



# RETURN TO WORK GUIDELINES DURING COVID-19

GUIDELINES & FAQ's FOR EMPLOYERS & EMPLOYEES


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# RETURN TO WORK GUIDELINES DURING COVID-19

UPDATED 7/16/2020

## GUIDELINES FOR **EMPLOYERS** REGARDING RETURN TO WORK DURING COVID-19



If you are an employer that has offered regular work to an employee that was temporarily laid-off or furloughed, at the same number of hours and rate of pay that they were working prior to COVID-19, and the employee has refused to return to work, it is important that you report this activity to the Division of Unemployment Insurance. Employers can submit a report of refusal to work by completing the online form, found here at: **Employer Work Refusal Report** 

Employers are responsible to keep the workplace safe for their employees. What may have been suitable work for an employee before the pandemic may not be suitable after it. The employer must be prepared to demonstrate its good faith efforts to comply with Governor Carney's Economic Reopening Guidance, published industry-specific guidance, OSHA guidance, and the US Center for Disease Controls' best practices for reopening, including: conducting daily worker health checks, conducting a hazard assessment of the workplace, providing adequate personal protective gear to employees as necessary for their job duties, requiring employees to wear face masks in the workplace if appropriate, implementing and enforcing policies and practices for social distancing at the workplace, and improving air circulation in work areas. If you need assistance with meeting the safety and health guidelines set forth by the various agencies, the Delaware Department of Labor can help you. Call 302-451-3421 or go to the website: <https://dia.delawareworks.com/osa-consultation/>.

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## GUIDELINES **FOR EMPLOYERS** REGARDING RETURNING TO WORK DURING COVID-19 (continued)

Employers should also consider whether there are accommodations it can make to overcome the worker's specific concerns about the workplace, and whether the Americans With Disabilities Act requires that reasonable accommodations be provided to workers with qualifying disabilities -- including disabilities that might put them at higher risk from COVID-19 infection. Employees with safety concerns due to disability should work with their employer to request and identify appropriate accommodations. See the U.S. Equal Employment Opportunity Commission guidance on reasonable accommodation requests related to COVID-19 at: <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>.

Employers who have permitted workers to telecommute are encouraged but not required to continue that practice.

Employers should not presume that the reopening of their business means that former employees know that they have an offer to return to work. Employers are encouraged to provide furloughed or former workers with written job offers to return to work that specify whether the job being offered has the same or different salary, benefits and hours as the prior job.

Employers are encouraged to report any return to work refusal issues to the Division on the form provided on the Division's website, to aid the Division in its investigation of return to work issues.



### **Employer Services**

Employers can submit a report of refusal to work by completing the online form, found here at: [Employer Work Refusal Report](#)



# RETURN TO WORK GUIDELINES DURING COVID-19

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## FREQUENTLY ASKED QUESTIONS\* **FOR EMPLOYEES** REGARDING RETURNING TO WORK DURING COVID-19



### **Q: Will I be disqualified for unemployment benefits if I refuse to return to work after receiving notice from my employer?**

In general, an employee will be disqualified from receiving further unemployment benefits if the employee chooses not to return to work after receiving notice to do so from their employer. Refusal to return to suitable work, may result in the termination of unemployment benefits and the requirement to repay any benefits received.

### **Q: What if I am making more money through unemployment benefits, can I continue collecting rather than return to work?**

Employees who refuse to return to work because they would prefer to continue collecting benefits or because their current weekly benefit is higher than their regular wages are not eligible for unemployment benefits and any attempt to continue collecting benefits under those circumstances will be deemed fraud. If an employee refuses to return to work due to a general concern or fear of exposure to COVID-19, he or she is not eligible for continued unemployment benefits.



**For more information about your Unemployment Insurance Benefits please visit [ui.delawareworks.com](http://ui.delawareworks.com). For specific questions please send an email to [uiclaims@delaware.gov](mailto:uiclaims@delaware.gov)**

*\* These FAQ are not intended to provide legal advice. For advice on your specific situation or what laws apply, you should consult your own attorney.*

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## FREQUENTLY ASKED QUESTIONS\* **FOR EMPLOYEES** REGARDING RETURNING TO WORK DURING COVID-19

### **Q: Do I have to report that I refused my employer's offer to return to work?**

Yes. If your employer has called you back and you did not return to work, you must report that you have refused an offer to work when filing your Weekly Certification. You will have an opportunity to provide more information about your reason for not returning to work and whether that reason constitutes good cause for refusing to return to work during the investigation.

### **Q: Are there any scenarios where I refuse to return to work and may still qualify for unemployment benefits?**

Claimants who can show good cause to refuse to return to work may still be ineligible for unemployment benefits if they are unable to work or unavailable to work because of medical reasons, childcare reasons, or family care reasons, even if those reasons are related to COVID-19. In such circumstances, claims will be evaluated for eligibility for Pandemic Unemployment Assistance benefits.

### **Q: If my doctor advised me not to return to work due to a medical condition or age, what you should I do?**

If you are advised by a doctor not to return to work due to medical conditions or age, you should ask your employer if you can return to work by teleworking. Employees who are offered the ability to telework by their employer, but refuse to do so, will not be entitled to unemployment benefits. If your work requires you to be physically present in the workplace, your employer may terminate you if you refuse to return to work. If you are ineligible for unemployment benefits, you may still be eligible for Pandemic Unemployment Assistance (PUA) benefits.



Want to receive weekly job opportunities, resources, and info about the unemployment claims process in your email inbox? Sign-up for emails at [de.gov/UICovid19Updates](https://de.gov/UICovid19Updates).

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## FREQUENTLY ASKED QUESTIONS\* **FOR EMPLOYEES** REGARDING RETURNING TO WORK DURING COVID-19

### **Q: What if my employer offered me my job back but with reduced hours and or pay?**

If you are called back to work by your employer, but only offered reduced hours or reduced pay, then the Division will need to consider the facts and circumstances to determine if the new job is suitable.

### **Q: What should I do if I am concerned about my workplace not being safe from COVID-19?**

If you are concerned that your private-sector employer is not keeping the workplace safe from COVID-19, or has not adequately responded to an outbreak of COVID-19 in the workplace, you can consider the following options:

- Raise the concern with your supervisor or your employer's Human Resources Department;
- Contact the Delaware Department of Labor, Division of Industrial Affairs at 302-451-3421 or go to the website: <https://dia.delawareworks.com/osha-consultation/>
- File a complaint with the U.S. Occupational Safety and Health Administration (OSHA). Complaints can be made via telephone or online. Federal OSHA: 302-573-6518 or [https://www.osha.gov/workers/file\\_complaint.html](https://www.osha.gov/workers/file_complaint.html).

If you exhaust these remedies and your employer still will not follow established guidance to make your workplace reasonable safe, taking into account the nature of the business, you may have good cause to voluntarily quit or not return to work. The analysis will be fact-specific and considered on a case-by-case basis. In order to demonstrate to the Division in the investigation of your refusal to return to work claim that your employer is not keeping your workplace safe, you must demonstrate what steps you took to rectify the situation and what public health or safety guidance the employer is refusing to follow.



**Text updates to 555888 for the latest updates sent directly to your mobile phone.**

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To report businesses that fail to comply with the state's public health guidelines and economic re-opening guidelines, including mandated face masks, social distancing, and maintaining a certain percentage of the fire code, please report the details of the non-complying businesses by emailing [HSPcontact@delaware.gov](mailto:HSPcontact@delaware.gov).

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## **Claimant Portal: [ocs.delawareworks.com/ACCOUNT/LOGIN](https://ocs.delawareworks.com/ACCOUNT/LOGIN)**

This portal allows claimants to file, request an address change, submit fact finding information, file an appeal, etc.



## **Claimant Handbook: [de.gov/UIClaimantHandbook](https://de.gov/UIClaimantHandbook)**

Find more details about filing a claim, how to sign-up for Direct Deposit, Monetary Determination, and more. Some information is not relevant to COVID-19, like visiting a local office, because the locations are closed to the public.



## **Check Payment Status**

Call the Information Hotline, at (800) 794-3032 or (302) 761-6576. The hotline is available 7 days a week, 24 hours per day and the hotline will let claimants know if a payment was made.



## **Delaware JobLink: [joblink.delaware.gov](https://joblink.delaware.gov)**

As permitted by the Governor's Declaration of a State of Emergency, we suspended the work search requirement and also the requirement to create the JobLink account. However, if you are able to work, and want to work, please visit [de.gov/COVID19jobs](https://de.gov/COVID19jobs).



## **Employer Services**

For more information on Unemployment Insurance, please refer to the Employer's Handbook: [ui.delawareworks.com/employer-handbook.php](https://ui.delawareworks.com/employer-handbook.php)



***Text uifacts to 555888 for the latest updates sent directly to your mobile phone.***



**Want to receive weekly job opportunities, resources, and info about the unemployment claims process in your email inbox? Sign-up for emails at [de.gov/UICOID19Updates](https://de.gov/UICOID19Updates).**



**For more information about your Unemployment Insurance Benefits please visit [ui.delawareworks.com](https://ui.delawareworks.com). For specific questions please send an email to [uiclaims@delaware.gov](mailto:uiclaims@delaware.gov)**