

# What to do if Your Employee Refuses to Return to Work

With the COVID-19 Pandemic in full swing across much of the USA, many employees are hesitant to return to work for a variety of reasons. The goal is to return your employees to work and be empathetic in the process. Business owners are eager to reinstate their normal operations. Employees who are receiving unemployment benefits, including the extra \$600 weekly from the CARES Act, may be enticed by this arrangement: stay home and receive extra pay.

So how do you balance your need to reopen and the employees' need to feel safe and appreciated?

## Here is Some Advice to Consider

If possible, create a "retention" program. It could be as simple as 1 extra day of vacation for every week worked, to be used by December 31, 2020. Or maybe an extra cash incentive for every week worked. If you received the Payroll Protection Program (PPP) loan, you can use some of that money to fund it.

If an employee is refusing to return to work, ask why and have the conversation. Is it because they are making more money on unemployment? If so, remind them the extra \$600 kicker runs out on 7/31/20 and is not a permanent income stream for them. Refusing to return to work from unemployment can be grounds for disqualification for benefits and termination (see FAQ section).

If the employee refuses to return to work, do they qualify for extended FMLA? The EFMLA that was enacted as part of the **Families First Coronavirus Response Act (FFCRA)** continues through December 31, 2020. Therefore, if an employee has a qualifying reason, has not yet exhausted their regular FMLA or EFMLA eligibility, and the employer is under 500 employees, the employee must be offered the EFMLA. Furthermore, the employer must pay the employee for the EFMLA and will be reimbursed via tax credits.

If you have an employee who does not qualify for EFMLA, has not requested an accommodation, is not immunocompromised, and otherwise does not have a "good reason" to stay home, what can you do? In essence, if the employee is refusing to work without good reason, they've resigned. However, if you want to, you could offer them an unpaid leave of absence. Just keep in mind, you need to be consistent and offer it to everyone in this situation.

Like anything else in Human Resources, document everything. You should recall employees in writing and document anyone who refuses to return to work.



## Frequently Asked Questions

I took a Payroll Protection Program (PPP) loan and indicated I had 30 FTEs. I've attempted to recall all 30, but 5 are refusing to return to work. **Will my loan forgiveness be impacted?**

No. As an exercise of the Administrator's and the Secretary's authority under Section 1106(d)(6) of the CARES Act to prescribe regulations granting de minimis exemptions from the Act's limits on loan forgiveness, SBA and Treasury intend to issue an interim final rule excluding laid-off employees whom the borrower offered to rehire (for the same salary/wages and same number of hours) from the CARES Act's loan forgiveness reduction calculation. The interim final rule will specify that, to qualify for this exception, the borrower must have made a good faith, written offer of rehire, and the employee's rejection of that offer must be documented by the borrower. Employees and employers should be aware that employees who reject offers of re-employment may forfeit eligibility for continued unemployment compensation.

In other words, your loan forgiveness is not impacted if an employee refuses to return to work. But, you must document that you tried to recall them AND they refused to return to work.

What does the Families First Coronavirus Response Act cover?

Under the FFCRA, an employee qualifies for paid sick time if the employee is unable to work (**or unable to telework**) due to a need for leave because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19; or
6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Under the FFCRA, an employee qualifies for expanded family leave if the employee is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19.



## Frequently Asked Questions

<p>My employees are making more money on unemployment with the kicker than I can pay them. They are refusing to return to work. <b>Can they still collect unemployment?</b></p>	<p>This answer varies by state, but as a general rule, employees who refuse to return work jeopardize their unemployment claim. In order to earn unemployment benefits, an employee must not have the opportunity for employment. If the employer offers them their job back and the employee refuses (without good reason) then the employee has in essence resigned.</p>
<p>What does it mean to be unable to work, including telework for COVID-19 related reasons?</p>	<p>You are unable to work if your employer has work for you and one of the COVID-19 qualifying reasons set forth in the FFCRA prevents you from being able to perform that work, either under normal circumstances at your normal worksite or by means of telework. If you and your employer agree that you will work your normal number of hours, but outside of your normally scheduled hours (for instance early in the morning or late at night), then you are able to work and leave is not necessary unless a COVID-19 qualifying reason prevents you from working that schedule.</p>

## Families First Coronavirus Response Act (FFCRA) Timeline

