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**People with disabilities sue to overturn Wisconsin law denying them unemployment benefits**

*By Mario Koran, Wisconsin Watch / WPR*

Tracy Long of Fond du Lac County is no stranger to Wisconsin’s unemployment system. With 30 years of experience in manufacturing, she’s been subject to the ebbs and flows of the industry. Long says she has applied for unemployment aid dozens of times in the past three decades.

But after a workplace injury that resulted in three back surgeries in as many years left her unable to complete many of the tasks she’d previously performed, in 2019 she turned to the state’s unemployment system for relief — one that would soon be strained close to its breaking point by the pandemic.

This time, however, due to her disability, the system that in years past helped keep her afloat barred her from the aid meant to help jobless workers weather employment gaps.

Owing to a 2013 law passed by a Republican-controlled legislature, Wisconsin bars workers who receive federal Social Security Disability Insurance benefits from simultaneously collecting state unemployment aid. Labor experts say such a ban exists in only one other state.

“I’m backed so far into a corner, and it’s something I can no longer comprehend anymore or do on my own,” said Long, 50. At one point, she says an adjudicator with the Department of Workforce Development had accused her of fraud for benefits she had previously received — a charge that was later cleared. But Long was still required to pay back an alleged overpayment.

With the help of Madison attorney Victor Forberger, Long and seven other plaintiffs on Tuesday filed a class-action [lawsuit in U.S. District Court in Madison](https://www.documentcloud.org/documents/21057133-ssdi-iu-lawsuit) hoping to recoup the unemployment benefits they and other people with disabilities in Wisconsin were denied — and undo the law that barred them from accessing the aid.

According to the suit, roughly 157,000 SSDI recipients work in Wisconsin, or one out of every 17 workers. The law enacted in 2013 and revised in 2015 prevents these workers from collecting benefits after they are laid off. The lawsuit asks for an injunction halting enforcement of the law while the case is pending.

At a press conference Tuesday in Madison, Forberger said the state’s interpretation and application of Wisconsin’s unemployment compensation eligibility statute is unconstitutional and violates federal law that bans discrimination based on a person’s disability.

“The goal here is to have disabled people treated like everyone else,” Forberger told Wisconsin Watch. “This is discrimination against those with disabilities because the state has said, ‘You know, because you get SSDI (Social Security Disability Insurance) benefits — which you are only get because you’re disabled — you can’t get unemployment benefits’… That’s just basically wrong.”

DWD said it was aware of the complaint and pointed out that Gov. Tony Evers has tried to reverse the law, but it was blocked by Republicans who run the state Legislature. Democratic lawmakers are also seeking to change the law.

“A fix to the Social Security Disability Insurance issue was included in the governor’s proposed 2021-23 biennial budget,” said DWD spokesperson Jennifer Sereno. “This item was removed by Republicans in the Legislature during the (budget) process.”

The lawsuit comes a year after Wisconsin’s DWD, which administers unemployment benefits, [reversed course](https://wisconsinwatch.org/2020/07/unemployed-wisconsin-workers-disabilities-federal-pandemic-aid/) on its policy to deny Pandemic Unemployment Assistance (PUA) to workers who lost their jobs due to the pandemic who also were receiving federal disability benefits. That reversal followed a [2020 Wisconsin Watch/WPR report](https://wisconsinwatch.org/2020/06/wisconsin-blocks-pandemic-payments-for-federal-disability-aid-recipients/) that revealed Wisconsin was denying PUA benefits to workers with disabilities.

Assembly Speaker Robin Vos, along with 26 other Republican lawmakers, claimed in [a 2013 letter](https://wisconsinwatch.org/wp-content/uploads/2020/06/0401knodllaseeletter.pdf) that collecting disability and unemployment benefits simultaneously represented “double dipping” that “may constitute fraud.”

Labor and unemployment insurance expert George Wentworth previously told Wisconsin Watch that North Carolina is the only other state with such a ban.

SSDI guidelines [allow](https://www.ssa.gov/OACT/COLA/sga.html) and even [encourage](https://www.ssa.gov/pubs/EN-05-10095.pdf) those who receive disability benefits to supplement their income with part-time work, so long as the employee does not earn more than $1,310 a month. The federal program is set up for those who have worked and paid Social Security taxes but can no longer perform “substantially gainful activity.”

That includes workers like Evan Johnson, a 55-year-old former truck driver who lives in Central Wisconsin’s village of Weston. Johnson said he had been driving full time until 2015, when he broke his leg while helping a friend cut down a tree.

After taking time off to heal, Johnson worked part-time when the pain didn’t keep him off the job, but eventually lost his job after the pandemic hit. In 2020, Johnson said he received a letter from the department telling him he was ineligible to collect unemployment because he received SSDI benefits. He eventually received PUA benefits, but used most of that to pay off the credit card debt he racked up paying for basic expenses like food, gas, electricity and health insurance.

“I knew it was going to be a long battle, but never in my wildest dreams did I think the Department of Workforce Development would take 14 months getting me (PUA benefits),” he said, referring to the federal aid that ended Sept. 4.

“When you’re living on credit cards and trying to make ends meet, it doesn’t work so well when you’re sitting there waiting for any type of income.”

Forberger said because workers with disabilities cannot collect unemployment benefits, the state is essentially encouraging employers — who pay for their former workers’ unemployment benefits — to discriminate based on workers’ disabilities.

“Wisconsin has, to its shame, created a perverse incentive for employers to lay off disabled workers first,” he said.

*This story was produced as part of the NEW (Northeast Wisconsin) News Lab. The nonprofit Wisconsin Watch (wisconsinwatch.org) collaborates with Wisconsin Public Radio, PBS Wisconsin, other news media and the University of Wisconsin-Madison School of Journalism and Mass Communication. All works created, published, posted or disseminated by Wisconsin Watch do not necessarily reflect the views or opinions of UW-Madison or any of its affiliates.*