DESIGNED TO EXCLUDE:
New York’s Failure to Provide Compensation and Language Access to Unemployed Workers
About this Report

This report was only made possible by the courage of workers who came forward to share their stories and the contributions of the incredibly vibrant community organizations and legal service providers who have been on the front lines ensuring Limited English Proficiency workers have access to vital unemployment insurance benefits, given the tremendous gaps left by the New York State Department of Labor. The National Center for Law and Economic Justice thanks the following organizations and individuals for their support and participation in this report.

**Adhikaar** · Adhikaar, meaning “rights” in Nepali, is a women-led community and workers’ center that provides direct services to the Nepali-speaking* community and organizes low-income workers and impacted community members to promote social justice and human rights. We create access to information, build community leadership, and grow collective power to win rights for our communities, and dignity and equity for all. *At Adhikaar, we define the Nepali-speaking community as descendants of Nepal, Bhutan, India, Burma, and Tibet that speak Nepali.

**Flushing Workers Center** · Flushing Workers Center was founded in 2014 by immigrant and young workers to unite workers to fight for better conditions at our workplaces, our homes, and in our communities. It is a membership organization open to workers of all trades, ethnicities, and backgrounds.

**The Legal Aid Society** · The Legal Aid Society is built upon one simple but powerful belief: that no New Yorker should be denied the right to equal justice.

**Legal Services NYC** · The nation’s largest provider of free civil legal services, Legal Services NYC fights poverty and seeks racial, social, and economic justice for low-income New Yorkers, including language access for immigrant and LEP families.

**Make the Road New York** · Make the Road New York builds the power of immigrant and working-class communities to achieve dignity and justice.

**MinKwon Center for Community Action** · Organizing, educating, and serving low-income Korean and Asian immigrant communities since 1984.

**New York Legal Assistance Group** · Founded in 1990, NYLAG is a leading civil legal services organization combatting economic, racial, and social injustice by advocating for people experiencing poverty or in crisis.

**Queen City Workers Center** · The Queen City Workers’ Center brings together workers of all backgrounds to fight for better working and living conditions in our communities.

**Volunteers of Legal Service** · VOLS harnesses the power of New York City’s legal community and neighborhood-based groups to provide free, civil legal services when and where they are needed most.
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Introduction

“It would be maybe one hour [or] two hours waiting to connect, and then they would either cut me off, or when I would connect, I would say, ‘Please in Spanish,’ they would either cut me off, or they would put me on hold again. And then even when they put me on hold, after another hour or two, they would cut off the call anyway, and that made me feel hopeless.”¹

As COVID-19 devastated communities around the world, it laid bare the structural racism and economic inequality across the nation and in New York State. Unemployment skyrocketed, with immigrants, workers of color, and women bearing the brunt of the crisis.² Not only do these workers face higher mortality rates, but they disproportionately comprise the “essential workers” who put their health at risk in low-paying jobs.³

The New York State Department of Labor (“NYSDOL”) created prohibitive barriers to Unemployment Insurance (“UI”) for low-wage workers—and especially for the 2.5 million New Yorkers with Limited English Proficiency.⁴ This report—based on interviews with workers, leaders of more than a dozen immigrant-serving organizations in New York State, and a review of relevant literature and data—documents the extreme language access barriers NYSDOL imposed on LEP and immigrant communities and the severe financial and material hardship that resulted. The report also provides specific recommendations to policymakers on the state and federal level.

During the height of the pandemic, it was near-impossible for anyone to get through to NYSDOL by phone, with LEP workers experiencing particularly profound barriers to this day. Would-be claimants called dozens of times a day for weeks at a time, hoping to apply over the phone or to address wrongful delays or denials, only to receive a message that NYSDOL could not accept their calls. Those who managed to get through—after days to months of effort—waited on hold for hours, often getting disconnected without ever speaking to anyone. And if LEP applicants ever got through, they discovered that NYSDOL provided incoherent and inconsistent interpretation services, if any at all.

Because of the collapse of NYSDOL’s phone system, most UI claimants had to apply for benefits online and address any wrongful delays or denial through the online system. But here, again, low-wage workers—and especially immigrant workers—lacked the computers, internet access, and technical savvy necessary to complete the online application and certification process.

For nearly a year after the pandemic began, despite clear state and federal laws prohibiting discrimination on the basis of language,

¹ NCLEJ Interview with Worker 4 (May 13, 2021).
NYSDOL did not translate key UI documents—including the application, instructions, and its website—to any of New York’s top six languages. And while NYSDOL eventually translated some documents into Spanish and other languages, the poor quality of the translations severely limited their utility. To this day NYSDOL has still failed to translate numerous vital documents, and NYSDOL still sends critical, time-sensitive notices only in English. These practices severely limit eligible LEP workers’ ability to access or maintain UI benefits.\(^5\)

“It felt like the government is really ailing people, failing workers, on multiple levels. Fine, [the state] can’t do anything about the pandemic, but it can ensure that the health and well-being of people is [its] primary concern. We all felt like that was clearly not the case.”\(^6\)

Further, New York State’s private fraud prevention system, ID.me, creates additional barriers for LEP and other claimants via unjustified fraud investigations. All workers now must pass through ID.me—an electronic process requiring technological and English language literacy—in order to receive benefits. LEP and tech-challenged workers, among others, commonly experience severe delays orgive up their claims entirely because they cannot access or navigate the system. After the system was implemented in February 2021, workers who were already receiving benefits were flagged for potential fraud by ID.me. They immediately lost their benefits without warning and had to comply with onerous proof requirements and long delays to regain access to their benefits—if they could at all. ID.me caused deep economic pain and suffering for eligible claimants who were cut off with no ability to navigate the system.

Faced with overwhelming access problems, some LEP claimants sought help from community-based organizations and the nonprofit legal community. These organizations—genuine heroes of the pandemic—poured thousands of hours into assisting LEP claimants.

They produced their own translations and instructional manuals and videos and served as interpreters—labor that NYSDOL had a legal mandate to perform. However, LEP New Yorkers who did not know about or have access to these organizations could not navigate the UI process when they needed help the most. Even those who did find help were often unjustly and unlawfully delayed and denied unemployment benefits.

NYSDOL’s systemic barriers illegally blocked LEP New Yorkers from receiving critical UI benefits. New York State’s profound gaps in language access services have caused and continue to cause severe financial hardship and economic instability for countless LEP workers. Without access to UI, LEP workers could not pay bills or feed their families. They turned to food banks, they resorted to homeless shelters, and they went hungry. Many LEP workers deprived of UI benefits had no choice but to take high risk, unsafe jobs on the front line of the pandemic. There are countless workers who were due benefits but never received them, with the NYSDOL simply

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\(^5\) New York’s Executive Order 26, issued on October 6, 2011, established the first statewide language access plan and mandated language access for the top six most commonly-spoken languages. State of N.Y., Exec. Order 26 “Statewide Language Access Policy” (2011), Executive Order 26.1, issued on March 23, 2021, expanded this order to translation and interpretation services for the top ten most commonly spoken languages but gave agencies until August 1, 2022 to come into compliance. State of N.Y., Executive Order 26.1 “Statewide Language Access Policy” (2021). In 2022, the New York State legislature passed a new law, N.Y. Exec. Law § 202-a, effective July 1, 2022, requiring state agencies to translate vital documents into the 12 most common non-English languages spoken by LEP individuals in the state and to publish their language access plans on their websites.

\(^6\) NCLEJ Interview with Flushing Workers Center Organizer Sarah Ahn (May 16, 2022).
responding with inhumane positions such as “mistakes were made.” Throughout this crisis, NYSDOL has persistently and seriously failed people who speak and read limited English.

“I’m kind of powerless in front of the DOL because I just have to do what they ask me to do to get the benefits. I don’t have a right because I’m in a foreign land, so whatever they demand ... Well I wasn’t born here; the benefits don’t come to me easily.”

As set out in detail in the Appendix, NYSDOL’s actions violate state language access law, Title VI of the Civil Rights Act of 1964, the Social Security Act, and United States Department of Labor (“U.S. DOL”) guidance and regulations.

- Under New York State Executive Orders (“EO”) 26 and 26.1, all state agencies that interact with the public must now translate key documents into the ten most common languages spoken by LEP individuals and provide interpretation services in the six most common languages. As of July 1, 2022, New York State agencies must translate documents into the 12 most common languages in New York State under N.Y. Exec. Law § 202-a.

- Title VI of the Civil Rights Act prohibits discrimination on the basis of race, color, or national origin by any federally funded agency or program. The United States Supreme Court has held that Title VI mandates meaningful language access to government services for non-English speakers.

- The Social Security Act of 1935 requires prompt payment of UI benefits to all eligible applicants “when due.” U.S. DOL regulations and guidance require equal access to benefits for workers who do not speak English as their primary language.

Produced in collaboration with community groups and legal services organizations on the front lines, this report documents the severe and systemic language access barriers and hardship that NYSDOL imposed on immigrant communities, as well as broader problems with the New York unemployment compensation system and the severe financial and material hardship that resulted. This report also provides specific recommendations to policymakers based on interviews with workers, interviews with leaders of more than a dozen immigrant-serving organizations in New York State, documents received through a Freedom of Information Law (“FOIL”) Request to NYSDOL, and a review of relevant literature and data.

In New York, COVID-19 exacerbated deeply rooted disparities that society has chosen to ignore, taking a heavy toll on LEP workers, immigrants, and people of color. To work towards equity, New York must make fundamental changes, not only to bring the UI system into legal compliance with federal and state law but also to ensure a more humane system that works for all New Yorkers.

“The [Unemployment Insurance statute] is a remedial statute, a humanitarian statute, and should be construed accordingly. It is the general rule that a liberal construction is accorded statutes which are regarded by courts as humanitarian and which are grounded on a humane public policy.”

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1. NYSDOL Representative Phone Conversation with NCLEJ Senior Attorney Anjana Malhotra (April 2022).
2. NCLEJ Interview with Worker 1 (June 26, 2021).
5. Lau v. Nichols held that discrimination on the basis of limited English proficiency constitutes national origin discrimination under the Civil Rights Act, including Title VI. 414 U.S. 563, 568 (1974).
6. See discussion and notes infra § 11A.
Key Findings

Language access barriers have caused unjustified, profound economic hardship to people who speak languages other than English. We found specifically:

- Thousands of LEP applicants faced prolonged delays and wrongful denials in receiving benefits, causing deep economic hardship, pain, hunger, and homelessness;

- Applicants had serious problems reaching NYSDOL and report having made hundreds to thousands of unsuccessful phone calls to NYSDOL over the course of weeks to months to apply for unemployment or resolve problems. If a LEP worker did eventually connect to a person, NYSDOL frequently provided inadequate or no interpretation;

- Low-wage workers—especially LEP workers—could not effectively apply for benefits online because of technological and language barriers;

- The NYSDOL failed to make services available in languages other than English, resulting in delays and wrongful denials of benefits to eligible LEP applicants in violation of federal and state laws;
  
  o For the first year of the pandemic, NYSDOL failed to translate its website and the federal unemployment application—including key applications and instructions—into languages other than English, preventing LEP workers from filing claims;
  
  o Few vital documents have been translated into New York’s six most frequently spoken languages, resulting in prolonged delays, inability to access benefits, and wrongful denials;
  
  o LEP workers faced wrongful denials because they had difficulty completing English-only forms, and faced language barriers in contesting their employer’s objections to their eligibility and NYSDOL ineligibility determinations;

- NYSDOL’s private contractor, ID.me, illegally cut off and created barriers to benefits for eligible LEP claimants and has not translated many of its identity verification mechanisms or key vital documents into New York’s six, much less 12, most frequently spoken languages;

- Due to NYSDOL internal errors, NYSDOL overpaid thousands of claimants and now seeks to recoup money already spent—even though the federal government has made clear in guidance that states should waive broad categories of non-fraudulent overpayments;

- Community and legal organizations had to fill the gap caused by NYSDOL’s failures and helped fill out and translate vital documents and applications for thousands of workers.

- In 2021, NYSDOL disproportionately denied unemployment benefits to applicants with Limited English Proficiency at higher rates than English speakers. NYSDOL also denied Hispanic and African American, Native American, and Hawaiian claimants unemployment benefits at higher rates compared to non-Hispanics and Whites, respectively.
Key Recommendations

New York State must take immediate action to address the debilitating, harmful, and illegal language access barriers identified in this report, and the U.S. DOL must ensure that New York is complying with its Title VI obligations. Failure to do so will continue to cause deep and unnecessary pain and hardship for LEP communities and impose an unfair burden on nonprofit and community organizations serving immigrants across the state.

- NYSDOL must prioritize meaningful language access by translating all vital documents and instructions necessary to obtain unemployment into the top 12 languages in New York with non-machine-based translations that are reviewed and approved by certified translators.
- NYSDOL must revamp its telephone system to provide prompt and accurate interpretation to allow LEP applicants to access unemployment.
- NYSDOL must end its contract with ID.me and cease targeting eligible immigrants and LEP applicants for fraud investigations.
- NYSDOL must set up a system to identify and compensate all eligible LEP beneficiaries who attempted to apply for unemployment but never received benefits due to language access barriers, including allowing LEP applicants who were eligible but unable to access UI benefits to apply for retroactive unemployment.
- NYSDOL must set up a task force to engage with and listen to community-based organizations to improve language access and respond to claimants’ needs in a timely manner in accordance with federal law.
- NYSDOL must cease all overpayment collections and apply broad waivers to the fullest extent permitted under federal law and guidance.
- NYSDOL must be transparent with the public about the functioning of the UI system by making data and reporting publicly available.
- NYSDOL must redress gross failures of the last two years by proactively providing benefits to claimants still waiting on applications during the last two years.
- U.S. DOL must open a Title VI investigation to bring NYSDOL into compliance with its language access obligations.
I. Background
“Economic insecurity due to unemployment is a serious menace to the health, welfare, and morale of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden, which now so often falls with crushing force upon the unemployed worker and his family.” - N.Y. Lab. Law § 501.

Since its inception during the Great Depression, the unemployment system has been a lifeline for workers in the United States, preventing their fall into poverty due to job loss.¹⁶ This should have been true when emergency public health measures forced many businesses to close their doors at the onset of the COVID-19 pandemic.¹⁷ For many of New York’s most vulnerable workers—low-wage, immigrant, and/or LEP workers—New York’s unemployment system failed them when they needed it most.

Within days of the pandemic-related economic shutdown, hundreds of thousands of New Yorkers suddenly found themselves out of work.¹⁸ In the first two months of the pandemic, New York State lost twenty percent of its jobs.¹⁹ Workers in every sector, and particularly the service sector, began filing unemployment claims at unprecedented levels.²⁰ It was a deeply stressful time for all workers—when the fear and uncertainty as the pandemic set in, combined with a complete loss of income for workers and their families that threatened to plunge millions of people into poverty.²¹

The federal government responded by expanding UI benefits in an unprecedented way: both increasing the amount and duration of UI benefits per worker and extending benefits to workers who are typically excluded, such as independent contractors.²² Congress enacted the largest expansion of unemployment benefits in U.S. history, eventually creating four new categories of benefits that operated alongside traditional state UI.²³ In New York, the NYSDOL administered both these expanded benefits and traditional UI pursuant to a longstanding federal-state unemployment system.²⁴

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¹⁵ N.Y. Lab. Law § 501 (“[T]he legislature therefore declares that in its considered judgment the public good and the well-being of the wage earners of this state require the enactment of this measure for the compulsory setting aside of financial reserves for the benefit of persons unemployed through no fault of their own.”).

¹⁶ See Zachary Parnell et al., “Economic Insecurity due to Unemployment is a Serious Menace to the Health, Welfare, and Morale of the People of This State.”


PANDEMIC UNEMPLOYMENT EXPANSION

Pandemic Unemployment Assistance ("PUA"): provided financial assistance to people who did not qualify for regular UI but were unemployed as a result of the pandemic, such as self-employed, part-time, and gig workers; independent contractors; farmers; and high-school students. The program ran from January 27, 2020 to September 4, 2021.  
Federal Pandemic Unemployment Compensation ("FPUC"): added $600 per week to the amount an individual would otherwise be qualified to receive under their state UI program. This provision expired on July 31, 2020, and was revived as of December 26, 2020, as a $300 supplement, until September 4, 2021.

Pandemic Emergency Unemployment Compensation ("PEUC"): provided an additional 13 or 20 weeks of unemployment benefits for those who had exhausted unemployment benefits available under state law. The program ran from January 27, 2020 to September 4, 2021.  
Mixed Earners Unemployment Compensation ("MEUC"): provided an additional $100 a week to workers with $5,000 or more in net earnings from self-employment. This program ran from December 26, 2020 until September 4, 2021.

But far too many out-of-work New Yorkers, particularly LEP workers, could not access unemployment benefits of any kind. New York fell to the bottom third of the country in the length of delays in processing applications, well below the federally required processing times.

While many workers struggled to make ends meet, New York’s failure to get benefits to workers affected some communities more acutely than others: namely, people of color, immigrants, and low-wage workers. Workers of color accounted for nearly half of all job losses in New York State and nearly 70% in New York City.

More than two-thirds of UI recipients worked in low- and moderate-income industries, led by restaurants, hotels, health care, social assistance, and retail. A month into the pandemic, nearly two-thirds of jobs lost were held by workers paid less than $40,000 annually.

In particular, immigrants and LEP workers suffered harshly from pandemic-related job losses. For example, the jobless rate for Asian Americans in New York City increased from 3.6% in February 2019 to 25.6% in May 2019, the largest increase among all major racial groups. Chinese Americans in New York City reported significant job loss in mid-March 2020, after

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30 See supra note 19, at 2.
33 Parrott & Mok, supra note 31, at 2.
restaurants shut down or offered limited takeout. And more than half of Nepali Americans in New York City worked in industries with severe pandemic-related job losses, such as the transit and ground passenger transportation industry, which lost 42.7% of its jobs in May 2020. According to Adhikaar, a Queens-based nonprofit, all of the roughly 2,000 Nepali-speaking nail salon workers it serves lost their jobs “without any certainty whether they would get their jobs back.”

These statistics represent only a fraction of the outsized economic impact of the pandemic on New York’s immigrant communities. Undocumented workers were completely shut out of government programs yet were displaced at a rate twice that of the overall displacement rate. According to one report, leading nonprofits serving immigrant communities reported that 75% of their clients had lost their jobs, including domestic workers, nail salon workers, and 95% of day laborers. And, as documented in this report, immigrant workers who were eligible faced systemic language access barriers to benefits.

While the employment crisis of the initial pandemic has abated, high unemployment rates and the problems covered in this report have persisted. New York has regained only 71% of its COVID-19-related job loss. And the racial disparities continue: in the first quarter of 2022, while White workers were unemployed at 3.6%, workers of color were unemployed at higher rates: 5.5% for Latex workers; 8.3% for African American workers; 4.7% for Hispanic workers; and 3.8% for Asian workers.

The data included in this report is a conservative estimate. NCLEJ could not fully examine the extent of racial, ethnic, and language-based disparities in access to UI benefits. As a result, NCLEJ could not fully examine the extent of racial, ethnic, and language-based disparities in access to UI benefits. The data included in this report is a conservative estimate: a complete response would likely have revealed even larger disparities.

37 Id. at 21.
39 Id.
40 Id.
41 Id.
42 Id.
43 Id. Notably, the response of NYSDOL and the New York State Office of the Attorney General ("NYOAG") to NCLEJ’s FOIL request for basic UI data broken out by race, ethnicity, and language itself mirrored these disparities in violation of FOIL and Title VI of the Civil Rights Act. NYSDOL provided largely comprehensive data for Whites and English speakers but withheld significant data relating to non-Whites, Hispanics, and non-English speakers. NYSDOL and NYOAG insisted on providing data broken out by month even though NCLEJ’s request specified to provide the data quarterly or annually if necessary for completeness. NYSDOL and NYOAG then refused to provide specific data for any monthly category that contained less than 10 responses. This resulted in missing data for 125 categories of non-White groups, 24 categories of non-English speakers, and 16 categories of Hispanics. Comparatively, the data omitted only 13 categories of Whites and 3 categories for Non-Hispanics and English speakers. As a result, NCLEJ could not fully examine the extent of racial, ethnic, and language-based disparities in access to UI benefits.
### New York State UI Denial Rate by Race and Ethnicity: March 2020 - February 2022

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<th>CLAIMANTS</th>
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<tr>
<td>Hispanic</td>
<td>1,032,204</td>
<td>13,204</td>
<td>7.5%</td>
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<tr>
<td>Non-Hispanic</td>
<td>3,505,722</td>
<td>242,219</td>
<td>6.9%</td>
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<table>
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<tr>
<th>RACE</th>
<th>CLAIMANTS</th>
<th>DENIED</th>
<th>DENIAL RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black</td>
<td>889,064</td>
<td>82,901</td>
<td>9.3%</td>
</tr>
<tr>
<td>American Indian / Alaskan Native</td>
<td>44,501</td>
<td>3,425</td>
<td>7.7%</td>
</tr>
<tr>
<td>Pacific Islander</td>
<td>19,404</td>
<td>1,602</td>
<td>8.3%</td>
</tr>
<tr>
<td>White</td>
<td>2,705,726</td>
<td>173,152</td>
<td>6.4%</td>
</tr>
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*Includes unknown race/ethnicity

Source: NYSDOL

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New York State Attorney General and Department of Labor Response to NCLEJ FOIL request, June 7, 2022 (on file with author). Notably, as described above, NYSDOL and NYOAG failed to provide comprehensive data for numerous and a disproportionate number of categories of data or non-English speakers, Hispanics, and Blacks and other minority groups.
II. Language Access Barriers
The NYSDOL has failed countless New Yorkers, particularly those who do not speak English as their primary language. NYSDOL’s failure to implement basic language access measures—which are required by state and federal law—has prevented thousands of LEP claimants from receiving UI benefits.

Under state and federal law, NYSDOL must provide a means for LEP individuals to apply for, obtain, and maintain UI benefits in their primary language. NYSDOL’s Language Access Plan states that the agency provides oral interpretation services, either in person or via telephone, and written translation of some website portions and paper documents. However, our investigation exposed a shocking lack of translation at every stage of the process, even according to NYSDOL’s own Language Access Plan, causing unacceptable delays and wrongful denials to LEP workers.

A. Communication Breakdown

“When the pandemic hit, the problem was, traditionally if you didn’t speak English or Spanish you had to use the phone. And of course, a million people were calling into those phones. They didn’t have staff to handle this volume of calls. While it was extremely difficult for everybody, it was especially difficult for people who didn’t speak English or Spanish and then when they came out with new application forms, they were only in English, so even the Spanish speakers of whom they are quite a few in New York, had to get through on the phone. Forcing people into the phone system at that moment was crazy, and a complete log jam. Especially since we’re talking about a system where you not only have to apply [but] keep certifying, what are you supposed to do?”

Prior to the pandemic, workers could choose to apply for UI benefits in person, by telephone, or on the NYSDOL website. The telephone and in-person options provided critical pathways for many low-wage, elderly, and LEP workers who lacked the technological skills and equipment to navigate the online application process. During the pandemic, however, offices closed, and workers simply could not get through to NYSDOL by phone. Mary Lister, an organizer with the Queen City Worker Center in Buffalo, summarized: “Even though there was technically an option to call, there was not an option to call.”

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47 NCLEJ Interview with The Legal Aid Society Staff Attorney Richard Blum (Aug. 31, 2021).

48 NCLEJ Interview Queen City Worker Center Organizer Mary Lister (May 28, 2021).
Advocates and workers consistently confirmed the lack of telephone access, with workers calling for weeks and months without ever reaching an agent. Sunny Lee, Human Resources & Operations Specialist at MinKwon Community Action, reported that her clients typically tried to call NYSDOL for six weeks or more before reaching out to her for help. Victor Brito, a Senior Paralegal at Legal Services NYC (“LSNYC”), stated that his clients would call three to five times a day for weeks and still not get through. Amanda Bransford, a Staff Attorney at Make the Road New York, explained:

“[T]he advice we were giving people at a certain point was start calling at 8AM, expect it to take the entire day, and expect it to possibly take more than the entire day.” Ciara Farrell, a Volunteer Attorney with New York Legal Assistance Group (“NYLAG”), reported that workers would call “many times and leave a message, and call again and if they got through, they would leave a second message.” Every advocate and worker we spoke to reported long wait times to speak with NYSDOL. Ms. Lister described waiting on the phone for “hours on end, and then... hours would become weeks would become months.” Telephone access was “virtually impossible for some people and especially for people who don’t speak English.” LEP workers faced particularly high barriers because if they finally reached someone at NYSDOL, they frequently could not speak to anyone in their own language. In many cases, the NYSDOL representative would just hang up, and the workers would have to repeat the process of calling for weeks and waiting on hold for hours. In other cases, LEP workers and advocates also described that when they did get through, they got unclear and inconsistent answers from various agents on how to resolve delays or wrongful denials of their benefits, which caused more confusion and barriers.

“A lot of people have issues with their online accounts. And it wasn’t just older people not knowing how to navigate it. Younger people would try to apply, and the system would kick them out, and it would just keep happening to them where they call and the phone line would just drop. [T]hat also bleeds into communication issues—just calling and never getting through—calling, getting through, and then not getting a clear answer or hearing different things from different agents.”

46 NCLE | Interview with MinKwon Center for Community Action Human Resources & Operations Specialist Sunny Lee (May 13, 2021).
47 NCLE | Interview with LSNYC Senior Paralegal Victor Brito.
48 NCLE | Interview with Make the Road New York Staff Attorney Amanda Bransford (May 13, 2021) and email from Amanda Bransford to NCLE (May 17, 2022).
49 NCLE | Interview with NYLAG Mobile Legal Help Center Volunteer Attorney Ciara Farrell (July 26, 2021).
50 NCLE | Interview with NYLAG Mobile Legal Help Center Volunteer Attorney Ciara Farrell (May 16, 2022).
51 NCLE | Interview with Queen City Worker Center Organizer Mary Lister (May 28, 2021).
52 NCLE | Interview with LSNYC Legal Assistant Newman.
53 NCLE | Interview with Adhikaa Senior Organizer Megha Lama (June 30, 2021); NCLE | Interview with MinKwon Specialist Lee.
54 NCLE | Interview with Flushing Workers Center Organizer Sarah Ahn (May 16, 2022).
55 NCLE | Interview with Worker 4 (May 13, 2021); NCLE | Interview with The Legal Aid Society Staff Attorney Blum; NCLE | Interview with Flushing Workers Center Organizer Ahn; NCLE | Interview with Adhikaa Senior Organizer Lama; NCLE | Interview with MinKwon Specialist Lee; Testimony of The Legal Aid Society Senior Attorney Richard Blum before the N.Y. S. Standing Comm. on Labor (Aug. 13, 2020); https://www.nysenate.gov/sites/default/files/legal_aid_testimony_8_13_20_state_legislative_hearing.pdf.
56 NCLE | Interview with Worker 3 (June 29, 2021); NCLE | Interview with MinKwon Specialist Lee; NCLE | Interview with LSNYC Legal Services Assistant Newman.
57 NCLE | Interview with LSNYC Legal Services Assistant Samantha Newman (July 2, 2021).
The Legal Aid Society Staff Attorney Richard Blum described the lack of interpretation as a widespread problem that caused serious impairment to LEP applicants: “Worker centers assisting workers speaking other languages have repeatedly complained about the difficulties in accessing an interpreter. Workers have complained about being disconnected after requesting an interpreter. All of these problems have fueled the massive delays in providing benefits.”60

Multiple workers and their advocates described reaching someone who only spoke English, despite choosing the Spanish option, and never receiving a call back. One advocate described a Spanish-speaking client’s “typical” ordeal:

The first time he called the Department of Labor, he was on hold for over two hours. When he finally got through to a live person, they spoke to him in English, so he said “no English, Spanish,” after which he was put back on hold and made to wait for an hour longer. When he finally reached someone who spoke Spanish, the call dropped. So he called back, though this time instead of waiting, he requested a call back. Frustratingly, the person who called back spoke English. So he again said, “no English, Spanish,” and then they said, “okay, hold on, someone will call you back in Spanish.” Of course, he never got a call back. He would then have to do this whole song-and-dance all over again the next day, and the day after, until almost by random luck, he would successfully connect with someone who spoke in Spanish and could assist him with his question or issue. It was an incredibly painful back and forth to get to that point.61

WORKER PERSPECTIVES

“Tired and worn” to do this because I have the time, but there are folks who don’t even have the time who can’t even call the DOL and aren’t receiving benefits because everything is done through the phone ... So I call them the whole day and sometimes don’t get ahold of them. And sometimes I call for like six hours and then get ahold of them.”62

“It would be maybe one hour or two hours waiting to connect, and then they would either cut me off, or when I would connect, I would say ‘Please in Spanish,’ they would either cut me off, or they would put me on hold again. And then even when they put me on hold, after another hour or two, they would cut off the call anyway, and that made me feel hopeless.”63

“They spoke in English and when I asked to speak in Spanish, they would cut off the call. . . . So, the first person to answer would come out speaking English, and I would say, ‘Please speak in Spanish,’ and then they would cut off the call then, and then I would call back again.... Sometimes I had been on the phone waiting two, three, or four hours, and then all of a sudden, they would cut off the call and not respond to me. . . . I think there needs to be better attention to us Hispanics and the situation that we’re going through. [T]here needs to be more attention and people who can speak to us in Spanish, and when we’re calling, we’re calling because we need help. We’re calling because we need it. And this situation is really difficult, and it frustrates you and makes you feel bad.”64

“For some reason, without any notice [or] warnings, I was told [online] that I was not authorized to certify for my weekly benefits. I did not understand and was quite flustered by this. So I called [an immigrant advocacy center], who then told me to call the DOL. When I called the DOL regarding my issue, I had to explain to them multiple times what was going on. And this was tiring and difficult.”65

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60 See Testimony of The Legal Aid Society Staff Attorney Blum, supra note 58.
61 NCLEJ Interview with Worker 1 (June 21, 2021).
62 NCLEJ Interview with Worker 4 (May 13, 2021).
63 NCLEJ Interview with Worker 4 (May 13, 2021).
64 NCLEJ Interview with Worker 2 (June 21, 2021).
65 NCLEJ Interview with Worker 6 (Aug. 4, 2021).
B. FAILURE TO TRANSLATE THE WEBSITE AND INITIAL APPLICATION

With NYSDOL offices closed throughout the state and phone lines jammed, applicants had to use the website to apply for traditional UI and pandemic benefits and to resolve questions about wrongful denials and delays. But low-wage workers, including many LEP workers, ran into immediate technical difficulties. LEP applicants “would often face major roadblocks” in the very first step of the application process: setting up an online account with NYSDOL. According to one advocate, “in the early days of the government shutdown, the biggest thing people were calling me about was just not even being able to [] start the application, just having no way of accessing it at all.”

Advocates from Chhaya CDC, a South Asian community development organization, noted that the absence of computer literacy and technological access made it difficult or impossible for workers to apply for UI without the assistance of an interpreter with technological savvy:

You’re talking about extremely marginalized people who may or may not have literacy, who may or may not have access to a computer. They might have access to a phone, but they don’t have access to computers. How do you complete the unemployment application when you don’t have access to a computer, and you’re being forced to social distance? Legal Services NYC Staff Attorney Nicole Salk explained: “The system is so complicated that non-English speakers can’t really navigate it without translation.” Ms. Bransford from Make the Road New York summed up these challenges accordingly: “[I]t was hard to use the language or the online system on your phone. So, if you didn’t have a computer, if you didn’t have internet, and there was no way to get through on the phone, it was almost as if you had no way of applying.”

People who could not understand the website application could not reach NYSDOL by phone because the lines were always busy. “[T]he big issue was a lot of people just couldn’t do it online and tried to do it on the phone, which meant being on the phone for days and days, and sometimes not being able to get a translator and just being incredibly frustrated.” Advocates described working with hundreds of LEP applicants to set up their accounts, file for unemployment, and troubleshoot, by video, phone, and screenshots, the online application process.

Even if LEP workers could surmount the technological barriers, they could not complete the UI online application without assistance from English-proficient friends, family members, or community advocates. NYSDOL did not translate the UI guidebook, FAQs, instructions, notifications, and news alerts about changes to the UI application procedures.
Adhikaar Senior Organizer Megha Lama noted: “Many of our members don’t have computer

For at least a year after the pandemic began, NYSDOL maintained an English-only online application form that allowed people to apply simultaneously for both UI and PUA.75 The Spanish application form, which predated the pandemic, did not include the eligibility questions required by the CARES Act. Thus, unlike English-speaking applicants, Spanish-speaking applicants had to apply for state UI benefits and get rejected before applying for federal PUA benefits, and could not apply for both together.76

Not until around February 2021 did the NYSDOL update the Spanish application to include PUA eligibility questions.77

Even then, NYSDOL failed to translate its online application to any other language, including the five other most commonly spoken languages in the state. This particularly harmed LEP workers because many were self-earners, classified as independent contractors by their employers, or faced a COVID-19-related situation in which they only qualified for PUA. One advocate recounted: “We felt like the easiest fix would have been, it seemed like somebody could have translated that form in a couple of hours. And we didn’t understand how it could possibly take a year.”78

**AN EXTRA STEP FOR SPANISH SPEAKERS**

The state’s failure to translate the online application had a uniquely detrimental effect on Spanish speakers. Congress had specified that workers could not apply for PUA unless the state had already determined them ineligible for regular UI benefits. NYSDOL revamped its English online form so that English-speaking claimants could apply for regular UI and PUA benefits at the same time. Using that single application, NYSDOL would first evaluate the claimant’s eligibility for regular UI, and then—if rejected—for PUA. But NYSDOL did not make this joint UI and PUA application available in any language other than English.

Spanish speakers used an older application form, available in Spanish on the NYSDOL website, that did not include a PUA application. Spanish speakers had to “wait until [they] got rejected for traditional unemployment and then apply again. Whereas if you were applying with the updated English application online, you didn’t have to go through the whole process of getting rejected and then doing it again.”79 Staff Attorney Richard Blum of The Legal Aid Society described this grossly disparate process as “(p)erhaps the most obvious DOL communications failure during the pandemic.”80

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75 NCLEJ Interviews with Make the Road New York Staff Attorney Bransford and Staff Attorney Ward; NCLEJ Interview with LSNYC Legal Services Assistant Newman.
76 NCLEJ Interview with Make the Road New York Staff Attorney Ward (“[E]ventually, the NYSDOL at least partially translated the online application, but it took around a year for them to get around to it.”).
77 NCLEJ Interview with Make the Road New York Staff Attorney Bransford.
78 NCLEJ Interview with Make the Road New York Staff Attorney Bransford.
79 NCLEJ Interview with Make the Road New York Staff Attorney Bransford and Staff Attorney Ward; NCLEJ Interview with LSNYC Legal Services Assistant Newman.
80 NCLEJ Interview with The Legal Aid Society Staff Attorney Blum.
Workers and advocates described the toll and confusion this created, and the sense that the system was not working for them. One worker stated: “Because of my limited English, this process from the start to the finish was extremely strenuous … a city like New York, where there are so many different folks and immigrants living here, I believe it is right for the city to create a better system for the immigrants who deserve and have the right to receive public benefits.”

Ultimately, the failure to translate the application materials cut off countless LEP workers from accessing unemployment benefits and created significant burdens on family members and community and legal organizations.

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**WORKER STORY**

An LEP asbestos worker who was laid off in March 2020 called NYSDOL for months, waiting on hold for multiple hours many days without success.

> I was out of work for about three to four months and trying to call unemployment. They would have me on the phone for two to three hours and sometimes would just cut off or maybe hang up. Each time I called, I would ask for the names of the people I was talking to, and they would not give me the names. And I would be talking with them, and they would suddenly leave me on the phone and cut off the conversation.

Even after he applied, he still had to wait three months before he received benefits, which came in a lump sum. Then, he waited another two months without receiving any more benefits. During those two months, he again called repeatedly and received no explanation other than high call volumes. “I got tired of having to keep fighting with unemployment and around that time, my job started calling again, that they needed people to work.”

Even though he never received all the UI benefits he was owed, he gave up trying:

> “[O]nce I found work, I decided to stop calling to get paid…because I was tired of dealing with people who didn’t want to help me.”

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81 NCLEJ Interview with Worker 3.
82 NCLEJ Interview with Worker 4.
83 NCLEJ Interview with Worker 4.
84 Id.
85 Id.
C. FAILURE TO TRANSLATE WEEKLY CERTIFICATION FORMS

Claimants who apply for and receive benefits must certify their eligibility each week by answering questions about their work status and search for employment. However, the web-based certification forms for UI and PUA, each of which asked different questions, were available only in English. NYS DOL’s failure to translate the certification forms imposed unjustified barriers on LEP claimants seeking to maintain their benefits.

Due to the failure to translate the website, LEP claimants sometimes misunderstood the certification questions and accidentally provided incorrect answers. Several advocates described how NYS DOL denied benefits, and later sought to recoup overpayments, because of mistakes made by LEP claimants who did not understand the English-only certification forms. Advocates “spent significant time working with claimants to correct or redo the certification questions. It often took a long time for the NYS DOL to review and approve those back certifications, which meant waiting on retroactive payments for an even longer period of time.”

One LEP claimant who worked as a teaching assistant and in a nail salon described how even after she eventually got benefits (relying on her son and a non-profit organization for translation) she ran into problems with the certification process and could not obtain assistance from NYS DOL: “It’s difficult even for people who speak English to understand this concept of UIB, PUA, or the benefit process. So, when I was trying to certify my weekly benefits, it kept saying that the employer’s name and information does not match.”

D. FAILURE TO TRANSLATE “VITAL” DOCUMENTS

“Sometimes the notices that are sent by the DOL are also randomly only in English … [S]ometimes I’ll have a Spanish speaking client who says “I only received this in English” or “I never received this notice at all,” and that doesn’t work well because there are strict time limits with which you have to request a hearing for example once you receive a notice, but if you couldn’t read the notice, that’s kind-of vitiated.”

Federal regulations, as well as federal and state laws, require NYS DOL to provide “vital” documents, including time-sensitive notifications necessary to obtain or maintain benefits, to LEP workers in their primary language. “Vital” documents include

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See discussion and notes, infra § X(D).
86 NCLE Interview with Worker 2; NCLE Interview with The Legal Aid Society Paralegal Katherine Stanton (Aug. 31, 2021).
87 NCLE Interview with The Legal Aid Society Paralegal Katherine Stanton (Aug. 31, 2021).
88 Id.; NCLE Interview with NYLAG Mobile Legal Help Center Volunteer Attorney Farrell.
89 NCLE Interview with Make the Road New York Staff Attorney Ward.
90 NCLE Interview with Worker 2.
91 NCLE Interview with LSNYC Legal Services Assistant Newman.
92 See 29 C.F.R. § 38.9(h). Under 29 C.F.R. § 38.9(g)(1), the state agency “must translate vital information in written materials into these languages and make the translations readily available in hard copy, upon request, or electronically such as on a Web site.”
“information, whether written, oral, or electronic, that is necessary for an individual to understand how to obtain any aid [or] necessary for an individual to obtain any aid . . . .”. 94 This also includes communications requiring a response from the beneficiary or applicant. 95 NYSDOL’s obligation to provide translations of vital documents arises as soon as NYSDOL has notice that the worker has limited English proficiency. 96 Despite this clear federal mandate, even when LEP workers identified their primary non-English language on their UI applications, NYSDOL often sent them notices only in English. 97

For Spanish speakers, NYSDOL sent some select standard forms and correspondence, such as benefit determinations, in Spanish. 98 But even this was highly inconsistent. According to LSNYC Legal Services Assistant Samantha Newman, “I]sometimes the notices that are sent by the DOL are also randomly only in English.” 99 Other advocates confirmed a “big issue was that people who are applying online in Spanish, are getting messages back in English.” 100 And VOLS Attorney Tori Roseman explained: “Even if you ask for them, to be, they might not be, or it might only partially be translated.” 101 One advocate estimated that only 40% of form notices that should have been in Spanish actually were. 102

The lack of translation impacted workers because “there are strict time limits with which you have to request a hearing... once you receive a notice, but if you couldn’t read the notice, that’s kind of vitiated.” 103 Even if a document was translated, workers and advocates stated that DOL often only translated one sentence, such as the determination, without translating the reasoning. 104 The Legal Aid Society Paralegal Jacalyn Goldzweig Panitz described how decisions were sent to Spanish-speaking claimants in English, with only one sentence in Spanish disclosing the right to appeal. 105 But “with the rest of the decision in English,” her clients “had no way of understanding the context or making a decision.” 106

As for non-Spanish speaking LEP claimants: “The less common languages are—in there’s no translators for them.” 107 For example, Flushing Workers Center Organizer Sarah Ahn observed that NYSDOL did not translate into Korean letters regarding denials, employer contestation of benefits, and appeals. 108

NYSDOL’s Language Access Plan, required by state and federal law, confirms its failure to translate critical documents. 109 Although NYSDOL has long been required to translate vital documents into New York’s top six

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94 29 C.F.R. § 38.444.
95 U.S. Dep’t of Labor, Emp’t. & Training Admin., Unemployment Insurance Program Letter No. 02-16, at 3, https://oui.dol.gov/images/oui/UIPL/02-16/UIPL_0216.pdf (Oct. 1, 2015); U.S. Dep’t of Labor, Emp’t. & Training Admin., Unemployment Insurance Program Letter No. 02-16, Change 1 (May 11, 2020), https://oui.dol.gov/html/regs/oui/UIPL/UIPL_0216.pdf. In addition, pursuant to 29 C.F.R. § 38.9(g)(3), all communications containing vital information must contain a Babel notice, which is defined as a statement “in multiple languages informing the reader that the communication contains vital information, and explaining how to access language services to have the contents of the communication provided in other languages.” 29 C.F.R. § 38.4(i).
96 29 C.F.R. § 38.3(h); “(If) when an agency becomes aware of the non-English preferred language of an LEP claimant… the agency must convey vital information in that language.”
97 NCLE Interview with NYLAG Mobile Legal Help Center Volunteer Attorney Farrell; NCLE Interview with LSNYC Legal Services Senior Paralegal Brito; NCLE Interview with the Make the Road New York Staff Attorney Bransford.
98 Id.
99 NCLE Interview with LSNYC Assistant Samantha Newman.
100 Id.
101 NCLE Interviews with the Make the Road New York Staff Attorneys Bransford and Ward.
102 NCLE Interview with Volunteers of Legal Service Staff Attorney Victoria Roseman (March 10, 2022).
103 NCLE Interview with the Make the Road New York Staff Attorney Ward.
104 NCLE Interview with LSNYC Assistant Newman.
105 NCLE Interview with NYLAG Mobile Legal Help Center Volunteer Attorney Farrell; NCLE Interview with LSNYC Senior Staff Attorney Saik.
106 NCLE Interview with The Legal Aid Society Paralegal Jacalyn Goldzweig Panitz (Aug. 21, 2021).
107 Id.
108 Id.
109 NCLE Interview with LSNYC Senior Staff Attorney Saik; NCLE Interview with Flushing Workers Center Organizer Ahn.
110 Id.
111 NCLE Interview with Flushing Workers Center Organizer Ahn.
112 See N.Y. Dep’t of Law., supra note 46.
languages—Spanish, Chinese, Russian, Yiddish, Bengali, and Korean—NYSDOL does not translate key notices critical to accessing benefits into any language. For example, NYSDOL does not translate the Notices of Determination to the Claimant and Claim for Benefits documents, impeding LEP workers from understanding the outcome of their applications, the basis for NYSDOL’s determinations, and how to appeal. Nor does NYSDOL translate fraud and immigration notifications into any language other than Spanish. NYSDOL also fails to translate requests for secondary verification, identification, Alien Employment Verification, Social Security requests or requests for work verification or entitlements into any languages other than English and Spanish. Other key documents are not translated into New York’s six, let alone 12, most commonly spoken languages as required by state law, including eligibility instructions and the Monetary Benefit Form. Further, NYSDOL has openly admitted that it does not translate any notices to claimants eligible for overpayment recoupment waivers.

In addition, NYSDOL sent important notices concerning benefit renewals and additional federal benefits only in English—which prevented claimants from receiving all the benefits to which they were entitled. An LEP worker described how he obtained PUA with the help of a nonprofit, after which NYSDOL contacted him and told him he was eligible for additional benefits. However, he could not understand the documentation requirements, so he did not apply.

Some vital correspondence, including monetary determinations and appeals, required a response within 30 days, but workers would miss the deadline because the notice was issued only in English. By the time claimants found translators, they could not respond in time—especially if the request involved onerous requests for additional documentation. According to one advocate, NYSDOL’s failure to translate requests for immigration verification was particularly harmful:

Non-citizen [applicants] who had some form of immigration status that afforded them a work permit, such as asylum... were regularly asked for documentation, (1) proving they were authorized to work. And you have to turn in those documents within 21 calendar days. That’s a pretty tight window. If you get the notice in English, you have to schedule a call with one of us or find someone who can translate it and know what it means and know what documents you need to send in and how to send it in. There was also a lot of confusion around (1), do I need to send in my originals? Is that safe? If I don’t have to, what kind of copy does it need to be? So this was also something that created a lot of anxiety among claimants and significant delays in the application process.

NYSDOL’s failure to translate vital notices and instructions directly impacted workers’ ability to maintain their benefits. For example, when an applicants’ UI claim is pending or delayed, NYSDOL still requires workers to continue to

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10 Id. at 2. The number of languages was expanded from six to ten by Executive Order 26.1 in March of 2021; agencies have until August 1, 2022 to come into compliance. The expansion will add Haitian Creole, Italian, Arabic, and Polish. See State of N.Y., Executive Order 26.1 “Statewide Language Access Policy” (2021).
11 N.Y. Dep’t of LABOR, supra note 46, at 27, 29.
12 Id. at 29–30.
13 Id. at 17, 29–30.
14 Id. at 27.
15 NCLE Interview with VOLS Attorney Roseman; NCLE Interview with NYLAG Mobile Legal Help Center Volunteer Attorney Farrell.
16 NCLE Interview with Worker 3.
17 Id.
18 NCLE Interview with Flushing Workers Center Organizer Ahn; NCLE Interview with NYLAG Mobile Legal Help Center Volunteer Attorney Farrell; NCLE Interview with LSNY Legal Services Senior Paralegal Brito; NCLE Interview with Make the Road Staff Attorney Brandford and Staff Attorney Ward.
19 NCLE Interview with Make the Road New York Staff Attorney Ward.
20 NCLE Interview with OnYLG Mobile Legal Help Center Volunteer Attorney Farrell; NCLE Interview with LSNY Legal Services Senior Paralegal Brito; NCLE Interview with MinKwon Center for Community Action Human Resources & Operations Specialist Lee.
certify for weekly benefits. Failure to certify and comply during the set timeframe results in a denial of benefits. However, many LEP applicants did not understand this because NYSDOL failed to translate the certification questions and instructions. As Ms. Goldzweig Panitz described: “[I]f you’ve never been on unemployment before, it seems like a pretty straightforward system. You apply, you’re jobless, you get benefits weekly, but it’s a really complicated system with lots and lots of rules. What I’ve seen is people who can’t read in English assuming they were doing things right and then getting in trouble for violations of Rule 31 in a hundred-page handbook.”

Finally, LEP workers reported that NYSDOL’s online messaging system operated only in English, preventing them from following up on questions concerning eligibility, payment status, and other problems and delays with their benefits. Workers repeatedly described their difficulty using the messaging system to write to NYSDOL in their primary language—for starters, none of the mandatory subject headings were translated, which meant that claimants more often than not selected a heading that did not correspond to their question or issue. One advocate remarked: “[I]t didn’t really matter what language the text of the claimant’s message was in, the written response the claimant received was almost invariably in English.”

E. POOR QUALITY TRANSLATIONS

NYSDOL translated its website into Spanish and there is now a UI website that uses Google Translate for some languages. However, the poor machine-based translation still renders the website incomprehensible for some workers. Similar problems plague NYSDOL’s translations of documents and instructional materials. According to MinKwon Center’s Specialist Sunny Lee, NYSDOL’s translation of certain documents, including the UI guidebook, was incoherent. With the terms, directions, and guidance for UI materials already highly technical, the poor quality of translation made it even harder for LEP speakers to navigate and access UI benefits.

A central reason for poor translations is NYSDOL’s unlawful reliance on machine-based translation systems. According to Mr. Blum, “It seems like they’re using Google Translate. That can give you the general subject matter, but not much more.” Ms. Roseman agreed: “Their ‘go-to’ translation service is to use Google Translate.”

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122 NCLE Interview with NYLAG Mobile Legal Help Center Volunteer Attorney Farrell; NCLE Interview with LSNYC Legal Services Senior Paralegal Brito; NCLE Interview with The Legal Aid Society Paralegal Goldzweig Panitz.
123 NCLE Interview with The Legal Aid Society Paralegal Stanton.
124 NCLE Interview with The Legal Aid Society Paralegal Goldzweig Panitz.
125 NCLE Interview with NYLAG Mobile Legal Help Center Volunteer Attorney Farrell; NCLE Interview with LSNYC Legal Services Senior Paralegal Brito.
126 Id. NCLE Interview with The Legal Aid Society Paralegal Goldzweig Panitz.
127 NCLE Interview with Make the Road New York Staff Attorney Transford.
128 NCLE Interview with MinKwon Center for Community Action Human Resources & Operations Specialist Lee.
129 NCLE Interview with Make the Road New York Staff Attorney Ward.
130 NCLE Interview with The Legal Aid Society Staff Attorney Blum.
131 NCLE Interview with MinKwon Center for Community Action Human Resources & Operations Specialist Lee.
132 NCLE Interview with Make the Road New York Staff Attorney Transford.
133 NCLE Interview with The Legal Aid Society Staff Attorney Blum.
134 NCLE Interview with VOLS Attorney Roseman.
The inferior translation violates Title VI and state laws requiring language access, as well as federal regulations and guidance, which limit machine translation and require good quality translations.\textsuperscript{134}

Compounding the problem, the agency outsources its quality assurance for translations to private companies and allows internal staff to act as translators based on their unchecked self-assessment of their proficiency in a particular language.\textsuperscript{135} In addition, the NYSDOL’s Language Access Plan does not require the agency to consult with community organizations,\textsuperscript{136} despite the outsized and central role they play in ensuring LEP workers receive benefits.

Moreover, NYSDOL and its interpretation service Language Line lack a sufficient number of competent interpreters, especially for languages with multiple dialects or formal and colloquial distinctions.\textsuperscript{137} As a result, “it wasn’t really a great way to communicate, because the [interpreter] wasn’t being understood by the applicant, and then wasn’t properly translating what the applicant was saying to the DOL employee.”\textsuperscript{138} As Ms. Roseman explained: “To get anything translated, claimants must take a proactive approach, meaning they have to ask DOL to translate. But the problem is there is no procedure or protocol or instructions on how to do this.”

Legal Services NYC Senior Staff Attorney Nicole Salk described how “[f]or Bengali, a lot of people said that the translations were gobbledygook,”\textsuperscript{139} Ms. Ahn, who assisted workers who spoke Korean, Chinese, and other languages, said NYSDOL UI translations “always had issues. Sometimes they were very bad, sometimes okay, but there were always issues.”\textsuperscript{140} According to one LEP claimant who had to rely on her son and a non-profit to help translate and submit her application: “The biggest issue is that there is translated content out there, but the translation doesn’t embody the full culture or the process. They try to make it sound like the American process, but it doesn’t sound like the English.”\textsuperscript{141}

### F. LANGUAGE-BASED DENIALS OF BENEFITS

Language access barriers resulted in wrongful denials for a number of reasons. First, some unscrupulous employers took advantage of language access gaps to contest workers’ eligibility, falsely asserting that workers were fired for cause or refused to work, which are disqualifying grounds for UI, when in fact the employer let them go.\textsuperscript{142}

Second, LEP workers struggling to complete English-only forms often had to rely on English-speaking family members for help, sometimes leading to mistakes because the person completing the form did not have full knowledge of the facts or understanding of the terminology.\textsuperscript{143}

\textsuperscript{134} See discussion and notes, infra \S X(A).
\textsuperscript{135} “N.Y. Dep’t of Labor, supra note 4b, at 13 (authorizing the use, “occasionally and for routine matters,” of “multilingual staff volunteers who are self-assessed in their [language] competency”) and 13–14 (listing vendors for translation services).
\textsuperscript{136} See id.
\textsuperscript{137} NCLEJ Interview with The Legal Aid Society Paralegal Goldzweig Panitz.
\textsuperscript{138} Id.
\textsuperscript{139} NCLEJ Interview with Made the Road New York Staff Attorney Bransford; NCLEJ Interview with NYLAG Mobile Legal Help Center Volunteer Attorney Farrell; NCLEJ Interview with Worker 5.
\textsuperscript{137} See id.
\textsuperscript{134} See discussion and notes, infra \S X(A).
\textsuperscript{135} “N.Y. Dep’t of Labor, supra note 4b, at 13 (authorizing the use, “occasionally and for routine matters,” of “multilingual staff volunteers who are self-assessed in their [language] competency”) and 13–14 (listing vendors for translation services).
\textsuperscript{136} See id.
\textsuperscript{137} NCLEJ Interview with The Legal Aid Society Paralegal Goldzweig Panitz.
Or LEP workers completed the forms themselves and made accidental mistakes due to poor comprehension. For example, Ms. Roseman noted: “Something claimants are asked ‘Are you ready able and willing to work’ [and there is a] good chance that the question is lost in translation and therefore the answer is off.”

These kinds of errors led to wrongful denials and sometimes even fraud investigations. As one advocate described:

I’ve had problems with wrongful denials that were language-based, because the person, our clients often get fired, and the employer says to them, there’s no more work for you. And so then maybe the person wouldn’t write ‘fired’, they would write ‘no more work,’ and then there would be like a fraud issue, and then we would have to do an appeal. So that was a language access issue.

Third, once NYSDOL made forms available in languages other than English, poor translation quality caused unwarranted denials and losses on appeal. With terms, directions, and guidance for UI materials already highly technical, according to Ms. Roseman, “the challenge is that people don’t know the translation quality is poor and it leads to wrong answers or misinformation.” Often “the client does not even know it is poor translation until they get a negative determination later or run into problems.”

Advocates had to do a considerable amount of advocacy with NYSDOL to ensure eligible immigrants got their benefits, and some eligible immigrants never received the benefits they were due. According to Ms. Lama, NYSDOL “[was] not taking work permits, so we had to educate the DOL that these were work permits that were automatically extended.” Asylees were particularly hard hit. According to Ms. Lama, “asylum workers did not... get the eligibility and were waiting another seven months to see if they were eligible. A lot of students didn’t get [the benefits for which they were eligible].”

Advocates reported that domestic workers were also erroneously denied unemployment, even though they were fully eligible. The absence of translation and clear standards, as well as fear of retaliation, also led some eligible immigrant domestic workers to forego applying. According to Ms. Lama: “[F]or a lot our members, they are domestic workers, so [ ] I think there was not a lot of clarity on how these folks will apply. So, a lot of domestic workers gave up on applying... Many [were not found] eligible for unemployment even though they pay taxes and have a social security number, many were also scared whether their employer would say something to them. There was a question like... ‘During the pandemic did you leave or did your employer tell you not to come?’... so those were very differently framed questions I would say.”

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144 NCLEJ Interview with Make the Road New York Staff Attorney Bransford; NCLEJ Interview with VOLS Attorney Roseman; NCLEJ Interview with NYLAG Mobile Legal Help Center Volunteer Attorney Farrell.
145 NCLEJ Interview with Make the Road New York Staff Attorney Bransford.
146 NCLEJ Interview with VOLS Attorney Roseman.
147 NCLEJ Interview with LSNYC Senior Staff Attorney Salk.
148 NCLEJ Interview with NYLAG Mobile Legal Help Center Volunteer Attorney Farrell.
149 NCLEJ Interview with Adhikaar Senior Organizer Lama and Senior Case Coordinator Maya Gurung (June 29, 2021); NCLEJ Interview with VOLS Attorney Roseman; NCLEJ Interview with Make the Road New York Staff Attorney Ward and Staff Attorney Bransford; NCLEJ Interview with MinKwon Specialist Lee.
150 Id; NCLEJ Interview with Adhikaar Senior Organizer Lama.
151 Id; NCLEJ Interview with LSNYC Senior Staff Attorney Salk; NCLEJ Interview with Adhikaar Senior Organizer Lama.
Finally, translation problems persisted at hearings. Advocates described multiple examples where Unemployment Administrative Law Judges ("ALJs") upheld DOL’s denial of benefits because they viewed claimants as contradicting themselves when trying to correct an English-speaking family member’s translation error on their application and certification forms. 155 ALJs also assumed the application or recertification materials were available in other languages, when they were not, and issued denials on the basis that the claimants failed to fill out forms correctly or completely. 156

155 Id.
156 Id.; NCLEJ Interview with The Legal Aid Society Paralegal Stanton.
III. Increasing the Burden on LEP Claimants with ID.me
In February 2021, New York State purchased and implemented a new fraud detection system called ID.me, which relies on troubling facial recognition software and has erroneously prevented countless eligible immigrant and LEP workers from receiving benefits. According to workers and advocates, ID.me does not translate notices and instructions in accordance with New York and federal laws, imposes onerous evidentiary burdens on those flagged for alleged fraud, and significantly delays the resolution of fraud flags, leaving workers in extreme hardship without benefits for months. ID.me has barred many eligible LEP workers from receiving UI, and many others abandoned their valid UI claims because they could not navigate the system. Even as the Internal Revenue Service and other states have ceased using ID.me because of concerns about privacy, racial bias, and privatization of core government functions, and as New York advocates have pressed similar concerns, NYS DOL unaccountably continues to rely on ID.me.

Currently, every applicant has to register with the ID.me system. ID.me reviews and flags alleged fraudulent claims through an automated process that captures, stores, and uses biometric data. The primary identity verification process consists of “several automated checks to protect against identity fraud,” but “some people—through no fault of their own—can’t get past these checks.” These claimants must undergo “secondary verification” with a video referee. Advocates assert that LEP and immigrant workers are often flagged because of the spelling of their names, immigration status, and low incomes. Although NYS DOL claims that secondary verification “typically” takes less than 10 minutes, LEP workers and advocates described the ID.me verification process taking months.

Upon an ID.me hold, NYS DOL immediately bars or freezes claimants’ benefits and has refused to speak to claimants until they complete ID.me’s identity verification process, and ID.me verifies the documents. NYS DOL represents that individuals selected for identity verification will have their benefits reinstated within 10–14 days.

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156 NCLE] Interview with LSNYC Senior Paralegal Brito; NCLE Interview with NYLAG Mobile Legal Help Center Volunteer Attorney Farrell; Email from LSNYC Senior Advocate Paralegal Amanda Wilkins (Aug. 5, 2021); NCLE Interview with Worker 6.
159 See id.
161 See id.
162 NCLE Interview with LSNYC Senior Paralegal Brito; NCLE Interview with NYLAG Mobile Legal Help Center Volunteer Attorney Farrell; NCLE Interview with LSNYC Senior Paralegal Brito; NCLE Interview with NYLAG Mobile Legal Help Center Volunteer Attorney Farrell; Jennifer Lewke, News10NBC Investigates: Many Struggle to Get Through ID.me Process, News10NBC Rochester (Sept. 16, 2021), https://www.whec.com/news/many-struggle-to-get-through-idme-process/6240392 (“While 9 in 10 claimants can verify through our self-service flow in less than five minutes, those who need additional support are directed to an ID.me representative via video chat, typically in less than 10 minutes.”).
163 N.Y. Dep’t of Labor #NYSLabor, Twitter (Aug. 24, 2021, 12:01 PM), https://twitter.com/nyslabor/status/1430198566035787784?lang=en (“The ID.me process is not optional for claimants who are selected for identity verification. If selected for ID.me, you will not receive benefits or be able to speak to an agent until your identity is verified & processed in 10-14 days.”).
but LEP claimants and advocates report that it takes far longer after they submit their documents—if claimants have their benefits reinstated at all. And although federal guidance requires workers to receive notice of an ID.me fraud suspicion flag, countless New Yorkers, and particularly LEP workers, have received none.

While NYSDOL officials say that they translate fraud notifications, workers and advocates report that ID.me sends fraud notices in English only, despite claimants’ notification to DOL that they do not speak or understand English. Several other critical components of ID.me are not translated into New York’s top six languages (Spanish, Chinese, Russian, Yiddish, Bengali, and Korean), or the top ten (adding Haitian Creole, Italian, Arabic, and Polish). The NYSDOL’s Language Access Plan confirms that fraud-related forms are only available in English and Spanish. According to one advocate, “all [the notifications] came in English—even e-mail or text messages were all in English.

It’s very strange because the application says “what is your preferred language” and every time I put Korean in, nothing comes in Korean, so why bother even asking about what language my preference is, if you’re not going to give that to my clients.” The English-only notices made it difficult for many to understand the problem, comply, and reinstate their benefits.

ID.me directs claimants to use its platform to verify their identity by submitting a photo of state-issued identification, taking a video selfie for facial recognition, and providing their social security number. Workers who cannot complete the verification because of an issue with their documentation must have a smartphone or tablet and the ability to join a video call (with a computer or phone with a camera) so they can contact an ID.me “trusted referee” (not a NYSDOL representative) for a video call. During this video call, claimants must present two primary government-issued identification documents or one primary and two secondary identification documents. The primary identification generally consists of government-issued photo identification or

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160 NCLE Interview with Worker 6; NCLE Interview with LSNYC Senior Paralegal Brito; NCLE Interview with NYLAG Mobile Legal Help Center Volunteer Attorney Farrell.


162 See, e.g., NCLE Interview with Worker 6; NCLE Interview with LSNYC Senior Paralegal Brito; NCLE Interview with NYLAG Mobile Legal Help Center Volunteer Attorney Farrell.

163 NCLE Interview with Worker 6; NCLE Interview with LSNYC Senior Paralegal Brito; NCLE Interview with NYLAG Mobile Legal Help Center Volunteer Attorney Farrell; NCLE Interviews with Make the Road New York Staff Attorney Ward and Staff Attorney Bransford; NCLE Interview with MinKwon Center for Community Action Human Resources & Operations Specialist Lee; NCLE Interview with LSNYC Assistant Newtrain.

164 E-mail attachment from Lorettta Hamilton, NYSDOL Interim Director of the Claimant Advocate Office, Sue Filburn, NYSDOL UI Division, and Laura Campion, NYSDOL General Counsel’s Office, UI Coalition ID.me Issue Areas, March 15, 2022 (sent March 23, 2022) (on file with author).

165 See N.Y. Dep’t of Labor, LANGUAGE ACCESS PLAN, supra note 46, at 29-30.

166 NCLE Interview with MinKwon Center for Community Action Human Resources & Operations Specialist Lee.


birth certificate, and must be an original, \(^{178}\) while the secondary identification must be a Social Security Card or tax, immigration, insurance or other documentation. \(^{179}\)

The technological requirements pose serious barriers for low-income applicants. Legal Services NYC Senior Advocate Paralegal Amanda Wilkins described how her clients who “are not computer savvy face particular problems” and that it “takes very long to get help.” \(^{180}\) One of her clients who had technical problems with ID.me went ten months without benefits. \(^{181}\)

Many claimants simply could not get ID.me to verify them through the system despite trying multiple times for months. \(^{182}\)

According to Mr. Brito, the ID.me process, even in English, is complicated and confusing and must be done precisely. \(^{183}\) Immigrant workers face additional barriers because of the lack of translation and because the system has difficulty processing foreign-issued documentation. \(^{184}\)

Advocates also reported that ID.me’s technology often did not accept or recognize photos of people with darker skin tones. \(^{185}\)

Ms. Wilkins from LSNYC described:

> “I have so many cases regarding the issue of ID.me problems, it’s hard for me to count through all my cases. But, most of my clients are having technical issues or are waiting so long to get their benefits after completing their ID.me website uploads … There are so many issues … [especially the fact that there is a language barrier because … everything they are doing with ID.me is all in English only].” \(^{186}\)

**WORKER STORY**

One French-speaking claimant we interviewed demonstrates the harsh consequences of ID.me’s failures. After losing his job as a cleaner at JFK Airport in March 2020, he eventually got UI benefits with the help of his roommate, who spoke English. However, in May 2021, NYSDOL suddenly cut off his benefits. He eventually received a letter in English explaining that he was under investigation for fraud, and his benefits would be withheld until he could establish his eligibility. The instructions for how to comply with the ID.me documentation requirements were all in English. He called the number on the letter multiple times but could not get ID.me to verify them through the system despite trying multiple times for months.

According to Mr. Brito, the ID.me process, even in English, is complicated and confusing and must be done precisely. Immigrant workers face additional barriers because of the lack of translation and because the system has difficulty processing foreign-issued documentation.

Despite complying with the requirements, NYSDOL never reinstated his benefits. He tried contacting ID.me through video and telephone calls, as well as NYSDOL, but his attempts were all unsuccessful. Because of his lack of UI and the financial instability that followed, he could not pay rent, was evicted from his apartment, had to sign up for food stamps, and could not pay for transportation or food. He was forced to move into a homeless shelter. \(^{187}\)

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\(^{178}\) The list of primary identification documents includes: U.S. or Canadian Driver’s License; Permanent Government-issued Photo ID (paper documents are not accepted); State-issued ID: U.S. Passport or Passport Card; U.S. Permanent Resident Card; Employment Authorization Card or Certificate of Naturalization; Veteran Health ID Card; DHS Trusted Traveler Card; Tribal-issued Photo ID; and, for claimants living outside the U.S., a National ID card. Id.

\(^{179}\) The list of secondary identification documents—a claimant must provide two of these if they can only present one primary identification document—includes: Social Security Card; DoD or Consular Certificate of Birth Abroad; DoS Certification of Report of Birth; U.S. Voter or Health Insurance Card; U.S. Birth Certificate; College Certificate; Border Crossing Card; Native American or Canadian Indian tribal document or card; W-2, 1099, or 1098 Forms; Insurance Statement; and Auto Insurance Cards. Id.

\(^{180}\) Email from LSNYC Senior Advocate Paralegal Wilkins (Aug. 5, 2021).

\(^{181}\) Id.: NCLE Interview with The Legal Aid Society Paralegal Stanton; See N.Y. Unemployment Ins. Coal., Letter to NYSDOL Commissioner Roberta Reardon, NYS Department of Labor’s Implementation of Claimant Identity Verification Through ID.me, Dec. 3, 2021 (on file with author).

\(^{182}\) NCLE Interview with Worker 1; NCLE Interview with Worker 6; NCLE Interview with Worker 3; NCLE Interview with Minookan Center for Community Action Human Resources & Operations Specialist Lee; NCLE Interview with LSNYC Senior Paralegal Brito; NCLE Interview with NYLAG Mobile Legal Help Center Volunteer Attorney Farrell.

\(^{183}\) Id.

\(^{184}\) NCLE Interview with LSNYC Senior Advocate Paralegal Wilkins, supra note 180.

\(^{185}\) See email from LSNYC Senior Advocate Paralegal Wilkins, supra note 180.

\(^{186}\) Id.

\(^{187}\) NCLE Interview with VOLS Staff Attorney Roseman; NCLE Interview with NYLAG Mobile Legal Help Center Volunteer Attorney Farrell.
Workers described the serious toll on their lives when, after receiving UI benefits for months or even a year (after a struggle to access benefits to begin with), they were suddenly thrown off because of an ID.me flag. They often could not get through to NYSDOL or ID.me to ask questions, and when they did, they received conflicting instructions.\(^{188}\)

Because of ID.me’s inability to recognize documentation and other processing problems, workers experienced unconscionable delays and denials. For example, Mr. Brito described one client who waited nine to ten weeks with no benefits because of a wrongful ID.me flag.\(^{189}\) After struggling with translation and obtaining the required documents, the worker submitted his birth certificate, Social Security Card, and state identification to ID.me. After three weeks with no response, he re-uploaded his documentation, yet six more weeks passed before his reinstatement. As a result of the ID.me delays, despite his full compliance, he lost months of UI benefits.\(^{190}\)

The Legal Aid Society Paralegal Katherine Stanton explained: “[O]ftentimes a claimant has already submitted [to] ID.me, and they think it’s fine, but for some reason it hasn’t gone through and the DOL hasn’t followed up to ask them to submit another ID.me or to ask them for further information. They’re not communicating with the claimants about why their benefits have been cut are always tied up.”\(^{191}\)

Ms. Ahn from Flushing Workers Center reported that eligible LEP workers simply gave up on the process. For these applicants, facing the barriers first with NYSDOL and then with ID.me was “hurdle hurdle hurdle – and not worth it.” Members of the Workers Center “eventually went back to work” without ever collecting the UI benefits due them.\(^{192}\)

Steve Gray, Senior Counsel for the National Employment Law Project, publicly described how the insurmountable barriers have had a chilling impact on workers, reporting stories of people “who just threw their hands up and gave up due to problems with the ID.me verification process ranging from long waits for video chats to issues accessing the technology needed to sign up[].”\(^{193}\)

According to Mr. Gray, ID.me “has a serious chilling effect on the application process . . . which means people just leave and walk away. And we don’t have a good way of telling right now why they’re not completing the application.”\(^{194}\)

Notably, multiple advocates reported that, in their experience, English-speaking claimants were far less likely to get flagged, and when they did, resolved their problems much quicker.\(^{195}\)

One advocate estimated based on her caseload that seven out of ten applicants flagged for fraud by ID.me were non-English speakers.\(^{196}\) The

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188 Id.; NCLEJ Interview with Worker 1; NCLEJ Interview with Worker 3; NCLEJ Interview with MinKwon Center for Community Action Human Resources & Operations Specialist Lee; NCLEJ Interview with LSNYC Senior Paralegal Brito; NCLEJ Interview with NYLAG Mobile Legal Help Center Volunteer Attorney Farrell; NCLEJ Interview with The Legal Aid Society Paralegal Stanton.

189 Id.; NCLEJ Interview with LSNYC Senior Paralegal Brito.

190 Id.; NCLEJ Interview with The Legal Aid Society Paralegal Stanton.

191 Id.; NCLEJ Interview with Flushing Workers Center Organizer Ahn.


193 Id.; NCLEJ Interview with NYLAG Mobile Legal Help Center Volunteer Attorney Farrell; NCLEJ Interview with LSNYC Senior Paralegal Brito.

194 Mobile Legal Help Center Volunteer
off and there’s no way for the claimants to really get in touch with them because the phone lines impact was devastating: critical UI benefits would simply stop, often for those who needed it most.

**WORKER STORY**

One worker lost benefits for months after ID.me cut him off. He did not receive the fraud notice and only found out he had been flagged when he called NYSDOL to ask about his missing benefits. Working with an advocate, he found and sent four documents to prove his identity: his “Green Card, passport, Social Security Card, and driver’s license or NYS ID card.”

While waiting, he called dozens of times but rarely got through. When he reached someone, different agents gave him different explanations. According to the applicant, every agent “was different, interpretations are different [. . .] I understand that everyone interprets things differently, but because interpretations are different, obviously the solutions were all different.”

As he described:

> I called and said, “Well, the [representative] said this was incorrect,” and so we called again and we sent it again and the last straw was “oh your social security number is not valid” because it was an H1B instead of a regular one I guess. But then [DOL/ID.me] called last week and she was like, “Oh, this was a valid social security card.”

The worker was never informed why ID.me and NYSDOL flagged him for fraud, and his benefits were held up for months before being reinstated.

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197 NCLEJ Interview with Worker 1.
198 Id.
199 Id.
200 NCLEJ Interview with Worker 1.
IV. Unconscionable Delays in Adjudication and Payment
“Hours would become weeks would become months.”

In addition to the federal statutory mandate that states pay claimants their benefits “when due,” federal regulations set clear time limits for processing and payment. Under 20 C.F.R. § 640.5, the United States Department of Labor requires that 87% of initial payments be made within 21 days, and 93% of all initial payments within 35 days of the end of the first compensable week. Similarly, federal regulations for PUA benefits required states to pay 87% percent of eligible individuals within 14 to 21 days of their application. In compliance with these regulations, NYSDOL’s website represents that the “first payment will generally be made in two to three weeks from the time [a] claim is completed and processed.”

Nevertheless, workers report—and NYSDOL data confirm—serious payment delays. From April 2020 to December 31, 2021, NYSDOL paid only 58.5% of claimants within 14 or 21 days of the submission of their claims. NYSDOL has attributed these delays to its antiquated main frame computer problem resulting from the long-term disinvestment for 50 years in the UI system. The software programs that run the systems were “written in the 1970s and 1980s and remain constrained by the technology of that era.” These issues lead to serious delays in UI benefits, and onerous burdens on claimants, including the need to find a fax machine to submit required paperwork. Notably, while the pandemic temporarily increased UI applications to unprecedented levels, these delays have persisted into the present—and NYS still falls well below federal mandatory standards for processing UI claims.
For LEP workers, these delays could be especially severe. Ms. Newman, from LSNYC, estimated that 90% of their requests for assistance concerned delays. The Legal Aid Society Paralegal Ms. Stanton identified delays and “timely receipt of benefits” as one of the primary problems LEP and other applicants faced: “I’ve had clients apply and months later, haven’t received an approval or a denial. Radio silence.” Workers waited up to five months for benefits to be issued from the point when they applied.

UI claimants generally faced delays. According to one investigative report:

“[UI Claimants] have endured dozens of website attempts, getting oh-so-close to completion only to have their session time out and send them back to the beginning.

Every advocate and worker we spoke to reported long wait times to speak with NYSDOL agents and delays in processing claims and receiving benefit payments. One advocate described waiting on the phone for “hours on end, and then often times [we] would get frustrated, and [the U.S. DOL agent would] tell them to try calling back a different time. And so … hours would become weeks would become months.”

**WORKER STORY**

Omar Ramos, a school bus dispatcher in Rockland County, and his wife Angelina, an administrative assistant, waited six weeks for unemployment after losing their jobs in March 2020, and only received their checks through constant persistence. Mr. Ramos called NYSDOL more than 200 times a day [sic.] without getting through. According to Mr. Ramos: “Until you have done it yourself, you don’t know what people are going through.” He described the UI system as “chaotic, buggy, and full of useless information.”

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207 NCLEJ Interview with LSNYC Assistant Newman.
208 Id.
209 Id.
210 Kramer & Taddeo, supra note 24.
211 NCLEJ Interview Queen City Worker Center Organizer Lister.
212 Kramer & Taddeo, supra note 24.
V. Overpayments and Punitive Clawbacks
In another blow to UI claimants, NYS DOL overpaid benefits to thousands of workers—through its own errors and confusing instructions—and now demands repayment even as the federal government has made clear that states should not recoup such overpayments. Some of the overpayments have been “enormous”—“tens of thousands of dollars.”

For example, in April 2021, NYS DOL began collecting overpayments it made in April and May 2020. According to U.S. DOL statistics, between April 2020 and April 2021, New York State issued $69 billion in UI benefits, of which nearly $115 million was overpaid.

Even though the federal government has issued guidance requiring states to refund certain federal overpayment collections it has obtained from workers and recommending states implement several broad categories of overpayment waivers—and does not seek return of these overpayments—NYS DOL subjects workers to debilitating repayment plans, interest, and fines. "Many workers already spent the money on essentials, including rent and food, and now face large debt burdens through no fault of their own." When claimants cannot repay the debts, NYS DOL seizes a portion of their remaining benefits or takes other punitive measures against workers still struggling to achieve economic security.

The overpayments stemmed from NYS DOL’s processing and substantive errors, conflicting

U.S. DOL regulations, language barriers, and another issue—and frequently not the fault of the claimants.

As one advocate described: “[A]t the beginning of the pandemic, it seemed as though the Department of Labor was making hasty determinations just to get money into people’s pockets, which isn’t necessarily a bad thing. But then later on, and I mean months later, they tried to claw that money back, as if the claimants were at fault for not catching the Department’s own error.” NYS DOL has sought enormous clawbacks, such as $25,000 over 36 months from an individual claimant.

Ms. Goldzweig Panitz noted the toll of clawbacks on workers and the problematic fraud narrative that wrongly blames workers who are unfairly penalized:

> The important thing to remember about the Cuomo administration, perhaps the current administration, is that they loved putting out fraud statistics. They say, ‘We saved NY $60B last year.’ What that actually means is that someone made an easy mistake and then gets their money clawed back from them. They’re going after people who spent the UI on rent and food, and kept the economy afloat.”

Notably, NYS DOL does not translate overpayment notifications, like so many other NYS DOL documents.

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211 NCLEJ Interview with LSNYC Assistant Newman.
214 NCLEJ Interview with The Legal Aid Society Paralegal Goldzweig Panitz.
215 Id.
217 NCLEJ Interview with LSNYC Senior Staff Attorney Salk; NCLEJ Interview with NYLAG Mobile Legal Help Center Volunteer Attorney Farrell; NCLEJ Interview with VOLS Staff Attorney Roseman.
218 NCLEJ Interview with Make the Road New York Staff Attorney Ward.
219 NCLEJ Interview with LSNYC Senior Staff Attorney Salk and Email from Nicole Salk to NCLEJ (March 22, 2022).
220 NCLEJ Interview with The Legal Aid Society Paralegal Goldzweig Panitz.
221 NCLEJ Interview with Flushing Workers Center Organizer Ahn; NCLEJ Interview with VOLS Attorney Roseman.
The overpayment amounts can be staggering. Ms. Salk reports that one of her LEP client is facing a $35,000 overpayment, plus an additional $4,000 monetary penalty because her application was not properly assessed for PUA eligibility. Her client could not find childcare due to the pandemic, but instead of assessing her eligible for PUA, NYSDOL issued her traditional UI benefits they are now seeking to collect repayment for, due to their error.

To make matters worse, even when workers sent NYSDOL money in repayment, NYSDOL did not cash the payments for months afterwards—and continued to deduct 20% from these workers’ UI benefits as if they hadn’t already paid. Many workers reported repaying their overpayments after they received notice in April 2021, and NYSDOL publicly stated in May 2021 that it would cash checks within 45 days. However, as of June 2021, NYSDOL still had not cashed the repayment checks and was still deducting penalties from workers’ UI checks.

The federal government has a waiver program, but New York has been egregiously slow in implementing these waivers. In February 2021, 12 state senators wrote NYSDOL Commissioner Reardon, urging the State to forgive state and PUA unemployment obligations, which federal law permits. In April 2022, six organizations urged Gov. Hochul to pause overpayment collections in light of the broad federal waivers. The Governor and State DOL refused to do so. In contrast, recognizing the deep economic pain imposed on workers by these clawbacks, numerous states have paused all overpayment collection, adopted these waivers for hundreds of thousands of workers, and refunded eligible workers for overpayment recoupment.

Further, as of May 2022, even with the relatively small number of overpayment waiver notices NYSDOL has sent out to eligible claimants, NYSDOL representatives openly admitted that the notices were only in English. NYSDOL did not translate any notices it sent about claimants’ eligibility for and instructions for obtaining overpayment waivers. As a result, overpayment waivers are still out of reach for LEP workers, left in the dark about their ability to get relief.

Assemblywoman Latoya Joyner and Senator Liz Krueger introduced legislation in 2022 that would require New York to adopt the federal waivers. According to Senator Krueger: “Out of work New Yorkers have suffered enough in this pandemic—they don’t need the state pounding on their door to collect debts they never even knew they had incurred in the first place. These overpayments were the result of mistakes made by the state, and the state should pay for them.”

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222. Email from Nicole Salk to NCLE (March 22, 2022).
223. Ibid.
225. Ibid.
226. Ibid.
227. NCLE Interviews with LSNYC Senior Staff Attorneys Salk; NCLE Interview with NYLAG Mobile Legal Help Center Volunteer Attorney Farrell; NCLE Interview with VOLS Staff Attorney Roseman.
228. Letter from James Gaughran et al., N.Y. Sen’s., to Roberta Reardon, Comm’r, N.Y. Dep’t of Lab (Feb. 12, 2021), https://www.nysenate.gov/newsroom-releases/liz-krueger/senators-call-state-department-labor-forgive-unemployment#~text=4%22Out%20of%20work%20Ne wYorker,-state%20should%20pay%20for%20them.
232. 46
VI. Human Impact
“All my debts were coming down on top of me, I was not able to pay my rent, and my card expired. I had a car that I was paying off, and I had to call to ask for a chance, and I really went through a lot of things . . . . I always save my money, but it wasn’t enough, and my savings all ran out.”

As a result of NYSDOL’s wrongful denials and delays, LEP workers faced extreme economic hardship, compounded by pandemic-related stress, anxiety, and health concerns. Nonprofits stepped in and people formed mutual aid groups, but many people could not afford basic expenses for food, rent, and utilities. Some became homeless. Others had to take unsafe jobs because they had no other option. People “literally couldn’t feed their families . . . . [I]t was like the DOL was assuming people could afford to wait weeks, when in fact, they were like waiting in line to try to get food.”

Ms. Goldweig Panitz described:

For people who haven’t gotten benefits for 6-8 months, the problems compound, especially if they have bills. Sometimes we send groceries to people. I remember talking to a client and she suddenly said she hadn’t eaten all week and that she’s been drinking protein powder shakes. She depleted her savings.

Buffalo-based organizer Ms. Lister described the toll of delayed benefits: a woman whom the worker center was assisting “basically was being left with no resources . . . not even a couple bucks to take the bus to come get to the worker center. . . . [And] having been very concerned about possible eviction, because [] it had been months where she hadn’t been able to get any sort of income.”

Workers to whom NYSDOL wrongfully delayed and denied benefits could not cover utilities, medical bills, and other expenses, resulting in escalating penalties. One advocate described hearing from claimant after claimant: “First, we couldn’t pay that then we couldn’t pay our light bill, but then we had to pay extra on our light bill because we couldn’t pay it, then we couldn’t pay our rent, and we had to pay this fee, then we had to pay . . .[the delays] ends up costing you so much more money.” Ms. Goldweig Panitz commented: “These benefits were made weekly for a reason. Six months later a check for $12,000 is not as helpful as $600 a week [now]. I can’t imagine what people’s credit scores look like; the financial consequences have been horrible. And they’ve had their cars repossessed.”

Even formerly middle-class claimants struggled. Ms. Salk described how workers “relied on the pre-food program that the city was doing . . . they relied on food stamps, they weren’t paying rent, they weren’t making their car payments. They relied on family. . . . We had a lot of formerly middle-class folks who weren’t used to struggling, and they had trouble because they didn’t know how to handle things.”
As Ms. Stanton of The Legal Aid Society witnessed:

Financially, people are falling behind on their rent and utility payments. Worrying about just general finances, the emotional toll. While a lot of clients are simultaneously dealing with UI issues, wrongful denials or unable to contact DOL, they’re also going through different medical issues. It’s an immensely stressful issue to deal with while they’re already going through concurrent medical issues, or family care issues. I think the whole stressful nature of it is compounded by DOL’s horrible communication and they are drowning with no clear answer or understanding of what’s going on.

According to Ms. Ward from Make the Road New York:

So many people were waiting months and months and couldn’t pay their rent, couldn’t even buy food for their families. They knew that they were entitled to the money but had no way of accessing it. It was heartbreaking to see people give up and decide they weren’t going to get unemployment benefits, even though they were 100% eligible and entitled to them ... I know a lot of people who have not paid rent in over a year now and are facing eviction from their homes, and I imagine that a lot of those who were unable to tap into their unemployment are in that horrible situation.

At the height of the pandemic, many eligible LEP workers barred from receiving unemployment benefits had no choice but to accept unsafe work—they had to work to survive.

The absence of unemployment benefits—to which they were legally entitled—contributed to the already sharp, disturbing disparities of immigrants and people of color forced to work in unsafe, high risk jobs.

This harmed workers deeply:

People would be waiting for months to get the unemployment benefits that they were owed. In the interim, they faced the difficult choice of either holding out for benefits that may never materialize or going back to work, even if it meant unsafe work, to try to make ends meet. Of course, if someone did take a job here and there, this created a host of issues around what to put when they certified. DOL recently changed its rules on this issue, but for a long time, if someone worked four days a week but only one hour or less each day... they were still completely ineligible for benefits for that week. People are in desperate situations. They want to put down the right thing, but it also just seems really unjust to take away someone’s entire benefit, because they got a job that was going to feed dinner to their kids for a night. So, I was very frustrated by the way that people had to certify and being stuck in that hard place ... waiting on benefits while also [ ], feeling like they had no choice but to take really risky, unsafe jobs to survive.

“[T]he government really doesn’t want to help us, they know that people are dying here because of COVID . . . why can’t it just be easy?”
An advocate powerfully captured the experience for LEP applicants as “hugely” impactful and “incredibly stressful and scary” especially because most of her clients lived paycheck to paycheck and did not have savings. However, she was also impressed with her clients’ strength and determination:

“I’m always impressed by how composed my clients are. [They say:] ‘Yeah I haven’t received benefits for months, yeah. I don’t know how I’m paying anything.’ And most of them are pretty chill about it, and I’m just like, ‘You’re something special,’ because it’s been a truly ridiculous time, and I think it would be one thing if...

there were people who weren’t being approved for benefits, but there’s people who are enduring patiently, the ridiculousness of not being paid for months, not knowing what to do, not being able to talk to anyone, and they get to me and they’re somehow together. There’s something special. And so, it’s been pretty remarkable.

Not everyone has savings, some people are living paycheck to paycheck, you lose that, and then you’re not able to get your benefits—it’s incredibly stressful and scary.”

NCLEJ Interview with LSNYC Assistant Newman.
VII. Burden on Nonprofits
Because of the absence of translated applications and other documents critical for the UI application process, nonprofit community, immigrant, and legal organizations throughout New York had to reorient their work towards assisting UI claimants. These organizations redirected resources and assigned staff to help LEP workers through every stage of the process—becoming a safety net for the LEP, immigrant, and broader community struggling to access UI benefits and put food on the table during one of the most stressful periods in recent history.

Community organizers, policy advocates, and leaders became front line interpreters and translators for workers applying for unemployment. Attorneys who had never worked on UI turned into specialists. Some organizations set up food pantries in response to continued requests for resources for food. Organizations and advocates had to abandon other areas of mission, including citizenship assistance, tenants’ rights, civic advocacy, and organizing work, to focus on helping LEP individuals apply for unemployment.

Organizations set up direct service clinics, provided their personal cell phone numbers, and assisted people by Zoom, Facetime, telephone, and in other nontraditional ways: “So especially at the start of the pandemic, you know, this involved things like meeting with a worker out in a park . . . with my own personal laptop, and trying to assist them with going the online route.”

Because NYSDOL’s physical offices were closed, advocates also took on the task of collecting and scanning required documents. Advocates described a frenzied environment:

"We just were getting flooded with calls from people who were trying to apply, who knew they were eligible. And then there are five attorneys on our team and at the time two paralegals, and so we were sharing information because it was all being done by phone. We were having people take screenshots of what they were seeing on the online application, or they were just relaying to us what their experience had been trying to apply by phone."

LEP workers detailed how they had to rely on nonprofits because they could not understand the UI forms, applications, or instructions. Advocates’ assistance with each initial application could take up to two hours. One worker described:

"Because I didn’t know English, I needed help. If it wasn’t for nonprofits like this, I probably wouldn’t receive the insurance benefits. At the time I didn’t know any information regarding the rules. When I asked for help, it was a staff member and I looking at the screen, and they went through the eligibility process, and then they went through the application process and that took like an hour or two because she had to translate to me, and I had to tell back to her."

252 NCLEJ Interview with Worker 1.
253 NCLEJ Interview with Make the Road New York Staff Attorney Ward and Staff Attorney Bransford; NCLEJ Interview with Minkwon Center for Community Action Human Resources & Operations Specialist Lee.
254 NCLEJ Interview with Minkwon Center for Community Action Human Resources & Operation Specialist Lee.
255 NCLEJ Interview with Make the Road New York Staff Attorney Ward and Staff Attorney Bransford.
256 NCLEJ Interview Queen City Worker Center Organizer Lister.
257 NCLEJ Interview with Make the Road New York Staff Attorney Ward and Staff Attorney Bransford.
258 NCLEJ Interview with MinKwon Center for Community Action Human Resources & Operation Specialist Lee.
And an advocate explained:

**Many of our clients find automated phone lines, ostensibly simple web forms, and other common technology steps to access services confusing, due to language barriers or unfamiliarity. At this time of high anxiety, stress, and fear, they sometimes become even more overwhelmed with those feelings of helplessness, and it can be harder to talk someone through those processes by phone than in person.**

In addition to providing direct services, nonprofits translated NYSDOL guidance and instructions into Spanish, Hindi, Korean, Mandarin, Cantonese, and other languages, and distributed these translations to community and advocacy groups assisting individuals with unemployment. According to Mae Lee of the Chinese Progressive Association:

**There’s a lot of information being pushed out, but in the Chinese language, it’s very uneven. Sometimes you have a translation, and sometimes you don’t. This places a greater burden on community organizations to help clients navigate. Immigrants are not accessing [benefits] because they think they aren’t eligible, and still need assistance to access the benefits they are eligible for.**

To address the complexities of the system, organizations developed videos and other materials to help people with the application process. For example, because of NYSDOL’s failure to translate the PUA application and instructions, Make the Road New York “decided we needed to create a PDF guide with screenshots of knew what the difference was between UI and pandemic unemployment assistance, and what the application looked like in English versus Spanish. We then paired this guide with recorded Facebook Live events, during which we would walk through the entire application and explain what each step meant, so that people could follow along.”

NYSDOL made these advocates’ jobs harder by restricting their ability to assist, interpret, and translate. NYSDOL representatives treated advocates rudely and even hung up on them because they were not family members. Some NYSDOL UI representatives refused to speak to advocates even when the claimant was on the phone and consented to representation. And NYSDOL strictly enforced rules requiring claimants to fill out UI forms themselves—even when the forms were only available in English. This made the process of helping applicants even longer and more arduous:

**Part of what made this really difficult is you’re . . . not allowed to have someone else fill out the application for you. [The claimant has] to physically click the buttons. And while it’s an incredibly frustrating rule for everyone, advocates who worked with English speakers who had access to a computer or smart phone were often able to set up a Zoom, share their screen, walk the claimant through the form, and then the client would fill out the online form themselves and come back if they had questions. That just wasn’t an option for most of our clients, because the application either wasn’t available in their language,**

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263 African Friends Service Committee Representative, quoted in AMANDOLARE ET AL., supra note 37.

264 Id.

265 NCLE] Interviews with Make the Road New York Staff Attorneys Ward and Bransford; NCLE] Interview with MinKwon Center for Community Action Human Resources & Operations Specialist Lee; NCLE] Interview with Adhikaar Senior Organizer Lama.

266 NCLE] with Make the Road New York Staff Attorney Ward.

267 NCLE] Interview with MinKwon Center for Community Action Human Resources & Operations Specialist Lee.

268 NCLE] Interviews with Make the Road New York Staff Attorney Ward and Staff Attorney Bransford; NCLE] Interview with MinKwon Center for Community Action Human Resources & Operations Specialist Lee.
the application and step-by-step instructions for people applying... so they...

Without the assistance of nonprofits, many workers never would have gotten their benefits:

We met with many individuals, particularly elderly individuals, who didn’t have a family member or friend who was fluent in English or tech savvy. I don’t know if they would have ever gotten through the application process without our assistance. Nonprofits took on the burden of providing services that really the Department of Labor should have been providing from the beginning. Without our services, many eligible workers wouldn’t have gotten benefits at all.266

In Islam v. Cuomo, the Southern District of New York noted the immense stress placed on the New York Taxi Workers Alliance.267 The barriers to UI required the organization to dedicate its focus to the filing and appeals process for unemployment insurance claims. It specifically found that NYTWA’s focus on UI benefits forced it to move away from its traditional functions of providing aid to drivers needing help with wage theft, debt forgiveness, aiding deceased drivers’ families, and the additional pandemic related task of distributing personal protective equipment for the drivers.268

Every organization NCLEJ interviewed described a similar harm to their provision of core services, from integrating and engaging immigrant communities and educational services to other vital legal work. As Mr. Blum at The Legal Aid Society described:

I felt hijacked by the incompetence of the Department of Labor. I wasn’t spending a lot of time on unemployment until the beginning of the pandemic. Granted, if there were competent systems, there still would have been a huge need at that moment, but it was especially acute because it was such a disaster. So, my entire job was hijacked for a number of months.269

But organizations also took pride in the way they stepped up to meet core needs in a time of crisis.270

ORGANIZING STORY: QUEEN CITY WORKER CENTER

“A lot of times when crises come, and the government does not respond, I think that that’s a lot of times when social movements or worker centers actually kind of get more fire under their, you know, whatever. So, for us, I think it did actually become kind of like a catalyst for us becoming more of the kind of worker center we were trying to be anyways, where, you know, a lot of workers coming in the doors, you know, the work that we were doing as organizers being very dependent on what people were coming in it really kind of catapulted us further along the process. And, and that was actually something I mentioned before, that we had talked with a sister worker center in Houston, at the beginning of the pandemic about what they were doing. And they basically told us that they had also really gotten their start during a crisis. For them, it was like a natural disaster. But they said, you know, unfortunately, there’s going to be a lot of needs in the community. And so you really need to, like, jump on this and be effective. If you do,

See, e.g., NCLEJ Interview with LSNYC Legal Services Assistant Newman.

265 Id.
266 Id. at 154. The plaintiffs were represented by Brooklyn Legal Services Senior Staff Attorney Nicole Salk.
268 Id. at 154. The plaintiffs were represented by Brooklyn Legal Services Senior Staff Attorney Nicole Salk.
269 NCLEJ Interview with The Legal Aid Society Staff Attorney Blum.
270 See, e.g., NCLEJ Interview with LSNYC Legal Services Assistant Newman.
and asking us about, trying to, like, think of very innovative ways to be accessible to workers, like I mentioned, like, you know, going to workers’ houses, or parks or things like that. So I think that for the worker center, it really kind of, I think then it can be a way to really like start to, you know, bring folks in and learn from the people in the community who are most affected by these things.”

271 NCLEJ Interview Queen City Worker Center Organizer Lister.
VIII. Legal Violations
Despite clear state and federal requirements, NYSDOL has created and maintained serious and widespread language access barriers throughout the UI system that have prevented and continue to prevent LEP individuals from accessing unemployment benefits. As a result, NYSDOL has violated and continues to violate not only EOs 26 and 26.1 (and now N.Y. Exec. Law § 202-a), but also Title VI of the Civil Rights Act of 1964 and the Social Security Act.

Fundamentally, by delaying and denying benefits to LEP claimants (or attempted claimants) by reason of their inability to understand vital documents and notices issued only in English or in very poor-quality translations, NYSDOL has deprived LEP claimants of unemployment benefits and discriminated against them. 272

Further, NYSDOL’s imposition of ID.me, as well as its biometric digital identity credentialing, raises serious statutory, due process, and discrimination concerns. In essence, in the name of preventing “fraud,” New York has outsourced its governmental duty to provide critical UI benefits to a private system that, without statutory or regulatory basis, conditions UI on additional eligibility requirements and the submission of biometric information. It further flags innocent claims as fraudulent, preventing or freezing payments for weeks and sometimes months, which makes it impossible for many LEP and immigrant workers to maintain their benefits despite their dire need.

By failing to translate the ID.me documentation and process for LEP claimants, NYSDOL is violating Title VI and state laws mandating that vital documents be translated into New York’s top six (now 12) languages. 273 New York State has conditioned UI benefits on compliance with ID.me, with no alternative option available, yet has failed to translate materials or to provide interpreters so that LEP applicants can successfully navigate the process. 274

NYSDOL’s use of ID.me also raises serious due process concerns and conflicts with the federal Social Security Act, which requires states to provide benefits to claimants “when due.” 275 In violation of fundamental due process principles and federal guidance, 276 NYSDOL fails to provide LEP claimants with notice and a meaningful opportunity to contest any flag fraud. And the infliction of substantial delays in processing claims conflicts with the basic presumption in federal and state UI laws and guidance that workers should be presumed eligible to receive continuing benefits and are “entitled to promptness at all stages of the eligibility determination.” 277

273 See discussion and notes, infra § X.
274 Pabon, 70 F.R.D. at 676.
275 See California Dept of Hum. Res. Dev. v. Java, 402 U.S. 121 (1971) (holding that a California provision precluding benefits if employer appeals frustrated the congressional objective of getting money into the pocket of the unemployed worker at the earliest point administratively feasible, which violated the federal statutory requirement that state unemployment compensation be reasonably calculated to insure full payment of unemployment compensation “when due”); 42 U.S.C. § 503 (specifying that state laws must be “reasonably calculated to insure full payment of unemployment compensation when due.”).
276 See Federal-State Unemployment Compensation Program: Unemployment Insurance Program Letter Interpreting Federal Unemployment Insurance Law, 65 FR 70939-03; Review Letter 1-2009, Unemployment Insurance – Principles & Practices, New York State Department of Labor (March 2009) (“Given the nature and public purpose of the Unemployment Insurance program, after impartial fact-finding, fairly balanced cases of eligibility, entitlement or coverage should be determined in the claimant’s favor, bearing in mind the parties’ rights to a hearing.”).
IX. Recommendations
NYSDOL’s failure to provide basic language access has caused and continues to cause catastrophic financial hardship and instability for tens of thousands of LEP community members who are disproportionately low-income people of color. We call on the NYSDOL and the New York State Legislature to take immediate corrective action and the U.S. DOL to open a Title VI investigation into the NYSDOL for systematically violating LEP claimants’ rights, including:

- **NYSDOL must prioritize meaningful language access by translating the UI application, certification, and all vital documents and instructions into the top 12 languages in New York and by revamping its telephone system to provide prompt and accurate interpretation.**
  - Meaningful language access requires making the UI application, certification, and all vital documents available in high quality translation in New York’s top 12 languages. This is an ongoing obligation, and any future changes in the text of these documents must be promptly and accurately translated.
  - To achieve meaningful language access, accompanying materials, such as instructions and FAQs, must also be available in the top 12 languages. This translation must be done by qualified interpreters, not computer programs, that have been vetted and tested by native or fluent speakers of the respective language.
  - NYSDOL must also adopt a quality check method for all translated documents, including hiring community groups to ensure clarity of translations.
  - NYSDOL must create an online complaint form to inform the Department about delayed or denied service arising from language barriers. This includes, but is not limited to, providing in-language notice regarding how to file such complaints.
  - Improve the automated telephone system and access to Language Line services so that claimants are promptly informed of their ability to request interpretation and effectively connected with interpreters without calls being dropped.

- **New York must end its contract with ID.me.**
  - NYSDOL must immediately cease contracting with this discriminatory private company. The IRS ended its ID.me contract because of concerns about privacy, racial bias, and privatization of core government functions.
  - The New York State Legislature must prohibit all New York State agencies from contracting with private, for-profit companies for fraud detection.

- **NYSDOL must set up a system to identify and compensate all eligible LEP beneficiaries who attempted to apply for unemployment but never received benefits due to language access barriers, including allowing LEP applicants who were eligible but unable to access UI benefits due to language access barriers to apply for retroactive unemployment.**

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278 See list of documents, supra note 178.
● NSYDOL must engage with and listen to community-based organizations to improve language access and respond to claimants’ needs in a timely manner in accordance with federal law.
  ○ NYSDOL should form an advisory committee of community-based groups representing, at a minimum, the top 12 most spoken languages in New York State, to consult on NYSDOL operations, provide oversight, and be compensated for their work.

● NYSDOL must immediately cease all overpayment collections and apply broad waivers to the fullest extent permitted under federal laws and guidance, as U.S. DOL has advised. The New York State Legislature should pass Sen. Liz Krueger’s and Assemblymember Latoya Joyner’s pending legislation, A7511A/S6244B, which would force NYSDOL to take this action.

● NYSDOL must improve transparency about the functioning of the UI system by making data, information, and reporting publicly available.
  ○ NYSDOL needs to provide oversight and monitoring over the implementation of NYSDOL’s UI Language Access Plan and conduct quarterly and annual public reporting on claims received, claim disposition, claims flagged for fraud under ID.me, as well as data describing and UI beneficiary status of LEP claimants
  ○ NYSDOL must comply with its obligations under the Freedom of Information Law.

● NYSDOL must redress gross failures of the last two years by proactively providing benefits to claimants still waiting on applications during the last two years.
  ○ NYSDOL must create a process specifically for claimants who are still waiting for benefits owed from March 2020 to the present, including a requirement to return every message and process all outstanding applications and appeals.

● The New York State Legislature must have hearings on the barriers and harms LEP workers face in accessing unemployment and obtaining overpayment workers, as well as the issues fueling the disproportionate unemployment denial rates of Hispanic, Black, Native American, and Hawaiian Pacific Islander workers. Following these hearings, the NYS legislature should adopt statutory solutions to all barriers to UI created by Limited English Proficiency, race, and ethnicity.

● U.S. DOL must open a Title VI Civil Rights investigation to bring NYSDOL into compliance with its language access obligations.
X. Appendix: Legal Background

The New York State Department of Labor Unemployment Insurance Division administers the State’s Unemployment Insurance Law. The federal government provides funding for state UI programs and conditions this funding on numerous requirements, including timeliness of benefits and language access. The Secretary of the U.S. DOL is charged with oversight of state compliance of these federal requirements.279

The nondiscrimination laws that apply to state UI agencies outlaw both disparate treatment and disparate impact discrimination, as well as the use of different “criteria and methods” by ethnicity or race for administering benefits. As described below, the implementing regulations and guidance prohibit states from establishing policies or procedures that, while not directly barring access to benefits or services for individuals who are LEP, indirectly prevent or limit access.

A. LANGUAGE ACCESS RULES AND REGULATIONS

Federal and state laws mandate that state agencies provide meaningful access for all qualifying New York residents, regardless of their ability to speak English. In addition to Title VI of the Civil Rights Act, which prohibits discrimination based on national origin and language,280 Executive Order 13166, and New York EOs 26 and 26.1,281 and NYS Exec. Law § 202-a. U.S. DOL regulations and guidance also require that agencies provide meaningful access to unemployment insurance, including interpretation and translation for commonly used languages.282 The guidance plainly requires translation of vital information, defined as any “information, whether written, oral, or electronic, that is necessary for an individual to understand how to obtain any aid [or] necessary for an individual to obtain any aid. . . .”283

NYSDOL must take reasonable steps to assess LEP individuals for language needs, provide accurate oral interpretation and written translation of hard copy and electronic materials, and conduct outreach.284 The regulations require that all language assistance services must be accurate, free of charge, and provided in a timely manner that ensures equal access and avoids delay or denial of any benefit.285 Specifically, where languages are spoken by a “significant number” of the population to be served, the state agency “must translate vital information in written materials into these languages and make the translations readily available in hard copy, upon request, or electronically such as on a Web site.”286 In recent updated guidance, U.S. DOL has made clear that vital documents in the UI context include applications for benefits, notices of rights and responsibilities, and communications requiring a

280 Title VI prohibits discrimination on the basis of race, color, or national origin by any federally funded agency or program, 42 U.S.C. § 2000d (“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”). The Supreme Court made clear in Lau v. Nichols that the term “national origin” as used in the Civil Rights Act includes discrimination on the basis of language, 414 U.S. 563, 568 (1974) holding that the failure of a school system to provide non-English speaking Chinese students with English language instruction or to provide them with other adequate instructional procedures denied them a meaningful opportunity to participate in the public educational program and thus was a violation of Section 601 of the Civil Rights Act: “Discrimination is barred which has that effect even though no purposeful design is present. . . . It seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents’ school system which denies them a meaningful opportunity to participate in the educational program— all earmarks of the discrimination barred by the regulations.”). See also Patton v. Levine, 70 F.R.D. 674, 676 (S.D.N.Y. 1976) finding that Spanish-speaking plaintiff who received only English-language materials from the NYSDOL rejecting his unemployment insurance benefits claim stated a claim of discrimination upon which relief may be granted under N.Y. DOL regulations promulgated to effectuate section 701 as applied to federally assisted labor programs.”).
281 See discussion and notes, infra ¶ 168.
282 See 29 C.F.R. §§ 38.9(g)(1).
283 29 C.F.R. §§ 38.9(g)(2).
284 29 C.F.R. §§ 38.9(g)(1).
285 29 C.F.R. §§ 38.9(g)(1).
response from the beneficiary or applicant.287 In addition, New York State is required to record the limited English proficiency and preferred language of each LEP claimant/beneficiary, and as soon as the agency is aware of the non-English preferred language, convey vital information in that language.288

U.S. DOL has also provided in an Unemployment Insurance Program Letter (“UIPL”) that “UI agency staff should be trained to identify language access barriers and provide affected claimants alternative access options . . . .”289 U.S. DOL has further recognized that “[a]s state UI agencies move to almost exclusively website-driven services, there is an increased likelihood that LEP individuals will face barriers to accessing information and claims-related access in violation of Title VI and regulations . . . .”290 In May 2020 U.S. DOL issued new guidance to the states on how to ensure their unemployment programs comply with civil rights laws and regulations.291 It requires states “to translate written, oral, or electronic ‘vital information,’” including applications for unemployment benefits and communications requiring a response from the claimant.292

U.S. DOL’s implementing regulations for Title VI also make clear that federal funding recipients, which include state UI agencies, “may not . . . utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of race, color or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.”293 Under Title VI, oral interpretation or in-language services must be accurate and “should be provided at the time and place that avoids the effective denial or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person.”294

B. STATE POLICIES AND NYSDOL LANGUAGE ACCESS PLAN

New York State also has adopted and codified state language access policies that are designed to protect New York’s immigrant population. Under Executive Orders 26 and 26.1, and the recently enacted N.Y. Exec. Law § 202-a, each state agency is required to provide language access services to New York residents by:

- Translating vital documents into the top ten languages spoken by LEP residents of New York State, and top 12 languages effective July 1, 2022295

- Providing interpretation for LEP individuals in their primary language with respect to the provision of services or benefits;

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287 Id. at 3.
288 Id. at 3.
289 Id. at 3.
290 Policy Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 68 Fed. Reg. 32296 (“The quality and accuracy of language services is part of the appropriate analysis of LEP services required. For example, the quality and accuracy of language services in a UI appeals hearing or safety and health training, for example, must be extraordinarily high. . . .”).
The NYSDOL has recognized that the top six languages spoken in New York State are: Spanish, Chinese, Russian, Yiddish, Bengali, and Korean, and the expansion to the ten languages adds Haitian Creole, Italian, Arabic, and Polish.  As of this writing, NYSDOL has not yet indicated the two additional languages required by N.Y. Exec. Law § 202-a.

NYSDOL’s 2021 Language Access Plan outlines how the agency is expected to serve the size and diversity of New York’s linguistic populations. On paper, the plan states NYSDOL’s commitment to ensuring that everyone who is eligible for these services, including LEP individuals, has “meaningful access” to benefits and services. However, even within its plan, NYSDOL indicates that it has not translated vital documents into most languages. Specifically, NYSDOL does not provide the Notices of Determination to the Claimant and Registration for Work and Claim for Benefits documents in any language other than English, meaning that LEP workers cannot even know the outcome of, much less the basis for, a determination of benefits and how to appeal. In addition, NYSDOL inconsistently translates other central documents into New York’s top six, much less ten or 12 languages—even when they directly involve fraud and immigration issues. For example, NYSDOL fails to translate the Monetary Benefit Form, Information regarding Tax Withholding, instructions on eligibility, and other documents into all of New York’s six most commonly spoken languages, as required by state law.

In addition, NYSDOL has outsourced all of its quality assurance for translations to private companies and allows internal staff to act as translators, based only on staff members’ unchecked self-assessment of their fluency in a particular language. And although community and legal service organizations have played a significant and instrumental role in ensuring LEP workers obtained benefits, NYSDOL also affirmatively does not partner with community organizations in its LEP plan.

Finally, under recently enacted state law, all state websites providing COVID-19 related services must contain language translation technology for the 12 most common non-English language spoken by LEP New York residents. However, according to worker and advocates, the translations are web-based, of poor quality, and hard to understand.
C. UNEMPLOYMENT ELIGIBILITY AND ADMINISTRATIVE PROCESS

Unemployment insurance is a federal-state cooperative program financed in part by federal grants under the Social Security Act. States are only eligible to receive payments to finance their unemployment programs after the U.S. Secretary of Labor certifies that the State is providing benefits in a manner that is “reasonably calculated to insure full payment of unemployment compensation when due . . .” 306

To establish eligibility for unemployment, claimants must apply at the local office where they reside, or by phone or online. 307 The federal regulations governing UI require state unemployment insurance programs to provide for “such methods of administration as will reasonably ensure the full payment of unemployment benefits to eligible claimants with the greatest promptness that is administratively feasible.” 309 States are also required to “obtain promptly and prior to a determination of an individual’s right to benefits, such facts pertaining thereto as will be sufficient reasonably to insure the payment of benefits when due.” 310 Pursuant to this requirement, any state agency investigation should not be “so exhaustive and time-consuming as to unduly delay the payment of benefits . . .” 311

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307 N.Y. Lab. Law § 596(1).

309 Claims seeking to establish eligibility for unemployment insurance in New York State must establish either a “valid original claim” or an “alternate condition.” A “valid original claim” may be established by showing that: 1) the claimant is able to and available for work; 2) the claimant is subject to disqualification or suspension; 3) the claimant’s previously established benefit year, if any, has passed; and 4) the claimant has been paid by employers liable for contributions or for payments in lieu of contributions. N.Y. Lab. Law § 527. However, workers are not “eligible for employment” where the claimant lost employment due to disqualifying misconduct during at least two calendar quarters of the base period. Id. Workers who cannot file a “valid original claim” due to their failure to establish eligibility using that base period may still qualify under an “alternate condition” so long as they meet the first three qualifications of the “basic condition.” Successful claimants pursuing the “alternate condition” path to unemployment insurance eligibility use the four most recent calendar quarters to establish eligibility, rather than the earlier four of the most recent five calendar quarters under the “basic condition” path to eligibility. N.Y. Lab. Law § 527(2). Claimants are not eligible for unemployment insurance benefits if they quit or refuse employment without good cause of if they have been fired due to misconduct. N.Y. Lab. Law § 593. However, workers remain eligible for unemployment if they quit for a “compelling reason” such as the illness or disability of a family member, domestic violence, or need to provide childcare to one’s child. N.Y. Lab. Law § 593(b).

310 20 C.F.R. § 602.1(a).

311 20 C.F.R. § 602.1(a).

Id. The state agency can initiate discovery of necessary information, obtain information from the worker, the employer, or other sources. Id.
To facilitate workers’ access to unemployment insurance benefits, employers are required to pay into the state unemployment insurance fund and “keep a true and accurate record” of both each person employed and the amount paid in remuneration.

After a claim is filed, NYSDOL provides claimants with a Monetary Benefit Determination (“MBD”), which shows the claimant’s base period and the employers and wages used to determine if the claimant has enough earnings to establish a claim. If the claimant qualifies, the MBD shows the weekly benefit rate. Claimants who receive a MBD with incorrect wages or missing employment can file a Request for Reconsideration form, located on the NYSDOL website or in the Claimant Handbook. Claimants can submit the Request for Reconsideration via fax, mail, or through a virtual messaging system with the claimant’s online account.

Workers are owed a presumption of eligibility for unemployment benefits, and “[i]n the absence of credible, sufficient evidence that a denial of benefits is appropriate, prompt payment of benefits claimed is [their] highest priority.”

If a claimant is denied UI and wants to challenge the MBD, the burden shifts to the claimant to request reconsideration and a hearing. A claimant or employer may appeal any adverse decision to the New York State Unemployment Insurance Appeals Board by filing notice of appeal within twenty days of the decision, and then in state court.

Under federal and state guidelines, all NYSDOL decisions on unemployment claims must be made expeditiously—whether disputed or not. Federal guidelines require “promptness at all stages of the eligibility determination and payment processes.” While federal guidelines recognize that in some cases fact-finding may be complex and take more time, they “require nevertheless that the largest proportion of claims be examined and resolved as quickly as feasible.” The Supreme Court has also made clear that “[p]aying compensation to an unemployed worker promptly after an initial determination of eligibility accomplishes the congressional purposes of avoiding resort to welfare and stabilizing consumer demands; delaying compensation until months have elapsed defeats these purposes.” In line with the Court’s mandate, “[t]he Federal timeliness standards mandate that non-monetary determinations be made in twenty-one days upon the detection of an issue.”

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211 N.Y. Lab. Law § 570.
213 In making initial determinations on eligibility, NYSDOL relies on the employer’s wage and earnings data to assess whether a claimant qualifies for unemployment insurance benefits. N.Y. Lab. Law § 527; see also Islam v. Cuomo, 475 F. Supp. 3d 144, 148 (E.D.N.Y. 2020) (“[t]he NYSDOL uses wage and earnings data to assess whether a claimant qualifies for unemployment insurance benefits.”).
215 Id.
217 Id.
218 N.Y. Dep’t of Labor, Review Letter 1-2009, Unemployment Insurance – Principles & Practices (March 2009) (“Given the nature and public purpose of the Unemployment Insurance program, after impartial fact-finding, evenly balanced cases of eligibility, entitlement or coverage should be determined in the claimant’s favor, bearing in mind the parties’ rights to a hearing.”).
220 N.Y. Lab. Law §§ 621, 624.
222 N.Y. Dep’t of Labor, Review Letter 1-2009, Unemployment Insurance – Principles & Practices (March 2009). See also Java, 402 U.S. at 135 (emphasizing the “congressional objective of getting money into the pocket of the unemployed worker at the earliest point that is administratively feasible”).
223 Java, 402 U.S. at 132 (“Early payment of unemployment benefits serves to prevent a decline in the purchasing power of the unemployed, which in turn serves to aid industries producing goods and services.”).
224 N.Y. Dep’t of Labor, Review Letter 1-2009, Unemployment Insurance – Principles & Practices (March 2009). Cf. Fusari v. Steinberg, 419 U.S. 379, 389 (1975) (“[The] possible length of wrongful deprivation of unemployment benefits is an important factor in assessing the impact of official action of the private interests. Prompt and adequate administrative review provides an opportunity for consideration and correction of errors made in initial eligibility determinations. Thus, the rapidity of administrative review is a significant factor in assessing the sufficiency of the entire process.”) (internal citations omitted).
guidance further provides that “[d]eterminations on issues arising in connection with new claims may be considered on time within the meaning of the Court’s requirement for promptness if accomplished no later than the second week after the week in which the claim is effective.”

If a state fails to comply with the prompt payment requirements or wrongly denies unemployment compensation in a substantial number of cases, U.S. DOL is authorized to “notify the State agency that further payments [of federal funds] will not be made to the State until the Secretary of Labor is satisfied that there is no longer any such denial or failure to comply.”

D. CONTINUING DUTY TO CERTIFY

To remain eligible for both traditional state and, while they existed, pandemic federal unemployment benefits, each week claimants must certify that they still meet the eligibility criteria. U.S. DOL requires that after an initial determination of eligibility, there is a presumption that the claimant continues to be eligible. The presumption of eligibility is considered “an expedient for the State to facilitate timely payments.”

To avoid overpayments, the state “must issue a determination as soon as administratively feasible after payment is made to verify whether the presumption was correct.” Because of the risk of overpayments, federal guidance requires “that States must make timely determinations whenever possible.”

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327 Generally, if a worker refuses to return to their same job after being called back to work by their employer, they are no longer eligible to receive UI or PUA benefits because the worker must accept work that is considered “suitable” by the state unemployment agency. However, where an employer has failed to take the necessary health and safety precautions to protect workers against COVID-19 or where the worker is elderly or immunocompromised, a worker may be able to refuse their employer’s offer and continue to receive UI or PUA. Nat’l. Emp’t. Law Project, Frequently Asked Questions About UI Benefits, https://www.nelp.org/faq-unemployment-anchors/.
329 Id.
330 Id.
Acknowledgements

This report was researched and written by NCLEJ Senior Attorneys Anjana Malhotra and Leah Lotto, with research and interview assistance from current and former interns Mohammad Hussain, Aparna Jayashankar, Matthew Boyd, Anthony Damelio, Karli Wurpel, Sarah Bazir, and Madison Kang, and former Penn Law Fellow Jarron McAllister. It was edited by Director of Litigation and Advocacy Claudia Wilner. NCLEJ Staff Attorney Katherine Deabler and Senior Attorney Carmela Huang provided edits, as did the legal and community collaborators on this report. Many thanks to National Employment Law Project Senior Researcher and Policy Analyst Amy Traub and NCLEJ Intern Sanjay Duresetii, who provided statistical analysis, as well as Nicole Salk and Ciara Farrell who provided extensive feedback. The authors would like to express their deep gratitude to and respect for the workers who agreed to be interviewed for this report, as well as the organizers, attorneys, and advocates who have been working on the front lines of the pandemic to mitigate the deep failures of the New York State Department of Labor for LEP and other UI claimants in order to ensure that all people receive the Unemployment benefits they are legally entitled to, creating a critical lifeline for hundreds of thousands of New York residents.

This report was designed by Angel Sandoval.