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Unemployment Insurance for Striking Workers

This brief is part of the Unemployment Insurance Policy Hub created by the National Employment Law Project as a reference guide for state advocates to support efforts that will strengthen the economic security of workers and their families. For other Policy Hub resources, see www.uipolicyhub.org.

Unemployment Insurance (UI) for Striking Workers Definitions

Good Cause Quit: Leaving one's job voluntarily for a reason that is reasonable and compelling, as defined by state law. Workers who quit without good cause are disqualified from receiving UI benefits. For more information, see the Policy Hub brief on good cause quits.

Labor dispute/Trade dispute: Any disagreement between an employer and workers about the terms of employment, such as wages, benefits, work hours, working conditions, or workers' representation by a labor union.

Lockout: When an employer stops workers from working (which may literally involve "locking them out" of the workplace) to improve the employer's bargaining position during a labor dispute.

Strike: When workers collectively refuse to work in order to improve their bargaining position, raise objections to working conditions, or protest an employer's illegal activity during a labor dispute. Workers do not need to be union members to legally strike.[1] For more on workers' right to strike, see "The Right to Strike," from the National Labor Relations Board.

Overview

Going on strike is one of the most powerful tools workers have to challenge unsafe or unsuitable workplace conditions, low wages, and other harmful employment practices. Striking workers can also win benefits that extend to non-union workers and broader communities. Yet workers and their families make considerable economic sacrifices to exercise their right to collective action. Providing unemployment benefits to striking workers—and to all workers whose employment is impacted by strikes or lockouts—supports the right to strike and aligns with the purpose of the unemployment insurance (UI) system.

Enabling workers to qualify for UI benefits when they are on strike, locked out, or otherwise impacted by a labor dispute provides a degree of economic security, allowing workers and their families to continue paying rent or mortgage payments, buy groceries, and afford other necessities. At the same time, sustaining consumer spending by strikers and their families supports local economies impacted by the effects of a large strike.

Providing UI benefits to striking workers also helps bring balance to a system that otherwise tilts substantially towards employers. For example, some corporations wait until workers on strike face such severe economic hardship and distress that they submit to substandard conditions. Knowing they can no longer starve workers out, employers may be more willing to bargain fairly and quickly. In many cases, union contract agreements achieved by striking promote racial and gender equity by reducing pay gaps and protecting workers from discrimination on the job.[2]

Providing benefits to striking workers aligns with the purpose of UI

The unemployment insurance system was established in 1935 to safeguard workers and families against an unexpected loss of income due to unemployment and to support the overall economy during economic downturns. The system was also intended to prevent jobless workers from having to accept employment that is unsafe, unsuitable, or a poor match for their skills and abilities, which would drive down wages and depress labor standards for workers across the board.

Like other workers served by the UI system, striking workers are not receiving paychecks and are disconnected from their employers, at least temporarily. Striking workers may expect to return to work for the same employer, as do many other categories of workers who are currently eligible for UI benefits in most states, such as seasonal workers, workers on temporary layoff, and workers in Short Time Compensation programs.

Offering UI benefits to striking workers also aligns with the purpose of UI on a more fundamental level: Workers use the right to strike to challenge unsafe, exploitative, or otherwise unsuitable workplace conditions, low wages, and other harmful employment practices—the same types of substandard work the system was designed to safeguard against.

State decisions on UI for striking or locked out workers

States determine whether workers are eligible for unemployment benefits when they are on strike, locked out, or their employment is otherwise impacted by a labor dispute. States also determine how long workers must wait to become eligible for benefits and how much income (for example from a strike fund or an additional job) workers can be paid and remain eligible for UI benefits.

In New York and New Jersey, workers who are participating in a strike are eligible for UI benefits after 14 days. In an additional nine states, workers are eligible for UI benefits while on strike if the dispute resulted from the employer breaking either labor law or the union contract (or both).[3] In these states, the employer violation is considered a good cause quit on the part of workers (see the UI Policy Hub brief on Good Cause Quits for additional information).

Workers who are locked out by their employer (meaning the employer directly caused the work stoppage) are eligible for UI benefits in 32 states.[4] In most—but not all—states, workers who are laid off because of a labor dispute that they are not directly involved in are eligible for UI benefits.[5] State laws vary on whether eligibility extends to workers if they "and others of the same grade or class, are not participating in the dispute, financing it, or directly interested in it." For example, a clerical worker who is laid off when their office is closed due to a strike by manufacturing workers would be eligible for UI benefits in Colorado but not California.[6]

States can choose to make workers affected by strikes and lockouts eligible for UI benefits regardless of whether the state has a so-called "right to work" (RTW) law. These laws block unions from requiring equal dues from all workers in the unit they represent, making it more difficult for workers to join and maintain unions. Nevertheless, RTW laws do not diminish workers' federally-protected right to strike or limit a state's ability to decide whether to provide UI benefits to striking or locked out workers.

When workers are disqualified from receiving UI benefits because their unemployment is the result of a labor dispute, states vary in how long this disqualification lasts. The US Department of Labor (USDOL) points out that "Provisions related to labor disputes do not question whether unemployment is incurred through fault on the part of the individual worker. The denial is always a postponement of benefits; there is no reduction or cancellation of benefit rights."[7]

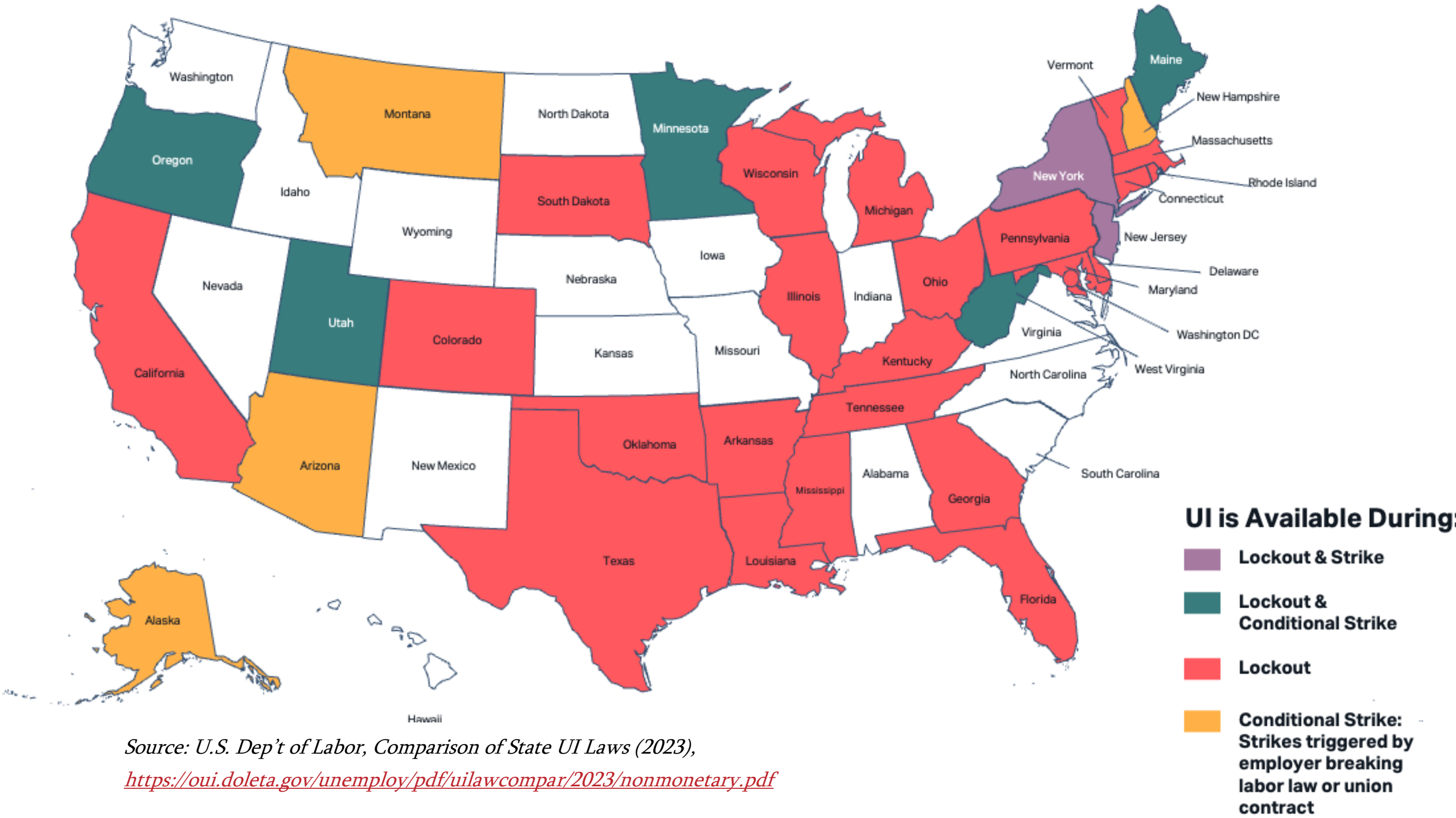
USDOL further notes that “In most states, the denial period ends when the ‘stoppage of work because of a labor dispute’ ends or the stoppage ceases to be caused by the labor dispute. In some states, the denial period lasts while the labor dispute is in ‘active progress.’ In others, the denial period lasts while the individual’s unemployment is a result of a labor dispute.”[8] The distinction is particularly relevant in cases where an employer hires replacement workers. In these cases, the work stoppage may have ended while the labor dispute is still ongoing.

If striking workers are collecting UI benefits but also receive some income from a strike fund or an additional job, state laws govern how much of this income is disregarded and whether payments from a strike fund are considered income at all. See the UI Policy Hub brief on Partial Benefits for additional information.

> Workers use the right to strike to challenge unsafe, exploitative, or otherwise unsuitable workplace conditions, low wages, and other harmful employment practices—the same types of substandard work the system was designed to safeguard against.

Figure 1.

State Unemployment Insurance Coverage During Labor Disputes



Source: U.S. Dep't of Labor, Comparison of State UI Laws (2023), *https://oui.doleta.gov/unemploy/pdf/uilawcompar/2023/nonmonetary.pdf*

UI benefits for strikers cost little and do not increase the likelihood of strikes

As discussed in greater detail in the sections below (see "Research Findings and Arguments to Support Reform") studies find that the cost of providing UI benefits to workers on strike are miniscule in the context of state UI spending and would account for only a tiny proportion of monthly unemployment claims. Because the cost of providing UI benefits to striking workers is just a fraction of one percent of what states spend each month on UI payouts, offering this benefit would have negligible impact on states' UI trust funds, even as it could significantly improve economic security for striking workers and their families.

In New York and New Jersey, which already offer UI benefits to striking workers, there is no evidence that access to UI benefits makes workers more likely to go on strike. This is because workers do not make the decision to go on strike lightly. Instead, workers generally strike only when they believe they have no other means to protect themselves from harmful working conditions or reach a fair deal on the job. In addition, strikes remain financially tough for workers because UI benefits replace as little as 28 percent of a worker's prior wages and do not make up for the health coverage and other workplace benefits that workers may lose while on strike (see "Data and State Comparison Resources" below for info on how to calculate the percentage of wages replaced by UI benefits in your state). At the same time, when employers know striking workers will have access to at least some financial security in the form of UI benefits, they may be more likely to bargain fairly, reducing the chances that workers will resort to striking.

Federal Requirements and Guidance

The U.S. Supreme Court has consistently ruled that the National Labor Relations Act, Social Security Act, and Federal Unemployment Tax Act do not preempt states from setting their own UI qualification rules regarding labor disputes. States are authorized to establish their own determinations whether to allow workers to qualify for UI benefits when workers are on strike, impacted but not participating in a strike, or locked out by an employer.

In 1977, the Court considered the legality of an Ohio UI statute that *excluded* workers whose unemployment was "due to a labor dispute."[9] In *Ohio Bureau of Employment Services v. Hodory*, the Court held "The fact that Congress has chosen not to legislate on the subject of labor dispute disqualifications confirms our belief that neither the Social Security Act nor the Federal Unemployment Tax Act was intended to restrict the States' freedom to legislate in these areas."[10] Thus, whether to provide UI to striking workers is up to states.

This was further affirmed in 1979 when the U.S. Supreme Court considered whether New York's law providing UI to striking workers was preempted by the National Labor Relations Act. In *New York Telephone Co. v. New York State Dept. Of Labor,* Justice Stevens found that "The omission of any direction concerning payment of unemployment compensation to strikers in either the National Labor Relations Act or Social Security Act implies that Congress intended that the States be free to authorize, or to prohibit, such payments, an intention confirmed by frequent discussions in Congress subsequent to 1935 (when both of those Acts were passed) wherein the question of payments to strikers was raised but no prohibition against payments was ever imposed."[11] While a plurality opinion, a majority of the Court *again* found that Congress decided to allow states to set their own qualification rules regarding labor disputes. Thus, states are authorized to establish their own determinations on qualifying workers for UI benefits whether the workers are striking, impacted but not participating in a strike, or locked out.[12]

Federal work search requirements do not prevent states from establishing entitlement criteria that include striking workers. The federal Middle Class Tax Relief and Job Creation Act of 2012 codified a requirement that workers must actively seek work to become and remain eligible for UI benefits.[13] However, there are two key federal exemptions to this requirement. First, under the Federal Unemployment Tax Act (FUTA), workers who are enrolled in state-approved training cannot be denied benefits due to application of the state work search requirements.[14] Likewise, FUTA establishes that a worker participating in a Short-Time Compensation program (see the USDOL Short-Time Compensation fact sheet for more information about this program) meets the state work search requirement by being available to work for their participating employer.[15] In addition, most states allow exemptions to the work search requirement if the worker is temporarily laid off with a definite return date, has a specified start date with a new employer, or is part of a union that finds work through a hiring hall.[16] Although some employer groups have expressed a determination to challenge the legality of UI benefits for striking workers on the basis that strikers are not "actively seeking work,"[17] similar temporary exemptions from work searches already exist in most states.

Federal UI law does expressly address labor disputes in the area of suitable work. FUTA limits the type of work states may require workers to accept. States cannot deny UI benefits to workers who refuse an offer of work because "the position offered to the jobseeker is vacant due directly to a strike, lockout, or other labor dispute."[18] In other words, states cannot deny UI benefits to workers who refuse to cross picket lines to work as strikebreakers.

Policy Recommendations

Workers impacted by labor disputes should be able to rely on UI benefits as they confront the economic insecurity and hardship of missing paychecks and employment benefits. UI eligibility should be expanded to all workers exercising their right to strike, facing employer lockouts, or on temporary layoff as a result of strikes they are not directly involved with. States should:

1. **Expand UI eligibility to all workers on strike.** In New York and New Jersey, workers who are on strike for any reason are eligible for unemployment insurance benefits after 14 days. Federal legislation mandating that all states provide UI benefits to striking workers was introduced in 2023 but was not enacted into law.[19]

- Adopt shorter eligibility waiting periods. Since most strikes last for less than 14 days, New York and Washington State proposed legislation in 2024 making workers eligible for UI benefits after 7 days. However, these bills were not enacted. NELP recommends that workers who are locked out or on strike have the same UI eligibility waiting period as other unemployed workers in the state (either one week or no weeks waiting for eligibility).
- Another option, pursued by nine states (AK, AZ, ME, MN, MT, NH, OR, UT, and WV) is to expand UI eligibility for striking workers if the dispute resulted from the employer breaking either labor law or the union contract, or both. This approach recognizes an employer's failure to conform to a union contract or to the law as a "good cause quit" so that workers engaged in a strike for these reasons are eligible for UI benefits. However, legislation along these lines would exclude some striking workers, for example by leaving out workers who go on strike to bargain a new contract if their employer did not violate any laws.

2. **Ensure workers experiencing a lockout are not denied UI benefits.** No worker should be denied benefits due to their employer's decision to cause or prolong a work stoppage. Workers who are locked out by their employer are currently eligible for UI benefits in 32 states.[20] Other states should adopt this policy.

3. **Ensure workers who have been replaced by an employer during a labor dispute are not denied UI benefits.** In many situations, it is legal for employers to replace workers who have gone on strike, and even legal to hire permanent replacements under some conditions.[21] In these cases, the work stoppage is considered to have ended even if the strike is ongoing. Workers in 23 states become eligible for UI benefits when a work stoppage ends, even if they remain on strike.[22] If states do not otherwise make striking workers eligible for UI benefits, they should, at minimum, enact this commonsense policy to ensure workers who have been replaced by their employers qualify for UI.

Existing laws give employers big advantages, but access to UI benefits gives workers a fairer chance.

Going on strike is a legal right: Workers should be able to exercise it. Yet current laws tilt substantially toward the employer's side in a labor dispute. For example, employers can legally replace striking workers in many situations, keeping businesses running while striking workers have little access to support to keep their families afloat. Too often, workers are forced to make an impossible choice between standing up for fair treatment on the job and keeping their families fed and housed.

During the screenwriters' strike in 2023, a Hollywood studio executive spelled out the strategy to avoid negotiating in good faith with writers: "The endgame is to allow things to drag on until union members start losing their apartments and losing their houses."[23]

When they go on strike, workers risk losing not only their regular paychecks, but also their family's health coverage and other critical employment benefits.[24] UI benefits replace just a fraction of a worker's prior wages (ranging from 28 percent to 46 percent depending on the state)[25] and so provide far less support than working. Yet this reduced income stream can provide an important degree of economic security to striking workers, making it more difficult for employers to take advantage of workers' financial desperation. As Representative Adam Schiff argued when he introduced a federal bill to make striking workers eligible for UI benefits, "The corporate executives who are sitting on one side of the negotiating table get paid during a strike, and workers should too; otherwise, management can simply wait them out."[26]

Making striking workers eligible for UI benefits is a step toward racial equity.

From the Black washerwomen who went on strike in 1880s Atlanta, to the striking sanitation workers Dr. Martin Luther King Jr. addressed in the last speech of his life, to the 5-year Delano grape strike by Filipino and Mexican American farmworkers led by César Chávez and Larry Itliong, strikes have long been a tool of survival for communities of color, as well as a critical way to advance both workplace fairness and civil rights.[27]

The union contracts won by workers who strike or threaten to strike reduce gender and racial wage gaps by boosting pay for workers of color and women workers, and by negotiating fair and transparent workplace rules for hiring, pay and benefits, working conditions, discipline, and promotions.[28] Workers acting through a union have more power to push back against discrimination or mistreatment on the job. By strengthening workers' ability to negotiate robust contracts, providing UI benefits to striking workers advances racial and gender equity.

Black workers are more likely to be union members than workers of any other race or ethnicity.[29]

Yet Black workers and other workers of color typically still have far less wealth than white workers as a result of decades of public policy that systematically excluded households of color from wealth-building opportunities.[30] For every $100 in wealth held by the median white household in 2022, the median Black household had just $15.75, while Latinx households had $21.62.[31] With fewer resources to draw on, workers of color face increased hardship when they go on strike. Providing unemployment benefits to striking workers will help to remedy this inequity, while supporting workers of all backgrounds.

The cost of providing UI to striking workers is minimal.

Making strikers eligible for UI benefits would have a big impact on workers, their families, and their communities, but would cost states very little. A study by Daniel Perez at the Economic Policy Institute analyzed the cost of legislation on UI for strikers in nine states and found the additional expenditures to be negligible. The data revealed that striking workers would make up 1.2 percent or less of all monthly UI claims in a state even if every striking worker applied for UI benefits.[32]

In reality, 86 percent of strikes last less than 14 days,[33] and less than 40 percent of eligible workers ultimately receive UI benefits.[34] Yet in a highly exaggerated scenario where 100 percent of eligible striking workers apply for and receive UI benefits and strikes last an additional four weeks beyond the average, projected monthly UI payments to striking workers would still be a minuscule proportion of the average monthly benefits that states pay out to workers, ranging from 1.8 percent to less than 0.01 percent depending on the state.[35] This is the case even during a period of unusually high strike activity and unusually low unemployment, meaning that the percentage would likely be even lower in most years. Providing UI benefits to striking workers would thus have minimal impact on a state's UI trust fund.

Making striking workers eligible for UI benefits would not increase the frequency of strikes.

The decision to go on strike is never a casual one: Workers strike only when they believe they have no other means to protect themselves from harmful working conditions or to reach a fair deal on the job. Even with access to unemployment benefits, going on strike remains risky for workers and their families. As noted above, workers not only lose their paychecks, but employers can eliminate benefits, including the health insurance covering workers' families. Under certain circumstances, striking workers can be permanently replaced, completely losing their jobs. While UI benefits provide vital support, they replace just a small fraction of wages.[36]

In New York and New Jersey, which already offer UI benefits to striking workers, there is no evidence that access to UI benefits makes workers more likely to go on strike. In fact, economic analyst Daniel Perez points out that making strikers eligible for UI benefits could actually reduce strikes, because employers would know they could not rely on their greater economic resources to outlast workers (or "starve them out") and would have greater incentives to negotiate in good faith.[37]

Many striking workers do not have access to strike funds. Those who do often get insufficient support.

In some cases, unions provide strike pay to workers who are on strike or locked out. However, this is not the case for many striking workers: In 2023, more than 1 in 5 strikes (22 percent) were organized by nonunion workers who likely did not have the institutional support of a strike fund.[38] Even when strike funds are available, they are often far from enough to enable workers to feed their families and keep their homes. For example, when machinists went on strike at Boeing in 2024, the union was able to provide just $250 a week in strike pay starting in the third week of the strike.[39] This is far less adequate than Washington's average weekly UI benefit of $699 a week after a one-week waiting period. Similarly, screenwriters who went on strike in 2023 could apply for emergency loans or grants but received no consistent support from the strike fund over the more than four months of the strike.[40] Strike funds are not an adequate substitute for unemployment insurance benefits.

Strikes can produce widespread economic benefits—far beyond the workers striking.

When workers go on strike, they can win better wages, benefits, and working conditions, improving their lives and the lives of their families. Local economies also benefit when strikers have money to keep spending at local businesses:[41] Providing UI benefits to striking workers stabilizes the economy by sustaining consumer buying power. In a larger sense, gains won by striking—or threatening to strike—reduce economic inequality by directing a larger share of a corporation's profit towards the workers that make it possible.

Strikes can help workers build power and win gains, even if they are not represented by a union. As noted above, more than 1 in 5 strikes (22 percent) were organized by nonunion workers in 2023.[42]

Strikes can also have powerful benefits for workers who are not involved in the labor dispute. For example, after the 2023 strikes by the United Auto Workers union won record pay increases at

Ford, General Motors, and Stellantis, auto companies such as Nissan and Hyundai immediately boosted pay for thousands of non-union workers at their U.S. plants.[43] More generally, researchers find that the presence of unions in an industry raises wages for both union and nonunion workers.[44] Nonunion employers need to compete for workers and may fear that their existing workers will be more likely to organize a union if wages fall below the industry standard.

In some cases, striking workers also win demands that directly benefit the broader public. For example, a 2023 strike by nurses in New York City led to an agreement that is being used to hold hospitals accountable for safe staffing to protect vulnerable newborn babies in the neonatal intensive care unit.[45] Meanwhile, striking teachers from Newton, Massachusetts to Portland, Oregon have achieved additional support for student mental health needs through recent strikes.[46] By supporting striking workers with UI benefits, states advance the broader gains workers can win for their families, communities, and the public.

Data and State Comparison Resources

Understand the laws on UI and labor disputes in your state.

Consult the "Labor Disputes" section in the USDOL's annual *Comparison of State Unemployment Insurance Laws*. In the 2023 edition, this section starts on page 5-21. USDOL's comparison report is updated every year following the end of the state legislative sessions. Consult your state's legal statutes directly for additional details.

Get data on current and past strikes in your state.

The Labor Action Tracker from Cornell University's School of Industrial and Labor Relations and the School of Employment and Labor Relations at the University of Illinois Urbana-Champaign includes information on the length of strikes, the employers and unions involved, how many workers participated, and links to media coverage, all searchable by state. See the next point for how to use this data to highlight the low cost and very small increase in monthly UI claims that would result from making striking workers eligible for UI benefits in your state.

The Bureau of Labor Statistics offers another source of strike data, but their database only includes strikes involving 1,000 workers or more.

Estimate the cost of UI for striking workers in your state.

The Economic Policy Institute has estimated the cost of providing UI benefits to striking workers in a number of states. If your state was not included, follow these steps to do your own rough estimate:

1. Note the UI eligibility waiting period proposed for your state (if there is not yet a state proposal, consider the recommendation above that striking workers have the same eligibility waiting period as other workers applying for UI benefits).
2. Consult the Labor Action Tracker for data on the number of workers who were on strike for longer than the waiting period in the last two years. This suggests the number of workers who would have been eligible for UI benefits had the law been in effect. Calculate the monthly average to estimate how many workers would be eligible for UI benefits each month if legislation providing UI to striking workers is enacted.
3. Use the UI weekly claims data reported by USDOL to calculate the average number of initial claims and continuing claims for UI benefits in your state over the last two years. Using the number of eligible strikers from step 2, calculate what percentage of these claims striking workers would make up. EPI finds that striking workers would make up 1.2 percent or less of continued claims in every state they examined.
4. Consult USDOL's monthly program and financial data to calculate the average total UI benefits paid per month over the last two years. Use percentage of monthly claims from step 3 to produce a rough estimate of the cost of providing UI benefits to striking workers.

Calculate the percentage of average wages that are replaced by UI benefits in your state.

Consult USDOL's UI Replacement Rates reporting tool, which allows users to look up annual or quarterly data on the proportion of wages replaced by UI benefits in each state and the nation. The reporting tool provides two different calculations for replacement rates (called "replacement ratios"), which are explained on the site. Note that the source of this data is different from the source for other UI data, so numbers for average weekly benefits may differ slightly.[47] This data illustrates the fact that striking workers receiving UI benefits get far less than their prior pay.

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[2] Josh Bivens, et. al., *Unions Promote Racial Equity*, (Washington, D.C.: Economic Policy Institute, 2023), https://www.epi.org/publication/unions-promote-racial-equity/.

[3] The states where workers are eligible for UI benefits while on strike if the dispute resulted from the employer breaking either labor law or the union contract are AK, AZ, ME, MN, MT, NH, OR, UT, WV. "Comparison of State Unemployment Insurance Laws 2023," US Department of Labor, 2024, p. 5-24, https://oui.doleta.gov/unemploy/pdf/uilawcompar/2023/complete.pdf.

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[6] Thanks to Michele Evermore for this example.

[7] "Comparison of State Unemployment Insurance Laws 2023," US Department of Labor, 2024, p. 5-21, https://oui.doleta.gov/unemploy/pdf/uilawcompar/2023/complete.pdf.

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[9] *Ohio Bureau of Emp. Servs. v. Hodory*, 431 U.S. 471, 473 (1977).

[10] *Id.* at 488–89.

[11] New York Telephone Co. v. New York State Dept. Of Labor, 440 U.S. 519, 544 (1979) (plurality opinion).

[12] In a concurrence joined by Justice Marshall, Justice Blackmun writes, "I agree with that portion of Part III of the plurality's opinion where the conclusion is reached that Congress has made its decision to permit a State to pay unemployment benefits to strikers." *See id.* at 547.

[13] https://oui.doleta.gov/unemploy/pdf/pl_112-96.pdf

[14] 26 U.S.C. §3306 (a) (8) (2018).

[15] 26 U.S.C. § 3306 (v) (5) (2020).

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