

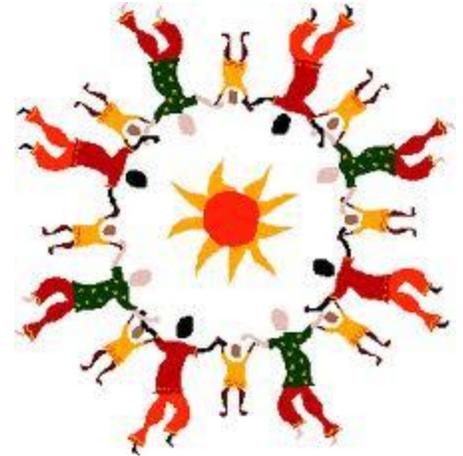
Rights of Domestic Violence Survivors to Unemployment Benefits in New Mexico

An explanation of NMAC 11.3.300.326 (last amended 2012)

If a survivor of domestic abuse left work voluntarily due to circumstances directly resulting from domestic abuse and follows the process described below, s/he may still be eligible for unemployment benefits in New Mexico. This rule creates an exception to the rule that people who leave their jobs voluntarily generally are ineligible for benefits. Monetary eligibility determination made by the state's Division of Unemployment Insurance remains the same.

Examples of qualifying reasons applicant would choose to leave employment:

- applicant reasonably fears domestic abuse at or en route to or from applicant's place of employment;
- applicant reasonably is required to relocate to another geographic area to avoid future domestic abuse;
- applicant reasonably believes that leaving employment is necessary for the future safety of the applicant or the applicant's family due to the domestic abuse;
- the abuse itself interfered with applicant's ability to work, travel or prepare for work;
- applicant reasonably left the labor market to escape such abuse;
- the abuse occurred at applicant's place of employment;
- the abuser's relatives, friends, or the abuser him/herself were co-workers of applicant or otherwise present at the worksite;
- applicant informed the employer and gave the employer the opportunity to ameliorate the domestic abuse within a reasonable period of time, but the employer would not or could not do so;
- applicant has filed a civil or criminal proceeding against an alleged abuser



Note: It is not a requirement to establish the existence of domestic abuse that applicant has filed or will file a civil or criminal proceeding. Furthermore, it is not a requirement that the employer is aware of the abuse. If found eligible due to domestic abuse, applicant's employer will not be charged for benefits.

What qualifies as abuse?

Examples include any actions committed by a household member against another household member that result in:

- physical harm;
- severe emotional distress;
- bodily injury or assault;
- a threat causing imminent fear of bodily injury by any household member;
- criminal trespass;
- criminal damage to property;
- repeatedly driving by a residence or work place;
- telephone harassment;
- stalking (does not need to be by household member);
- harassment;
- harm to children;
- threatened harm to children;
- *there may be other types of abuse that qualify as well; these are some examples. Sex offenses do not need to be committed by a household member to qualify.*

Remember, the qualifying abuse need not have occurred at work, as long as the survivor sees that circumstances related to his or her separation from employment were a direct result of the abuse.

Who qualifies as an abuser?

“Household member” means a spouse, former spouse, family member, including relative, parent, present or former stepparent, present or former in-law, child or co-parent of a child, intimate partner or a person with whom the applicant has had a continuing personal relationship.

Note: Living with the abuser, currently or in the past, is not a requirement to meet the definition of “household member.”

What to submit?

- Sworn statement by applicant regarding the domestic abuse
- Any documentation from an individual or advocacy organization from which the applicant has sought assistance from the domestic abuse may be considered. The following are recommendations, but not required:
 - Documentation from a shelter worker or court-appointed advocate
 - Documentation from an attorney, member of the clergy, physician or other medical or mental health practitioner
 - Hospital or other medical documentation

When to submit supporting documents?

To qualify for unemployment payments from the date applicant’s employment ended, supporting documents must be submitted within 10 days of the original unemployment application. See below for where to submit documents.

Documents can always be submitted later, but if UI payments are granted, payments will only be dated from the date the documents are submitted, not before.

The rule states that **the original application must note domestic abuse as a reason for separation from employment**. Applicants would have to select an option within the unemployment application that they left work voluntarily, and then specify the reason as domestic abuse. However, this rule and its exception are not always familiar to applicants when they apply. Domestic abuse survivors who meet the qualifications above should submit supporting documents to a pending unemployment application whenever they become aware of their right, or reapply citing this reason, if already denied. If applicants are denied benefits on the grounds that they did not note abuse as a reason in their original applications, applicants should object to the denial, and call the New Mexico Center on Law and Poverty at 505.255.2840 to discuss further action.

Where to submit supporting documents?

The law that explains the domestic abuse exception does not specify how to submit supporting documents. Initial unemployment benefits applications are submitted online or over the phone. Please follow the instructions in the most recent paperwork you received from the Department of Workforce Solutions’ for how and where to submit supporting documents, including their appropriate and updated contact information.

If you are unable to determine the best method to submit documents, do not hesitate to contact The NM Center on Law and Poverty at 505.255.2840 for assistance.