



Employee Recall Q&A (as of 05/07/2020)

Q. What if my employees refuse to come back to work because they say they will make more money on unemployment than by working?

A. Not wanting to return to work solely because an employee “can make more money on unemployment vs. going back to work” is not a qualifying reason for receiving unemployment according to Secretary Eugene Scalia, U.S. Department of Labor May 6, 2020.

In the Department of Labor FAQ, they answered a similar question and stated that, “No. As a general matter, individuals receiving regular unemployment compensation must act upon any referral to suitable employment and must accept any offer of suitable employment. Barring unusual circumstances, a request that a furloughed employee return to his or her job very likely constitutes an offer of suitable employment that the employee must accept...An employee who had been furloughed because his or her employer has closed the place of employment would potentially be eligible for unemployment while the employer remained closed, assuming the closure was a direct result of the COVID-19 public health emergency and other qualifying conditions are satisfied. However, as soon as the business reopens and the employee is recalled for work, eligibility for unemployment would cease unless the individual could identify some other qualifying circumstance outlined in the CARES Act.” Employers can challenge these claims; we just can't make any promises about how it will play out down the road through the adjudication process.

Q. If my employee must stay home with a child because his or her school or place of care is closed, or child care provider is unavailable, are they eligible for paid sick leave, expanded family and medical leave, or both—how do they interact?

A. Individuals in this situation may be eligible for both types of leave, but only for a total of twelve weeks of paid leave. Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or child care unavailability if the leave requirements would jeopardize the viability of the business as a going concern. An individual may take both paid sick leave and expanded family and medical leave to care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons. The Emergency Paid Sick Leave Act provides for an initial two weeks of paid leave. This

period thus covers the first ten workdays of expanded family and medical leave, which are otherwise unpaid under the Emergency and Family Medical Leave Expansion Act unless the employee elects to use existing vacation, personal, or medical or sick leave under your employer's policy. After the first ten workdays have elapsed, employees will receive 2/3 of their regular rate of pay for the hours they would have been scheduled to work in the subsequent ten weeks under the Emergency and Family Medical Leave Expansion Act.

Please note that individuals can only receive the additional ten weeks of expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act for leave to care for their child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

Q. Can I send an employee home if they are not willing to wear required PPE? What are my rights as an employer? Would they qualify for unemployment?

The direct answer is yes you can send the employee home and tell them that wearing a face mask is a safety policy that must be complied with. If they refuse you may discipline or discharge them. HOWEVER, it is recommended you engage them in a short ADA discussion by asking them why they refuse to wear the mask. If they do not have a reason involving a disability, or a health issue that is exacerbated by wearing a mask, then you can let them go.

They will be eligible for UI benefits under current qualification guidelines. If however you want to protest the claim you may state they were discharged for not complying with safety requirements and rules. Be sure to document how the termination occurred. UIA will have to decide if failing to wear a face mask under current circumstances amounts to a major safety violation and amounts to a disqualifying reason or not.

Also keep in mind that UI benefits are not chargeable back to the employer under current rules.

Q. Can I bring staff back less than their previous hours?

A. The attached fact sheet helps explain Michigan's Work Share program which allows employers to keep employees working with reduced hours, while employees collect partial unemployment benefits to make up a portion of the lost wages. ... With the Work share program, unemployment benefits are based on a percentage of the reduced hours of work and pay. https://www.michigan.gov/documents/ui/156_-_Shared_work_fact_sheet_letter_426209_7.pdf

Q. My business has remained open because it is essential. My employee is not sick, nor is anyone in their household sick. They do not have children or care for someone who cannot care for themselves. However, they are afraid of getting coronavirus from patients coming into the practice, so they quit and filed for unemployment. Can they obtain benefits under the CARES Act?

A. No. Under the CARES Act, they may be eligible for benefits if they meet one of the circumstances listed in the Act, but none include the scenario described. On these facts, they are not eligible for Pandemic Unemployment Assistance (PUA) because you do not meet any of the qualifying circumstances. There are, however, circumstances under the CARES Act in which specific, credible health concerns could require an individual to quit his or her job and thereby make the individual eligible for PUA. For example, an individual may be eligible for PUA if he or she was diagnosed with COVID-19 by a qualified medical professional, and although the individual no longer has COVID-19, the illness caused health complications that render the individual objectively unable to perform his or her essential job functions, with or without a reasonable accommodation. However, voluntarily deciding to quit your job out of a general concern about exposure to COVID-19 does not make you eligible for PUA. If your employee believe your employer response to the possible spread of COVID-19 creates a serious safety hazard or if they think you are not following OSHA standards, they can file a complaint with the Occupational Safety and Health Administration. As a general matter, employees are likely to be eligible for PUA due to concerns about exposure to the coronavirus only if they have been advised by a healthcare provider to self-quarantine as a result of such concerns. For instance, an individual whose immune system is compromised by virtue of a serious health condition, and who is therefore advised by a healthcare provider to self-quarantine in order to avoid the greater-than-average health risks that the individual might face if he or she were to become infected by the coronavirus will be eligible for PUA if all other eligibility requirements are met.

Q. I have an employee who is pregnant, is she at higher risk?

A. According to the CDC, they don't "currently know if pregnant people have a greater chance of getting sick from COVID-19 than the general public nor whether they are more likely to have serious illness as a result. Based on available information, **pregnant people seem to have the same risk as adults who are not pregnant.**"

Q. Who is at higher risk?

A. According to the CDC, "COVID-19 is a new disease and there is limited information regarding risk factors for severe disease. Based on currently available information and clinical expertise, **older adults and people of any age who have serious underlying medical conditions** might be at higher risk for severe illness from COVID-19."

Based on what we know now, those at high-risk for severe illness from COVID-19 are:

- [People 65 years and older](#)
- People who live in a nursing home or long-term care facility

People of all ages with [underlying medical conditions, particularly if not well controlled](#), including:

- People with chronic lung disease or moderate to severe asthma
- People who have serious heart conditions
- People who are immunocompromised
 - Many conditions can cause a person to be immunocompromised, including cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, and prolonged use of corticosteroids and other immune weakening medications
- People with severe obesity (body mass index [BMI] of 40 or higher)
- People with diabetes
- People with chronic kidney disease undergoing dialysis
- People with liver disease

If you have a staff member that is at higher risk for serious illness from COVID-19 because of their age or because they have a serious long-term health problem, it is extra important for them to take actions to reduce their risk of getting sick with the disease. Employees should work with their healthcare professional if they have concerns about COVID-19 and their underlying condition.

Resources

<http://workwithhrm.com>

<https://www.dol.gov/coronavirus/unemployment-insurance>

<https://www.sbam.org/Resources/COVID-19-Resources/HR-Unemployment-Guidance>

<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/pregnancy-breastfeeding.html>