

M E M O R A N D U M

TO: Kari Thurlow

FROM: Penelope J. Phillips
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RE: FAQs from LeadingAge MN Members regarding Unemployment

FAQ: Are employees who quit work because they are afraid of contracting COVID-19 eligible for unemployment benefits?

As a general rule, employees who “quit” are **not** eligible for unemployment benefits. There are, however, at least two exceptions that may apply in the context of the COVID-19 pandemic and operate to not disqualify the employee from receiving benefits.

Exception #1—Quitting Because of “Good Cause Caused by the Employer”

The first exception is if the employee quits for a “good reason caused by the employer.” A good reason caused by the employer is (1) directly related to the employment and for which the employer is responsible; (2) adverse to the employee; and (3) one that would compel an average, reasonable employee to quit and become unemployed rather than remaining in employment.

Importantly, an employee subjected to adverse working conditions must complain to the employer and “give the employer a reasonable opportunity to correct the adverse working conditions before that may be considered a good reason caused by the employer for quitting.”

How would this apply during the current pandemic? If, for example, an employee complained about PPE or had reasonable concerns about safety, and was able to establish legitimate concerns about the workplace, then this could present a situation where an employee could quit and still be eligible for benefits.

Exception #2—Quitting Because of a “Serious Injury or Illness”

The second exception applies if an employee quits because the employee’s “serious illness or injury” made it “medically necessary” for the employee to quit. The exception also applies if the employee needs to quit “in order to provide necessary care because of the illness, injury, or disability of an immediate family member.”

However, similar to the first exception, the second applies only if the individual disclosed the medical problem to his or her employer, requested some type of workplace modification (reasonable accommodation), and no reasonable accommodation was or could be made available.

With respect to the COVID-19 pandemic, an employee’s underlying serious health condition (e.g., cancer, transplant patient, etc.) could potentially claim the exception.

It is less clear whether protecting an employee’s immunocompromised family member satisfies this exemption. This is because the employee did not quit “in order to provide necessary care,” but rather to prevent the employee’s family from contracting the illness.

FAQ What if the employee doesn’t “quit” but rather refuses to come into work until the pandemic is over. Are they eligible for unemployment benefits?

In this scenario, the employee may be considered to be on a “voluntary leave of absence.” Typically, an employee who is on a “voluntary leave of absence” is **ineligible** for unemployment benefits.

However, in March 2020, Governor Walz and the Minnesota Legislature amended the unemployment statute to create a rebuttable presumption that an employee is on an involuntary leave of absence (and therefore not ineligible for unemployment) if one of the following is met:

- State health officials or a health care professional has determined that “the presence of the applicant in the workplace would jeopardize the health of others,”

regardless of whether the employee has actually contracted a communicable disease;

- The employee is subject to a “quarantine or isolation order” under Minn. Stat. §§ 144.419 to 144.4196;
- The employee is ordered by state health officials or a health care professional to “self-isolate or self-quarantine due to elevated risk from COVID-19 due to being immunocompromised”;
- The employer instructed the employee not to come into work; or
- The employee was notified by a school district, day care, or other child care provider that either (i) classes are canceled, or (ii) the employee’s ordinary child care is unavailable, provided that the applicant made reasonable effort to obtain other child care and requested time off or other accommodation from the employer and no reasonable accommodation was available.

2020 Minn. Laws ch. 71, § 23. The change is effective from March 1, 2020 to December 31, 2020.

As you can see, an employee whose family member is immunocompromised may be eligible for benefits under the first criterion because the employee’s presence at the workplace may “jeopardize the health” of the family member. That said, there would still need to be a determination by a state health official or a health care professional that the employee’s presence at the workplace would jeopardize the health of the family member.

Ultimately, the determination will be made by DEED as to whether the employee qualifies for one of these exemptions.

FAQ: How do I challenge an employee’s eligibility for unemployment benefits?

If an employee applies for unemployment benefits, DEED makes an initial determination regarding the employee’s eligibility. After the initial determination, there are three levels of appeals that can be exhausted.

Level I Appeal – Telephone Hearing

If the employee is determined to be eligible, the employer has 20 days to appeal that determination (also known as a Level I appeal). Once DEED has received the documents from the company and the employee relating to eligibility for unemployment, DEED will schedule a date and time for a hearing, which is usually held telephonically. After the

hearing, the unemployment law judge or "ULJ" will consider documentary evidence as well as witness testimony and make a determination regarding whether the employee is eligible for benefits.

The employer may challenge the initial determination of eligibility for any number of disqualifying reasons under the unemployment statute, including:

- The employee voluntarily quit and none of the exceptions listed above apply;
- The employee is on a "voluntary leave of absence" because (1) the employee was offered work (or recalled from furlough or layoff), (2) the employee refused to return to work, and (3) the employee does not meet any of the recently-enacted exceptions outlined above;
- The employee was discharged for "employment misconduct" or "aggravated employment misconduct"; or
- The employee was not available for or actively seeking suitable employment.

The "suitable employment" disqualification may be more difficult to establish because Governor Walz and the Minnesota Legislature also passed legislation altering its meaning in the COVID-19 context:

Employment is not suitable [under the unemployment statute] if:

(1) the employment puts the health and safety of the applicant at risk due to potential exposure of the applicant to COVID-19; or

(2) the employment puts the health and safety of other workers and the general public at risk due to potential exposure of the other workers and the general public to COVID-19.

2020 Minn. Laws ch. 71, § 20. Again, the change is effective from March 1, 2020 to December 31, 2020.

Level II Appeal

After the ULJ's decision, either party may request reconsideration of the ULJ's decision. The request for reconsideration must be filed within 20 days of the ULJ's decision and the request is considered by the same ULJ that made the original decision. Thus, reversal of the original decision is unlikely.

Level III Appeal

After the request for reconsideration, the final step in the process is to appeal the decision to the Minnesota Court of Appeals (Level III appeal). The appeal must be filed within 30 days (33 if mailed) of the ULJ's decision regarding the request for reconsideration.