

COVID-19: Workplace Considerations Employers Need to Know, Now!

*Prepared for Members of the Joliet Region Chamber of
Commerce & Industry*

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EMERGENCY PAID SICK LEAVE ACT (EPSLA)

EPSL Qualifying Reasons for Leave

Employee is **unable to work or telework** due to a need for leave because:

- (1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
- (2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- (3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

• **The amount is capped at \$511 per day and \$5,110 in the aggregate for each employee taking leave for these reasons.**

Qualifying Reasons for Leave

- (4) The employee is caring for an individual who is subject to a quarantine order as described above or has been advised by a health care provider to self-quarantine.
 - (5) The employee is caring for a son or daughter whose school or place of daycare has been closed or the child's child care provider is unavailable ***due to COVID-19 precautions. (EFMLEA too)***
 - (6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.
- **The amount is capped at \$200 per day and \$2,000 in the aggregate for each employee taking leave for these reasons**

Emergency Paid Sick Leave Act

- Employers may not require employees who take leave to find a replacement for their shifts
- Paid leave, *in addition* to any other leave provided by employers (e.g. PTO, vacation, sick leave, etc.)
- Employers may not require employees to use other Company provided paid leave **before** the employee uses paid sick time under the EPSL
- No payout on termination; no carryover to next year
- Expires December 31, 2020

Calculating the Amount of Leave

- **Full-time employees (works 40 or more hours per week):** 80 hours (capped, can't double dip)
- **Part time employees (works less than 40 hours per week):** Number of hours employee works on average over a 2-week period, includes overtime hours
 - For example, an employee who is scheduled to work 50 hours a week may take 50 hours of paid sick leave in the first week and 30 hours of paid sick leave in the second week. In any event, the total number of hours paid under the EPLA is capped at 80.
- **Variable Schedules** (*i.e.* hours differ from week to week): 14x's the average number of hours that the employee was scheduled per day over a 6-month period ending on the day the employee takes sick leave.
- **New(er) employees:** use the "reasonable expectation of the employee at the time of hiring."

Calculating Rate of Pay

- **Employee who is sick or directed to isolate, (1-3) *greater of:***
 - Regular Rate of Pay: includes base pay, tips, non-discretionary bonuses, shift premiums, commissions, and incentive compensation; or
 - Must factor in each of these with the employee's regular rate of pay
 - Go back 6 months.
 - FLSA Minimum Wage (\$7.25/hour); or
 - State (Illinois \$9.25) or local (Chicago \$14.00) minimum wage
- **Caring for a child/another individual (4-6) *greater of:***
 - 2/3 regular rate of pay **or** 2/3 the applicable minimum wage.
 - Employer and employee can agree to permit the employee to supplement paid sick leave (e.g. 1/3) or FMLA leave with employer provided paid leave, to reach the employee's normal earnings.

EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT (EFMLEA)

Amount of EFMLEA Leave and Pay

- **Covered employees:** (not the 12-month, 1,250 hour rule)
 - Employed for **30 calendar days prior to April 1, 2020** or 30 days prior to the date the employee wishes to begin leave.
- 12 weeks of job protected leave, from April 1, 2020, until December 31, 2020.
 - **DOES NOT** expand 12-week FMLA entitlement if employee has exhausted.
- Payment under EFMLEA for each employee is capped at \$200/day; \$10K total.

Amount of EFMLEA Leave and Pay

- 1st 10 days → unpaid (employee can elect to use other paid leave available).
- After 1st 10 days →
 - 2/3 regular rate x's the number of hours the employee would ordinarily be scheduled.
 - Employer may require the employee to use provided or accrued paid leave under the employer's policies **concurrently with EFMLEA**.
 - If the leave is taken **concurrently**, the employer must pay the employee the full amount to which the employee is entitled under the pre-existing paid leave policy for the period of leave taken; however, employer can only apply for 2/3's of pay for payroll tax credits!

Reinstatement Rights

- **Same as regular FMLA**
 - Reinstatement to same or equivalent position with respect to pay, benefits, terms and conditions)
 - Not job protected from a layoff that would have affected the employee regardless of whether the employee took the FMLA leave .
- **Small employer exception:** Fewer than 25 employees, but only if:
 - *Position is eliminated* due to economic or operating conditions that effect employment and due to COVID-related reasons.
 - Employer makes reasonable efforts to *reinstatement employee to same or equivalent position*; and
 - Employer makes a reasonable effort to contact a displaced employee about an equivalent position if such position becomes available within 1 year after employee's need for leave ends (or 12 weeks after start of leave).

SDNY Judge Voids Portions of FFCRA

- 8/3/20, SDNY voided 4 key FFCRA provisions:
 - 1. work-availability requirement; (e.g. furloughed or laid off due to a lack of work)
 - 2. definition of healthcare provider
 - 3. intermittent leave and employer agreement
 - 4. documentation requirement provided to employer in advance of granting leave
- DOL is said to be working “around the clock” to issue new regulations based on SDNY’s Judge’s decision.
- What does this mean for Employers . . . TBD . . .

What Must Employee Provide for Any FFCRA Leave?

- Employees are required to provide appropriate documentation, which includes a signed statement containing the following:
 1. The employee's name; and
 2. COVID-19 qualifying reason for the leave; and
 3. Oral or written statement that the employee is unable to work, including telework because of a qualifying COVID-19 reason; and
 4. The date(s) for which leave is requested

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Employee Documentation Requirements

- **Employee Notice Requirements under EPSLA:**
 - A copy of the quarantine or isolation order related to COVID-19; **or**
 - A copy of the directive from the healthcare provider advising the employee to self-quarantine due to COVID-19; (**See IRS Q&A #44**); **or**
 - A copy of the doctor's note stating that employee is experiencing symptoms and is seeking or has sought a diagnosis (**See IRS Q&A #44**).
 - With respect to the employee's inability to work or telework because of a need to provide care for a child older than 14 during daylight hours, a statement that special circumstances exist requiring the employee to provide care (**Note this item only referenced by IRS.**).

What Must Employee Provide for Leave for School Closing or Child Care Need?

- Employees must provide documentation as follows:
 1. the name of the child (children) being cared for;
 2. the name of the school or place of care that closed or is a care provider who is unavailable;
 3. a representation that no other suitable person will be caring for the child during the period of leave; and
 4. with respect to the employee's inability to work or telework because of a need to provide care for a child older than 14 during daylight hours, a statement that special circumstances exist requiring the employee to provide care. (**Note this item only referenced by IRS.**)
- ❖ <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>
- ❖ <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>

School/Child Care Under EPSL and EFMLEA

Employee is **unable to work or telework** due to a need for leave because:

The employee is caring for a son or daughter whose school or place of daycare is closed or the child's childcare provider is unavailable due to COVID-19 precautions.

- “Closed” – physical location is closed for a COVID-19 related reason.
- Must be **no other suitable person**, such as a **co-parent**, co-guardian or the usual provider, **available** to care for the child during the period of such leave.
- So, an employee may take paid sick leave to care for his or her child only when the **employee needs to, and actually is**, caring for the child.

Small Business Exception

- **Small Business Exception**

- Employs less than 50 employees; and
- Leave is requested to care for a child whose school/daycare is closed for reasons related to COVID-19; and
- Authorized officer of the Company has determined that *at least **one** of the following applies* and documents the determination, retains it in the employer's files:
 - » Providing paid sick leave or expanded FMLA leave would result in the expenses and financial obligations of the business exceeding available business revenues and cause the Company to cease operating at a minimal capacity; or
 - » Employee(s) absences from the Company for either of these leaves would entail a substantial risk to the financial health or operational capabilities of the Company because of their specialized skills, knowledge of the business, or responsibilities; or
 - » There are not sufficient workers who are able, willing and qualified to perform the work provided by the employee(s) requesting paid sick leave or expanded FMLA leave, and this work is needed for the Company to operate at a minimal capacity.

School Opening and Paid Leave Under EPSL and/or EFMLEA

- School is open, there is a choice between all distance (i.e. remote) learning, or in-classroom learning, and parent chooses all distance learning.
- Is parent eligible for paid leave under the EPSL and/or EFMLEA?
 - No. The school is **open**, and not closed due to a COVID-19 related reason.
 - Parent made a voluntary choice to do all distance/partial distance, even though school is open for in-person learning.

School Opening and Paid Leave Under EPSL and/or EFMLEA

- Hybrid model: school *requires* that each child to be in the classroom 3 days per week and *requires* distance learning 2 days per week because the school will be closed for those 2 days, can the parent take available paid EPSL and/or EFMLA for the 2 required distance learning days?
 - Yes, if employee is unable to work from home and the employer and the employee **agree** to an **intermittent EPSL and/or EFMLEA** schedule.
 - Note, federal judge in NY voided this requirement on August 3, 2020.
 - Remember, paid leave under FFCRA must be taken consecutively, subject to the **employer agreeing to an intermittent leave schedule**.
 - Difference here, is school is CLOSED for 2 days for a COVID-19 related reason.

School Opening and Paid Leave Under EPSL and/or EFMLEA

- Hybrid model: school is open 5 days a week, but operating on an alternate day basis of in person and remote learning. Is the parent eligible for paid leave?
 - Yes, parent is eligible to take paid leave under the FFCRA on days when their child is not permitted to attend school in person and must instead engage in remote learning, as long as parent is actually the one caring for child during that time and only if no other suitable person is available to do so.
 - According to the DOL, school is effectively “closed” on days when the child cannot attend.

School Opening and Paid Leave Under EPSL and/or EFMLEA

- School is closed, only offering remote learning, can the parent take available paid EPSL and/or EFMLA for all 5 school days?
 - Yes, if unable to work remotely from home, because school is CLOSED for a COVID-19 related reason.
- School is closed, only offering remote learning, parent has been working all spring/summer remotely without issue while child/children have been at home, but now says, “I can’t work while my child is remote learning.” Eligible?
 - Need to (and are able) to ask the question: What’s changed?

Day/Child Care and Paid Leave Under EPSL and/or EFMLEA

- Employee says no childcare because “**I’ve been waitlisted**, day care is only taking 10 kids.” Is Employee eligible for paid leave under EPSL and/or EFMLEA?
 - If Employee can provide evidence that (1) the child previously attended that day care, but now can’t because of capacity limit due to COVID-19; **and** (2) evidence of Employee’s **intent to enroll his/her child** e.g. Fall 2020, Employee likely eligible for paid leave under EPSL and/or EFMLEA.
- If the child had never previously attended that particular day care, but Employee provides evidence of his/her **prior** intent to enroll the child in the particular daycare in question during Fall 2020, (e.g. deposit, completed/ submitted/accepted application, Employee likely eligible for paid leave under EPSL and/or EFMLEA.

Day/Child Care and Paid Leave Under EPSL and/or EFMLEA

- Employee says no child care because “I don’t feel comfortable sending my child to day care.” Is Employee eligible for paid leave under EPSL and/or EFMLEA?
 - **No, because daycare is open; parent’s choice.**
- Employee says, “I don’t have childcare because I can’t afford daycare.” Is employee eligible for paid leave under EPSL and/or EFMLEA?
 - **No, because day care is open.**
- Employee says “I don’t have day care because grandma/grandpa don’t feel comfortable watching my child anymore.” Is employee eligible for paid leave under EPSL and/or EFMLEA?
 - **Yes, need a note from grandma/grandpa (if no one else is available).**
- Employee says, “Day care is open 5 days a week, but I am only sending my child 3 days a week.” Is employee eligible for 2 days of paid leave under EPSL and/or EFMLEA?
 - **No, because day care is open; parent’s choice.**

New CDC Return to Work Guidance (Self-Quarantine 7/20/20)

- On July 20, 2020, the CDC updated its guidance on returning to work following home isolation, shortening the required time that an individual **who has tested positive for or is suspected of having COVID-19** must be fever free from “at least **72 hours**” to “at least **24 hours**.”
- The CDC now recommends that **symptomatic** individuals may end home isolation if they meet all of the following requirements:
 - At least 10 days have passed after the individual’s symptoms first appeared;
 - The individual has been fever-free for **at least 24** (previously 72) hours without using fever-reducing medications, and
 - The individual’s **other symptoms have improved**.

New CDC Return to Work Guidance (Self-Quarantine 7/20/20)

- For asymptomatic individuals **who test positive for COVID-19**, the CDC now advises that such individuals may discontinue their isolation and other precautions **10 days after their first positive COVID-19 test**.
- CDC recommendation that individuals who have been in close contact with someone who has COVID-19, still advised to self-quarantine for **14 days after their last contact with the individual**.
- Thus, under new CDC guidance, it is possible for a person *known* to be infected with COVID to leave isolation earlier than a person who is quarantined because of the *possibly* they are infected.

New CDC Return to Work Guidance (Testing)

- CDC guidance previously included an alternate test-based strategy for ending home isolation, which required that an individual be fever free, have an improvement in other symptoms, and **receive at least two confirmed negative COVID-19 tests from samples taken at least 24 hours apart.**
- The CDC no longer recommends this approach except for “individuals who are severely immunocompromised,” or “to discontinue isolation or other precautions **earlier than would occur under the symptom-based strategy outlined above.**” (i.e. earlier than 10-days/24 hours).
- BEST PRACTICE: Should you still require at least one negative COVID test prior to an employee returns to work following new CDC guidelines?
 - Decision is yours . . . My recommendation is ABSOLUTELY!!!!

What Can an Employer Ask an Employee about Symptoms?

- How much information may an employer request from employees who report feeling ill at work or who call in sick?
 - Employers may ask such employees if they are experiencing any current CDC symptom associated with COVID to determine if they have or may have COVID
 - Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.

Can An Employer Require an Employee to Self-Quarantine? If so, what obligation to pay?

- May an employer send employees home if they display COVID-19 symptoms or restrict from the workplace if employees tests positive for COVID-19?
 - Yes. The CDC states that employees who become ill or experience COVID-19 symptoms should leave the workplace and/or restricted from the workplace per CDC guidelines.
- Exempt EE who can work from home – must pay under FLSA and/or EPSL if applicable.
- Non-Exempt EE who can't work from home – no obligation to pay, unless employee qualifies for leave under EPSL (reasons 2 or 3), or employee uses company-provided leave (e.g. sick, vacation, PTO).

CONTACT TRACING

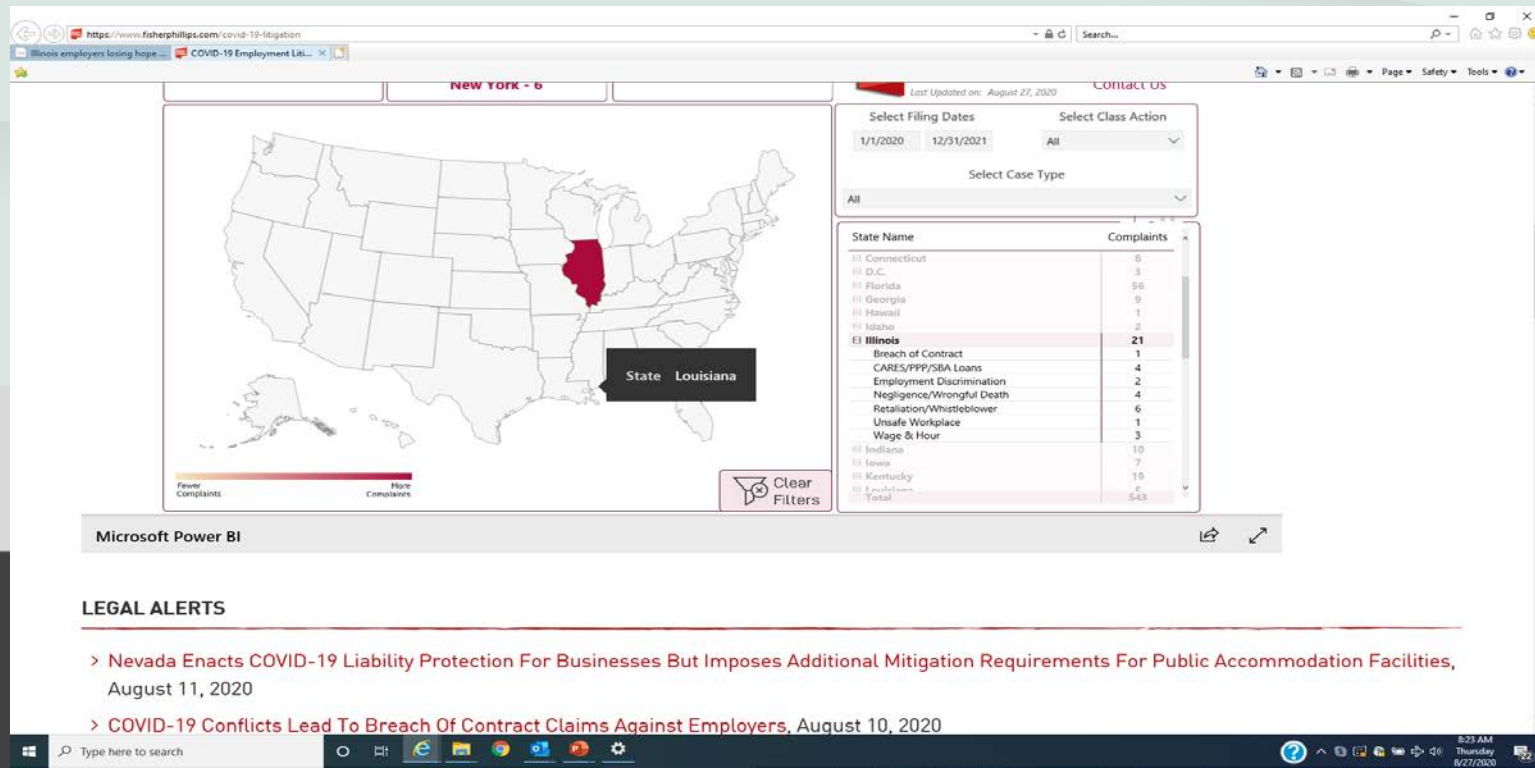
- Employee tests positive for COVID or experiences symptoms associated with COVID.
- Instruct employee to self-quarantine per CDC guidelines
- Determine when employee was last working and whom he/she came in “close contact”
- For COVID-19, a “close contact” is defined as any individual who was within 6 feet of an infected person for at least 15 minutes starting from 2 days before illness onset (or, for asymptomatic patients, 2 days prior to positive specimen collection) until the time the patient is isolated.
- Discussion with employees who meet definition of “close contact,” self quarantine per CDC guidelines and recommend he/she seek COVID-19 test.
- DO NOT DISCLOSE INFECTED EMPLOYEE’S NAME!!!!

Employee Temperatures/Employee Daily COVID-Questionnaire/Mobile App

- Governor Pritzker's/IDPH "Restore Illinois" guidelines, instructs:
 - Employers should make temperature checks available **and post information about COVID-19 symptoms** to allow employees to self-assess whether they have any symptoms and should consider going home
 - Employers should have a wellness screening program for conducting in-person screening upon arrival as well as a mid-shift screening. When not possible, screen employees via an in-person conversation or questionnaire once at their workstation, or virtual method via an online survey, mobile application, etc.
- What if I don't have a "wellness screening program?" Are there consequences?
 - IDPH instructs employees to contact Attorney General's Office if they believe workplace is unsafe
 - IDPH instructs employees to contact local health department if 2 or more employees in the workplace contract COVID
 - Whistleblower Protection.

Employee Temperatures/Employee Daily COVID-Questionnaire/Mobile App

- What if I don't have a "wellness screening program?" Are there consequences?
 - IDPH instructs employees to contact Attorney General's Office if they believe workplace is unsafe
 - IDPH instructs employees to contact local health department if 2 or more employees in the workplace contract COVID
 - Whistleblower Protection.



Defense to EE COVID-19 CLAIMS

- Monday, July 27, 2020, GOP introduced a bill that would make it significantly harder for individuals wishing to sue over COVID-19 infections and deaths, which requires plaintiff/employees to prove both **gross negligence** and **a failure to comply with public health guidelines**.
- Defense to Illinois Workers' Compensation Claims
 - *Rebuttable presumption* of work-related injury, but employer just needs to show that it was following CDC or IDPH/Restore Illinois guidance.
 - A home or residence is *not the workplace*.
 - Rebuttable presumption **ends December 31, 2020**
- Defense to OSHA unsafe workplace claims. Employers have a duty under OSHA to provide a workplace free from serious recognized hazards.

Employee Liability Waivers, Enforceable ????

- What is a waiver?
 - A waiver is a contract in which a party knowingly and voluntarily gives up a legal right (i.e. file a lawsuit)
- Are employee return to work waivers enforceable???? Sorry, but **Probably Not**.
 - **First**, the Illinois Workers' Compensation Act is an employee's exclusive remedy against an employer for injuries and occupational diseases arising in the workplace. Employees cannot waive their rights under IWCA. So, a return-to-work waiver seeking to limit liability related to an employee contracting COVID-19 in the workplace likely would not be enforceable under the IWCA.
 - **Second**, waivers do not immunize gross negligence or willful and wanton conduct.
 - **Third**, family members can sue – EE can't waive liability on behalf of spouse.
 - **Fourth**, waivers require employees to assume risk that workplace is unsafe – inconsistent with ER duty under OSHA.

Can we require employees to take a vaccine or just strongly encourage?

- EEOC guidance “Employers should consider simply encouraging employees” to get the flu vaccine,” but noted that no vaccine is yet available for COVID-19.
- ADA considerations
 - Reasonable accommodation for those who cannot for medical reasons?
 - Is an unvaccinated person a “direct threat” to others in the workplace?
 - Employee who has adverse reaction – liability?
- Title VII considerations
 - Religious beliefs – direct threat – accommodation?
- Practical considerations
 - Which vaccine?
 - How effective?
 - Who pays?

Restricting Employee Personal Travel

- Can you prohibit employees from engaging in personal travel – or even personal travel to certain States or Countries?
 - Employers have NO obligation to provide vacation (IWPCA pay out upon separation); employees have no right to take vacation.
 - Draft a temporary policy, requiring employees to answer, the following questions where; when; mode of transportation; with whom (COVID; symptoms; awaiting test results, etc.)
 - Violate temporary policy – discipline, up to and including termination.
 - Per CDC, upon return, 14-day required self-quarantine.
 - Job permits employee to work remotely- employee will be paid.
 - Job DOES NOT permit employee to work remotely, unpaid for the entire 14-day quarantine period.
 - Requirement that employee exhaust all remaining vacation/paid leave.

Wage and Hour Considerations (reduce exempt EE's salary)

- **Reduction in Exempt Employee's Salary**
 - Has to be prospective and in writing *i.e.* the next pay period, not the existing period.
 - Has to be for a “bona fide” reason. An economic downturn likely qualifies.
 - Most importantly, it CANNOT reduce the employee below the exempt salary threshold of \$684/week. If the reduction brings the employee BELOW \$684/week, the employee is now non-exempt.
 - Duties must remain the same.

Wage and Hour Considerations (reclassify exempt EE)

- **Temporary Reclassification of Pay Status**
 - An employer can temporarily reclassify the exempt employee to non-exempt and pay the employee by the hour.
 - Employee is now entitled to overtime, however.
 - After things settle down, an employer can change the status to exempt again by paying the guaranteed salary.

Wage and Hour Considerations (exempt EE performing non-exempt work)

- During the period of a public health emergency declared by a Federal, State, or local authority with respect to COVID-19, exempt employees may *temporarily* perform nonexempt duties that are **required by the emergency** without losing the exemption.
- Exempt employee can perform nonexempt duties during emergencies that **“threaten the safety of employees, a cessation of operations or serious damage to the employer’s property”** *and* which are beyond the employer’s control and could not reasonably be anticipated.
- Employees who are temporarily required to perform nonexempt duties due to COVID-19 may do so without losing the FLSA exemption, as long as they continue to be paid on a salary basis of least \$684 per week.

I can't/won't come to work because

...

- I am high risk.
- I can't wear a mask.
- I will make more on unemployment.





Refusal of Work Reporting Form

Please utilize this form to notify us of one or more claimants who have refused to return to work when offered by you or your representative. Include detailed explanation of the reasons that employee provided for refusing to return to work. This information will assist IDES in making our determination of benefit eligibility. Generally, an individual must show good cause for refusing a bona fide, suitable offer of work.

In determining whether any work is suitable for an individual, consideration shall be given to the degree of risk involved to their: health, safety, and morals; physical fitness and prior training; experience and prior earnings; length of unemployment and prospects for securing local work in their customary occupation; and the distance of the available work from their residence. To read more about Refusal of Work (Section 603 of the IL UI Act), please review the [Unemployment Insurance Law Handbook](#) on our website.

Instructions for Submitting: Submit the completed form using our secure [File Transfer Utility tool](#) only. The recipient email address is DES.WorkRefusal@Illinois.gov. This is for notifying the agency of work refusals ONLY. Other documents, emails or requests will not be accepted. Include as many workers as you are aware on one submittal. If later you need to protest additional workers, please remove any that were previously reported.

Employer UI Account Number	<input type="text"/>
Employer Name	<input type="text"/>
DBA	<input type="text"/>
Business Address	<input type="text"/>
City, State, Zip	<input type="text"/>
Contact Name	<input type="text"/>
Contact Telephone Number	<input type="text"/>
TPA Name and Contact Info (if applicable)	<input type="text"/>

Please explain what steps,
if any, the employer has taken
to limit exposure to COVID-19
in the workplace?

Enter each claimant for which you wish to raise a refusal of work issue.

Last Name	First Name	Full SSN	Date offer made	How was offer made?	What was the specific reason the employee gave for refusing to return to work	Name of person who made the offer	Same position offered?	If different, please explain	Hours and pay same as previous?	If No, what was previous rate of pay?	If No, what were previous hours?	Rate of Pay Offered	Hours Offered
				Phone ▾									
				Phone ▾									
				Phone ▾									
				Phone ▾									

Unemployment Claims and Marijuana

Understand defenses to unemployment claims

“Misconduct” under the Illinois Unemployment Insurance Act, includes:

602(A)(6) Consuming alcohol or **illegal** or non-prescribed prescription drugs, or using **an impairing substance** in an off-label manner, on the employer’s premises during working hours **in violation of the employer’s policies**;

602A(7) Reporting to work under the influence of alcohol, **illegal** or non-prescribed prescription drugs, or an **impairing substance** used in an off-label manner **in violation of the employer’s policies**.

According to the IDES, these 2 provisions NO LONGER apply to cannabis:

Cannabis is not a prescription drug because the user does not obtain a prescription.

Cannabis could be considered an impairing substance, but it cannot be used in an off-label manner, since there is no “on-label” limitation on use.

Cannabis is legal in Illinois

Unemployment Claims and Marijuana

Understand defenses to unemployment claims

“Misconduct” under the Illinois Unemployment Insurance Act, is defined as:

Deliberate and willful misconduct

Of a reasonable rule or policy of the employer governing the individual’s behavior in the performance of his/her work.

That either (a) harmed the employer or a fellow employee; or was repeated despite a warning or explicit instruction from the employer.

Use/Possession of Cannabis on the Job (observe conduct)

A claimant’s use or possession of cannabis on the job *may* be disqualifying under Section 602’s general definition of misconduct, if all elements are met.

Conduct was willful and deliberate – EE knew of zero tolerance drug/free workplace policy.

Zero tolerance/drug free workplace policy is reasonable – cannabis is an intoxicant, and it is reasonable for an employer to prohibit possession and use of an intoxicating substance at work.

Potential harm to employer – employee could injury himself or others, or company property, particularly in a safety sensitive position.

Unemployment Claims and Marijuana

Understand defenses to unemployment claims

“Reporting to work impaired” (don’t observe conduct)

“A claimant may also be ineligible for benefits based on impairment at work, regardless of where the consumption occurred.”

Use the criteria set forth under the Cannabis Act, plus a positive drug test/refusal to take a drug test.

A claimant’s reporting to work impaired or under the influence of cannabis *may* be disqualifying under Section 602’s general definition of misconduct, if all elements are met.

Conduct was willful and deliberate – EE knew of zero tolerance drug/free workplace policy.

Zero tolerance/drug free workplace policy is reasonable – cannabis is an intoxicant, and it is reasonable for an employer to prohibit employees from coming to work impaired or under the influence.

Potential harm to employer – employee could injury himself or others, or company property, particularly in a safety sensitive position, if impaired or under the influence.

VIRTUAL TRAINING SERIES:

Sexual Harassment Prevention

As of January 1, 2020, all Illinois employers are required to conduct annual sexual harassment prevention training. At a minimum, this must include:

- an explanation and examples of what constitutes unlawful sexual harassment
- a summary of relevant federal and state provisions and remedies available to victims
- a summary of employers' responsibilities in preventing, investigating and taking corrective measures in regard to sexual harassment

Greensfelder is providing multiple virtual options to meet the needs of all Illinois employers. Each session not only meets but exceeds Illinois' annual training requirements.

WHY CHOOSE OUR TRAINING?

- ✓ Our comprehensive training courses offer separate and distinct sessions for employees and supervisors, with each covering the prevention of discrimination, harassment, retaliation and bullying in the workplace under Illinois and federal laws. The full program covers all aspects of a true comprehensive training on these important topics for employers of all types, in all industries.
- ✓ Following the U.S. Supreme Court's recent ruling that all employers are prohibited from discriminating against employees based on the employee's sexual orientation and/or gender identity, our training covers this important change as well.
- ✓ Failure to provide training each year is a violation of the Illinois Human Rights Act. Illinois employers who do not provide compliant training will be subject to civil penalties, including a \$500 penalty to any business with fewer than 4 employees, or \$1,000 to those with 4 or more employees. Penalties for subsequent violations can rise to \$5,000 each.



Trainings will be led by Greensfelder Officer [Scott Cruz](#), an experienced labor and employment attorney. For more information or to order training sessions, contact Scott at 312-345-5008 or scruz@greensfelder.com.

TRAINING OPTIONS

PRE-RECORDED TRAININGS

Employee or supervisor recording
(one program)

\$499

Employee and supervisor recordings
(two programs)

\$899

BEST VALUE

Programs are about 1.5 hours each. Recordings are password-protected and available via any internet streaming platform through Dec. 31, 2020, when links will be removed from the cloud.

LIVE VIRTUAL TRAININGS

Live virtual training via Zoom customized for your workplace, including a live Q&A opportunity

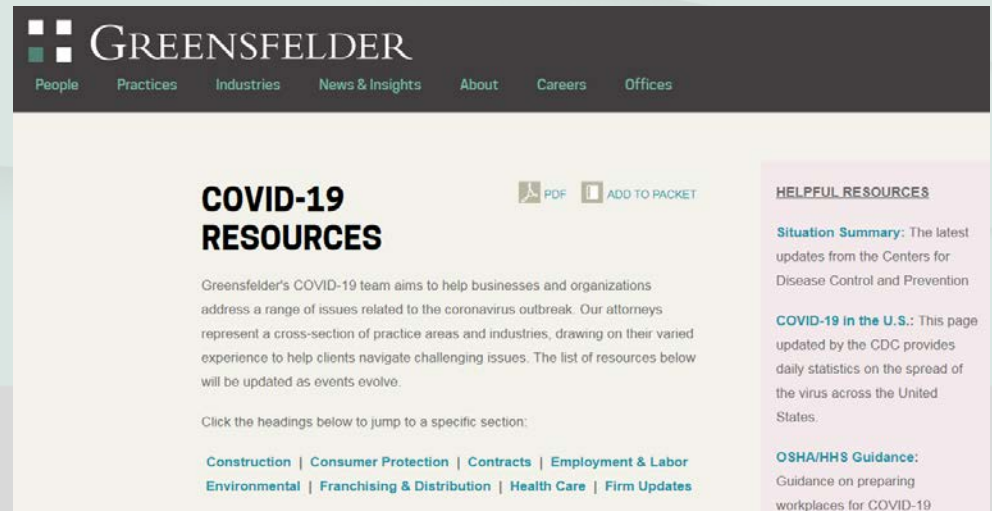
\$2,400

Live programs will run about 1.5 to 2 hours. Recordings can be provided afterward as well, available via any internet streaming platform until Dec. 31, 2020, when the link will be removed from the cloud.

Because employers must maintain documentation for each employee establishing compliance with the training requirement, a certificate of attendance/completion will be made available for each employee, and a copy of the PowerPoint also will be made available to download.

COVID-19 Resources

- Greensfelder's COVID-19 resources page is a source for continuing updates:
<https://www.greensfelder.com/covid-19-resources.html>



Questions?



Scott Cruz

312-345-5008

scruz@greensfelder.com

THANK YOU

Legal Disclaimer: This document is not intended to give legal advice. It is comprised of general information. Employers facing specific issues should seek the assistance of an attorney.