

NEW INDIANA DWD GUIDANCE ADDRESSES TIMING OF UNEMPLOYMENT BENEFITS AND EMPLOYEES WHO REFUSE TO RETURN TO WORK

The Indiana Department of Workforce Development (“DWD”) recently published an [announcement](#) setting out when claimants can expect to receive various types of enhanced pandemic-related unemployment benefits made available under the federal CARES Act. The DWD also used the announcement as an opportunity to remind applicants that the DWD will initiate collection proceedings and potentially pursue state and federal criminal prosecution against those who attempt to collect unemployment benefits fraudulently.

Employees Who Refuse to Return to Work When Recalled

In addition to its recent announcement, the DWD has continued to periodically update its FAQ pages for both [Claimants](#) and [Employers](#). As of April 30, 2020, the Employer FAQ contains new information about what employers can do when employees receiving unemployment benefits refuse to return to work upon being recalled from layoff or furlough. In particular, employers are invited to report this information to the DWD by filing a new [State Form 56951](#).

In addition to collecting the details concerning the employer’s recall communication and whether the employee would be returning to the same job, hours and pay, State Form 56951 asks employers to provide narrative responses describing:

1. Why the employee refused to return to work; and
2. What accommodations the employer has made to ensure the employee’s safety.

Be Careful When Responding to State Form 56951

Employers should answer these narrative questions concisely and carefully as this form could ultimately become a discoverable document in litigation against employers.

For example, when answering why the employee refused to return to work, employers should stick to the facts by using the **employee’s own words** as much as possible. If the employee did not specify a reason or the reasons were unclear, then that’s what should be stated on the form. Employers should not include statements that the employee is lying or trying to collect unemployment fraudulently, nor should they include any specific medical information about the employee. Doing so could expose employers to unnecessary liability related to defamation and/or Americans with Disabilities Act claims.

When answering whether accommodations have been made to ensure employee safety, employers should first internally confirm that they are, indeed, following the most updated OSHA, CDC and local agency recommended guidelines related to the pandemic. Assuming they are, employers should consider simply stating as much on the form. If necessary and appropriate, employers may consider truthfully elaborating on their safety measures in response to follow up inquiries from the DWD.

If you have any questions or require any assistance when communicating with the DWD regarding employee claims for unemployment benefits, please do not hesitate to contact:

- [Jon Bumgarner](#) at (317) 977-1474 or jbumgarner@hallrender.com;
- [Jake Kolisek](#) at (317) 977-1428 or jkolisek@hallrender.com; or
- Your regular Hall Render attorney.

Hall Render’s attorneys and professionals continue to maintain the most up-to-date information and resources at our [COVID-19 Resource page](#), through our 24/7 COVID-19 Hotline at (317) 429-3900 or by contacting your regular Hall Render attorney.

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