



When Not Working Is More Profitable Than Working

The laws are changing rapidly in the current pandemic/crisis. Therefore, the legal issues discussed here are subject to constant change. It is best to consult with your counsel concerning any specific legal advice you may need.

Businesses getting ready to reopen are contacting furloughed and temporarily laid off employees to discuss bringing them back to work. Instead of enthusiasm, however, some employers are meeting reluctance. Not working has become more profitable than working.

Unemployment is supposed to be a minimal safety net which provides employees with some compensation between jobs when a position is lost through no fault of their own. Employees receive only a percentage of their overall compensation, as the state does not want to carry the employee indefinitely. The decreased income is meant to incentivize employees to find a job and go back to work.

But that was then, and this is now. With the addition of federal unemployment benefits on top of the usual (or sometimes newly increased) state benefits, some employees are earning more money by not working. What can employers do to get their business staffed and back up and running?

In short, the best practice is to find out why the employee is refusing to come back to work and address the reason for the refusal. Concerns due to underlying health conditions or being in a vulnerable age group may trigger an employer's reasonable accommodation obligations, or could qualify employees for disability benefits where offered, if returning is not medically possible. COVID-19-related reasons (being sick or under quarantine for testing positive; caring for someone who is ill or under quarantine; being unable to return because a child's school or daycare remains closed) might be reasons for which the employee who is now being called back to work would become eligible for leave under state or federal COVID-19-related leave laws, or, in

some situations, even qualify non-working employees for unemployment benefits.

But an employee who has been offered work and refuses to return because he or she wants to stay home and collect more money on unemployment, without having a valid reason for not returning to work, could be considered a voluntary quit. Because the job was lost through their own actions, that employee could potentially be deemed ineligible for unemployment benefits.

States beginning to reopen have expressed concerns about situations where employees have no valid reasons to refuse to return to work. Ohio and Texas have asked employers to report employees who will not return to work, with Ohio creating an on-line reporting tool. The Washington State Employment Security Department and Texas Workforce Commission, which manage unemployment insurance compensation in those states, have both indicated that refusing to work may mean losing unemployment benefits. Iowa's governor has said that refusing to come back when work is offered is a voluntary quit. New York's updated guidance on unemployment in this COVID-19 era similarly reflects that employees are not generally eligible for unemployment insurance if they voluntarily leave their job without good reason.

In the end, trying to stay home expecting to earn more money through unemployment without having a valid reason to refuse to return to work could backfire on employees, who would likely both be out of a job and denied unemployment because they quit.

As a practical matter, many state unemployment divisions are swamped keeping up with applications and may not be able to stay on top of employer work-refusal reports. That said, businesses would be prudent to file their protests, as well as document their offer of rehire, and the employee's rejection of that offer. If the business has a PPP loan, such documentation can help avoid having the decreased headcount (due to the employee's refusal to return) affect the loan's forgiveness.

Employers should consult with competent employment counsel when employees refuse to return to work, to ensure all bases are covered.

For additional articles on related topics please go to [COVID-19 Employment Law Resource Center](#).

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The foregoing is a summary of the laws discussed above for the purpose of providing a general overview of these laws. These materials are not meant, nor should they be construed, to provide information that is specific to any law(s). The above is not legal advice and you should consult with counsel concerning the applicability of any law to your particular situation.

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