

As we enter Phase 1 of Governor Kelly's Executive Order to reopen Kansas, we know many employers will be asking employees to come back to work. The Kansas Department of Labor (KDOL) is committed to ensuring the health, safety and well-being of all workers, employers, and the public as we all make this transition.

Claimants and employers alike have many questions about how unemployment insurance benefits will be impacted if an employee refuses to return to work. It is important for both to know the standards and process KDOL will be using to make those determinations.

If an individual is considered high-risk for COVID-19, or lives with someone who is considered high-risk for COVID-19 and refuses to return to work, the individual may not be disqualified for benefits.

The Center for Disease Control has put out guidance identifying persons at higher risk for severe illness from COVID-19. KDOL will use this guidance in conjunction with guidance that may be provided by the Kansas Department of Health and Environment to identify categories of high-risk individuals. These categories are subject to change as guidance from these organizations evolves. KDOL will consider different factors such as whether the employer has made reasonable accommodations for suitable work, such as allowing telework. We will also examine if the work environment has necessary safety measures in place for COVID-19. Employers must also act in accordance with, but not limited to, Governor Kelly's Executive Order 20-29 and guidelines from the Occupational Safety and Health Administration (OSHA), the Center for Disease Control, and the Kansas Department of Labor. Phases 1 and 2 of Governor Kelly's Executive Order direct telework when possible.

If an individual is not considered high-risk for COVID-19, or does not reside with someone considered high-risk for COVID-19 and refuses to return to work, the individual may be disqualified for benefits.

A claimant who refuses to apply for suitable work, refuses to return to work, or otherwise refuses an offer of suitable employment, without good cause, may be disqualified for unemployment insurance benefits. Claimants are required to report whether or not they refused work during the week claimed during the weekly claims process.* Employers can report job refusals by submitting a job refusal form available at <https://www.dol.ks.gov/docs/default-source/ui-benefits-forms/k-ben-3118-a.pdf> via email to UICC.JobRefusals@ks.gov.

Decisions about whether or not someone is disqualified for unemployment insurance benefits due to failing to return to work will be decided on a case-by-case basis.

Both claimants and employers should complete and return all forms received from KDOL as quickly as possible. This ensures a timely review of the claim by KDOL and reduces erroneous decisions.

In making this determination, KDOL will consider whether a bona fide offer of employment was made and refused, whether that employment was suitable, and whether the claimant had good cause for refusing the offer.

In considering whether there was an offer of work, KDOL will review whether specific information was provided regarding the position. Details such as duties, starting pay, and hours, must be conveyed to the claimant; however, if the claimant prevents the employer from providing those details by refusing the job or referral before they could be conveyed, a disqualification can still be imposed.

KDOL must then consider whether the employment offered was suitable.

Factors considered include whether the claimant has the skills, training, experience and capabilities to perform the work offered. Consideration also includes the claimant's prospects of finding work, the number of jobs available in the claimant's chosen occupation, the number of people unemployed in that occupation, and the length of time the claimant has been unemployed. If the work offered is not the claimant's normal profession, then considerations will include whether training will be offered to the claimant, and whether the job meets federal/state/local standards in terms of wages, hours or other conditions of the work. In light of COVID-19, KDOL will also consider whether the employer is taking appropriate measures to safeguard employee health and safety by providing personal protective equipment, practicing social distancing, disinfecting and cleaning practices, and following all Federal, State, and local guidelines.

Finally, KDOL will consider whether the claimant had good cause to refuse suitable work.

"Good cause" is not defined in K.S.A. 44-706(c). However, consideration of "good cause" may include whether the claimant's reason for refusing the offer of suitable work was of such nature that would impel a reasonable, not supersensitive, individual exercising ordinary common sense to refuse the work. Consideration will also be given as to whether the claimant showed good faith, which includes the presence of a genuine desire to work, when refusing the work.

Claimants who accept part-time work may still be eligible to receive benefits. Claimants who return to work and continue to file weekly claims are required to report their earnings as they are earned; not when they are paid.*

After all of these relevant factors are considered, a Notice of Determination will be mailed to both parties.

If either the claimant or the employer disagrees with the examiner's determination, that party may appeal at their own expense in increasing level of appellate review: The Kansas Department of Labor Office of Appeals, Employment Security Board of Review, State District Court and beyond.

Cases in which claimants intentionally misstate or omit facts are considered fraudulent and may result in prosecution. Claimants will be required to pay back benefits deemed to have been overpaid. Overpayments that are due to fraud will be subject to penalties and interest.