



GUIDANCE

Back to work and UI during COVID-19

The New Mexico Department of Workforce Solutions is issuing the following guidance regarding work and Unemployment Insurance Benefits during the COVID-19 pandemic:

Non-Essential Businesses

All businesses deemed non-essential are asked to close their doors for the duration of the Governor's Public Health order. Workers should not go back to work at these employers until restrictions are lifted, unless a non-essential worker can participate in a safe way such as telework. A list of essential employers can be [found here](#).

Safe Working Conditions

Employers are asked to provide safe working conditions for their employees in the workplace. General guidance includes the following:

- Limit operations to remote work to the greatest extent possible.
- Arrange workplace to provide for 6-feet of distance between individuals wherever possible.
- Close common areas where personnel are likely to congregate wherever possible or modify them to minimize contact.
- Provide for all meetings to take place remotely whenever possible.
- Ensure all employees have face coverings or masks and wear them in the workplace at all times when in the presence of others, except when eating, drinking, or exercising, or unless otherwise advised by a health care provider.
- Train all employees on daily cleaning and disinfecting protocol, hygiene, and respiratory etiquette (e.g., covering coughs).
- Make handwashing, sanitizer, and other hygiene support available to employees.
- Screen employees before they enter the workplace each day (verbally or with a written form or text-based or other app). Send employees home who are experiencing the following COVID-19 symptoms related to COVID-19 and direct them to obtain free testing through the [New Mexico Department of Health](#).
 - *Fever, cough, shortness of breath, chills, repeated shaking with chills, muscle pain, headache, sore throat and/or loss of taste or smell.*
- Prohibit employees with known close contact to a person who is lab-confirmed to have COVID-19 to return to work until authorized by the Department of Health.
- Minimize non-essential travel. Adhere to CDC guidelines and state orders regarding isolation following out-of-state travel.
- Adhere to all [CDC](#) and [OSHA](#) guidelines.

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Best Practices

- Develop a COVID-19 communication plan and provide a forum for answering employee questions and addressing concerns.
- Appoint a COVID-Safe Practice leader or team to enact safe practices in the workplace.
- Review employee leave policies and modify as needed to ensure compliance with the [Families First Coronavirus Response Act](#).
- Consider assigning vulnerable workers duties that minimize their contact with customers and other employees (e.g., managing inventory rather than working as a cashier, managing administrative needs through telework).
- To support contact tracing, retain a daily log for at least four weeks including the date, name, phone number of all customers and employees who enter the workplace.
- Follow all heating, ventilation, and air conditioning (HVAC) preventative maintenance as required by the manufacturer on prescribed schedules. When possible, consult with an HVAC engineer to improve ventilation and minimize the potential for worker exposure.

COVID-Safe Practices by Industry

Employers should refer to the publication, [All Together New Mexico: COVID-Safe Practices for Individuals and Employers](#). This publication provides safety guidance by industry.

Additional safety guidance and resources:

- CDC: [Guidelines for Cleaning and Disinfection Community Facilities](#)
- CDC: [Print Resources in multiple languages](#)
- CDC: [Frequently Asked Questions](#)
- Child Care Facilities: <https://www.newmexicokids.org/wp-content/uploads/2020.5.11-Early-Childhood-Health-and-Safety-Guidance.pdf>
- [COVID-19 Emergency Supply Collaborative](#)
- Dental Industry: <https://www.osha.gov/SLTC/covid-19/dentistry.html>
- Occupational Safety and Health Administration (OSHA): [Guidance on Preparing Workplaces for COVID-19](#)
- Restaurants: <https://www.fda.gov/food/food-safety-during-emergencies/best-practices-retail-food-stores-restaurants-and-food-pick-up-delivery-services-during-covid-19>
- Residential Housing: <https://www.cdc.gov/coronavirus/2019-ncov/community/shared-congregate-house/guidance-shared-congregate-housing.html>

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Quitting or Declining to Return to Work Without Good Cause

Workers who have been placed on a temporary layoff at an essential employer related to COVID-19 should return to work if called back to remain eligible for benefits. Not returning to work without good cause when work is available could be considered fraud and a “refusal of work”, if the refusal to return is for the purpose of obtaining unemployment insurance benefits. Refusal of an offer of suitable work will potentially disqualify an individual from receiving unemployment insurance benefits.

Not returning to work because of general fear of COVID-19 is not considered good cause. However, if a worker can present documentation from a medical provider that returning to work would be a high risk for severe illness for either the worker or someone they are a caregiver for, that would be good cause during the Pandemic. Examples of people in that category can include:

- People 65 years and older
- People who live in a nursing home or long-term care facility

People of all ages with underlying medical conditions, particularly if not well controlled, including:

- People with chronic lung disease or moderate to severe asthma
- People who have serious heart conditions
- People who are immunocompromised
 - Many conditions can cause a person to be immunocompromised, including cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, and prolonged use of corticosteroids and other immune weakening medications
- People with severe obesity (body mass index [BMI] of 40 or higher)
- People with diabetes
- People with chronic kidney disease undergoing dialysis
- People with liver disease

Those who are on quarantine for COVID-19 related issues at the direction of a medical provider are eligible for paid sick leave under the Families First Coronavirus Response Act with guidance available here: <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

Declining Suitable Work

Under the law, if an unemployed person is offered a comparable job to their previous job at comparable wages and hours at a legally opened business and refuses to accept the job offer, they will be disqualified from benefits.

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Benefits obtained through fraud must be repaid. Claimants who commit fraud may be subject to additional penalties to include prevention from receipt of future benefits, assessment of monetary penalties in addition to the benefits that must be repaid, and possible referral to the Office of Inspector General for criminal prosecution.

Working Reduced Hours

Workers who are called back by their employer, but working reduced hours, may still qualify for benefits. These workers should continue to file weekly claims at www.jobs.state.nm.us and report all earnings. If a worker is earning more than their previous weekly benefit amount, they will not be eligible for benefits for that week. Workers whose employers have an approved Short-Time Compensation plan can also receive a partial unemployment benefit.

Reporting Job Offers

Employers should report hires to [State Directory of New Hires](#) (SDNH) under the Human Services Department. The Unemployment Insurance system performs a weekly crossmatch and will detect work items for potential fraud cases of those receiving benefits while earning wages.

If an essential employer offers full time work to an Unemployment recipient who then refuses, they can report the situation to uitax.support@state.nm.us by submitting a [Refusal of Work Form](#). The following information will be needed:

- Your business name
- Your Unemployment Employer Account Number
- Name of the individual
- Last four digits of the individual's Social Security Number
- Name and title of the person who made the offer of work to the individual
- Date was the offer to work made
- How the individual was contacted to make an offer.
- The type of work that was offered
- The city/town/state and division/unit of the work offered
- If the work was full-time or part-time
- The number of hours per week and shift of the work offered
- The rate of pay for the offered work
- The date work was to start
- The reason(s) given by the individual for refusing the offer of work
- If the individual had done this type of work before, you will be asked what was the previous job, rate of pay, and last day of that work. Also, where the previous work was performed

Employers should encourage employees to stop certifying once a full-time job is established. Claimants do not need to contact NMDWS. Simply stopping the submission of weekly certifications is sufficient.