

Dept. of Workforce Development: Addressing concerns about returning to work

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MADISON - The Department of Workforce Development (DWD) is addressing concerns from employers and employees about how to safely return to the workplace in light of Wednesday's Wisconsin Supreme Court ruling that struck down most of the Safer at Home Order.

"It is more important than ever that the people who are able to work from home to continue to stay at home so that we can protect those who must go back," DWD Secretary Caleb Frostman said. "Self-isolating and quarantining is part of the Badger Bounce Back plan to decrease COVID-19 cases and deaths and is aimed to protect the health, safety, and wellbeing of Wisconsinites so that we can all get back to work."

How Does the Supreme Court Ruling Affect Unemployment Claims?

As it relates to unemployment claims, DWD announced that the Supreme Court's ruling does not have any impact on submitted applications or pending claims.

DWD will continue to process claims and adjudicate issues. Benefits will be paid when due, even if the person returns to work before their case has been addressed since back weeks will continue to be payable if a determination finds benefits are due.

Please note that if an employer now has work for an employee who was laid off or furloughed and that employee refuses to return to work, the eligibility issue must be adjudicated. Depending on the specifics of the reason for the refusal to work, that

person may or may not be eligible for benefits.

For more information pertaining to the following questions related to unemployment insurance (UI) and COVID-19, please visit <https://dwd.wisconsin.gov/covid19/public/ui.htm>.

Claimant focused questions:

1. My employer is reopening but I don't plan to return to work, am I eligible for unemployment?

Answer: Unemployment benefits are available to individuals who are totally or partially unemployed due to no fault of their own. In this example, the individual—not the employer—is choosing not to work and, therefore, would be ineligible. However, the facts of each circumstance are important. An investigation would be conducted to determine if you would still be eligible. Please see the Claimant Handbook Part 6 Eligibility Issue, Common Disqualifications. <https://dwd.wisconsin.gov/covid19/public/ui.htm#collapse1-44>

1. What if I'm called back to work but can't return because I need to take care of my child since daycares/schools are not open?

Answer: Individuals not returning to work because they are the primary caregiver for a child unable to attend school or another facility closed due to COVID-19 may not be eligible for regular UI but could still be eligible for Pandemic Unemployment Assistance (PUA). <https://dwd.wisconsin.gov/dwd/publications/ui/pua-18774-p.pdf> (see line 4)

1. How do I report that I have turned down my employer's request that I return to work?

Answer: On your weekly claim for benefits for the week you turned down the offer, you would answer "yes" to the question "During the week, did you refuse any work that was offered to you?" <https://dwd.wisconsin.gov/covid19/public/ui.htm#collapse1-45>

Employer focused questions:

- 1) If an employee decides not to return to work when the business reopens, are they eligible for unemployment?

Answer: In most cases, no. Unemployment benefits are available to individuals who are totally or partially unemployed due to no fault of their own. In this example, the individual—not the employer—is choosing not to work and, therefore, would be ineligible. However, the facts of each circumstance are important. An investigation would be conducted to determine if the employee would still be eligible. <https://dwd.wisconsin.gov/covid19/public/ui.htm#collapse2-12>

1. How do I notify UI that an employee refused to return to work?

Answer: Contact the [UI Help Center](https://dwd.wisconsin.gov/covid19/public/ui.htm#collapse2-13) (Employer Assistance Line). <https://dwd.wisconsin.gov/covid19/public/ui.htm#collapse2-13>

More specific scenarios, when asked about person not returning due to personal safety concerns:

Quit: If part of an ongoing employment relationship, refusing to work could be considered quitting. Under Wisconsin law, there is a quit provision related to quitting with good cause attributable to the employer. The law requires that UI consider the reasonableness of the reason for the claimant quitting. It must be a valid, substantial reason for which the employer is responsible.

Job Refusal: A person who has refused an offer of work due to concerns about personal safety could be eligible for benefits depending on the specifics of the reason for the refusal. A full eligibility review would be required to determine if the claimant would be eligible for benefits.

If an offer of work is refused and the offer is bona fide, we must always consider whether the job offered meets labor standards – are the wages, hours, and other conditions of the work favorable.

The law also requires that we consider whether the work was refused for good cause. One of the examples enumerated in the statute is “refusal due to the employee’s personal safety”. DWD would need to examine the reasonableness of the objection to the job. Was the employer made aware of the objections and, if so, were there accommodations the employer could make to make the job safe?

What Should Employers Consider When Opening Operations?

As employers consider whether they should resume operations or how they can return workers to their jobs, DWD's Equal Rights Division (ERD) reminds employers and employees to be mindful of the Fair Employment Act and other employment laws:

In general, employers should be mindful of the following:

1. Avoid making return to work decisions based on age, marital status, real or perceived disability, or any other protected bases.
1. Make return to work decisions based on nondiscriminatory factors such as:
 1. whether work duties are essential/non-essential,
 2. the ability to perform job duties remotely, and
 3. individual medical risks which may require accommodation.
1. Make sure "legitimate nondiscriminatory criteria" do not unintentionally impact one protected class over another.
1. Avoid blanket policies that treat individuals with disabilities differently.
1. Instead, engage in the interactive accommodation process where needed.

It is unlawful to retaliate against a worker for engaging in legally protected activity - which can include requesting medical accommodation or complaining about unsafe work conditions.

Employers should work with HR or legal counsel to avoid unlawful retaliation.

Employees with questions or concerns regarding their right to accommodation, family and medical leave, fair wages, or equal treatment should contact the ERD at 608-266-6860 or 414-227-4384 or email DWD at erinfo@dwd.wisconsin.gov.

Employers with questions or concerns should visit <https://dwd.wisconsin.gov/covid19/public/er.htm> for more information or email DWD at erinfo@dwd.wisconsin.gov.

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What options are available for employees concerned about workplace safety?

Workers who are concerned that their private-sector employer is not keeping their workplace safe from COVID-19 can [file a complaint](#) with the U.S. Occupational Safety and Health Administration (OSHA) at <https://www.osha.gov/workers/index.html>. Wisconsin is one of more than two dozen states whose workplace safety complaint and enforcement systems are primarily under the federal government's jurisdiction, with public-sector workers covered separately. Additional details and resources are available [online](#) at https://dwd.wisconsin.gov/wc/safety/safety_works/.