

UNEMPLOYMENT BENEFITS & RETURNING TO WORK COVID-19 PANDEMIC QUICK TAKES

If a workplace reopens following a COVID-19 shutdown, must employees return to work?

- As long as eligibility requirements under the CARES Act are met, individuals are not required to return to work and may continue to receive unemployment benefits. These requirements may include:
 - If you have tested positive for COVID-19;
 - If a member of your household has been diagnosed with COVID-19;
 - If you are providing care for a member of your household who was diagnosed with COVID-19;
 - If you do not have childcare due to COVID-19;
 - If you are unable to reach your place of employment due to an imposed quarantine, or because advised by medical provider to self-quarantine due to COVID-19.
- States may have identified special return-to-work timelines for vulnerable individuals, such as those over the age of 65 or those with medical conditions. Check with your state labor department.
- The Occupational Safety and Health Act requires workplaces to be “free from recognized hazards that are causing or are likely to cause death or serious physical harm.” Employees may refuse to work if they believe they are in “imminent danger.”

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What are potential repercussions for not returning to work if there are no COVID-19 related reasons?

- A state may consider that you have voluntarily quit your job and you will no longer be eligible for unemployment benefits.
- If you continue to collect unemployment benefits, the state may determine that you have made fraudulent unemployment claims. You will likely be required to pay back the benefits. You may be subject to criminal prosecution under federal law.

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What steps should an employer take to ensure employee health and safety?

- Establish safety protocols to provide a safe working environment for employees returning to work. These may be related to social distancing, sanitation, temperature checks, personal protective equipment, and the promotion of healthy hygiene practices. Be sure to check:
 - State or local recommendations or laws regarding protocols, such as requirements for masks or face coverings.
 - OSHA's Guidance on Preparing Workplaces for COVID-19.
<https://www.osha.gov/Publications/OSHA3990.pdf>
 - CDC's recommendations for policies and practices for businesses and employers.
<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>
 - EEOC's information on compliance on the ADA and other federal laws following COVID-19.
<https://www.eeoc.gov/coronavirus/>
- Ensure that everyone follows established protocols and state and local laws.
- Prioritize which workers return to work first.
- Work with individuals who have Covid-19 related concerns for returning to work. If employees refuse to return to work without Covid-19 related reasons, report those employees to your state labor department.

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What testing or protocols can employers require when employees return?

- Employers may administer COVID-19 testing or screening to employees before they return to work. All medical information must remain confidential.
 - COVID-19 testing must be accurate and reliable under FDA, CDC, and other public health authority guidance.
 - Temperature screening is permissible.
 - You may ask screening questions, such as whether they have symptoms or have been tested. The EEOC recommends not asking whether they have been exposed to family members who have COVID-19 or symptoms of the virus.
 - For more information: <https://www.eeoc.gov/coronavirus/>

Employers may exclude individuals with COVID-19 or COVID-19 symptoms, or those who refuse to answer health questions or submit to testing from the workplace.