

(Updated: October 22, 2020)

## **“I am now collecting Unemployment Insurance for a reason related to COVID-19. Businesses in Massachusetts are starting to reopen. Can my employer force me to return to work?”**

Massachusetts employers whose businesses were closed because of COVID-19 are being allowed to reopen. This reopening process started in May and will occur in four phases, each phase lasting at least three weeks -- or longer if there is another spike in COVID-19 cases. We are now in Phase 3 of the reopening; the schedule for reopening is [here](#).

**Until your employer is allowed to reopen, you may continue to stay safely at home and collect Unemployment Insurance (UI).**

**You MAY NOT refuse to return to work because your UI benefit is higher than the wage you would receive if you returned to work.** A program funded by the federal government that provided an additional \$600 per week in UI benefits ended July 25<sup>th</sup> and another program providing an extra \$300 per week in UI benefits ended September 5<sup>th</sup>. Additional benefits may become available, and if they do, refusing work on this basis will not be permissible.

**But you may remain eligible for UI if DUA determines that your refusal to return to work is “reasonable.”** DUA [says](#) that “determining what is “reasonable” is a fact-specific inquiry. A general fear of being exposed to COVID-19, without more, is not a reasonable basis for refusing work. However the employee’s own health situation is an important consideration, as are the work conditions and the job the employer offers.” **A “reasonable refusal,” therefore, could include the employee’s situation, the job or work conditions to which the employee is being asked to return, or a combination of some or all of these factors. More recently, DUA has also said that you can refuse an offer of work if the work is not considered “suitable” (and therefore can be refused without any impact on unemployment benefits) if the worker has a reasonable belief that the job poses a substantial risk to the health or safety of the worker, the worker’s child, a member of the worker’s immediate family or household member, or the worker’s health or safety would be compromised due to an underlying medical or other condition if the worker accepted the job. In each of these situations, the worker has “good cause” to refuse otherwise suitable work.**

### **Factors pertaining to the employee’s personal or family situation:**

- Are you over the age of 65 or if you have an underlying health conditions that makes you at high risk for COVID-19?
- Have you been diagnosed with or are recovering from COVID-19?
- Have you been exposed to COVID-19 and quarantined?
- Are you caring for an individual ill with COVID-19?
- Is a member of your family or household quarantined as a consequence of COVID-19 even no actual diagnosis of COVID-19 has been made?

- Do you have symptoms of COVID-19?
- Do you not have child care or is your child's school is only open for virtual learning? (Note: If your child's school is open for in-person learning and if you have a reasonable belief of harm to your child, family or household member, those factors will also be considered.)
- Do you have a reasonable belief that the job poses a substantial risk to yourself, your child, your dependent, a member of your family or household?

## Factors pertaining to the employee's job or work conditions.

If your employer wants you to return to a job that is unsuitable, you **MAY choose not to return to work and continue to collect UI**. Work is "unsuitable" if it involves different duties or different conditions of employment, like a lower salary, different hours. or if it does not meet mandatory safety practices. Your employer must [certify](#) compliance with these Covid-19 health and safety practices:

### Social Distancing

- All persons, including employees, customers, and vendors should remain at least six feet apart to the greatest extent possible, both inside and outside workplaces
- Establish protocols to ensure that employees can practice adequate social distancing
- Provide signage for safe social distancing
- Require face coverings or masks for all employees

### Hygiene Protocols

- Provide hand washing capabilities throughout the workplace
- Ensure frequent hand washing by employees and adequate supplies to do so
- Provide regular sanitization of high touch areas, such as workstations, equipment, screens, doorknobs, restrooms throughout work site

### Staffing and Operations

- Provide training for employees regarding the social distancing and hygiene protocols
- Employees who are displaying COVID19-like symptoms do not report to work
- Establish a plan for employees getting ill from Covid-19 at work, and a return-to-work plan
- Employers should take measures to ensure employees comply with all [State-issued rules concerning out of state travel](#) for any employer-paid or -reimbursed travel

### Cleaning and Disinfecting

- Establish and maintain cleaning protocols specific to the business
- When an active employee is diagnosed with COVID19, cleaning and disinfecting must be performed
- Disinfection of all common surfaces must take place at intervals appropriate to said workplace

In addition to these general safety practices, there are specific ones for the kinds of businesses that are being allowed to reopen. They are listed [here](#).

You can report an employer who is not complying with re-opening standards to your local board of health or the state Department of Labor Standards. Instructions on how to file a report are [here](#). You can also notify the Fair Labor Division of the Attorney General's office about non-compliance or if your employer retaliates against you, using [this form](#) or by calling the Attorney General's Labor Hotline at 617-727-3465.

## **If your employer wants you to return to work and you think you have a “reasonable belief” for refusing to do so, keep these things in mind:**

**You must demonstrate that you made reasonable efforts to preserve your job.** You must show that you took steps to try to keep your job unless your efforts would be futile. For example, if your employer insists that you travel to work rather than to continue to telework and you have any of the COVID-19 reasons for your inability to do so, you would be entitled to UI. If you do not have access to child care for your children, you would be entitled to UI. Reasonable efforts also include accepting a leave if offered by the employer. An employer may offer COVID-19 emergency paid sick leave or the Family Emergency FMLA Expansion. You must accept this offer unless the employer is not offering you work at the end of the leave or unless taking the leave will not resolve the underlying problem. You cannot collect UI at the same time you are receiving paid leave (unless the paid leave is less than 1 and 1/3 times your weekly benefit amount, not counting any additional UI weekly add-on benefit). A fact sheet on federal leave is [here](#).

**How to Communicate with DUA:** If your employer asks you to return to work after your workplace has been allowed to reopen, it is important to let DUA know that your employer has asked you to return to work. If you believe you should continue to stay safely at home for any of the reasons listed above, you should recertify for regular UI for that week by answering “yes” to the question “Were you offered employment?” You will then receive a questionnaire on the suitability of the work you were offered, which will allow you explain your reasons for refusing the work. If you are certifying for PUA, for the same reasons, you should answer “yes” to the question that asks “Other than Covid-19 related reasons, were you able and available to work between [certification date] and [certification date]?”

Also, be sure to inform DUA if your reason for not returning to work is that your employer did not offer the mandatory safety practices or follow the guidelines for specific jobs described above.

Eligibility issues will be resolved more quickly if you provide some documentation about your reason for refusing to return to work, such as a letter from your medical provider, a copy of the report you filed about the employer's failure to comply with the health and safety standards, or other proof of your reason not to return to work.

Produced by members of the Massachusetts Employment Rights Coalition.