

**FACT SHEET #145C JUNE 2020**

## **COVID-19 Unemployment Benefits What is Suitable Work?**

Michigan's unemployment insurance law and the Federal Coronavirus Aid, Relief, and Economic Security Act (CARES) Act requires individuals collecting unemployment benefits to be available for suitable work and accept an offer of suitable work. In situations where an employer offers a employee to return to their customary work, a employee can possibly lose unemployment benefits if he/she refuses. Wages, workplace safety, and other factors are considered in determining whether the work is "suitable."

In determining whether full-time or part-time work is "suitable," the law considers the following criteria:

- Employee's physical fitness for the job
- Degree of risk to the employee's health, safety and morals
- Employee's prior training and work experience
- Length of the employee's unemployment
- Employee's prospects for securing work in his/her customary occupation
- Distance of work from employee's residence
- Employee's prior earnings

An individual who refuses an offer of work that is determined to be suitable will be denied benefits if the pay rate for that work is at least 70% of the gross pay rate received immediately before becoming unemployed.

An evaluation of suitable work also includes whether workplace conditions are safe.

- Employers must follow current state and federal requirements and guidance to maintain a safe workplace in general and due to COVID-19
  - State and federal requirements and guidance on COVID-19 include information from the following sources (as of date of publication):
    - [Michigan's Stay Home, Stay Safe Orders](#)
    - [Michigan Occupational Safety and Health Administration \(MIOSHA\)](#)
    - [Occupational Safety and Health Administration \(OSHA\)](#)
    - [Centers for Disease Control and Prevention \(CDC\)](#)
    - [Michigan Safe Start Plan](#)

Check with each government entity for up-to-date guidance and regulations.

- Work is not considered to be suitable if the employer is unable or unwilling to provide a safe workplace required by current state and federal law and guidance. Employers have the responsibility to prove that workplaces are safe and in compliance with appropriate workplace safety laws and guidance.

After collecting half (50%) of the employee's entitled weeks, an unemployed employee must apply for, and accept work even if the work is outside of his or her past training and experience, or unsuitable as to the pay rate as long as the pay is at least:

1. 120% of the individual's weekly benefit amount (WBA);
2. The average wage for the particular work in the locality where the job is offered; and
3. The state minimum hourly wage (currently \$9.65 an hour).

The law says that if an employee refuses an offer of suitable work, without good cause, the employee may be disqualified from receiving unemployment benefits.

### **Returning to Work with Reduced Hours**

If an employee returns to work at reduced hours, and this results in a reduced weekly income compared to the weekly income prior to filing for unemployment benefits, the employee may be eligible for both partial unemployment compensation and the \$600 Federal Pandemic Unemployment Compensation (FPUC) per week. The \$600 FPUC per week is not prorated based on an individual's earnings or hours worked.

### **What If Employees Refuse to Return to Work?**

Employees who refuse to accept "suitable work" without "good cause" can lose unemployment benefits. If the Unemployment Insurance Agency (UIA) finds that the employee did not have good cause to refuse to return to work, the employee: (1) will not be eligible for further unemployment benefits, and (2) will have to pay back unemployment benefits they may have received after they refused the work. If the UIA finds that the employee did have good cause to refuse to return to work, the employee will continue to be eligible for unemployment benefits.

Employers and employees are encouraged to communicate openly about workplace safety practices, sick time policies, reopening requirements and employee-specific concerns about returning to work. Both employers and employees should also document workplace compliance with health and safety guidelines, correspondence (including complaints and inquiries) to MIOSHA, and communications between employers and employees about returning to work.

Employees should report on their MIWAM Account in their biweekly certification that an offer of work was made but they refused that work for a specific reason. See the section below, "Good Cause to Refuse Suitable Work" for COVID-19 specific reasons. Employees should provide the agency with as much information as possible about why they refused an offer of work.

### **Good Cause to Refuse Suitable Work**

Pursuant to Governor Whitmer's Executive Orders, federal law, and UIA guidance, employees may have good cause to refuse work in light of COVID-19 in the following situations:

- The individual's normally available transportation is now unavailable. For example, including but not limited to if public transportation or ride-sharing services are reduced or eliminated due to COVID-19 or for another reason.
  - For employees receiving Pandemic Unemployment Assistance (PUA), the individual's normally available transportation must be unavailable due to a quarantine related to COVID-19 only.
- The individual is under self-isolation or self-quarantine in response to elevated risk from COVID-19 due to being immuno-compromised. Examples of high risk include but are not limited to:
  - Older adults (age 65 and older) and those who are pregnant.
  - Those with specific disease or chronic conditions such as cancer, heart disease, lung disease, chronic liver disease undergoing dialysis, severe obesity, diabetes, malnutrition, and certain genetic disorders.
  - Those with specific medications or treatments such as steroids, chemotherapy, radiation therapy, dialysis, stem cell, bone marrow, or organ transplant.
- The individual or household member has displayed at least one of the principal symptoms of COVID-19, which include fever, atypical cough, and atypical shortness of breath. Refer to the CDC's website for up-to-date information on symptoms, <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>. Individuals must either have a positive test, have a COVID-19 diagnosis from a medical professional, or be seeking a COVID-19 diagnosis.

- The individual has had contact in the last 14 days with someone with a confirmed diagnosis of COVID-19. Contact for the purposes of healthcare exposures is defined as follows: a) being within approximately 6 feet (2 meters) of a person with COVID-19 for a prolonged period of time, without appropriate personal protective equipment consistent with Department of Health and Human Services recommendations; or b) having unprotected direct contact with infectious secretions or excretions of the patient (e.g., being coughed on, touching used tissues with a bare hand).
- The individual recovered from COVID-19, but the infection caused medical complications rendering the individual temporarily unable to perform essential job duties .
- The individual is required to care for someone with a confirmed diagnosis of COVID-19.
- The individual has a family care responsibility as a result of COVID-19 and does not have access to customary arrangement or a reasonable alternative.
  - This includes if individuals must miss work either to take care of children if the school is closed, or if summer child-care arrangements are closed due to a government directive or COVID-19.
  - If individuals' customary child care is no longer available due to COVID-19, individuals must seek "reasonable" alternatives to child care. If individuals cannot find "reasonable" alternatives to child care, individuals may remain eligible for unemployment benefits. The Agency will consider if alternative child care is "reasonable" compared to the pre-COVID-19 child care for an individual's family. Factors for reasonableness of alternative child care includes:
    - Whether the individual has documented attempts to secure alternative child care;
    - Availability of alternative child care;
    - Distance from individuals' homes to pre-COVID-19 child care compared to the distance from individuals' homes to alternative child care;
    - Cost of alternative child care compared to pre-COVID-19 child care
    - Reasonableness usually will not apply to the curriculum of child care, absent a showing that a child requires a specific curriculum for a medically documented reason(s);
      - E.g. child with special needs requires specific child care arrangements
    - Reasonable childcare includes child care operational and in compliance with Executive Orders and Michigan Department of Licensing and Regulatory Affairs' requirements, including disaster relief child care centers authorized by Executive Order.
- The individual has a reasonable belief that the workplace is unsafe or not in compliance with state or federal safety guidance and law. If an employer claims that a workplace is "suitable" because it meets state and federal workplace safety requirements, the employee may still have "good cause" to refuse that work if the employee can establish he or she has a reasonable belief that the workplace does not meet safety requirements.
- Merely being afraid to return to work is not good cause.

### **Protesting or Appealing a Refusal of Work Determination or Redetermination**

An Agency determination or redetermination can be protested or appealed within 30 days of the mail date on the (re)determination. The employer must prove that a specific offer of work was made to the specific employee and that the work was suitable. The employee will have to prove that the offer was not received, that the work was unsuitable, or that he or she has good cause for refusing the work.