

Addressing Unemployment Claims During a Pandemic

*Prepared for Members of the Leadership Council
Southwestern Illinois*

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Employee Eligibility

- **Employee Eligibility**

- Employee must have earned at least \$1,600 during base period (4 of the last 5 calendar quarters).
- No hours requirement needed for a claimant to be eligible for benefits.
- 26 weeks of state unemployment benefits eligibility
 - August 6, 2020, IDES extended *state* unemployment benefits 20 weeks, after exhaustion of initial 26 weeks.

Chargeable Employer

- **Chargeable Employer**

- The employer whose account will fund the unemployment compensation benefits
- The last employer prior to the beginning of the individual's **benefit year** (*i.e.* first day of the week in which employee files unemployment claim, and next 364 days) for whom the individual provided services during at least **30 days** beginning with the first day of the individual's **base period** but prior to the beginning of his benefit year.
- The 30 days do not have to be consecutive.
- A “day” is considered any day in which compensable services are actually performed for the employer.

Employee Ineligibility

- **Definition of Misconduct**

- Misconduct is defined as the deliberate and willful violation or gross negligence;
- involving a reasonable rule or policy of the employing unit,
- governing the individual's performance of his work;
- provided such violation has harmed the employing unit or other employees or has been repeated by the employee despite a warning or instruction

“Misconduct” under Illinois Unemployment Insurance Act

- **Deliberate and willful violation**
 - Question is whether the employee *intended* to do the act that caused the harm
 - *Intentional* misconduct does not include inefficiency, accidents, normal negligence, or errors in judgment when made in good faith

“Misconduct” under Illinois Unemployment Insurance Act

- **Gross negligence** i.e. *non-intentional* conduct
 - Intoxication (drugs or alcohol) at work
 - Repeated absences
 - Falsification of employment application
 - Damaging employer’s property
 - Dishonesty
 - Failure to maintain licenses, registrations, certifications required by the employer.
- Insubordination

Required IDES Pamphlet

- **Must an employer provide information on how to obtain unemployment benefits to an employee who is separated or laid off due to COVID-19?**
- Yes.
 - Employers are required to provide employees who are laid off or separated for more than seven days with a pamphlet supplied by IDES, titled, “What Every Worker Should Know About Unemployment Insurance.”

Required IDES Pamphlet

State of Illinois
Department of Employment Security



What Every Worker Should Know About Unemployment Insurance

Notice to Employers
When workers are laid off for a period of seven

12:09 PM
8/11/2020

School/Day Care Closed

- Are employees who must leave work because their child's school is closed, and the parent feels he/she must be home with the child, eligible for unemployment?
- Likely, No.
 - An individual who leaves work **voluntarily** without a good reason attributable to the employer is generally disqualified from receiving unemployment benefits.
 - The reason the individual in this situation left work would not be considered attributable to the employer.
 - Consequently, the individual would likely not qualify for unemployment benefits.

Temporary lay off/furlough – COVID-19

- Are employees who were temporarily furloughed/laid off due to economic downturn caused by COVID-19, eligible for unemployment benefits?
- Yes.
 - Individuals temporarily laid off/furloughed due to COVID-19 are eligible for unemployment benefits *so long as they meet all the usual eligibility requirements.*
 - Those requirements include being **separated from employment through no fault of their own** and are **able and available for work.**
 - The individual would be considered “**able and available**” for work if there was *some* work that he or she could perform from home and there is a labor market for that work.
 - Under IDES’s “emergency rule,” the requirement that individuals be “actively seeking work” **has been waived if the employee was furloughed/laid off**; they are considered to be actively seeking work as long as they are **prepared to return to their jobs as soon as their employers reopen.**

Offer of Re-employment – Employee Refuses

- What if an Employer makes an offer of employment to an employee who was previously furloughed/laid off due to COVID-19, and the employee *refuses* to return to work? Is the employee ineligible for unemployment benefits?
- Possibly – depends on the reason for the refusal.
 - Generally, an individual must show good cause for refusing a bona fide, suitable offer of work.
 - In determining whether any work is suitable for an individual, the IDES looks at the degree of risk involved to the employee's: (1) health, safety, and morals; (2) physical fitness and prior training; (3) experience and prior earnings; (4) length of unemployment and prospects for securing local work in their customary occupation; and (5) the distance of the available work from their residence.



Refusal of Work Reporting Form

Please utilize this form to notify us of one or more claimants who have refused to return to work when offered by you or your representative. Include detailed explanation of the reasons that employee provided for refusing to return to work. This information will assist IDES in making our determination of benefit eligibility. Generally, an individual must show good cause for refusing a bona fide, suitable offer of work.

In determining whether any work is suitable for an individual, consideration shall be given to the degree of risk involved to their: health, safety, and morals; physical fitness and prior training; experience and prior earnings; length of unemployment and prospects for securing local work in their customary occupation; and the distance of the available work from their residence. To read more about Refusal of Work (Section 603 of the IL UI Act), please review the [Unemployment Insurance Law Handbook](#) on our website.

Instructions for Submitting: Submit the completed form using our secure [File Transfer Utility tool](#) only. The recipient email address is DES.WorkRefusal@Illinois.gov. This is for notifying the agency of work refusals ONLY. Other documents, emails or requests will not be accepted. Include as many workers as you are aware on one submittal. If later you need to protest additional workers, please remove any that were previously reported.

Employer UI Account Number	<input style="width: 95%;" type="text"/>
Employer Name	<input style="width: 95%;" type="text"/>
DBA	<input style="width: 95%;" type="text"/>
Business Address	<input style="width: 95%;" type="text"/>
City, State, Zip	<input style="width: 95%;" type="text"/>
Contact Name	<input style="width: 95%;" type="text"/>
Contact Telephone Number	<input style="width: 95%;" type="text"/>
TPA Name and Contact Info <small>(if applicable)</small>	<input style="width: 95%;" type="text"/>

Please explain what steps, if any, the employer has taken to limit exposure to COVID-19 in the workplace?

Enter each claimant for which you wish to raise a refusal of work issue.

Last Name	First Name	Full SSN	Date offer made	How was offer made?	What was the specific reason the employee gave for refusing to return to work	Name of person who made the offer	Same position offered?	If different, please explain	Hours and pay same as previous?	If No, what was previous rate of pay?	If No, what were previous hours?	Rate of Pay Offered	Hours Offered
				Phone ▾									
				Phone ▾									
				Phone ▾									
				Phone ▾									

Contact IDES

Writing to IDES - Individuals or Employers

If you have a question, a problem to report, or would like to help us better understand how the website or our services may be improved, please let us know by using the form below.

When your contact information is provided, **particularly an email address and ZIP code**, we respond as quickly as possible.

* indicates required field

Why are you contacting IDES? *

Are you submitting a:

Comments

Name: *

Company (Recommended):

City: *

State:

Zip Code: *

Phone: *

Email: *

Submit

Reset

Quarantined at Home Due for COVID-19 Related Reason

- If an employee is quarantined at home:
 - Because a medical professional has diagnosed the employee with COVID-19; or
 - To care for a spouse, parent or child who a doctor has diagnosed with COVID-19
- Potentially.
 - An individual in any of those situations would be unemployed through no fault of his or her own, so the employee *may* be eligible.
 - **However**, to qualify for unemployment benefits, he or she would still need to meet all other eligibility requirements, including the requirements that the individual be **able and available for work** (able to do some type of work from home) and actively seeking work from home.

Employee Quits Due to COVID-19 Concerns

- An employee quits his/her job because the employee is generally concerned over the COVID-19 virus? Is the employee eligible for unemployment benefits?
- Possibly, depends on the legitimacy of the reason given.
 - An individual who leaves work **voluntarily, and without a good reason attributable to the employer**, is generally disqualified from receiving unemployment benefits.
 - The eligibility of an individual in this situation will depend on whether the facts of his or her case demonstrate the individual had a **good reason for quitting and that the reason was attributable to the employer**.
 - An individual generally has a duty to make a reasonable effort to work with his or her employer to resolve whatever issues have caused the individual to consider quitting, **prior to quitting**.

Voluntary Resignation

- For an individual's separation from work to be a voluntary, the individual must have the option to remain employed
- The separation is NOT voluntary (*i.e.* involuntary discharge) if the individual does not have the option to remain employed
- Employee submits two-week voluntary resignation, employer tells employee to leave immediately. Employee likely eligible for two weeks of benefits

State of Illinois
Department of Employment Security
www.ides.illinois.gov



Voluntary Leaving Questionnaire - Employer

Claimant Information:

Last Name: _____ First Name: _____ MI: _____
SSN: _____ Employer Account #: _____

Under Section 601 of the Illinois Unemployment Insurance Act, an individual who quits his/her job without good cause attributable to his/her employer is ineligible for unemployment benefits. Please provide information about the claimant's separation from employment. The information you provide will be used for the purpose of determining the claimant's eligibility for benefits.

Please complete, sign and return this questionnaire to the Illinois Department of Employment Security Office as instructed. If you need additional space, please use the other side of this document, if appropriate, or attach a separate sheet of paper.

This state agency is requesting information that is necessary to accomplish the statutory purpose as outlined in 820ILCS 405/100-3200. Disclosure of this information is voluntary. However, failure to respond may result in erroneous payment of Unemployment Insurance benefits which may affect the amount of your liability for contributions or payments in lieu of contributions.

Thank you for your cooperation in this matter.

Section A: Employment Information		
Employer Name: _____		Employer Telephone Number: (____) ____ - _____
Length of Employment	Work Hours	Wages
From: ____ / ____ / ____ To: ____ / ____ / ____	From: ____ To: ____	\$ ____ . ____ Per
Type of Work (e.g. retail sales, cook, office manager, etc) _____		Job Duties _____
Section B: Reason For Leaving		
What was the last day the claimant worked? ____ / ____ / ____		
What was the circumstance, incident, or reason that caused the claimant to leave his/her employment? _____		
Did the claimant inform you that he/she was leaving? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If Yes, what is the name and title of the person the claimant informed? _____		
If Yes, what was the date the claimant informed that person? ____ / ____ / ____		
If Yes, what reason did the claimant give you for leaving? _____		
Did the claimant have a choice to remain employed? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Did the claimant take any steps before leaving to explain or resolve the situation? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If Yes, what steps did the claimant take to explain or resolve the situation? _____		
Did the claimant submit his/her resignation in writing? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Did the claimant give you a notice period? <input type="checkbox"/> Yes <input type="checkbox"/> No Did the claimant complete the notice period? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If No, please explain: _____		
Did the incident or problem that caused the leaving violate or change the original hiring agreement? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If Yes, please explain: _____		
Section C: Signature		
Signature: _____		Date: ____ / ____ / ____
Name: (Printed or Typed) _____		Telephone Number: (____) ____ - _____
Title: _____		Extension: _____

Reduction in Weekly Hours

- **Does a reduction in weekly hours trigger unemployment compensation?**
- Possibly.
 - To qualify as an “unemployed individual,” the employee must receive “less than full-time” work in a given week and the employee’s wages must be less than the weekly benefit amount, which is generally 47 percent of the individual’s average weekly wage with a minimum of \$51 per week and a maximum of \$667 per week.
 - The weekly benefit amount depends on each individual’s compensation and dependent allowances.
 - Thus, in order to qualify, an individual’s compensation must be reduced such that it falls below 47 percent of his or her weekly wages.
 - Conversely, if an employee receives more than the maximum weekly benefit amount for given week, he or she is not considered to be unemployed and is not eligible for benefits.

Rotational Furloughs

- **Are employees on “rotational furloughs” eligible for unemployment benefits?**
- Potentially.
 - Employers are implementing alternative reductions in force by, for example, alternating furloughs where an employee may work only two full weeks or so in a month.
 - Employees who are subject to these rotational furloughs *may* be entitled to their weekly benefit amounts without reduction for the weeks that they are not working.
 - However, it is important to note that this is a determination that only IDES can make.

Use of PTO or Vacation

- If an employee uses PTO while on furlough or temporarily laid off, or an Employer pays out accrued but unused PTO or vacation upon separation, will that effect the employee's eligibility or cause a delay in unemployment compensation?
- Generally, Yes.
 - PTO/Vacation payments connected to a separation or layoff are generally considered wages under the Illinois Unemployment Insurance Act and may reduce or delay the payment of benefits.

Paid Sick Leave Under FFCRA

- If an employee is receiving paid sick leave under FFCRA, is the employee eligible for unemployment compensation?
- No.
 - Employee is NOT eligible for unemployment benefits while receiving paid sick leave under the FFCRA.

Fringe Benefits

- Can an employer continue to provide fringe benefits, severance pay, 401(k) loans, and COBRA health insurance coverage following an employee's receipt of unemployment benefits without affecting or delaying an employee's unemployment eligibility?
 - **Fringe Benefits**: No, fringe benefits provided to a discharged employee may be considered wages that will reduce the individual's unemployment benefit amount. Wages include bonuses paid after a job separation.
 - **Severance**: Yes. Severance may be paid periodically or in a lump sum without affecting eligibility.
 - **401(k) Loans**: Yes.
 - **COBRA Coverage**: Yes, regardless of whether the individual fully pays for continuing health insurance benefits under Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) coverage or the employer partially or totally subsidizes COBRA premiums.

Supplementing an Employee's Wages While on Furlough

- Can an employer supplement an employee's wages while he or she is furloughed, but collecting unemployment?
- Yes, but it may eliminate or reduce an employee's benefit amount.
 - An individual is ineligible for unemployment benefits in any week the individual receives wages that *exceed* his or her weekly unemployment benefit amount. (e.g. WBA \$100; Wages \$120 = not eligible).
 - If wages **do not exceed** the weekly amount, unemployment benefits will be reduced by the amount of wages that exceeds 50 percent of the weekly unemployment benefit amount. (e.g. WBA \$100; Wages \$90; WBA reduction of \$40, new WBA - \$60).

Unemployment Benefits Under the CARES Act

- What unemployment benefits are available for Illinois workers under the CARES Act?
 - The CARES Act *provided* an additional \$600 per week added on to an eligible individual's weekly unemployment benefit amount.
 - This \$600 per week benefit applies to individuals who are eligible for benefits beginning March 29, 2020, **but expired on July 25, 2020.**
 - NOW WHAT?????????

Unemployment Benefits Under the CARES Act

- **What unemployment benefits are available for Illinois workers under the CARES Act?**
 - Saturday 8/8/20, President Trump signed an Executive Order, in which eligible individuals would receive \$400, instead of \$600.
 - Federal government would cover \$300 through DHS Disaster Relief Funds, and would extend benefits through 12/6/20, or when DRF is drawn down to \$25 million.
 - DOL sent a memo to States advising that they are “encouraged” to bankroll the remaining \$100 from their own budget, but apparently are not obliged to do so.
 - An alternative option would allow States to satisfy the cost-sharing requirement through their existing unemployment insurance weekly benefit payments, meaning the individual would receive only \$300 in extra assistance on top of their weekly state-funded benefit.
 - TBD . . . guidance to be issued this week . . .

Unemployment Claims and Marijuana

Understand defenses to unemployment claims

“Misconduct” under the Illinois Unemployment Insurance Act, includes:

602(A)(6) Consuming alcohol or **illegal** or non-prescribed prescription drugs, or using **an impairing substance** in an off-label manner, on the employer’s premises during working hours **in violation of the employer’s policies**;

602A(7) Reporting to work under the influence of alcohol, **illegal** or non-prescribed prescription drugs, or an **impairing substance** used in an off-label manner **in violation of the employer’s policies**.

According to the IDES, these 2 provisions NO LONGER apply to cannabis:

Cannabis is not a prescription drug because the user does not obtain a prescription.

Cannabis could be considered an impairing substance, but it cannot be used in an off-label manner, since there is no “on-label” limitation on use.

Cannabis is legal in Illinois

Unemployment Claims and Marijuana

Understand defenses to unemployment claims

“Misconduct” under the Illinois Unemployment Insurance Act, is defined as:

Deliberate and willful misconduct

Of a reasonable rule or policy of the employer governing the individual’s behavior in the performance of his/her work.

That either (a) harmed the employer or a fellow employee; or was repeated despite a warning or explicit instruction from the employer.

Use/Possession of Cannabis on the Job (observe conduct)

A claimant’s use or possession of cannabis on the job *may* be disqualifying under Section 602’s general definition of misconduct, if all elements are met.

Conduct was willful and deliberate – EE knew of zero tolerance drug/free workplace policy.

Zero tolerance/drug free workplace policy is reasonable – cannabis is an intoxicant, and it is reasonable for an employer to prohibit possession and use of an intoxicating substance at work.

Potential harm to employer – employee could injure himself or others, or company property, particularly in a safety sensitive position.

Unemployment Claims and Marijuana

Understand defenses to unemployment claims

“Reporting to work impaired” (don’t observe conduct)

“A claimant may also be ineligible for benefits based on impairment at work, regardless of where the consumption occurred.”

Use the criteria set forth under the Cannabis Act, plus a positive drug test/refusal to take a drug test.

A claimant’s reporting to work impaired or under the influence of cannabis *may* be disqualifying under Section 602’s general definition of misconduct, if all elements are met.

Conduct was willful and deliberate – EE knew of zero tolerance drug/free workplace policy.

Zero tolerance/drug free workplace policy is reasonable – cannabis is an intoxicant, and it is reasonable for an employer to prohibit employees from coming to work impaired or under the influence.

Potential harm to employer – employee could injury himself or others, or company property, particularly in a safety sensitive position, if impaired or under the influence.

Mechanics of a Claim for UI Benefits

- Notice to employer from the Department of Employment Security
- Challenges by employer (10 days)
- Written determination
- Telephone hearing
- Appeal to Board of Review and Circuit Court

Employer Contribution Rates– COVID-19

- Will employers IDES' contribution rate be increased for unemployment benefits paid to an employee who has been furloughed or laid off due to COVID-19?
- *As of today, No.*
 - Employers will not be charged for layoffs/ related to COVID-19 between **March 15, 2020, and December 31, 2020.** These costs will be socialized in the system.

Statement of Benefit Charges

- Due to the volume of unemployment insurance claims resulting from the pandemic, IDES has temporarily stopped mailing employers the quarterly Statements of Benefit Charges (for taxable employers) and Statements of Amount Due for Benefit Charges (for reimbursable employers).
- All employers will be able to view the Statements for the Second Quarter 2020, along with instructions and a protest form, on their MyTax.Illinois.gov account when they are posted on **August 14, 2020**.
- All employers will be mailed a notice on July 22, 2020 asking that they sign up for a MyTax account.
- This notice will state that the Statements will “only” be delivered on MyTax. This is incorrect. A second notice will be mailed on August 10, 2020 with instructions on how to receive a duplicate paper copy of the Statement through the mail.

Questions?



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THANK YOU

- Legal Disclaimer: This document is not intended to give legal advice. It is comprised of general information. Employers facing specific issues should seek the assistance of an attorney.