



## **LEGALLY BRIEF:**

### **Frequently Asked Questions (FAQ) on COVID-19 and Undocumented Immigrants**

#### **LAW ENFORCEMENT**

##### **Q. Has ICE modified enforcement efforts during COVID-19?**

**A.** ICE Enforcement and Removal Operations (ERO) will focus enforcement on public-safety risks and individuals subject to mandatory detention based on criminal grounds. For those individuals who do not fall into those categories, ERO will exercise discretion to delay enforcement actions until after the crisis or use alternatives to detention, as appropriate.

##### **Q. I am undocumented. Is it possible that US Immigration and Customs Enforcement (ICE) will come to hospitals?**

**A.** While it is possible that ICE will come to a hospital, it is unlikely. ICE does not conduct enforcement operations at medical facilities, except under [extraordinary circumstances](#). Claims to the contrary are false and create unnecessary fear within communities. Individuals should continue to seek medical care.

##### **Q. What is happening in detention centers to prevent the spread of COVID-19?**

**A.** According to an ICE statement, ICE is reviewing CDC (Center for Disease Control) guidance daily and updates its protocol based on the CDC guidance. ICE evaluates detainees based on CDC protocol to determine if individuals with a higher risk of severe illness as a result of COVID-19 should continue to be detained. According to ICE, ICE initially released 160 individuals from detention who have a higher risk of severe illness as a result of COVID-19 after evaluating their immigration history, criminal record, potential threat to public safety, flight risk, and national security concerns. According to ICE, ICE has decreased the number of new detainees due to coronavirus concerns.

To prevent the spread of coronavirus in detention centers, the ICE Health Service Corps isolates detainees with fever and/or respiratory symptoms who meet the CDC criteria for epidemiologic risk of exposure to COVID-19. Detainees without fever or respiratory symptoms who meet the CDC risk criteria are monitored for 14 days while housed separately from the general population. Detainees are tested for COVID-19 if they meet the CDC guidelines for testing. ICE transports individuals with moderate to severe coronavirus symptoms to hospitals. ICE provides detainees

with soap in the showers and hand soap in the bathrooms. The population at all detention facilities has been reduced to 70% capacity to encourage social distancing.

**Q. Can I still visit someone who is being held in the ICE detention centers?**

A. No. ICE has temporarily suspended social visitation at detention centers to prevent the spread of coronavirus, and has increased detainee access to videoconferencing, telephone, and email as a result. In-person attorney visitation is allowed if the attorney determines that in-person visitation is essential, but the attorney must undergo the same screening required for staff entry into the facility.

**Q. I have a scheduled ICE check-in and tried calling my local field office but no one answered, what should I do?**

A. Contact the [local ICE field office](#) by phone for further instructions. If you missed your scheduled ICE check-in, you need to ensure you make contact with ICE. If they do not answer, leave a message with your name, A-number, and phone number. ICE will contact you with updated information on how to proceed with your scheduled check-in.

**IMMIGRATION COURT**

**Q. Is Immigration Court (Executive Office for Immigration Review) still hearing cases in light of the coronavirus pandemic?**

A. All non-detained hearings scheduled through May 1, 2020 have been postponed. All Migrant Protection Protocols (MPP) hearings scheduled through May 1, 2020 have been postponed. Individuals with scheduled MPP hearings before and on May 1, 2020 should present themselves at their designated port of entry on their previously scheduled date to receive a tear sheet and hearing notice containing their new hearing date.

Individuals and their attorneys can now file by email through temporary email addresses for the Office of the Chief Administrative Hearing Officer, the Board of Immigration Appeals, and the Immigration Courts nationwide.

The operational status for each Immigration Court (i.e. open, open for detained hearings and filings only, closed etc.) can be found by locations [here](#).

**Q. Are USCIS offices open during the coronavirus pandemic?**

A. USCIS has temporarily closed its domestic offices through May 3, 2020 and plans to reopen on May 4, 2020 unless the public closures are extended. All domestic field offices, application support centers, and asylum offices are temporarily [closed](#).

USCIS domestic offices will send notices to applicants and petitioners whose scheduled appointments and naturalization ceremonies are impacted by the temporary closure. Asylum interviews have been automatically cancelled and rescheduled. Asylum applicants will receive a

new interview notice once their interview has been rescheduled. Once USCIS offices have reopened, USCIS will reschedule the application support appointments and notify the individuals of the new appointment time by mail. If an individual has an appointment at a field office, she must reschedule through the [USCIS Contact Center](#); USCIS will not automatically reschedule appointments at field offices.

## **HEALTH INSURANCE**

**Q. If I am undocumented and do not qualify for Medicaid, can I access emergency Medicaid to cover coronavirus treatment?**

**A.** Yes. Under federal law (42 U.S.C. §1396b(v)(2)(A)-(C)), state Medicaid programs must treat individuals suffering from an emergency medical condition who are not lawfully present in the United State and therefore do not meet the immigration requirements.

An “emergency medical condition” is such that the absence of immediate medical attention could put the patient in serious jeopardy, impair bodily functions, or cause serious disfunction to an organ or body part.

**Q. Will I be subject to Public Charge rule if I receive emergency Medicaid?**

**A.** No. Receipt of emergency Medicaid will not count against an individual in the public charge determination.

**Q. What other options do undocumented people have besides going to the emergency room and accessing emergency Medicaid?**

**A.** Undocumented people can go to [free or low-cost clinics](#) that serve the uninsured.

**Q. Can individuals with DACA (Deferred Action for Childhood Arrivals) access Medicaid, insurance through the ACA Marketplaces, or private health insurance through an employer?**

**A.** Individuals with DACA are not eligible for Medicaid and cannot purchase private health insurance coverage through the ACA Marketplaces. As DACA recipients have work authorization, they can access employer-provided private health insurance.

**Q. Can undocumented immigrants access private health insurance?**

**A.** Undocumented immigrants cannot purchase private health insurance coverage through the Affordable Care Act (ACA) Marketplaces. Some undocumented immigrants may access private health insurance as a spouse or dependent of an employee who receives health insurance through his or her employer. Other undocumented immigrants who are students may receive health insurance through their colleges or universities. Undocumented immigrants can purchase private health insurance on the individual market outside of the ACA marketplaces (i.e. directly from an insurance company), but [not all plans on the individual marketplace comply with the ACA](#).

## INDIANA UNEMPLOYMENT INSURANCE

### **Q. Are noncitizens eligible for unemployment insurance?**

**A.** Noncitizens are generally eligible for unemployment insurance benefits as long as they are: (1) work-authorized at the time they file for unemployment benefits and during the entire time that they are receiving benefits; and (2) meet the state residency requirements for unemployment benefits.

Receiving unemployment insurance benefits will not count against the individual in the public charge determination because unemployment insurance is an earned benefit and not a public benefit.

### **Q. How do I file for unemployment insurance (UI benefits)?**

**A.** Online, using a computer or smart phone. Go to [www.Unemployment.IN.gov](http://www.Unemployment.IN.gov) to file, and to see Frequently Asked Questions, the Claimant Handbook, and video tutorials.

### **Q. If my employer temporarily shuts down or lays me off because of COVID-19, will I be eligible for unemployment insurance (UI) benefits?**

**A.** Yes, if an employer must lay off employees due to COVID-19, the employees will be eligible for unemployment insurance (UI) benefits if they have earned enough wages to set up a claim and meet the weekly eligibility criteria. Employees must stay in contact with your employer and be available to work when called back by your employer.

### **Q. If I am self-employed, will I get regular unemployment insurance benefits?**

**A.** Independent contractors and self-employed individuals are not engaged in covered employment for the purposes of UI, so regular UI benefits would not be available. You will be eligible for Pandemic Unemployment Assistance (PUA) under the federal CARES Act.

## CARES ACT BENEFITS

### **Q. I heard that everyone will receive a \$1,200 check in the mail to offset economic losses due to the coronavirus pandemic. Can noncitizens receive the \$1,200 rebate?**

**A.** The CARES (Coronavirus Aid, Relief, and Economic Security) Act provides a \$1,200 rebate to individual taxpayers and a \$2,400 rebate for taxpayers filing taxes jointly.

Taxpayers must have a Social Security number to receive the rebate. If an individual filed a tax return in 2018 or 2019 with a valid Social Security number, she will get a rebate in the mail. (The IRS has extended the deadline to file fiscal year 2019 taxes to July 15, 2020.)

**Q. Do we have to pay it back? And will it count towards a public charge determination?**

A. You do not have to pay back your stimulus check next year. Your stimulus check is not taxable. The CARES tax rebate will not count against an individual in the public charge determination, as the rebate is a tax credit and not cash assistance.

**Q. I filed my taxes with my spouse who has an Individual Taxpayer Identification Number (ITIN), do we qualify?**

A. If both partners in a married couple used an Individual Taxpayer Identification Number (ITIN) to file their taxes, no one in the household is eligible for the return, regardless of whether they file jointly or not.

For mixed-immigration status married taxpayers (where one taxpayer has an SSN and the other taxpayer has an ITIN), the couple would need to file separately in order to claim the rebate for any eligible household members. There is an exception if at least one spouse filing jointly was in the armed forces last tax year, as long as one spouse has a valid SSN.

**Q. Do noncitizens qualify for coronavirus-related sick leave under the Families First Coronavirus Response Act (FFCRA)?**

A. The [FFCRA](#) does not include any immigration status-related restrictions. Paid sick leave is paid to employees the same way that their wages are paid, so there is generally no involvement with government agencies.

**PUBLIC CHARGE**

**Q. If I use Medicaid for coronavirus treatment, will it count against me in the public charge determination?**

A. USCIS will not consider COVID-19 testing, treatment, or preventive care (including a vaccine if a vaccine becomes available) as part of a public charge inadmissibility determination, even if paid for by a public benefit like Medicaid.

**Q. Could I be deported for using public benefits after I get a green card?**

A. It is rare to be deported for using public benefits, and it will only happen if you or your sponsor were asked to pay for services used within the first five years after immigration and you or your sponsor refused to pay.

**Q. Will applying for rental assistance, Section 8 or other housing benefits, cash assistance or food stamps for their children during the COVID-19 pandemic count against a noncitizen during a public charge determination?**

A. Generally, applicants can apply for food stamps for their children. This is permitted because children's benefit use is not to be considered in a public charge determination. USCIS has not

explicitly stated how the use of benefits such as Section 8 housing and other housing benefits, rental assistance, and cash assistance would impact a public charge determination, the option to submit additional documentation during the COVID-19 crisis suggests immigration officers will take the unprecedented nature of the pandemic into account when making a [public charge determination](#).

## **LABOR RIGHTS**

**Q. Do health and safety laws protect immigrant workers during this public health crisis?**

**A.** Yes. All workers are protected by health and safety law regardless of immigration status.

**Q. Are there specific protections under health and safety law for the COVID-19 pandemic?**

**A.** The federal Occupational Safety and Health (OSH) Act gives all workers the right to safe and healthful working conditions and imposes on employers the duty to provide workplaces that are free of known hazards that could harm their employees. However, federal OSHA does not currently have standards (legal rules) that specifically address protection from COVID-19 in the workplace

**Q. What can I do if my employer is not giving me the equipment I need to protect myself?**

**A.** When workers face certain hazards, their employers have an obligation to provide and pay for personal protective equipment. This obligation exists regardless of a worker's immigration status. OSHA is not enforcing any requirement for any personal protective equipment in this pandemic. However, some state and local officials are now requiring that workers wear masks in certain jobs—and these requirements may expand as the disease continues to spread in workplaces. Further, the CDC has just updated guidance that encourages employers to pilot test the use of face masks

**Q. What rights do I have if someone at my worksite had a confirmed case of COVID-19 and I think I have been exposed?**

**A.** The CDC has just issued very controversial guidance that workers potentially exposed to COVID-19 may be permitted to continue work following the exposure, provided they wear a mask for 14 days (that can be provided by the employer), their temperature must be monitored every day by the employer, and other measures must be followed.

**Q. How can I enforce my rights under health and safety laws?**

**A.** An employee can file a complaint with OSHA by visiting or calling his or her local OSHA office; sending a written complaint via fax, mail, or email to the closest OSHA office; or filing a complaint online. No particular form is required and complaints may be submitted in any language.

**Q. Will an OSHA inspector ask about my immigration status if I file a complaint?**

A. The investigator should not ask. Even if the investigator does ask about immigration status, workers are under no obligation to answer an OSHA inspector's questions about immigration status.

**Q. What rights do immigrant workers have if an employer retaliates against them for enforcing their health and safety rights?**

A. Regardless of their immigration status, retaliation against a worker for exercising these rights is prohibited. There are two potential avenues to pursue if a worker is retaliated against: the OSH Act and the NLRA. It is preferable for workers to obtain the anti-retaliation protections of both, and a worker can file complaints with both agencies simultaneously.

For more information or questions, please contact ICADV Staff Attorney Jocelyn Alday at [jalday@icadvinc.org](mailto:jalday@icadvinc.org)