




COVID-19

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**Coronavirus / COVID-19
Response Team**


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**What Employers Should Do
If An Employee Does Not
Want to Return To Work**

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The materials and information have been prepared for informational purposes only. This is not legal advice, nor intended to create or constitute a lawyer-client relationship. Before acting on the basis of any information or material, readers who have specific questions or problems should consult their lawyer.

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Workers Are Refusing To Come To Work – What Can I Do?

1. Communications
2. Manage Legal Risks
3. Manage Practical Risks: Unpaid Leave Status, Discipline, or Discharge
4. Benefit Issues
5. Unemployment Eligibility

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1. Communicate and Communicate Some More!

- An opportunity for leadership
 - Details on why the company's work is essential or permitted to resume under Executive Orders
 - Well-written recall letters
 - Assurance on safety, screening protocols, cleaning, and mitigation efforts
 - Training
 - Town halls that include question/answer opportunity

2. Manage Legal Risks

- What is the reason for the refusal to work?
- Make sure it is not legally-protected, e.g.
 - Executive Order 2020-36 protections
 - Person has COVID-19
 - Person has principal symptoms
 - "Close contact"
 - ADA/FMLA/FFCRA/Michigan Paid Medical Leave
 - NLRA: concerted protected activity for mutual aid and protection/strike
 - OSHA - safety concerns

3. Manage Practical Risks Manage Practical Risks

- Employee engagement - need to keep your talent
- What are the facts?
- PR issues
- Impact on other employees
- Consistency in your position

3. Practical Risks: Leave or Discipline/Discharge

- Can you accommodate a temporary leave of absence? Does it make sense?
- What if it is indefinite?
- If reason for not coming to work is not protected, apply attendance policy or deem voluntary quit / end the employment relationship
- If it's protected strike activity; consider permanent replacement
- **Bottom line:** have a plan and nail down the facts before making a decision - manage the risk

4. Benefit Issues (Assuming Leave)

- Worker refusing available work is withholding labor
 - No pay and no need to continue healthcare or other benefits for an employee who withholds their labor in a dispute over working conditions (consistent with your policies)
 - Will potential loss of benefits deter folks from refusing to work?
 - Return to work not guaranteed – employers can certainly favor those employees who’ve worked and there may be fewer jobs

5. Unemployment Issues

- In ordinary times, refusal of available work is a voluntary quit
- It still should be. Employers can take that position; but remember who’s deciding this and there is a potential wrinkle with EO 2020-57.
- Can tell employees they may not be eligible and you may want to challenge
- Additional potential employer challenge based on disqualification for striking employees

Example Scenario #1

Rebecca calls off work and tells her supervisor that she thinks its unsafe to work. Plus she has a daughter with asthma. She wants to stay on layoff until this mess is over.

What do you do?

Example Scenario #2

Keith refuses to work because he has serious concerns based on what he read on the CDC website. He has several pre-existing health problems. He is immuno-compromised, has high blood pressure, and is 67 years old. He's at high risk for serious complications if he contracts COVID-19.

What do you do?

Example Scenario #3

David is not a great worker, but he's your only licensed electrician and you need him to return. He says he's not coming back. This whole virus thing is wicked scary and he's no dummy. He tells you: "why would I work can make way more money on unemployment?"

- What do you do?

Example Scenario #4

Patrick is a single dad with school-aged kids. He tells you that he can't come to work because Michigan schools are closed.

- What do you do?
 - Does it matter if you have 500 employees or less?

Example Scenario #5

Employee calls off and reports that he has an atypical cough and a little trouble breathing when he walks up the steps.

- Response: Are these COVID-19 symptoms?
 - employee stays home until three days have passed since their symptoms have resolved, and seven days have passed since their symptoms first appeared
 - Small employers: Emergency Paid Sick Leave
 - Employers over 50: Michigan Paid Sick Leave

Example Scenario #6

Maggie reports she had contact with a close friend who tested positive for COVID-19

- Response: employee stays home until 14 days have passed since last close contact with sick or symptomatic individual, or the symptomatic individual receives a negative COVID-19 test
- Small employers: Emergency Paid Sick Leave

Miller Johnson Back to Work Resource Center

<https://resources.millerjohnson.com/>

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Resource Center

Guidance Contact Account Log in

Welcome!

Our online **Back to Work Resource Center** provides a cost-effective one-stop shop for employers who are returning employees to work during this COVID-19 pandemic.

The **Back to Work Resource Center** regularly updates information to:

- ensure compliance with the ever-changing legal requirements
- include practical tools to effectively, safely and confidently return employees to work
- incorporate resources of best practices from outside organizations, including community partners such as Spectrum Health

Updates will be provided to all participants as the law and best practices evolve, including a weekly email of significant postings.

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