

OREGON EXPANDS UNEMPLOYMENT ELIGIBILITY TO ADDRESS COVID-19 IMPACT (UPDATED)

Insights
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COVID-19 has forced numerous employers to close facilities and terminate employees. With unemployment rates expected to skyrocket, Oregon's Employment Department (OED) has responded to this crisis by [enacting a new rule](#) that expands the eligibility criteria for unemployment benefits.

Prior to the current pandemic, to be eligible for unemployment benefits in Oregon an unemployed individual had to be: (1) able to work, (2) available to work, and (3) actively seeking work. COVID-19 presents a barrier for unemployed workers to meet these criteria since they may not be able to work or seek work due to sickness, quarantine, caretaking needs, or business closures. OED's new rule addresses these concerns by creating exceptions to the normal disqualification rules and expanding benefit eligibility requirements to account for unemployment caused or furthered by COVID-19.

[Ed. Note: On April 28, 2019, the OED enacted the [federal Pandemic Unemployment Assistance \(PUA\) program](#), which expands COVID-19 related unemployment eligibility to categories of workers not normally eligible for unemployment, including: (1) self-employed, 1099 contract workers, and gig economy workers; (2) employees whose wages are not reported for unemployment insurance; (3) employees who have not earned enough wages or worked enough hours for regular unemployment benefits; and (4) people who were going to start work but could not. PUA

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benefits may be retroactive to February 2, 2020 and last for up to 39 weeks if eligibility is maintained.]

EXCEPTIONS TO NORMAL DISQUALIFICATION RULES

OED's new rule provides exceptions to unemployment eligibility rules that would generally disqualify applicants from entitlement to unemployment benefits. A person who quits, is discharged, fails to timely apply for work, or fails to accept an offer for work, is not disqualified from unemployment benefits if those actions were taken due to "COVID-19 related situations."

"COVID-19 related situations" include when a person cannot or should not work because:

1. They are sick with COVID-19.
2. They are in quarantine due to potential COVID-19 exposure.
3. They are in quarantine or isolation advised or required by the government or a healthcare provider. (This includes Governor Brown's recent Stay-At-Home Order. For more information on this order, see this legal [alert](#).)
4. Their employer has ceased or curtailed operations due to COVID-19.
5. They are home taking care of a family member who would normally be cared for at school or by a care provider made unavailable due to COVID-19.

Though these exceptions provide relief from automatic benefit disqualification, those seeking unemployment benefits still must meet the eligibility criteria detailed below.

MEETING REQUIREMENTS FOR UNEMPLOYMENT BENEFITS DURING THE COVID-19 PANDEMIC

An unemployed worker is eligible for unemployment benefits if they are (1) able to work, (2) available to work, and (3) actively seeking work. OED's new rule expands these criteria to cover applicants whose continued unemployment is caused by COVID-19.

ABLE TO WORK

An unemployed person is not disqualified from receiving benefits for being unable to work if the inability to work is because:

- They are quarantined as advised by a public health official or healthcare provider, but not sick.
- They are home sick with COVID-19 or a condition causing similar symptoms, without turning down an offer of work.
- They are hospitalized due to COVID-19 for less than half a week, without turning down an offer to work during that week.

A person is not considered able to work if they are offered work and do not accept it due to COVID-19 or a condition causing similar symptoms.

AVAILABLE TO WORK

An unemployed person will not be deemed unavailable to work because:

- They are in quarantine or isolation advised or required by the government or a healthcare provider (including Governor Brown's Stay-At-Home Order), even if their employer had work for them that they otherwise could have performed.
- They are home taking care of a family member who would normally be cared for at school or by a care provider made unavailable due to COVID-19.

ACTIVELY SEEKING WORK

An unemployed person is "actively seeking work" if their employment search efforts are impaired by COVID-19, or they are unemployed due to a "COVID-19 related situation," and they are either:

- Doing what they can to find employment, or
- Maintaining a relationship with an employer where both intend to resume the working relationship once the COVID-19 situation subsides.

WHAT ELSE OREGON EMPLOYERS NEED TO KNOW

WHEN IS THIS RULE EFFECTIVE?

The rule applies retroactively to March 8, 2020, the date of Governor Brown's executive order declaring a statewide emergency, and is in effect to September 12, 2020. We will continue to monitor this situation for any updates.

IF I LAY OFF EMPLOYEES WHO MAY BE CALLED BACK TO WORK, CAN THESE EMPLOYEES RECEIVE UNEMPLOYMENT BENEFITS?

Yes, provided the employees meet the work ability and availability requirements. When an employee and their employer intend on the employee resuming work upon relief from COVID-19, the "actively seeking work" benefit eligibility requirement is satisfied.

If I reduce an employee's hours, can that employee receive unemployment benefits?

Probably, as outlined in the [chart](#) noted above. Oregon provides employers with the opportunity to use the "Work Share" Program. This program provides partial unemployment insurance benefits to supplement workers' reduced wages when an employer needs to cut employee hours. Employees cannot apply for the Work Share Program. For more information on this program, [you may visit the website](#).

IF I TEMPORARILY LAY OFF AN EMPLOYEE BUT CONTINUE TO PAY THEIR MEDICAL BENEFITS (E.G., HEALTH INSURANCE), CAN THE EMPLOYEE GET UNEMPLOYMENT BENEFITS?

Probably. Employees are generally still considered unemployed if they are laid off but continue receiving medical benefits, as those benefits are not listed under OAR 471-030-0017. However, there may be other risks (to you and your temporarily laid off employee) associated with this type of furlough. Thus, it is our recommendation to contact counsel if you wish to pursue this option.

CONCLUSION

COVID-19 has already had a sweeping impact on the workforce, which will continue to manifest in increased unemployment. Given this expectation, it is prudent for employers to be aware of the unemployment insurance

options available to terminated employees in order to make informed decisions about layoffs, hour reductions, and furloughs. Employers should also consider participating in Oregon's Work Share Program, which assists employers in avoiding layoffs by providing partial unemployment benefits to compensate for an employer's reduction of employee hours.

We will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, any attorney in [our Portland office](#), or [any member of our COVID-19 Taskforce](#). You can also review our nationwide [Comprehensive and Updated FAQs for Employers on the COVID-19 Coronavirus](#) and our [FP Resource Center For Employers](#), maintained by our Taskforce.

This Legal Alert provides an overview of a specific state law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.