

June 10, 2020

The Reality of Unemployment Benefits in the Wake of COVID-19 Reopening When UI Eligibility Ends

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GREAT FALLS, MT - As businesses throughout the Golden Triangle reopen, stabilize, and recover from the COVID-19 shutdown, our staff at GFDA is receiving a significant volume of inquiries related to bringing employees back. In particular, the topic of unemployment insurance (UI) benefits and ongoing eligibility for unemployment benefits are being debated.

At issue – from our engagement with businesses in the region – is if an employee who was a job-attached layoff due to the COVID-19 shutdown is eligible for unemployment benefits once the business offers to bring the employee back to work. Some employees are in an improved financial situation while being on unemployment. Many are receiving 100% of previous compensation plus the additional \$600 in federal support from the CARES Act.

There are some employees saying ‘no thanks’ to offers of re-employment. This begs the question: Are those rejecting re-employment offers still eligible for unemployment benefits?

While this is a complex issue, the Montana Department of Labor and Industry (DLI) has an FAQ for Employers (<http://www.dli.mt.gov/employer-covid-19/employer-resource-covid-19>) clearly addressing this topic:

Question: “I am re-opening my business and have asked employees to return to work. If an employee refuses to return is the employee still eligible for UI benefits?”

Answer: “Generally, no. Individuals receiving UI benefits, even those whose claims are COVID-19 related, must return to work when able to do so. The employer should document the work offered, including any changes regarding wages or hours of work, the date the offer was made, and the reason given for the refusal.”

The guidance here then is, document...document...document. That’s not really any different than traditional job separation procedures.

Even still. Communication is key. The last thing you want are unhappy current and/or former employees picketing outside your doors because they don’t feel safe returning, which happened in Fort Collins, Colorado. We encourage employers to communicate with employees about safety concerns. Talk to them in person, on the phone, via email, with signage, and in other ways traditionally used. Our rule of thumb: Tell them. Tell them what you told them. And tell them again.

Work with your local county health offices to ensure your business is doing everything possible to instill confidence.

One option, consider participating in the Open and Safe (<https://yceconomicrecovery.org/>) initiative launched in Yellowstone County and gathering steam in other parts of the state.

In the event your business disregards local, state, and federal reopening guidance, there may be situations in which the employee may argue the workplace is not safe. In those cases, according to DLI's FAQ for Employers, they may be eligible for ongoing UI benefits:

Situation #1: "...if the business is not complying with the Phase 1 Directive on Reopening as outlined in the Governor's Directive of April 22 and any local public health orders..."

Situation #2: "...if an employer is unable to make reasonable accommodations for an employee who is a vulnerable individual pursuant to the Directive on Reopening, the employee may be eligible for continuing benefits..."

There are a handful of options to report issues or seek guidance from the DLI.

- Call DLI's Employer Charging Unit at 406-444-0399
- Amend your SIDES separation response
- Submit details of the employee's refusal by a secure web message via <https://uieservices.mt.gov/> or by email to uieservices@mt.gov
- Contact DLI's eServices Customer Support at (406) 444-3834, select option 2

Again, we encourage employers to lead with a degree of empathy on this topic.

However, if your business is offering re-employment to staff laid off during this time, it is being refused, the business is following local, state, and federal workplace safety recommendations, and market demand exists to justify the return to work, it is incumbent on the long-term viability of the business to get back to productivity levels.

In other words, if work exists for the business but the staff refuses to come back to complete the work, the business is at risk of some negative outcomes. The worst of those outcomes could include permanent job losses, permanent business closures, and bankruptcies.

The extra \$600 federal unemployment benefit runs out July 31, 2020 and is not guaranteed to be renewed. It is entirely possible that work refused today could lead to permanent unemployment with no safety net for the employee.

One final note. Don't create additional liability issues. Paying employees 'under the table' while they also receive UI benefits is a no-no.

Labor law attorney Roberta Berkhof with Church, Harris, Johnson, & Williams, P.C. provide this language from Montana Code Annotated § 39-51-3201:

“...administrative penalties as well as the criminal penalties for unemployment fraud. While administrative penalties are usually financial in nature, the criminal penalties vary, but carry a maximum fine of \$500 and imprisonment up to 30 days in your local county jail. Employers should be aware that each day a violation continues is deemed to be a separate offense. If the Department of Labor decides to pursue fraud charges under Montana Code Annotated § 45-7-203, potential incarceration increases to six months along with a maximum fine of \$500, or both.”

In short, don't do it.

Recovery requires a “we” not “me” perspective. Short term benefits today may result in long term negative effects.

For the entirety of the Montana Department of Labor and Industry's FAQ for Employers, please follow this link: <http://www.dli.mt.gov/employer-covid-19/employer-resource-covid-19>

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