

**FACT SHEET #144C JUNE 2020**

## **COVID-19: Unemployment Compensation Benefits Returning to Work and Refusal to Work - Information for Employers**

Michigan's unemployment insurance law and the Federal Coronavirus Aid, Relief, and Economic Security (CARES) Act requires individuals collecting unemployment benefits to be available for suitable work and accept an offer of suitable work. When an employer makes an offer of suitable work to an employee or makes an offer for an employee to return to their customary work, the employee can possibly lose unemployment benefits if he/she refuses. 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.
- State and federal requirements and guidance on COVID-19 include information from the following sources (as of date of publication):
  - [Michigan Occupational Safety and Health Administration \(MIOSHA\)](#):
  - [Occupational Safety and Health Administration \(OSHA\)](#)
  - [Centers for Disease Control and Prevention \(CDC\)](#)
  - [Michigan Safe Start Plan](#)

Check with each government entity for up-to-date guidance and regulations.

Work is not considered to be suitable if the employer is unable or unwilling to provide a safe workplace as required by current state and federal law and guidance. Employers have the burden to prove that workplaces are safe and in compliance with appropriate workplace safety laws and guidance.

### **In determining whether work is suitable, consideration is given to the following:**

- Employee's physical fitness for the job
- Degree of risk to the employee's health, safety and morals
- Employee's prior training and work experience
- Length of the employee's unemployment
- Employee's prospects for securing work in his/her customary occupation
- Distance of work from employee's residence
- Employee'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 the employee has received 50% of his/her benefits on a claim, the employee must accept a job even if they have not performed the work in the past or been trained in the work. The employee must accept the job if:

- It pays at least the state minimum hourly wage of \$9.65 an hour;
- It pays at least the average wage in the locality for that kind of work;
- It pays at least 120% of the employee's weekly unemployment benefit amount.

Employers must communicate the job offer to the specific employee, and should include specific details about the job. Sending the offer by registered mail and getting a return receipt is a good idea. Providing a "sign up" sheet for employees to use in responding to a generalized offer is not sufficient to constitute a bona fide job offer to a specific employee. Also, the

offer must be for a job that is currently available. Furthermore, employers should communicate about the compliance of the workplace with state and federal law and guidance when making a job offer or requesting that an individual return to his or her customary work.

### **Good Cause for Not Returning to Suitable Work**

Employees who refuse to accept “suitable work” without “good cause” can lose unemployment benefits. However, “good cause” is expanded based on Governor Whitmer’s Executive Orders, federal law, and Unemployment Insurance Agency (Agency) guidance to include COVID-19 specific reasons an employee may have for refusing to return to work. See [Fact Sheet 145C COVID 19 Unemployment Benefits – What is Suitable Work?](#)

### **What if an Employee Refuses Suitable Work?**

Both employers and employees have an obligation to report offers and refusals of suitable work to the Agency. If an employer makes an offer of suitable work to an employee, and the employee refuses to return to work, then the Agency will conduct a fact specific inquiry into the situation. The fact specific inquiry could take several weeks.

The employer should notify the Agency of the refusal online using the employer’s MIWAM Account. Due to high call volumes during this time, employers are encouraged to submit correspondence to the Agency online and not by telephone. Provide the following information:

- A copy of the offer including the rate of pay, who offered it, and how it was communicated to the employee (verbally, written, posted, personally delivered);
- Note whether the employer maintained safety standards required by state and federal guidance and law regarding COVID-19 precautions, and if the employer followed the State of Michigan’s re-opening guidelines;
- If applicable, how the offered work compares to work previously performed for the employer by the employee;
- The reason given by the employee for refusing the offered work.

If the Agency finds that the employee did not have good cause to refuse to return to work, the employee: (1) will likely not be eligible for further unemployment benefits, and (2) will likely have to pay back unemployment benefits they received while waiting for the Agency to make a decision. If the Agency finds that the employee did have good cause to refuse to return to work, the employee will likely continue to be eligible for future unemployment benefits and will likely not have to pay back unemployment benefits.

Employers and employees are encouraged to communicate openly about workplace safety practices, sick time policies, reopening requirements, and employee-specific concerns about returning to work. Both employers and employees should also document workplace compliance with health and safety guidelines, correspondence (including complaints and inquiries) to MIOSHA, and communications between employers and employees about returning to work. Learn more about COVID-19 workplace safety at [www.michigan.gov/COVIDWorkplaceSafety](http://www.michigan.gov/COVIDWorkplaceSafety).

### **Additional Resources for Employers**

If employers are financially distressed, they may use the **Michigan’s Work Share Program** to maintain operations during declines in regular business activity rather than laying off employees. The program allows employers to keep employees working with reduced hours, while employees collect partial unemployment benefits to make up the portion of the lost wages. For more information, review [Fact Sheet 156C](#), visit [Michigan.gov/workshare](http://Michigan.gov/workshare), or call the Office of Employer Ombudsman at 1-855-484-2536.

Employers seeking to lay off employees should review the [Employer Filed Claims](#) (EFC) program, which streamlines the unemployment benefit claim process for any employers faced with temporary or permanent layoffs. Employers can submit basic employee information on behalf of their employees to initiate claims for unemployment benefits. Visit the UIA website at [Michigan.gov/uia](http://Michigan.gov/uia) or contact the EFC unit through email at [efc@michigan.gov](mailto:efc@michigan.gov) or telephone at 1-855-484-2636.