



RETURNING TO WORK:

Health, Safety, Childcare & Caregiving Unemployment Relief & Workplace Protections in the COVID-19 Pandemic

GENERAL PRINCIPLES

New Jersey's Unemployment Compensation Law ("UCL") was "enacted to ameliorate the plight of workers who, through no fault of their own, become unemployed and who are able, willing and available for work." *Medwick v. Board of Review*, 69 N.J. Super. 338, 340 (App. Div. 1961). Reflecting the Legislative intent behind the UCL, the State's Unemployment Insurance ("UI") system **places a great emphasis on working**. Claimants are entitled to receive benefits only so long as they are unemployed through no fault of their own, and while they are unemployed they must be looking for work. In the colorful view of one State appellate court, receiving unemployment benefits should be seen as temporary relief and should not "furnish a welcome sedative to those who prefer to drift more comfortably on the tides of indolence." *Krauss v. A. & M. Karagheusian, Inc.*, 24 N.J. Super. 277, 282 (App. Div. 1953).

Despite these general requirements, there are two significant exceptions that the Department will explain in this guidance document. If a claimant applies for benefits and meets these exceptions, **the claimant will receive UI benefits even though they did not become unemployed through no fault of their own; or the claimant is not able, willing, and available for work**. The guidance will also explain how these legal principles interact with Pandemic Unemployment Assistance ("PUA"), an additional benefit program created by the CARES Act that provides benefits in a wide variety of COVID-related scenarios.

VOLUNTARY QUIT FOR GOOD CAUSE – HEALTH AND SAFETY CONCERNS

The first exception involves an individual who voluntarily quits a job. In most cases, an individual is disqualified from collecting UI benefits if they voluntarily quit.

However, where an individual quits with "good cause attributable to the work," they can collect UI benefits. N.J.A.C. 12:17-9.1. One such example of good cause is where the individual quits because "working conditions are so unsafe, unhealthful, or dangerous as to constitute good cause attributable to such work." N.J.A.C. 12:17-9.4.

The burden of proof is on the claimant to prove that they quit for good cause, and it is a difficult standard to meet. Our courts have held that "mere dissatisfaction with working conditions which are not shown to be abnormal or do not affect health" are not considered good cause. *Medwick v. Board of Review*, 69 N.J. Super. 338, 345 (App. Div. 1961). Rather, the working conditions complained of must be so intolerable so as to "give the individual no choice but to leave the employment." Additionally, before quitting the employee would be obligated to try to remedy the problem with the employer.

Thus, while in most cases a claimant cannot voluntarily quit a job and collect benefits, where a claimant can show "unsafe, unhealthful, or dangerous" working conditions, that were so intolerable that the claimant had "no choice but to leave the employment," they could collect UI benefits. These determinations are highly fact-specific and are determined on a case-by-case basis.

During the COVID-19 pandemic, where a claimant alleges that they quit a job because of “unsafe, unhealthful, or dangerous” working conditions, the Department will consider such factors as:

1. The employer’s overall actions to create a safer workplace (such as having an infectious disease preparedness and response plan; providing options to work from home; providing extra handwashing stations and break time for handwashing; providing additional sanitation and frequent cleaning of high-touch areas; providing personal protective equipment such as masks and gloves; limiting occupancy; and following social distancing guidelines);
2. Compliance with guidance from the Occupational Safety and Health Administration, the Centers for Disease Control, and other relevant federal agencies;
3. Compliance with guidance from the New Jersey Department of Labor and Workforce Development, Department of Health, New Jersey State Police, and other relevant state agencies;
4. Compliance with guidance from industry groups and associations; and,
5. Compliance with the Governor’s executive orders.

This list is not intended to be exclusive, and the Department may consider additional factors and sources in making its determination.

REFUSING SUITABLE WORK – HEALTH AND SAFETY CONCERNS

The second exception involves an individual who is recalled to work, or receives another offer of employment, and declines it.

As described above, the State’s UI system places a great emphasis on working and attempting to find work. Generally, if a claimant refuses an offer of “suitable work” without good cause, they cannot collect benefits for that week plus the 3 weeks immediately following. But, a claimant can refuse work that is not “suitable” and continue to collect benefits.

State law defines “suitable work” to include such considerations as “the degree of risk involved to health, safety and morals, the individual’s physical fitness and prior training, experience and prior earnings and employee benefits, the individual’s length of unemployment, prospects for securing work in the individual’s customary occupation and commuting distance.” N.J.S.A. 43:21-5(c); N.J.A.C. 12:17-11.2. Thus, while in most cases a claimant cannot refuse “suitable work” and collect benefits, where the work poses a high degree of risk to health and safety, they can refuse to accept the “unsuitable work” and continue to collect benefits.

The burden of proof is on the claimant to prove that the work was not suitable, and it is a difficult standard to meet. The claimant must show that the deficiencies are “so compelling so as to prevent the claimant from accepting work.” N.J.A.C. 12:17-11.2. These considerations are judged subjectively, “with respect to the particular individual involved.” N.J.A.C. 12:17-11.2. Before refusing the work, the individual is obligated to try to remedy the problem with the employer. These determinations are highly fact-specific and are determined on a case-by-case basis.

During the COVID-19 pandemic, where a claimant alleges that prospective employment poses a high degree of risk to their health and safety and is therefore “unsuitable,” the Department will consider such factors as:

1. The employer’s overall actions to create a safer workplace (such as having an infectious disease preparedness and response plan; providing options to work from home; providing extra handwashing stations and break time for handwashing; providing additional sanitation and frequent cleaning of high-touch areas; providing personal protective equipment such as masks and gloves; limiting occupancy; and following social distancing guidelines);
2. Compliance with guidance from the Occupational Safety and Health Administration, the Centers for Disease Control, and other relevant federal agencies;

3. Compliance with guidance from the New Jersey Department of Labor and Workforce Development, Department of Health, New Jersey State Police, and other relevant state agencies;
4. Compliance with guidance from industry groups and associations; and,
5. Compliance with the Governor's executive orders.

This list is not intended to be exclusive, and the Department may consider additional factors and sources in making its determination.

VOLUNTARY QUIT/REFUSING SUITABLE WORK AND THE CARES ACT

As described above, if a claimant voluntarily quits without good cause, or if they refuse an offer of "suitable work" without good cause, they are disqualified from collecting UI benefits.

However, if a claimant voluntarily quits or refuses an offer of "suitable work," but has been affected by the COVID-19 pandemic in one of the ways enumerated by the CARES Act, they could be eligible for benefits under the Pandemic Unemployment Assistance ("PUA") program. PUA benefits are equal to regular UI benefits (60% of a claimant's average weekly wage to a maximum of \$731 per week in 2021, and an additional \$300 per week from January 2021 through March 13, 2021).

In other words, a claimant who is determined ineligible for UI may still be eligible to receive PUA.

To qualify for PUA, a claimant must certify each week that they are not eligible for UI benefits under state law; are otherwise able and available to work; and are unemployed, partially unemployed, unable or unavailable to work because of the following COVID-related reasons:

- a. the individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- b. a member of the individual's household has been diagnosed with COVID-19;
- c. the individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;
- d. a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
- e. the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
- f. the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- g. the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
- h. the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
- i. the individual has to quit his or her job as a direct result of COVID-19;
- j. the individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or,
- k. the individual meets any additional criteria established by the Secretary for unemployment assistance under this section.

If circumstances change and these COVID-related reasons no longer apply, the claimant would not be able to continue receiving PUA benefits.

Below are two questions the Department has received on this point related to provisions of the CARES Act.

Child Care Concerns

QUESTION 1

—
What if I am recalled to work by my former employer, or receive another offer of suitable work, but my child's school or daycare is still closed because of COVID?

ANSWER

—
The individual may be eligible for PUA. Although refusing an offer of suitable work would disqualify the individual from regular UI benefits, they could receive PUA under reason (d) above: "if the child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work."

There are several qualifications here that are elaborated upon in federal guidance documents. First, eligibility is not limited only to the care of children, it extends to other persons in the household. Second, "primary caregiving responsibility" for a child or other person in the household means the individual is "required to remain at home" to care for the child or other person. Third, eligibility is not limited only to school closures, it extends to other "facilities," such as daycare facilities and summer camps, that provide care and are closed because of COVID. Fourth, with respect to schools, eligibility for PUA would not continue past the usual closing date of the 2019-2020 school year. Finally, although eligibility for PUA is usually limited if an individual can work remotely, if the provision of care "requires such ongoing and constant attention" that the individual cannot work effectively, the individual would be eligible for PUA.

Health and Safety Concerns

QUESTION 2

—
What if I am recalled to work by my former employer, or receive another offer of suitable work, but am concerned for my health and safety if I go back to work?

ANSWER

—
See our previous guidance on refusing an offer of suitable work for health and safety concerns. In addition, an individual with specific COVID-19 health and safety concerns may be eligible for PUA under reason (f) above: "the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19." These specific concerns are essential; federal guidance documents state that "general concerns about exposure to COVID," without anything further, do not qualify for PUA.

According to federal guidance documents, this scenario would apply to an individual who has been advised by a qualified medical professional that they may be infected with the coronavirus and that they therefore should self-quarantine. For example, if the individual had direct contact with another person who has tested positive or been diagnosed with COVID, and is advised by a health care provider to self-quarantine to prevent further possible spread of the virus.

In addition, this would apply to "high-risk" individuals with underlying health concerns. Such individuals could receive PUA if they were advised by a health care provider to self-quarantine "in order to avoid the greater-than-average risks that the individual might face if he or she were to become infected by the coronavirus." This can include, but is not limited to, individuals with an "immune system [that] is compromised by virtue of a serious health condition." See **CDC Guidance** for complete list of people who are at higher risk of severe illness.



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