



May 5, 2020

Governor Mike DeWine
77 S. High Street- 30th Floor
Columbus, Ohio 43215
Governorsoffice@governor.ohio.gov

Via US Mail and Email

RE: Clarify “suitable work” and “good cause” as applied in Ohio’s Unemployment Compensation Program’s “COVID-19 work refusal policy.”

Dear Gov. DeWine:

Thank you for considering working Ohioans in Executive Order #2020-03D, issued March 16, 2020, which ensured that the Ohio Department of Job and Family Services extended unemployment compensation to “individuals requested by a medical professional, local health authority, or employer to be isolated or quarantined as a consequence of COVID-19 even if not actually diagnosed with COVID-19.” House Bill 197 further added to these protections. We also appreciate that you joined Governors Inslee, Dunleavy, and Pritzker to ask the federal government for disaster unemployment assistance. This existing law became the model for key portions of the Coronavirus Aid, Relief and Security Act. These actions mean thousands of Ohioans who otherwise would not have been eligible under Ohio’s existing rules have access to the lifeline of unemployment compensation during this unprecedented time.

We write to urge you to keep people first by issuing an executive order consistent with the Stay Safe Ohio Order that will address the unemployment compensation system and the urgent needs of Ohioans facing the impact of COVID-19.

The notice employers received on May 1, 2020 states that guidance on the state’s COVID-19 refusal to return to work policy will be released this week. The notice emphasized that there will be a strong presumption that if an individual’s job is available, they will not be eligible for unemployment benefits. We are concerned that a narrow policy that fails to spell out good cause exemptions will exclude many working people, who have real, justifiable reasons for not returning to work, including those susceptible to COVID-19, from receiving unemployment insurance benefits.

Leaving employees, who have little access to the evidence needed to prove their employer failed to follow COVID protocols and who are largely without access to legal counsel and advice, with the burden of overcoming a strong presumption that their employer acted reasonably in their request to return to work will be too much for many with legitimate claims to navigate and will put working Ohioans at a disadvantage.

We assume that the process whereby an employer will notify ODJFS of an issue will comply with Ohio Revised Code Section 4141.28(F). That section requires that an employer may notify the Director of an eligibility issue by use of an ‘eligibility

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notice'. The statute provides that a valid eligibility notice must contain a statement that identifies either a source who has firsthand knowledge of the information or an informant who can identify the source, provide the name and address of the source or the informant, provide specific and detailed information that may potentially disqualify the claimant; and appear to the director to be reliable and credible.

Pursuant to ORC 4141.28(F), once an eligibility issue is raised, ODJFS sends the claimant notice and an opportunity to respond before a Determination is issued on the claim. Nevertheless, we are concerned that without a policy that spells out the exemptions, claimants will inappropriately receive Determinations finding that they refused an offer of suitable work. With the current unemployment compensation backlog, thousands of Ohioans could lose unemployment benefits under the refusal to work policy, spend weeks trying to navigate an already overburdened system to reestablish eligibility through appeals, while having no income, or be at risk of an overpayment finding, or at worst a fraud charge. Parents with closed day cares and schools and low-income working people will be particularly at risk of falling through the cracks. This is insufficient for the current crisis and will leave many working people with only bad choices.

There are many policy options that would provide fair outcomes for working people and employers. Unfortunately, so far as we know, no organization representing working Ohioans was consulted regarding this important policy and there is little time for improvements.

Including good cause exemptions for situations related to COVID-19 by executive order will give working people a fair chance of protecting their health and protecting their income. We ask that the state provide specificity and clarity on basic questions of reasonableness and include exemptions for workers who may be particularly susceptible to the virus, such as those provided in the return to work policy issued in [Texas](#).

As the risk of infection continues to be present while businesses reopen, the health and safety of our workforce must be a top priority. Current law, Ohio Revised Code (ORC) 4141.29(D)(2)(b), disqualifies an individual who refuses without good cause to accept an offer of suitable work, and ORC 4141.29(F) contains factors to consider in determining whether work is suitable, including that the director "shall consider the degree of risk to the claimant's health, safety, and morals, the individual's physical fitness for the work, the individual's prior training and experience..."

Further, House Bill 197 required that an individual cannot be disqualified from receiving unemployment compensation (UC) benefits if the individual is unemployed or is unable to return to work because of an order issued by the governor or director of health during the state of emergency or until December 1, 2020 to protect the health and safety of the public.

We write today to request the following concerns be addressed through an executive order:

Determination of whether there was an offer of suitable work and whether claimant has good cause to refuse an offer of work pursuant to ORC 4141.29(F):

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Workplaces lacking proper safety precautions do not qualify as suitable work and jobseekers should not be disqualified from UC benefits for refusing to return to a workplace that does not take reasonable precautions to protect workers from COVID-19.

The Stay Safe Ohio Order dated April 30, 2020 requires that businesses and operations shall comply with social distancing requirements, including maintaining six-foot social distancing for employees and members of the public at all times. The order also requires employers to comply with sector specific operating requirements. For example, manufacturing, distribution, and construction employers are required to stagger or limit arrivals of employees and guests and perform daily symptom assessments on employees that include taking temperatures with a thermometer.

This order urges those at high risk of contracting COVID-19 to stay in their homes to the extent possible except as necessary to seek medical care. The Centers for Disease Control has issued guidance identifying those who are at a higher risk of infection to include people over 65, people with underlying medical conditions including lung disease and severe asthma, and those who are immunocompromised due to other medical conditions. An individual with a higher risk of contracting COVID-19 should not be disqualified from UC benefits.

The Stay Safe Ohio Order also requires schools and child care services to remain closed. Those who do not have access to schools and their normal child care services cannot return to work due to closed facilities and unavailable alternatives due to social distancing. These individuals should not be disqualified from receiving UC benefits.

Recommendation:

- (a) The Ohio Department of Job and Family Services (ODJFS) shall consider the risk to an individual's health when making determinations on whether the offer was for suitable work and whether the claimant had good cause to refuse an offer of work. Determination shall include but is not limited to:
 - (1) Whether the workplace provides proper facilities, equipment, training, supplies, and physical distancing necessary to permit the individual to take reasonable precautions to prevent the infection of the individual from COVID-19 in the workplace consistent with guidance issued by the Centers for Disease Control and the requirements in the Stay Safe Ohio Order;
 - (2) The individual's prior or current health conditions, age, or other risk factor that may lead the individual to be immunocompromised;
 - (3) Whether the individual is at a higher risk of contracting COVID-19 according to guidance issued by the Centers for Disease Control and the Stay Safe Ohio Order, such as:
 - i. People over the age of 65
 - ii. People with chronic lung disease or moderate to severe asthma;
 - iii. People who have serious heart conditions;
 - iv. People who are immune compromised;
 - v. People with severe obesity (body mass index [BMI] of 40 or higher);
 - vi. People with diabetes;

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- vii. People with chronic kidney disease undergoing dialysis; and viii. People with liver disease.
- (4) Whether the individual has child care services, which include schools;
- (b) This section continues in effect until six months after the expiration of the governor's Declaration of State of Emergency, dated March 9, 2020. At such time this provision is no longer in effect.

Clarify just cause for quitting work

Workers who voluntarily leave work due to reasonable COVID-19 related issues should not be denied UC benefits. This should include both those who have left due to a lack of reasonable safety precautions at their workplace, as discussed above, and those who have left to care for themselves or a family member with COVID-19.

Recommendation:

- (a) The Ohio Department of Job and Family Services finding of just cause for quitting employment shall include:
 - (1) Claimants who left employment based on being diagnosed with COVID-19 or upon experiencing symptoms of COVID-19 and seeking a medical diagnosis;
 - (2) Claimants who left employment to care for quarantined or sick family or household members with COVID-19 or who are experiencing symptoms of COVID-19 and seeking a medical diagnosis;
 - (3) Claimants who have left employment to quarantine on a doctor's order;
 - (4) Claimants who have left employment because their employer did not make available to the individual the facilities, equipment, training, supplies, and physical distancing necessary to permit the individual to take reasonable precautions to prevent the infection of the individual with COVID-19 consistent with guidance issued by the Centers for Disease Control and the Stay Safe Ohio Order; or
 - (5) Claimants who are at a higher risk of contracting COVID-19 according to guidance issued by the Centers for Disease Control and the governor's Stay Safe Ohio Order and those who have a family member in their household who is immunocompromised.
- (b) This section continues in effect until six months after the expiration of the Governor's Declaration of State of Emergency, dated March 9, 2020. At such time this provision is no longer in effect.

We are all in this together. Our health is dependent on the health of our neighbor and our economy depends on a safe and healthy workforce.

For many Ohioans unemployment compensation means the difference between surviving this crisis or being wiped out by the necessary changes in our daily life and work. We owe it to each other to see this through. Unemployment compensation continued eligibility requirements should not adversely impact public health and our shared success of slowing the spread of this virus.

Thank you for considering this proposal. Please reach out to any one of the undersigned with questions you may have. We'd all love to help keep Ohio safe at work.

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Most Sincerely,

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