



Michigan Immigrant Rights Center

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Michigan House Oversight Committee
Anderson House Office Building
124 North Capitol Avenue
Lansing, MI 48933

SENT VIA EMAIL: Clerk@house.mi.gov

RE: Hearing on Unemployment Insurance Agency Issues

Dear Members of the Oversight Committee,

We write to share our concerns about the Unemployment Insurance Agency (UIA) unemployment benefit payback notices but wish to bring another issue to light. MIRC is a statewide legal resource center that focuses on the rights of Michigan's immigrant communities, including but not limited to representation of migrant and seasonal farmworkers and low-wage immigrant workers in employment-related disputes and before UIA. MIRC is a program of Michigan Statewide Advocacy Services (MSAS) and the Michigan Advocacy Program (MAP).

For the past 18 months, during a national pandemic, the demand for our services has drastically increased. Many of our clients have been essential workers working in the agriculture industry and food and processing plants. Due to the emerging needs of our clients during the COVID-19 pandemic, MIRC took on new unemployment insurance cases for clients who could not otherwise find representation -- chiefly UI claims brought by immigrants, migrant and seasonal farmworkers, and low-wage immigrant workers. MIRC attorneys are among very few lawyers statewide with experience at the intersection of immigration status and UI eligibility.

The key statutory provision which governs the eligibility of UI benefits and immigration status is MCL 427.27(k)(1), which states that:

“benefits are not payable on the basis of services performed by an alien unless the alien is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for the purpose of performing the services, or was permanently residing in the United States under color of law at the time the services were performed, including an alien who was lawfully present in the United States under section 212(d)(5) of the immigration and nationality act, 8 USC 1182.”

Due to the breadth of the “permanent residing under color of law” (PRUCOL) provision of the act, many eligible immigrant applicants should receive UI benefits, but have been wrongfully denied. In fact, we suspect that many immigrants who would be considered PRUCOL fail to even apply for UI benefits due in part to the agency's misapplication of the statute and misleading communications about it.

The denial of benefits to vulnerable and eligible immigrants is based on the agency having incorrectly cited a federal statute: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); and/or completely obviated the PRUCOL section of Michigan Employment Security Act cited above. In fact, during one of the hearings before an Administrative Law Judge regarding a denial of a client claiming to be PRUCOL, the agency representative stated in no uncertain terms that PRUCOL was not being considered when determining whether a claimant was eligible for UI benefits¹. This is a misapplication of the law. The agency places near-exclusive reliance on an immigrant's Employment Authorization Document (EAD)--a card that authorizes an individual to legally work in the United States, which is issued by United States Citizenship and Immigration Services (USCIS). The agency has conflated an EAD's validity period as the sole basis for considering UI eligibility, but not all employment-authorized noncitizens have or are eligible for EADs, particularly those in the PRUCOL category. There is no statutory or case law basis for the degree of reliance placed on the EAD by the agency. Again, PRUCOL is a broad category that reflects statutory intent to provide stability and economic security to the many long-term noncitizen residents of our state, not the fewest possible.

For these reasons, our primary concern for our clients, other than the many other barriers that our clients face with the agency, is to understand how the agency is concluding their determination denials based on the EAD validity periods. Particularly since the Michigan UI statute makes no mention of an EAD requirement and the PRWORA specifically prioritizes a state's UI statute to govern the issuance of UI benefits for immigrants as well as not mentioning an EAD requirement therein. *8 U.S. Code §1621, Sec. 411(d)*.

Please note that although this issue has come to MIRC's attention during the COVID-19 pandemic, it predates the pandemic and this administration and its UI leadership.

We thank you for looking into our concern and your advocacy to ensure that those who need UI benefits during such a critical time are able to receive them to ensure that they are able to meet their basic needs. Please do not hesitate to contact me if I can provide further information. I can be reached via email at gperalta@michiganimmigrant.org

Sincerely,



Gonzalo Peralta
Staff Attorney

¹ On March 23, 2021, before ALJ Nancy Bondar, Bethany Arnold--the UI Agency representative during the hearing, testified that the agency does not read Section 27(k) to include the PRUCOL provision.