



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY
UNEMPLOYMENT INSURANCE AGENCY

JEFF DONOFRIO
DIRECTOR

Date: June 8, 2020

Subject: Returning to Work and Refusal of Work for Unemployment Compensation Benefits

Michigan's Unemployment Insurance law and the Federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act) requires individuals collecting unemployment insurance benefits to be available for suitable work and accept an offer of suitable work. In situations where an employer makes an employee an offer to return to their customary employment, the employee can possibly lose unemployment benefits if he or she refuses to return to suitable work. Wages, workplace safety, and other factors are considered in determining whether work is "suitable."

Suitable work includes that workplace conditions must be safe. Employers must follow current state and federal requirements and guidance to maintain a safe workplace in general and due to COVID-19. This includes adhering to the following:

- Michigan Stay Home, Stay Safe Orders
- Michigan Executive Orders (EOs)
- MiOSHA guidelines
- Michigan Safe Start Plan

It is not considered suitable work if the employer is unable or unwilling to provide a safe workplace required by current state and federal law and guidance. The burden of proof is on the employer to prove that workplaces are safe and in compliance with appropriate workplace safety laws and guidance.

The following criteria must also be taken into consideration in determining whether the offered work is suitable:

- Claimant's physical fitness for the job
- Degree of risk to the claimant's health, safety and morals
- Claimant's prior training and work experience
- Length of the claimant's unemployment
- Claimant's prospects for securing work in his/her customary occupation
- Distance of work from claimant's residence
- Claimant's prior earnings

An individual who refuses an offer of work that is determined to be suitable will be denied benefits if the pay rate for that work is at least 70% of the gross pay rate received immediately before becoming unemployed.

After collecting half (50%) of the worker's entitled weeks, an unemployed worker must apply for, and accept work even if the work is outside of his or her past training and experience, or unsuitable *as to the pay rate*, as long as the pay is at least:

1. 120% of the individual's weekly benefit amount (WBA);
2. The average wage for the particular work in the locality where the job is offered; and
3. The state minimum hourly wage (currently \$9.65 an hour).

Good cause for refusing suitable work. In general, employees who refuse to suitable work without good cause can lose unemployment benefits. However, in accordance with Governor Whitmer's Executive Orders, federal law, and Unemployment Insurance Agency (UIA) guidance, workers may have good cause to refuse work in light of COVID-19 in the following situations:

- The individual's normally available transportation is now unavailable.
 - This includes but is not limited to if public transportation or ride-sharing services are reduced or eliminated due to COVID-19 or for another reason.
 - For claimants receiving Pandemic Unemployment Assistance (PUA), the individual's normally available transportation must be unavailable due to a quarantine related to COVID-19 only.
- The individual is under self-isolation or self-quarantine in response to elevated risk from COVID-19 due to being immune-compromised. Examples of high risk include but are not limited to:
 - Older adults (age 65 and older), and those who are pregnant or caring for someone who is pregnant or caring for newborns and infants.
 - Those with specific disease or chronic conditions such as cancer, heart disease, lung disease, chronic liver disease undergoing dialysis, severe obesity, diabetes, malnutrition, and certain genetic disorders.
 - Those with specific medications or treatments such as steroids, chemotherapy, radiation therapy, dialysis, stem cell, bone marrow, or organ transplant.
- The individual or household member has displayed at least one of the principal symptoms of COVID-19, which include fever, atypical cough, and atypical shortness of breath.
 - Individuals must either have a positive COVID-19 test, have a COVID-19 diagnosis from a medical professional, or be seeking a COVID-19 diagnosis.
- The individual has had contact in the last 14 days with someone with a confirmed diagnosis of COVID-19.
 - Contact for the purposes of healthcare exposures is defined as follows:

- a) Being within approximately 6 feet (2 meters) of a person with COVID-19 for a prolonged period, without appropriate personal protective equipment consistent with Michigan Department of Health and Human Services (MDHHS) recommendations; or
 - b) Having unprotected direct contact with infectious secretions or excretions of the patient (e.g., being coughed on, touching used tissues with a bare hand).
- The individual recovered from COVID-19, but it caused medical complications temporarily rendering the individual unable to perform essential job duties.
- The individual is required to care for someone with a confirmed diagnosis of COVID-19.
- If an individual's customary childcare is no longer available due to COVID-19, the individual must seek "reasonable" alternatives to childcare. If an individual cannot find "reasonable" alternatives to childcare, the individual may remain eligible for unemployment benefits. UIA will consider if alternative childcare is "reasonable" compared to the pre-COVID-19 childcare for an individual's family. Factors for reasonableness of alternative childcare includes:
 - Whether the individual has documented attempts to secure alternative childcare. Examples include but are not limited to:
 - Inquiries and/or applications to alternative provider.
 - Availability of alternative childcare.
 - Placement on a waitlist(s) for alternative childcare but cannot secure alternative childcare due to providers' limitation on capacity.
 - Distance from an individual's homes to pre-COVID-19 childcare compared to the distance from an individual's homes to alternative childcare.
 - Cost of alternative childcare compared to pre-COVID-19 childcare.
 - Reasonableness usually will not apply to the curriculum of childcare, absent a showing that a child requires a specific curriculum for a medically documented reason(s). For example, a child with special needs requires specific childcare arrangements.
 - Reasonable childcare includes childcare operational and in compliance with Executive Orders and LARA requirements, including disaster relief childcare centers authorized by Executive Order.
- The individual has a family care responsibility as a result of COVID-19. This includes whether the individual must miss work either to take care of children if the school is closed, or if customary summer child-care arrangements are closed due to a government directive or COVID-19.
- The individual has a reasonable belief that the workplace is unsafe or not in compliance with state or federal safety guidance and law. If an employer claims that a workplace is "suitable" because it meets state and federal workplace safety requirements, the employee may still have "good cause" to refuse that work if the employee can establish he or she has a reasonable belief that the workplace does not meet safety requirements. Merely being afraid to return to work is not good cause.

Employee refuses to return to work: If an employee refuses an offer of suitable work, the employer can notify UIA online through their Michigan Web Account Manager (MiWAM) account. Due to high call volumes, employers should be encouraged to submit correspondence online. Employers should also review Fact Sheet #144C, *COVID-19: Unemployment Compensation Benefits Returning to Work and Refusal to Work - Information for Employers*, for additional information on how to report, or submit a protest of, an employee's refusal to work.

Both employers and employees have an obligation to report offers and refusals of suitable work to the UIA. Employees should notify UIA during their biweekly certification if they have refused an offer of work.

If an employer makes an offer of suitable work to an employee, and the employee refuses, then the UIA will conduct fact-finding into the situation. The fact specific inquiry could take several weeks. If UIA finds that the employee did not have good cause to refuse work or to return to work, the employee will not be eligible for further unemployment benefits and may have to repay unemployment benefits already received.

If UIA finds that the employee did have good cause to refuse to return to work, the employee will continue to be eligible for future unemployment benefits and will not have to pay back unemployment benefits.

When addressing refusal of work, staff must ensure that the employer made a bona fide offer of work to the claimant. In determining whether there was a bona fide offer of work, the employer must have made a genuine offer of work, and the offer must have been successfully conveyed to the claimant, for example, by telephone, in person, by email, or by mail. The offer must also have been for a specific job and must have been available to the claimant. The employer should document and maintain the details of the job, i.e., duties, starting pay, hours of work, compliance with state and federal law and guidance on workplace safety, etc. Providing a "sign up" sheet for workers to use in responding to a generalized offer is not sufficient to constitute a bona fide job offer to a specific worker.

If you have any questions, please contact the Benefit & Tax Procedures Unit by email at hilld12@michigan.gov.