



**FAIR TREATMENT
FOR SURVIVORS OF
INTERPERSONAL
VIOLENCE AND
THEIR EMPLOYERS**

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At a Glance

At a time when unemployment insurance serves as a critical safety net for millions, Michigan had one of the lowest reciprocity rates for unemployment insurance in the country. Michigan is also one of the few states that has chosen not to extend unemployment insurance to individuals who become unemployed due to interpersonal violence. The Michigan legislature and the state Unemployment Insurance Agency should act to extend benefits in accordance with the statute and judicial precedent.

Unemployment insurance (UI) benefits are crucial for many individuals.¹ Outdated UI systems exacerbate poverty-related hardships, particularly for those who experience interpersonal violence (IPV). Unfortunately, Michigan trails the rest of the country in reforming UI to better meet the needs of IPV survivors and their employers.

The intersection of unemployment insurance and interpersonal violence

UI was implemented as part of New Deal federal programming to get families back on their feet by supporting workers who become involuntarily separated from employment.² The Michigan Employment Security Act (MESA) has a clear purpose “to prevent spread [of involuntary unemployment] and lighten its burden which so often falls with crushing force upon the unemployed worker and his or her family, to the detriment of the welfare of the people of this state.”³

Michigan employers pay federal and state taxes to support UI.⁴ These taxes are a cost of doing business, not an assessment of employers’ fault in any unemployment period.⁵ Further, a nonchargeable benefits account is pooled among employers for circumstances where it would be unfair to charge employers directly.⁶ Specifically, money from this account is used in special circumstances to pay unemployed workers without increasing their employer’s tax rating.

Until recently, Michigan's average UI reciprocity rate was below the national average and far below the rest of the Midwest.⁷ In 2019, there were more than 200,000 unemployed individuals in Michigan⁸ and the state's UI system served only 20 percent of them.⁹ During the early months of the COVID-19 pandemic, more than one million Michiganders were unemployed,¹⁰ yet the UI reciprocity rate was just 26 percent.¹¹ This low reciprocity rate is the result of massive holes in Michigan's UI statute that leave many workers unprotected even though MESA was written to protect workers and the economy.

Michigan's low reciprocity rate exacerbates challenges for workers experiencing IPV, which encompasses survivors of domestic violence, sexual assault, and stalking.¹² Under Michigan law, domestic violence includes physical abuse, sexual abuse, emotional and psychological abuse, and economic abuse.¹³ In 2018, there were 48,264 domestic violence offenses reported to Michigan state law enforcement.¹⁴ Many other incidents went unreported.¹⁵

IPV has significant costs for both workers and employers.¹⁶ A report submitted to the U.S. Department of Justice analyzing responses from more than 24,000 employed men and women in 39 states found that "it is clear that IPV is a work-related phenomenon."¹⁷ Annually, victims of domestic violence lose eight million days of paid work¹⁸ in part because stalking, harassment, and assault can occur at work.¹⁹ IPV affects workers' ability to concentrate and negatively impacts productivity.²⁰ It causes missed work due to fear or exhaustion, legal issues, medical treatment, child care concerns, or obtaining safe housing.²¹ As a result, workers lose their jobs and sources of income and employers lose valuable team members.²²

Workers experiencing IPV may not immediately be aware of the connection between the violence and separation from employment.²³ They may hesitate to disclose personal history to employers, lawyers, or judges, but it is crucial for survivors to have a steady income because IPV often includes financial abuse and requires financial resources to maintain safety.²⁴ UI should provide this financial security when IPV affects the ability to work; it was intended as a temporary measure to protect individuals who become separated from employment due to no fault of their own.²⁵ Survivors of IPV meet this requirement—they did not cause the violence but are victims of abuse and leave work due to no fault of their own.

Federal and state governments are aware of the challenges IPV survivors face in obtaining UI. The 2009 American Recovery and Reinvestment Act included incentives for states to amend UI laws so workers would not be disqualified for separation caused by "any compelling family reason" including domestic violence.²⁶ Thirty-six states, the District of Columbia, and the Virgin Islands reformed UI to reach IPV survivors.²⁷ This leaves Michigan in the minority of states that do not provide statutory protection for this part of the workforce.

Over the last decade, the Michigan legislature has unsuccessfully attempted to expand UI to those experiencing IPV.²⁸

Most recently, during the 2019–2020 session, House and Senate committees considered bills that would allow an individual who left work "due to domestic violence" to receive benefits from the nonchargeable account,²⁹ but efforts have stalled.

It is virtually impossible to establish the exact number of individuals who would benefit from expanded access to UI given low reporting rates for IPV. However, the correlation between IPV and employment is well established.³⁰ IPV can lead to separation from employment and difficulty meeting administrative deadlines.³¹ The COVID-19 pandemic exacerbated these issues. Lockdowns and restricted movement meant to prevent spread of the virus intensified domestic violence, especially given widespread unemployment and financial stress.³² Michigan lawmakers and state officials should learn from the strengths and pitfalls of other state legislation and implement UI reforms through legislative and administrative approaches.

A way forward for Michigan: Legislative and administrative approaches

A legislative fix would be the clearest and most powerful approach to bring Michigan in line with national standards for those who leave work due to IPV. The Michigan legislature can ensure consistent protection for workers unemployed due to IPV by passing pending SB 604/HB 5156 or similar legislation.

Employers are reasonably reluctant to support legislation that would increase UI taxes, but legislation can ensure that individuals who establish separation resulting from IPV receive benefits from a nonchargeable account instead of from an employer's account.³³ Only if the agency has reasonable belief that the IPV was *related* to the worker's employment should the employer's account be charged.

State laws often place a heavy burden on individuals to prove their experiences with IPV.³⁴ Many survivors have been accused of making false accusations;³⁵ however, studies suggest that the prevalence of false reporting is as low as two percent.³⁶ Those low numbers are likely inflated due to inconsistencies in definitions and protocols.³⁷ The vast majority of claims are true and many go unreported but survivors required to prove IPV may fear further angering the person battering them or their family member;³⁸ a restraining order may feel like a useless piece of paper. Michigan must avoid erecting insurmountable burdens of proof; testimony under oath should suffice.³⁹

Lastly, lawmakers should adopt a strict confidentiality program to ensure workers' safety. Survivors may hesitate to seek benefits for fear that their abuser could access the information. Experts from the National Employment Law Project and Employment Law Center, together with the Legal Aid Society, proposed a definition based on other state statutes.⁴⁰ Strong confidentiality protections make it more likely that IPV survivors can obtain critical UI benefits to protect the social welfare of the state in accordance with MESA.

The Michigan Unemployment Insurance Agency need not wait for a legislative success to adjust its rules and internal policies to better serve workers in alignment with the purpose of UI. While political will to adopt legislative changes remains uncertain, the agency has authority to issue guidance internally and propose rulemaking. While rulemaking is time consuming and requires public notice and comment, internal guidance can be updated without review. The agency has authority to interpret and implement existing provisions of MESA and precedent from Michigan's high courts to protect unemployed IPV survivors and their former employers.⁴¹

To qualify for UI, separation from employment must be through no fault of the worker.⁴² This can be established in various circumstances. If a worker is fired, the employer needs to prove that the claimant intentionally harmed the employer's interest.⁴³ If a worker is absent for reasons beyond their control or with good cause, those absences are not considered misconduct and the worker cannot be denied benefits.⁴⁴ If a worker leaves a job, the first inquiry is whether that leaving was voluntary.⁴⁵ When the worker faces two untenable choices—for example, between going to work and the worker's life or safety—that is no real choice at all.⁴⁶ Because IPV survivors may have been prevented from working due to stalking, harassment, and medical or legal needs, their separation from work can be interpreted in their favor using this precedent. Therefore, under Michigan law, any worker who becomes unemployed due to IPV should qualify for UI. Internal policy guidance and rulemaking would improve accurate adjudication and access to UI for these workers.

The agency should update its internal policy to ensure claims adjudicators know that involuntary leaving encompasses IPV. Congress intended for MESA to be broadly applicable⁴⁷ and the courts have directed the agency to uphold that intent.⁴⁸ The agency is bound to act under these precedential cases, and its purpose is to support those unemployed at no fault of their own. But the agency does not consistently apply the precedent, leaving many workers to fight an uphill battle at administrative hearings. Legislation would more permanently ensure heightened protections for workers experiencing IPV but through internal policy guidance, the agency can ensure the protections it is bound to uphold.

The agency should apply similar considerations to late protest or appeal of case adjudications because challenges associated with IPV could prevent on-time submission of paperwork. Agency rulemaking can append the non-exhaustive list of circumstances that amount to good cause to include IPV.⁴⁹ Although enumeration of IPV is not necessary, it would demonstrate state and agency willingness to support these individuals and signal the legislature to implement additional systemic improvements to increase UI reciprocity.

Lastly, the Department of Labor empowered state agencies to issue rules allowing for reduced work-search requirements.⁵⁰ During receipt of benefits, a claimant must register for work and regularly report an active work search.⁵¹ Someone

experiencing IPV may have priorities preventing them from focusing on their job search, including finding medical or legal help and a safe place to live.⁵² In Michigan, claimants can apply for reduced work-search requirements in limited circumstances.⁵³ The agency should make explicit that those experiencing IPV are eligible for this waiver.

Conclusion

Unemployment insurance programs are ineffective if they fail to reach survivors of interpersonal violence, and Michigan lags in expanding UI for these workers. Until the legislature successfully amends the Michigan Employment Security Act, the agency should issue internal guidance and promulgate rules to provide benefits for IPV survivors who become unemployed through no fault of their own. Many individuals may still fail to make the connection between IPV and unemployment, report IPV, or file for UI, but this does not lessen the state's burden to increase reciprocity and improve social welfare in Michigan. ■



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