

May 5, 2020

UPDATE:
GUIDANCE REGARDING EMPLOYEES RETURNING TO WORK

As the State of Utah and local counties and municipalities around the state lift restrictions imposed in response to COVID-19, we wanted to address two new developments in Utah that may be helpful for employers to know as their employees return to work.

First, the Utah Department of Workforce Services (“DWS”) has published Returning to Work FAQ for Employers, available [here](#). One of the most frequently asked questions by employers may be: *What if an employee refuses to return to work?*

Employers may have different obligations when answering that question under federal and state law, including the Americans with Disabilities Act (“ADA”) and the Families First Coronavirus Response Act (“FFCRA”), so you should consult with legal counsel as to any particular employee. But with regard to unemployment, the DWS FAQ sheet indicates that an employee may not turn down a job offer because he or she prefers to continue receiving unemployment benefits—something that we have heard erroneously referred to as “choosing the unemployment option.” (To be clear, there is no such “option.”)

When an employer is ready for employees to return to work, DWS advises employers to “directly and clearly communicate the details on the work offered,” including the following information:

- Start date
- Full-time or part-time
- Wage
- Type of work hours
- Hours
- General location
- Conditions of the job

We recommend that employers do this *in writing*. If an employee refuses to come back to work or refuses an offer of work, an employer can report the job refusal by submitting a request for investigation of unemployment insurance fraud through the link available on DWS’s FAQ sheet.

We encourage you to review the Department of Workforce Service's website at <https://jobs.utah.gov/covid19/> for additional guidance regarding unemployment.

Second, on May 4, 2020, Governor Herbert signed into law [S.B. 3007](#), which grants certain statutory immunity to persons (including employers) related to COVID-19. Under this new legislation, employers generally will be immune from civil liability for damages or injury resulting from exposure to COVID-19 on any premises the employer owns or operates, or during an activity the employer manages, unless the injury is based on willful misconduct, reckless infliction of harm, or intentional infliction of harm.

Notwithstanding this statutory immunity and other potential shields to liability available to employers, including the exclusive remedies provision of the Utah Workers' Compensation Act, employers would be wise to continue using common-sense safety procedures with regard to preventing the spread of COVID-19. OSHA has published helpful guidance on preparing workplaces for COVID-19, available [here](#).

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