | 150  | 3.5   |
| Maine          | 2013                             | 12,970  | 3,948   | *   | *  | 144  | 3.6   |
|                | †                                | †   | †   | *   | *  | *  | *   |
| New Hampshire  | 2010                             | 6,088   | 1,487   | 109   | 1.8  | 90   | 6.1   |
|                | 2011                             | 6,055   | 1,292   | 87  | 1.4  | 63   | 4.9   |
|                | 2012                             | 4,510   | 1,337   | 78  | 1.7  | 59   | 4.4   |
|                | 2013                             | 4,281   | 1,539   | 57  | 1.3  | 39   | 2.5   |
| Oregon         | 2013                             | 20,254  | 5,334   |   |  | 386 <sup>f</sup>                             | 7.2   |
| South Carolina | 2010–present                     | 75,161  | 3,049   | 2,095 <sup>g</sup>                              | 2.8  | 580 <sup>g</sup>                             | 19.0  |
| Wisconsin      | 2009                             | 50,778  | 18,176  | 468   | 0.9  | 340  | 1.9   |
|                | 2010                             | 51,456  | 18,051  | 688   | 1.3  | 520  | 2.9   |
|                | 2011                             | 44,988  | 14,089  | 648   | 1.4  | 451  | 3.2   |
|                | 2012                             | 42,197  | 12,623  | 570   | 1.4  | 424  | 3.4   |
|                | 2013                             | 38,515  | 10,639  | 464   | 1.2  | 308  | 2.9   |

\* Indicates data not available or inconclusive.

† Department of Labor-reported data are not included when state data are not available.

<sup>a</sup> Percentages denote the number of voluntary quits to care adjudicated as a percentage of all voluntary quits adjudicated for the state/time period.

<sup>b</sup> Percentages denote the number of approved voluntary quits to care as a percentage of all voluntary quit approvals for the state/time period.

<sup>c</sup> February 1–December 31, 2013.

<sup>d</sup> September 1, 2011–May 31, 2014.

<sup>e</sup> Data as reported may not be deemed reliable.

<sup>f</sup> Combines decisions under the compelling family reasons exception and those under the all voluntary quits exception. The latter were all instances of voluntarily leaving work to care for someone due to illness, but may include caring for individuals who do not fit the family member definition under the compelling family reason exception. Discharges are included under the compelling family reasons exception (of which there were only four).

<sup>g</sup> Includes quits to care for a sick or disabled family member; quits due to own illness; and quits to relocate to accompany a spouse during a job change.

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