

## Can Individuals Who Refuse To Return To Work Because Of COVID-19 Safety Concerns Get Unemployment Benefits?

On February 25, 2021, the Department of Labor issued a guidance clarifying when persons who refuse to report to work because of unsafe COVID-19 working conditions may be able to receive federal unemployment benefits. Part of last year's CARES Act was the creation of the Pandemic Unemployment Assistance (PUA) Program, a federally-funded unemployment program for those that might not otherwise be eligible for unemployment, such as freelancers and gig workers whose wage loss was caused by COVID-19.

In the press release announcing the guidance, the DOL noted that “[f]or many of American workers, choosing between unsafe employment and refusing work to avoid risk of coronavirus infection has serious consequences. Too often, those who do not return to work or accept a job offer over concerns about workplace exposure lose their state unemployment benefits.”

The new guidance expands PUA benefits to include persons who were previously denied state unemployment benefits because work was available, but they did not return to work because of COVID-19 safety concerns.

The two examples given by the DOL are:

- An individual was laid off in June 2020 and began receiving regular unemployment compensation (UC). The individual was recalled to work in October 2020. However, because the worksite was not in compliance with the local mask mandate, the individual refused to return to work. The individual was disqualified from continued receipt of regular UC under state law. The individual is now eligible to apply for PUA under this new COVID-19 related reason.
- An individual was laid off in October 2020 and began receiving regular UC. The individual received a new job offer in January 2021, but the new worksite was unsafe due to non-compliance with physical distancing measures under state law. The individual was disqualified from continued receipt of regular UC under state law. The individual is now eligible to apply for PUA under this new COVID-19 related reason.

The PUA benefits are not available if the person is otherwise eligible for unemployment benefits. Some state unemployment laws already covered work that unreasonably exposes an individual to health and safety risks.

The guidance is retroactive, so it is as if the newly clarified benefits had been included from the beginning of the program. It also includes provisions requiring states to notify individuals who were previously denied PUA benefits “because they were not unemployed, partially unemployed or unable or unavailable to work for one of COVID19 related reasons available at the time.”

It is unclear how many people will be affected by the new guidance, but that number is not expected to be significant. As of last week, about 19 million people were receiving some type of unemployment aid. The PUA is scheduled to end March 14, but an extension is currently being debated in the U.S. Senate.