

6.0 EMPLOYER/EMPLOYEE ISSUES

6.1 Overview

This section provides practical advice for assisting those who have temporarily or permanently lost employment or are facing other employment-related issues as a result of a disaster.

6.2 Common Questions

Common employment-related questions arising from a disaster are:

- What unemployment benefits are available if my employment is interrupted or lost due to a disaster (or if my family income is affected by a disaster)?
- Can my health benefits be continued if I lose my job due to a disaster?
- Can my employer fire me because a natural disaster has occurred?
- If I cannot work because of a disaster, does my employer have to pay me anyway?
- Am I entitled to leave if a family member or I become ill as a result of the disaster or its aftermath?
- How do I get my pay?

6.3 Summary of the Law

A. *Unemployment Compensation*

1. Unemployment Compensation Not Related to Disaster

To be eligible for regular (non-disaster) unemployment compensation under the Texas Unemployment Compensation Act ([Texas Labor Code Title 4](#)), an individual must meet all of the following requirements:

- a. They must have earned sufficient wages to qualify for benefits in the “base period” The base period is defined as the first four calendar quarters of the five calendar quarters immediately preceding the date the individual files a claim for unemployment benefits. See [Eligibility and Benefit Amounts](#) from the Texas Workforce Commission (TWC).
- b. They must be unemployed or partially unemployed.
- c. They cannot have been fired for misconduct or have voluntarily quit without good cause. See [Eligibility and Benefit Amounts](#) from the TWC.
- d. They must be able and available to work.
- e. They must be actively seeking work. See [Ongoing Eligibility Requirements for Receiving Unemployment Benefits](#) from the TWC.

For more information, see the TWC page on [Eligibility and Benefit Amounts](#).

2. Federal Disaster Unemployment Assistance (DUA)

Federal Disaster Unemployment Assistance (DUA) provides unemployment benefits for people who lost their jobs or self-employment livelihoods, or who cannot work as a direct result of a major disaster. To be eligible, they must have been rejected or have otherwise exhausted regular unemployment benefits through the TWC. The first step in accessing federal DUA is to apply to the TWC.

DUA availability is triggered by a major disaster declaration. It is available only during a Disaster Assistance Period, which runs from the first Sunday following the declaration and ends on a date as determined by DUA and the Federal Emergency Management Agency (FEMA). Benefits paid under DUA are counted as taxable income to the recipient.

After a finding of ineligibility for regular TWC unemployment benefits, the DUA applicant must establish one or more of the following:

- a. The income from the job lost represented more than 50% of the applicant's total income.
- b. The applicant lives, works, or travels to work through the disaster area.
- c. The applicant's place of employment was damaged or closed.
- d. The applicant was hired to start a job, but the job no longer exists or the place of employment can no longer be reached.
- e. The applicant suffered injury or incapacitation.
- f. The applicant became the breadwinner or major supporter of the household due to the death of the head of household.

Disaster Unemployment Assistance for Noncitizens

In addition to other DUA requirements, noncitizens must meet the following requirements to be eligible for DUA. See [20 C.F.R. §§ 625.4, 625.8\(f\)](#):

- a. A noncitizen must be authorized to work for the weeks for which they are claiming DUA, and
- b. A noncitizen must have had one of the following statuses during the time they were earning the wages that are used to calculate the weekly benefit amount:
 - i. lawfully admitted for permanent residence in the United States at the time such services were performed, or
 - ii. lawfully present for purposes of performing such services, or
 - iii. permanently residing in the United States under color of law at the time such services were performed.

Noncitizens must have had one of the three statuses listed above during at least part of their base period. A noncitizen who qualifies for benefits at the time of the application but did not have a qualifying status might be ineligible. With some exceptions, the weekly benefit amount is normally calculated using the wage credits earned during the base period (usually the first four calendar quarters of the five quarters immediately preceding the date the DUA claim is made. See [Tex. Lab. Code §§ 201.011, 207.004](#). See TWC's [Eligibility & Benefit Amounts](#).

In the event of a disaster, the TWC will publish announcements about the availability of DUA benefits and the deadline to apply for benefits. Visit the [Applying for DUA](#) page on the TWC website.

3. Work Search Requirements and Waiting Week

Under normal circumstances, TWC will not pay for the first week of a claim (the "[Waiting Week](#)") until the claimant receives two times their weekly benefit and has either exhausted their benefits or returned to full-time work.

TWC [has work search requirements](#) for all claimants. See [Required Number of Work Search Activities by County](#).

B. Continuation of Group Health Coverage under COBRA

After a disaster, employees may lose their employer-provided group health plan coverage due to voluntary or involuntary termination, reduction in work hours, or another qualifying event. In these cases, an employer may be required to extend health plan coverage to the individual and their dependents (qualified beneficiaries) previously covered under the employer's group health plan. Group health plans include but are not limited to medical, dental, and vision plans. 26 C.F.R. § 54.4980B-2, Q&A-1.

COBRA continuation coverage applies only to private sector employers with at least twenty employees, governmental employers, and certain employee organizations. 26 C.F.R. § 54.4980B-2, Q&A-4. Under COBRA, qualified beneficiaries have the right to continue their health coverage under the same group health plan they had before losing coverage. 26 U.S.C. § 4980B(f)(2)(A). If the same plan is no longer offered, the qualified beneficiary may elect coverage under another group health plan maintained by the employer. Each qualified beneficiary may make a separate election for coverage. 26 C.F.R. § 54.4980B-6, Q&A-6. For example, if an employee's family coverage plan previously covered a spouse and a dependent child, either the spouse or the child could separately elect COBRA under a single plan, even if the remaining family members waive coverage.

Qualifying Events under COBRA

"Qualifying events" are events that cause an individual to lose group health coverage. The following are qualifying events for a covered employee if it causes the employee to lose coverage:

- Termination of the covered employee's employment for any reason other than "gross misconduct," or
- Reduction in the covered employee's hours of employment.

The following are qualifying events for a spouse and dependent child of a covered employee if they cause the spouse or dependent child to lose coverage:

- Termination of the covered employee's employment for any reason other than "gross misconduct,"
- Reduction in hours worked by the covered employee,
- Covered employee becomes entitled to Medicare,
- Divorce or legal separation from the covered employee, or
- Death of the covered employee.
- Loss of "dependent child" status under the plan rules (typically at age 26).

Duration of COBRA

Generally, COBRA continuation coverage may continue for up to eighteen months. [26 U.S.C. § 4980B\(f\)\(2\)\(B\)\(i\)](#). A plan may choose to provide longer periods of continuation coverage than required under COBRA and/or to contribute toward the cost.

Cost of COBRA

COBRA coverage can be very costly. An employer may charge up to 102 percent of the actual cost of coverage as an active employee (not just the employee's contribution while actively employed). [26 U.S.C. § 4980B\(f\)\(2\)\(C\)](#). Also, an employer is not required to offer COBRA coverage if the group health plan ceases. [26 U.S.C. § 4980B\(f\)\(2\)\(B\)\(ii\)](#). For example, if an employer closes operations entirely and no longer offers group health plans, a qualified beneficiary has no rights to continued coverage under COBRA .

Time for COBRA Election

COBRA continuation coverage is not automatic, and there is a time limit to elect coverage. A qualified beneficiary has only sixty days to make the election, running from the date of the COBRA notice or the date of loss of coverage, whichever is later. 26 U.S.C. § 4980B(f)(5). Employers are required to send a notice regarding COBRA rights to the last known mailing address of the qualified beneficiary, but those dislocated by disaster might not promptly receive this notice. For these reasons, the eligible person should contact the employer providing group health benefits as soon as possible. See the DOL publication, [An Employee's Guide to Health Benefits Under COBRA](#).

C. Affordable Care Act

In declared disaster situations, the Affordable Care Act (ACA) requires insurers to provide coverage for out-of-network care for individuals displaced by disaster. It also prohibits insurers from charging higher coinsurance or copayment amounts for out-of-network care than for in-network care. It does not, however, prohibit medical providers from billing consumers for the remaining balance after the insurer-paid portion.

Each health plan has different policies regarding out-of-network reimbursement. Individuals should contact the health insurer directly by calling the number listed on the back of the insurance card or by visiting the insurer's website. If they cannot access their card, they can contact the [Marketplace Call Center](#) at 1-800-318-2596 (TTY number: 1-855-889-4325).

The Texas Department of Insurance (TDI) may issue disaster bulletins that affect health insurance and other insurance providers in Texas. For example, during Hurricane Harvey the TDI issued a [bulletin](#) recommending that Texas health insurers waive restrictions or penalties on members going out-of-network for services during the disaster period declared by the governor.

D. Employer's Wage Payment Obligations

1. Fair Labor Standards Act

Under the federal Fair Labor Standards Act (FLSA), [29 U.S.C. § 201](#) *et seq.*, the Texas Minimum Wage Act (TMWA), [Tex. Lab. Code § 62.001](#) *et seq.*, and common law, employees must be paid for all work performed and for all time worked, which includes time spent waiting and travel time between job sites. Unless exempt, employees covered by the FLSA must receive overtime pay for hours worked over 40 in a workweek of at least time and one-half their regular rate of pay. All workers are entitled to labor protection regardless of immigration status. It is not a valid defense to FLSA and TMWA claims that the work was done slowly or poorly, or that the employer cannot afford to pay wages earned. In general,

there are no labor law exceptions made in the case of disasters. See [Employment & Wages Under Federal Law During Natural Disasters & Recovery from the DOL](#).

Exempt Employees

Certain employees are exempt from the FLSA's minimum wage and overtime provisions because they fall within one or more of the exemptions to the FLSA: executive, administrative, professional, outside sales, or certain computer employees. To be exempt, they must be paid at least \$684 per week.¹ Title is irrelevant; calling an employee a "manager" and therefore exempt from overtime has been a source of litigation against employers for back pay and other benefits.

Exempt employees must be paid full salary if the business shuts down for less than a full workweek, or if the employer does not have work available for the employee to work a full week. If the employee is absent from work for one or more full days for personal (non-disaster) reasons, the employer may deduct from the employee's salary. If the absence was due to sickness or disability, the employer may deduct a full day pursuant to the employer's sick or disability leave plan, policy, or practice. [29 C.F.R. § 541.602](#). See the DOL's publications: [Salary Basis Requirement and the Part 541 Exemptions](#) Under the Fair Labor Standards Act, and [FAQ Regarding Furloughs and Other Reductions in Pay and Hours Worked Issues](#).

For more information about labor laws and wages, refer to the [DOL Fact Sheets](#), which provide a useful summary of legal requirements for different categories of workers (migrant and seasonal agricultural workers, workers on visas, first responders, etc.).

2. Texas Payday Law

The Texas Payday Law requires employers to pay FLSA-exempt employees at least once a month. Non-exempt employees must be paid at least twice a month on paydays designated by the employer. [Tex. Lab. Code § 61.011](#).

Wages may be paid to the employee by

- Direct deposit;
- In-person delivery to the employee (or person designated by the employee in writing) at the employee's regular place of employment during regular work hours, or at a place and time agreed by employer and employee;
- By registered mail to the employee or written designee to be received no later than their regular payday; or
- Delivery by any reasonable means authorized by the employee in writing. [Tex. Lab. Code § 61.017](#).

¹ As of July 1, 2024, employees exempt from the Fair Labor Standards Act's (FLSA) minimum wage and overtime protections under the bona fide executive, administrative, and professional (EAP) exemption must be paid at least \$844 per week (equivalent to \$43,888 per year). On June 28, 2024, a Texas federal judge issued an injunction temporarily blocking the DOL's new overtime rule from taking effect for employees working for the State of Texas. *Texas v. DOL*, No. 4:24-cv-00499 ED Tex. The injunction only prevents the rule from being implemented or enforced against the state of Texas as an employer. It does not protect private employers inside of Texas or any employer – public or private – outside of Texas.

Employers whose employees may have been displaced by a natural disaster should ensure that pay is delivered in a manner most likely to be received by the employee.

An employee whose last paycheck is delayed due to disaster is entitled to submit a wage claim with TWC no later than 180 days following the date wages were originally due. See [How to Submit a Wage Claim Under Texas Payday Law](#). An employee who is discharged from employment must be paid in full no later than the sixth day after the date of discharge. Employees who leave employment voluntarily must be paid in full no later than the next regularly scheduled payday. [Tex. Lab. Code § 61.014](#).

3. Wage Theft

Under [Texas Penal Code § 31.04](#), the offense of wage theft of service occurs when an employer “intentionally or knowingly secures the performance of the service by agreeing to provide compensation and, after the service is rendered, fails to make full payment after receiving notice demanding payment.” This includes payment for overtime. An employer’s partial payment of wages alone is not a defense to wage theft. Information and forms for [filing a wage claim](#) are available from the TWC.

4. WARN Act

Employers covered under the federal Worker Adjustment and Retraining Notification (WARN) Act, 29 U.S.C. § 2101 must provide employees who lose employment because of a plant closing or mass layoff with sixty days’ advance notice. The notice requirement under the WARN Act applies only to employers with at least 100 employees. If the closing or layoff is a direct result of a natural disaster, employers must provide as much notice as possible, even if notice comes after the disaster. Employers who do not provide proper notice may be liable for back pay and benefits for the time leading up to the sixty-day notice period.

The employer must provide notice to the bargaining representative of affected union employees, and to those workers who may reasonably be expected to lose employment. The notice must state whether the layoff or closing is permanent or for six months or less, the date (within a fourteen-day period) that employment will end, and the name and contact information of a person with the company who can provide more information. Read more about [WARN Act Compliance Assistance](#) from the Department of Labor.

5. Independent Contractor

All workers are presumptively entitled to protection under state and federal labor laws, including laws governing minimum wage and overtime. The burden is on the employer to prove that an employee falls within an exemption to the FLSA, or that the worker is an independent contractor. A worker classified as an independent contractor may be deemed an employee entitled to protection under the FLSA, TMWA, Texas Payday Law, and other labor laws if certain tests are met. Both the Internal Revenue Service (IRS) and the DOL consider many factors when determining whether a worker is an independent contractor or an employee. For example, they consider the degree to which the employer controls when and how the contractor’s work is performed, whether the contractor’s work is substantially similar to that of an employee, if the contractor works for a single employer or has work arrangements with other employers, and whether the contractor uses their own tools or supplies or those of the employer. See the IRS publication [Independent Contractor \(Self-Employed\) or Employee?](#) and the DOL’s Fact Sheet: [Employment Relationship Under the FLSA](#).

E. Prohibited Employment Discrimination & Wrongful Termination

Generally, Texas is an employment-at-will state. This means that if an employer disliked the employee's job performance, if the employee failed to follow workplace policies, or if the employee's services are no longer needed, an employer can fire the employee for any lawful reason. There are many exceptions to "at will" employment:

- An employee cannot be fired because of their race, sex (including LGBT status or pregnancy status), religious preference, ethnicity, national origin (including language), age, or disability. See the Equal Employment Opportunity Commission publication [Equal Employment Opportunity is the Law](#).
- An employee cannot be fired for complaining about their rights under laws providing for minimum wage, overtime, medical leave, discrimination, workers' compensation, and workplace safety (among others).
- If the employee is covered by the [Family and Medical Leave Act](#) (FMLA, described in the following section), the employee cannot be fired for taking leave because of a serious illness, maternity or paternity leave, time off to adopt a child, or to help take care of a seriously ill close family member.
- An employee cannot be fired for refusing an order to do something illegal.
- An employee cannot be fired for discussing pay or working conditions with co-workers, or for complaining with or on behalf of coworkers about pay or working conditions.
- An employee cannot be fired for being a union member, joining a union, or or trying to form a union.
- An employee cannot be fired for reporting an employer's violation of a law to appropriate law enforcement authorities ("whistleblowing").
- For employees under an employment contract, the contract governs the grounds and circumstances under which an employer can terminate an employee. Terms governing employment may also include a collective bargaining agreement negotiated by the employee's union.

The above list covers some of the more common types of terminations that are unlawful, but there are other exceptions See TWC information on [wrongful discharge and exceptions](#).

Prohibited Employer Discrimination Against Evacuees

Texas law prohibits discrimination against employees who participate in an emergency evacuation. It is unlawful for an employer to take adverse action against an employee who leaves the work site to participate in a general public evacuation ordered under an emergency evacuation order. [Tex. Lab. Code § 22.002](#). Emergency services personnel, such as firefighters, police officers, emergency medical technicians, and others who provide emergency services to the public, are exempt from this provision if their employer provides adequate emergency shelter. [Tex. Lab. Code § 22.004](#).

Under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), [38 U.S.C. §§ 4301–4333](#), it is unlawful for an employer to deny initial employment, reemployment, promotion, or any employment benefit to a person who is obligated to perform in a uniformed service, including the Reserves and National Guard. This includes a call to active duty due to a national emergency. See [Your Rights Under USERRA](#).

F. Entitlement to Family and Medical Leave

In addition to paid vacation or sick leave, the federal [Family and Medical Leave Act](#) (FMLA) requires covered employers to provide up to twelve weeks of unpaid, job-protected leave to eligible employees for certain family and medical reasons. See [29 U.S.C. § 2601 et seq.](#); [29 C.F.R. § 825 et seq.](#) Leave is available in part to cover an employee's own serious health condition that renders them unable to perform their job, as well as to care for their spouse, son or daughter, or parent who has a serious health condition.

A disaster may exacerbate an employee's serious or chronic health condition such as stress, anxiety, or soaring blood pressure, to such an extent that they are unable to perform their job. Similarly, an employee may be required to care for a family member with a serious health condition as a consequence of a natural disaster, as, for example, a family member who cannot access dialysis services when their usual transportation is disrupted by disaster.

Employers must provide FMLA unpaid leave if:

1. The employee has worked for their employer for at least twelve months (need not be consecutive),
2. The employee has worked at least 1,250 hours (about 1 month 3 weeks) over the year preceding their need for leave, and
3. The employer has at least fifty employees within seventy-five miles of the employee's work site.

The FMLA permits employees to take leave on an intermittent basis or to work a reduced schedule under certain circumstances. The employer must maintain the employee's health coverage under any group health plan for the duration of FMLA leave.

Under the FMLA, an employer is permitted to substitute paid leave for unpaid leave. [29 U.S.C. § 2612\(d\)\(2\)](#). Subject to certain limitations, an employer may require the employee to use paid vacation, personal, family, or medical sick leave concurrently with unpaid FMLA leave. 29 C.F.R. § 825.207. Employers can require employees to meet all the normal requirements of paid leave before permitting substitution. For example, if an employer's policy requires that vacation be taken in full day increments, the employer can deny a substitution for an employee's half day FMLA leave. Similarly, if vacation time cannot be taken during a particular month, an employer may deny substitution during that time. Read more about FMLA leave from the DOL [here](#).

6.4 Regulatory Agency Directives

The DOL, in coordination with FEMA, provides funds to state unemployment insurance agencies for payment of DUA benefits. Accordingly, the TWC administers DUA benefits to those who lost their jobs or self-employment or who are no longer working as a direct result of a major disaster for which a disaster assistance period is declared. In the event of a disaster, the TWC will publish announcements about the availability of DUA benefits and the deadline to apply for benefits.

6.5 FAQs

Q. 6-1 *What is unemployment compensation?*

Unemployment compensation benefits are provided to Texas workers by the Texas Workforce Commission. The TWC provides temporary financial assistance for a worker whose employer laid them off, fired them for a reason other than misconduct, or who quit a job for “good cause.” An employee who has been fired from their job “for cause” (misconduct) is probably not eligible to collect unemployment.

Q. 6-2 *How do I qualify for unemployment insurance benefits?*

To be eligible for regular (non-disaster) unemployment compensation in Texas, an applicant:

- a. must have earned sufficient wages to qualify for benefits in the “base period,”
- b. must be unemployed or partially unemployed,
- c. cannot have been fired for misconduct or voluntarily quit without good cause,
- d. must be able and available to work, and
- e. must be actively seeking work. See TWC eligibility guidelines [here](#).

Q. 6-3 *What is Disaster Unemployment Assistance, or DUA?*

DUA provides financial assistance to those who lost employment as a direct result of a major disaster as declared by the president of the United States *and* are not eligible for regular unemployment insurance benefits under the TWC’s unemployment compensation program. An example would be an individual who is self-employed or is unavailable to work due to an injury that is the direct result of the disaster. While DUA is a federal program, it is administered by states as agents of the federal government. [42 U.S.C. § 5177](#).

Q. 6-4 *How do I qualify for Disaster Unemployment Assistance?*

An unemployed U.S. national or qualified alien might qualify for DUA if they:

- a. have applied for and used all regular unemployment benefits from any state or do not qualify for unemployment benefits;
- b. worked or were self-employed, or were scheduled to begin work or self-employment in the disaster area; and
 - i. can no longer work or perform services because of physical damage or destruction to the place of employment as a direct result of the disaster;
 - ii. can no longer work because the individual is not able to reach the place of employment because of the disaster;
 - iii. the workplace is inaccessible due to closures by federal, state, or local officials;
 - iv. cannot perform work or self-employment because of an injury as a direct result of the disaster; or
 - v. became the breadwinner or major supporter of a household because of the death of the head of the household due to disaster; and
- c. establish that the work or self-employment you can no longer perform was your primary source of income.

Those who are unemployed and not eligible for regular unemployment compensation should apply for DUA benefits as soon as possible. Applicants must comply with DUA application deadlines and waiting periods for receipt of benefits. Refer to the TWC’s page on [Disaster Unemployment Assistance](#).

Q. 6-5 *How do I file for Unemployment Insurance (UI) or Disaster Unemployment Assistance (DUA)?*

Disaster unemployment benefits are unrelated to FEMA benefits and require a separate application. Before you can qualify for DUA, you must apply to TWC to determine if you are eligible for regular benefits. As a practical matter, the TWC may accept your applications for both regular benefits and DUA at the same time.

Apply to the TWC for benefits online [here](#). TWC also offers an [online tutorial](#) for help and answers. To apply by phone, call the TWC at 1-800-939-6631. For Relay Texas, dial 7-1-1 (TTY number: 1-800-735-2989).

Be prepared to provide the business name and address of your employer, the first and last dates of employment, the number of hours worked, rate of pay, and your social security number (or alien registration number). If eligible for DUA, TWC will inform you of the benefit amount, how to request payments, and other information.

You also must complete a work search registration at [WorkinTexas.com](#) or with your local Workforce Solutions Office within three (3) days of applying for DUA. See a directory of local workforce solutions offices [here](#). If you were self-employed at the time of the disaster and are taking steps to reopen your business, you do not need to apply. If you do not plan to reopen your business, you must complete a work search registration and seek employment as a condition of receiving benefits.

For DUA, you must submit proof of employment with the employer that was affected by the disaster (a pay stub, earnings statement, written statement from your employer, or notarized statement from a co-worker) to the TWC within twenty-one (21) days of the date the DUA application is filed. If this documentation is not submitted within the twenty-one-day period, eligibility for DUA might be denied. See the [TWC's information on DUA](#).

Q. 6-6 *How do I get proof of prior wages or earnings?*

You can obtain proof of prior income/earnings from the Internal Revenue Service (IRS). Complete and file [IRS Form 4506-T](#), Request for Transcript of Tax Return, with the IRS. Write in the name of the disaster, for example, "DISASTER [name of storm]," in red letters across the top of the forms to expedite processing. Submit the form according to the instructions. For help, call the IRS Disaster Assistance Hotline at 1-866-562-5227. The [IRS Resource Guide](#) has links to Disaster Assistance and Emergency Relief Programs.

Q. 6-7 *Are unemployment insurance benefits taxable?*

Yes. Any unemployment insurance benefits, including federal DUA benefits, are taxable income. You will receive a Form 1099-G at the end of January the following year showing the amount of benefits paid to you in the previous year, as well as any federal income tax withheld when the benefits were paid. The 1099-G will not show credit for any repayments made for overpaid benefits. UI and DUA recipients should keep records of repaid benefits, such as reimbursement receipts and canceled check notices, to make adjustments to taxable income when filing tax returns.

Q. 6-8 *What DUA benefits are available?*

If approved, DUA is available for weeks of unemployment beginning after the date the president makes a disaster declaration and for up to twenty-six (26) weeks after the major disaster. For Texas employment, the maximum weekly benefit amount will be determined by the TWC. See the [TWC's information on DUA](#).

Q. 6-9 *Where can I get help finding new employment?*

Reemployment services are available through Texas Workforce Centers. See the [Work in Texas](#) site. Check with the nearest [Workforce Solutions](#) office.

Q. 6-10 *Is my employer required to continue my health insurance if my employment is reduced or I've been laid off?*

No, not unless you voluntarily elect to pay for your employer-based health insurance under COBRA continuation coverage. If you have a “qualifying event”, which includes most voluntary and involuntary terminations, layoffs, reductions in work hours, or the covered employee dies, an employer is required to extend health benefits under the same plan for up to 18 months.

The coverage is not free and is likely to be more expensive because your employer is not covering part or all of the premiums. There is a sixty-day deadline to elect to be covered under COBRA, running from the date of the COBRA notice or the date of loss of coverage, whichever is later.

Certain employers, including small employers, may be exempt from COBRA. If an employer ends the group health plan for active employees, it is not required to extend coverage through COBRA. See [An Employee's Guide to Health Benefits Under COBRA](#) from the DOL.

Q. 6-11 *What happens to my family's coverage under the Affordable Care Act (ACA) during disaster?*

If you are having trouble making health insurance premium payments because of financial difficulties due to disaster, contact your health insurance provider directly and let them know the reason. People displaced due to disaster may have no alternative but to use an out-of-network provider. If so, review the policies regarding out-of-network reimbursement. Call the number listed on the back of the insurance card or visit the insurer's website. For lost cards, contact the Marketplace Call Center ([HealthCare.gov](#)) at 1-800-318-2596 (TTY number: 1-855-889-4325).

Q. 6-12 *Who do I contact if we're on Medicaid or CHIP?*

This coverage should not be affected by a disaster. See the Texas Health and Human Services (HHS) page on [Help Coordinating Your Services](#). For Medicaid, call the HHS Medicaid Client Hotline at 1-800-252-8263. For the Children's Health Insurance Program (CHIP), call 1-877-543-7669 or 1-800-647-6558.

Q. 6-13 *If my worksite temporarily closes, will I get laid off?*

Some employers may place employees on unpaid administrative leave status (temporary leave) while the office or other worksite regroups. While your employer is in a disaster recovery period, ask them about temporary reduced work hours and other alternatives to full employment. If the employer's benefits plan permits continuation of coverage, you might be able to maintain coverage without a gap.

Q. 6-14 Can my employment be terminated without notice or cause?

Generally, yes. You can be fired for any lawful reason, such as job performance, failure to follow workplace policies, or if your services are no longer needed. However, there are many exceptions to Texas' "at-will" employment doctrine. Firings for reasons based on discrimination or other unlawful reasons are exceptions to "at-will" employment. See Section E above on Prohibited Employment Discrimination & Wrongful Termination.

If you are part of a mass layoff or plant closing, the WARN Act requires employers with 100 or more employees to provide sixty days' advance written notice of a layoff or plant closing that is expected to last at least thirty days or more. A "mass layoff" occurs when a third of employees are fired at worksites of fifty or more, or when 500 or more employees are fired at a large worksite.

If the closing or layoff is a direct result of a natural disaster, employers must still give as much notice as possible to the collective bargaining representative as well as unrepresented workers facing job loss, even if that notice comes after the disaster. The written notice should inform employees if the layoff or closing is permanent or for six months or less, the date (within a fourteen-day period) that employment will end, and contact information for the person within the company give you more information.

If the employer does not provide proper notice, employees may be due back pay and benefits for up to the sixty-day notice period. Read more about [WARN Act Compliance Assistance](#) from the Department of Labor.

Q. 6-15 Are there protections for workers discharged or discriminated against because they followed a disaster or evacuation order?

Yes. An employer may not discharge or otherwise discriminate against an employee who leaves work to participate in a general public evacuation under an emergency evacuation order. [Tex. Lab. Code § 22.002](#). An "emergency evacuation order" is an official statement issued by the Texas governor or a political subdivision of Texas recommending evacuation of all or part of the population in an area stricken or threatened with a disaster. It also includes a declaration of local disaster under [Texas Government Code § 418.108](#).

If discharged in violation of [Texas Labor Code § 22.02](#), the employee is entitled to reinstatement in the same or an equivalent position and pay. [Tex. Lab. Code § 22.003](#). Chapter 22 does not apply to certain emergency personnel (e.g., firefighters, peace officers, medical personnel) if the employer provides emergency shelter for those personnel. It also does not apply to workers necessary to provide for the safety of the general public and restoration of vital services. [Tex. Lab. Code § 22.004](#).

Various state and federal laws prohibit discrimination in hiring, discipline, discharge, and other terms and conditions of employment for other reasons. Please see Section G above on Prohibited Employment Discrimination & Wrongful Termination.

Q. 6-16 Am I entitled to take leave to deal with my own or a family member's serious health problem?

Yes. Many employers have sick leave or vacation policies that entitle employees to a period of paid leave. In addition, the federal [Family and Medical Leave Act](#) (FMLA) may provide up to twelve weeks of unpaid leave for certain family and medical reasons. The FMLA applies to employers with at least fifty employees. To be eligible, you must have worked for the employer for at least twelve months (need not be consecutive) and at least 1,250 hours over the year preceding the leave.

The FMLA does not require an employer to give time off to attend to personal matters arising out of a natural disaster, such as cleaning a flood-damaged basement, salvaging belongings, or searching for missing relatives.

If you have developed a serious health condition triggered by the disaster, you may qualify for FMLA unpaid leave. A “serious health condition” is a physical or mental illness or injury that renders the employee unable to perform their job, or they must care for a spouse, child, or parent with a serious health condition who is affected by the natural disaster. Some examples:

- a. As a result of the natural disaster, a chronic condition (such as stress, anxiety, or soaring blood pressure) flares up, rendering an employee unable to perform their job. If a medical certification supports the need for leave, the FMLA may apply.
- b. An employee is required to care for a family member with a serious health condition for a reason connected with the natural disaster. For example, the employee may need to assist a family member when their medical equipment is not operating because of a power outage.

While on FMLA leave, you may continue your existing group health coverage and are entitled to reinstatement at the end of the leave. See Section F above on Entitlement to Family and Medical Leave.

Q. 6-17 I had to evacuate and need to get my pay. What do I do?

Most employees’ pay is directly deposited into their bank account. If not, you should make sure your employer has your current address and contact information. You can also give written consent to your employer to allow another person to receive or pick up wages on your behalf.

Q. 6-18 Can my employer make me use leave time if I can’t make it to work during a disaster?

Do not assume that a disaster entitles you to leave work or not report to work unless there is an official evacuation order. If there is no emergency order, your absence may be considered personal leave, unauthorized leave, or possibly grounds for termination. An employer cannot fire or discriminate against you for leaving work as part of an emergency evacuation order, which is an official statement by the government recommending evacuation because of a disaster or potential disaster. [Tex. Lab. Code § 22.02](#).

If you are a non-exempt employee entitled to overtime, your employer is required to pay only for the hours you actually worked. Non-exempt employees are not entitled to pay if their employer is unable to provide them with work because of a natural disaster.

Exempt employees must be paid full salary if the worksite is closed or unable to reopen due to disaster or weather for less than a full work week. If the employee performs any work during the work week, they are entitled to be paid full salary, but may be required to exhaust accrued personal leave. If the worksite is open and the employee chooses to stay home because of weather, road closures, transportation issues,

or other emergencies, the DOL considers these to be personal absences. The employer may deduct any full days from the employee's salary for time not spent working or choosing not to come into the workplace.

Q. 6-19 *My employment has been terminated. When will I get my final paycheck?*

If you do not have direct deposit, contact your employer immediately to let them know where to send your final paycheck. If you quit, you are entitled to be paid wages in full by the next regular payday. If fired, you are entitled to your full paycheck within six days of the date of firing. [Tex. Lab. Code § 61.014](#). "Final pay" includes regular wages, fringe benefits payable under a written policy, and any other component of pay. Review your employment manual or contract. For wage complaints, call the Texas Workforce Commission at 1-800-832-9243. Review the TWC page on [Final Pay](#).