

Can employees refuse a recall to work and still collect unemployment?

In most cases, no, but ultimately it will be up to the state to decide on a case-by-case basis.

When an employer recalls an employee to work, it must notify its state unemployment agency of the offer of work made to that individual. This should stop the eligibility for benefits based on work not being available.

Depending upon the circumstances, however, an individual may be unavailable for work due to COVID-19. It's possible that a stay-at-home order could still be in place where the individual lives, making him or her unable to travel to a work location unless his or her work is essential. The individual may also be caring for a child whose school or caregiving place is closed or still be caring for someone diagnosed with COVID-19. Additionally, he or she could have some reason to feel unsafe at the workplace due to the pandemic, which might be deemed allowable. Therefore, if the individual does not accept the recall notice, he or she will have to continue to certify with the unemployment agency as to why he or she cannot work due to COVID-19, or for another qualifying reason.

If an employer has any reason to believe an employee might refuse a recall for unlawful reasons, it may wish to educate him or her on the consequences of unemployment fraud. These could include not only reimbursing the state for benefits paid but also civil and criminal penalties, including incarceration.

Additionally, through the end of July 2020, unemployment recipients will receive an additional \$600 per week on top of their regular unemployment insurance entitlement through provisions under the CARES Act. In many cases, this will provide more money than the employee normally made when working, and these employees may feel less inclined to return to work before August, and therefore, refuse the recall. Employers may wish to advise these employees that the offer of work has been reported to the state, and unemployment benefits will stop as of the intended start date. Any dishonest statements made by the employee to the unemployment agency would be considered fraud and may be subject to the penalties mentioned above.

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