



# Coronavirus - Refusing to Return to Work

## Publication:

Riker Danzig Labor & Employment Client ALERT re Coronavirus - Refusing to Return to Work

As New Jersey gradually reopens for business, the Department of Labor has issued new guidance relating to the return to work and unemployment benefits, clarifying two key departures from the ordinary rule that individuals are only eligible for unemployment if they became unemployed through no fault of their own and are able, willing, and available to work.

### **Voluntary Quit for Good Cause – Health and Safety Concerns**

State law provides that an individual may be eligible for unemployment when they quit a job with “good cause attributable to the work” or because “working conditions are so unsafe, unhealthful, or dangerous as to constitute good cause attributable to such work.” N.J.A.C. 12:17-9.1, 9.4. Ordinarily, this is a difficult standard to meet.

The Department of Labor has issued new guidelines about how it will assess unemployment claims made on this basis during the COVID-19 pandemic. It will consider several factors including:

- Employer’s efforts to create a safer workplace;
- Compliance with Occupational Safety and Health Administration (“OSHA”) and Centers for Disease Control and Prevention (“CDC”) guidelines;
- Compliance with guidance from the Department of Labor, Department of Health, and State Police;
- Compliance with guidance from industry groups and associations; and
- Compliance with the Governor’s executive orders.

In considering an employer’s efforts to create a safe workplace, the Department of Labor will be looking for employers to have an infectious disease preparedness and response plan, to provide options to work from home, to provide extra handwashing stations and break time to use them, to increase sanitation and cleaning, to provide

personal protective equipment, to limit occupancy, and to follow social distancing guidelines.

Now is the time to develop plans for a safe reopening.

### **Refusing Suitable Work – Health and Safety Concerns**

New Jersey law provides that while ordinarily refusing an offer of “suitable work” will result in a loss of benefits, a determination of whether work is “suitable” considers “the degree of risk involved to health, safety and morals.” N.J.S.A. 43:21-5(c); N.J.A.C. 12:17-11.2. A claimant must be able to show the concern is “so compelling so as to prevent the claimant from accepting work.” N.J.A.C. 12:17-11.2.

The Department of Labor will consider the factors listed above in determining whether a claimant may refuse work as “unsuitable” and continue receiving benefits.

### **CARES Act**

Even an individual who cannot meet either of the above standards might still have some claim to benefits. The CARES Act created expanded unemployment benefits through the Pandemic Unemployment Assistance Program. In order to receive Pandemic Unemployment Assistance, an individual must certify that they are not eligible for unemployment benefits under State law, are otherwise available to work, and are unemployed because of a COVID-19 related reason. Those reasons include a diagnosis of COVID-19 either of the individual or a member of the individual’s household, the inability to reach the place of employment due to a quarantine or self-quarantine, the closure of a business due to COVID-19, or that the individual has become the breadwinner for a household because of a death in the family as a result of COVID-19.

The most likely circumstance employers will face is an employee who is unavailable for work because the individual has primary caregiving responsibility for a child or other family member who cannot attend school or a care facility as a result of COVID-19 related closures. Employers should be aware that such individuals might be eligible for Pandemic Unemployment Assistance and consider that possibility in making return to work plans.

Riker Danzig is here to help if you need assistance of any kind. Please do not hesitate to contact [Scott Ohnegian](#), [Adam McLnerney](#), [Fiona Cousland](#), or any member of Riker Danzig's [Labor & Employment Group](#) regarding any specific legal issue affecting your business.

Please visit Riker Danzig’s [COVID-19 Resource Center](#) to stay up to date on all related legal issues.

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