

6.0 EMPLOYER/EMPLOYEE ISSUES

6.1 Overview

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

6.2 Most 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. Non-disaster Unemployment Compensation

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. The individual 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. The individual must be unemployed or partially unemployed.
- c. The individual cannot have been fired for misconduct or have voluntarily quit without good cause. See [Eligibility and Benefit Amounts](#) from the TWC.
- d. The individual must be able and available to work.
- e. The individual 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 for federal DUA, the individual 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 first.

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.

In addition to 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.

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.

See the FFRCA section below for further detail.

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](#).

See the FFRCA and CARES Act sections below for further detail.

B. Continuation of Group Health Coverage under COBRA

After a disaster, employees may lose their employer-provided group health plan coverage as a result of either a voluntary or an involuntary termination or a reduction in work hours. An employer may be required to extend COBRA continuation coverage to such an individual and their dependents (Qualified Beneficiaries) previously covered under the employer's group health plan. The death of the covered employee would also be a qualifying event that would trigger an employer's obligations under COBRA. [26 U.S.C. § 4980B\(f\)\(3\)](#).

COBRA continuation coverage only applies 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](#). Also, COBRA coverage is not available if the termination was for gross misconduct.

COBRA requires an employer to extend to Qualified Beneficiaries the right to continue their health coverage under the same group health plan under which the beneficiaries were covered prior to their coverage loss. [26 U.S.C. § 4980B\(f\)\(2\)\(A\)](#). If the employer no longer offers the same health plan, the Qualified Beneficiary may elect coverage under another group health plan maintained by the employer. Group health plans include, but are not limited to, medical, dental, and vision plans. [26 C.F.R. § 54.4980B-2, Q&A-1](#). Each Qualified Beneficiary may make a separate election with respect to coverage. [26 C.F.R. § 54.4980B-6, Q&A-6](#). For example, if an employee previously covered a spouse and a dependent child through family coverage, either the spouse or the dependent child could separately elect COBRA under a single plan while the remaining family members waive coverage.

Generally, a Qualified Beneficiary may continue their coverage for up to eighteen months. [26 U.S.C. § 4980B\(f\)\(2\)\(B\)\(i\)](#). However, COBRA coverage can be very costly. An employer may charge up to 102 percent of the actual cost of coverage to a similarly situated active employee (not just the contribution that the employee paid while actively employed). [26 U.S.C. § 4980B\(f\)\(2\)\(C\)](#). Also, an employer is not required to offer COBRA coverage if group health plan to its active employees. [26 U.S.C. § 4980B\(f\)\(2\)\(B\)\(iii\)](#). For example, if an employer closes operations entirely and no longer offers any group health plans, a Qualified Beneficiary has no rights under COBRA to continued coverage.

An eligible person who wishes to elect COBRA coverage should contact the employer providing the group health plan coverage. Employers are generally required to send a notice regarding COBRA rights to the last known mailing address of the Qualified Beneficiary. Those who have been dislocated by the disaster might not promptly receive this notice. Qualified Beneficiaries only have sixty days to elect COBRA coverage from the later of the date of the COBRA notice or the date of loss of coverage. [26 U.S.C. § 4980B\(f\)\(5\)](#). 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 prohibit medical providers from billing consumers the remaining balance after the insurer-paid portion.

Each health plan will have 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 and other insurance providers in Texas. During Hurricane Harvey, for example, the TDI issued a [bulletin](#) recommending that Texas health insurers waive restrictions or penalties on members going out-of-network for health and dental 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. This is true regardless of immigration status. It is not a valid defense to FLSA and TMWA claims that the work was done slowly, poorly, etc., or that the employer cannot afford to pay. Work time includes time that an employee has been engaged to wait, as well as travel time between job sites. In general, there are no exceptions made in the case of disasters. See [Employment & Wages Under Federal Law During Natural Disasters & Recovery from the DOL](#).

Certain employees are exempt from the FLSA's minimum wage and overtime provisions because they are bona fide executive, administrative, professional, outside sales, or certain computer employees paid a salary of at least \$455 per week. 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 for the full work week. When the business is open and work is available, the employer may deduct from the employee's salary if the employee is absent from work for one or more full days for personal reasons. An employer can deduct a full day if it occurred because of sickness or disability, as long as the deductions are made pursuant to a *bona fide* sick or disability leave plan, policy, or practice. See [29 C.F.R. § 541.602](#). See [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](#) from the DOL.

For more information about wages refer to the [DOL Fact Sheets](#), which include explanations of the 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 employees who are exempt from the FLSA's overtime provisions at least once a month. Employees who are not FLSA-exempt must be paid at least twice a month on the paydays designated by the employer. [Tex. Lab. Code § 61.011](#). Wages may be paid by (1) delivering them to the employee, or a 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; (2) sending them to the employee, or a person designated by the employee in writing, by registered mail, to be received no later than payday; or (3) delivering them to the employee by any reasonable means authorized by the employee in writing. Employers with a direct deposit plan may also pay wages by direct deposit. [Tex. Lab. Code § 61.017](#). Employers whose employees may have been displaced by a natural disaster should take steps to ensure that pay is delivered in a manner that ensures receipt by the employee.

An employee whose last paycheck is delayed because of a disaster may submit a Texas wage claim with TWC no later than 180 days after the date the wages originally became due for payment. 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 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.” Evidence of partial payment of wages alone is not a defense to an employer’s intent to avoid payment for a service.

4. WARN Act

Under certain circumstances, employees who lose employment because of a plant closing or mass layoff are entitled to sixty days’ advance notice under the federal Worker Adjustment and Retraining Notification (WARN) Act, [29 U.S.C. § 2101](#) *et seq.* If the closing or layoff is a direct result of a natural disaster, employers must still give as much notice as possible, even if that notice comes after the disaster. Employees who do not receive proper notice may be due back pay and benefits for up to the sixty-day notice period.

The WARN Act notice requirement applies only to employers with at least 100 employees. The employer must give written notice to the bargaining representative of affected union employees and to unrepresented individual workers who may reasonably be expected to experience an employment loss. Notice must include whether the layoff or closing is permanent or for six months or less, the date (within a fourteen-day period) that the employee’s employment will end, and the name and contact information of a person in the company who can provide additional information. Read more about [WARN Act Compliance Assistance](#) from the Department of Labor.

5. Independent Contractor

Under federal law, an independent contractor may be deemed an employee entitled to the protections of the FLSA, the TMWA, the Texas Payday Law, etc. Both the Internal Revenue Service (IRS) and the DOL consider many factors when determining whether a worker is an independent contractor or an employee. *Control* over the worker is among the most important. A worker is more likely to be considered an employee if the employer controls when and how the work is performed. The IRS additionally considers how the worker is paid, whether the worker has the potential to realize significant financial gain or loss, and whether the worker uses the employer’s tools or supplies, among other factors. 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, working conditions with co-workers, or complaining with or on behalf of coworkers about pay or working conditions.
- An employee cannot be fired for being a member of, joining, 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").
- If an employee has an employment contract specifying the grounds for termination, the employee cannot be fired in violation of that contract (this includes a collective bargaining agreement negotiated by a union in the employee's workplace).

The above list does not cover all situations in which it is unlawful for an employer to fire an employee, but it covers some of the more common types of terminations that are unlawful. See TWC information on [wrongful discharge and exceptions](#).

Prohibited employer discrimination against evacuees: Texas law prohibits discrimination for participation in an emergency evacuation. An employer may not discharge or discriminate against an employee who leaves their place of employment to participate in a general public evacuation ordered under an emergency evacuation order. [Tex. Lab. Code § 22.002](#). Emergency services personnel (including firefighters, police officers, emergency medical technicians, and other individuals who are required to provide services for the benefit of the general public in emergency situations) are exempt from this provision. [Tex. Lab. Code § 22.004](#).

In addition, the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), [38 U.S.C. §§ 4301–4333](#), makes it unlawful for an employer to deny initial employment, reemployment, promotion, or any benefit of employment 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. Unpaid Leave Entitlement

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 the employee unable to perform the employee's job, and to care for the employee's spouse, son or daughter, or parent who has a serious health condition. A serious health condition may be attributable to a disaster. For example, a disaster could exacerbate an employee's chronic condition (e.g., stress, anxiety, or soaring blood pressure) and render them unable to perform their job. Similarly, an employee may be required to care for a family member with a serious health condition for a reason connected with the natural disaster (for example, a family member on dialysis where usual dialysis services and transportation are disrupted by disaster).

Employees are eligible if:

1. they have worked for their employer for at least twelve months (need not be consecutive),
2. they 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.

Substitution of paid leave is allowed under the FMLA. [29 U.S.C. § 2612\(d\)\(2\)](#). Employers may require employees to use paid vacation, personal, family, or medical sick leave concurrently with FMLA, subject to certain limitations. FMLA regulations restrict the substitution of paid leave. Under [29 C.F.R. § 825.207](#), employers can require employees to meet all of the normal requirements of paid leave policies before permitting substitution. For example, if a policy requires that vacation be taken in full day increments, an employer can deny substitution for an employee's half day FMLA leave. Similarly, if vacation time cannot be taken during a particular month, substitution could be denied during that time period. 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 provided to Texas workers by the Texas Workforce Commission. The TWC provides temporary financial assistance for a worker who has been laid off or fired for a reason other than misconduct or 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](#).

Disaster Unemployment Assistance for Noncitizens

In addition to other DUA requirements, noncitizens must meet the following 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,
 - 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](#).

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 an applicant can qualify for DUA, they must apply to TWC to determine if they 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).

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

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

For DUA, the applicant 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?*

An applicant 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 UI 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?*

An employer may be required to extend employer-based group health benefits under COBRA continuation coverage if benefits are lost due to certain qualifying events, including:

- a. most voluntary or involuntary terminations,
- b. a reduction in hours triggering a coverage loss, or
- c. the death of the covered employee.

The continuation period under COBRA generally is eighteen (18) months. This does not mean that coverage is free. Your employer may charge up to 102 percent of the cost of providing coverage to a similarly situated active employee under the group health plan.

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?*

Those who are having trouble making health insurance premium payments because of financial difficulties due to disaster should contact their health insurance provider directly and let them know the reason. Persons 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. 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. If the employer's benefits plan permits continuation of coverage, employees might be able to maintain coverage without a gap. Workers should ask their employer about temporary reduced work hours and alternatives to full employment while the employer is in a disaster recovery period.

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

Generally, yes. An employer can fire an employee for any lawful reason, such as job performance, failure to follow workplace policies, or the employee's services are no longer needed. An employee that is fired for reasons based on discrimination or other unlawful reasons are exceptions to Texas's "at-will" employment doctrine. See Section G above on Prohibited Employment Discrimination & Wrongful Termination.

The Worker Adjustment and Retraining Notification (WARN) Act requires that employers with 100 or more employees provide sixty days' notice before a mass layoff or a plant closing of at least thirty days. 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, even if that notice comes after the disaster. Notice should be in writing and tell employees 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 contact information for the person within the company who can provide additional information. The employer must give written notice to the bargaining representative of affected union employees and to unrepresented individual workers who may reasonably be expected to experience an employment loss.

If the employer does not provide proper notice, the employee 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 any legal restrictions against firing, suspending, or disciplining employees?*

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.

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

If discharged in violation of [Texas Labor Code § 22.02](#), the discharged 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](#).

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

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 (50) employees. To be eligible, the employee 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 need for 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.

Employees that suffered a serious health condition as a result of a natural disaster 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. Where a medical certification supports the need for leave as a result of the natural disaster, FMLA leave is in play.
- 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, the employee may continue their existing group health coverage and are entitled to reinstatement at the end of the leave. See Section H above on Unpaid Leave Entitlement.

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, the employee should make sure their employer has their current address. An employee may give written consent for someone to receive or pick up wages on their behalf.

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

An employee should not assume that a disaster entitles them to leave work or not report to work unless there is an official evacuation order. If there is no emergency order, the absence may be considered personal leave, unauthorized leave, or possibly grounds for termination. An employer cannot fire or discriminate against an employee 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](#).

For employees entitled to overtime (non-exempt employee), their employer is required to pay only for the hours actually worked. Non-exempt employees are not entitled to pay if their employer is unable to provide work due to 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 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 the employee does not have direct deposit, they should contact their employer immediately to let them know where to send their final paycheck. If the employee quit, they are entitled to be paid wages in full by the next regular payday. If fired, the employee is entitled to their 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. Read the employment manual or contract. For wage complaints, call the Texas Workforce Commission at 1-800-832-9243. Review the TWC page on [Final Pay](#).

Q. 6-20 *Can I still get coronavirus unemployment benefits?*

Texas ended its participation in pandemic unemployment insurance programs effective June 26, 2021. If you live outside of Texas, please consult resources applicable to your state to find out what programs might be available.