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# Market Matters: Unemployment compensation rules changed amid pandemic

By Robert B. Mitchell  
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Photo: Contributed Photo

Some of the rules for collecting unemployment compensation have changed amid the coronavirus pandemic. For employers, a degree of caution is needed when dealing with workers who are afraid to come back to the job. Employees must understand that a simple, undifferentiated and unsupportable fear of going back to work because of COVID-19 is unlikely to support an unemployment compensation application.

If a worker has an underlying non-COVID disability that adversely impacts a major life function, the worker is protected by the federal Americans with Disabilities Act. Is there an unreasonable risk that the virus could impact the disability? If so, you may be eligible for unemployment compensation even if your employer says the workplace is COVID-free and that it is safe to come back to work.

On the other hand, an employer cannot prevent a person with a disability or an older employee from returning to work even if the employee is in a group with a heightened susceptibility for contracting the virus.

Both worker and employer must adjust to the new reality.

Recently, Gov. Ned Lamont issued a new executive order that has received considerable media attention for its directives for nursing homes. However, a critical section of so-called Executive Order No. 7UU deals with an individual's suitability for work, specifically for unemployment claims submitted May 17 through July 25.

The order directs the Department of Labor to consider "the degree of risk to the individual's health, or, due to the COVID-19 public health emergency, the health of a member of that individual's household."

The order continues, saying the state "may consider the individual's or household member's health, his or her physical capabilities, the physical and mental requirements of the job, working conditions and the existence of any medical documentation concerning the individual's limitations."

If "unreasonable risk to the individual's health or, due to COVID-19, the health of a member of that individual's household is established," the work offered can be found unsuitable for the individual and the employee is therefore eligible for unemployment compensation.

What actually constitutes "unreasonable risk" is a determination, ultimately, to be made by the state. Clearly, a statement from the individual's doctor can help support the person's claim. To show the employer the risk is real, under state law the employer can ask for some type of medical evidence. The problem? Once obtained, such medical information must be guarded and maintained in separate files to protect employee privacy.

Meanwhile, it is clear that a worker cannot stay home from work simply out of fear. If, for example, an office is following all the guidelines for social separation and cleanliness, simple fear of the disease, standing alone, is not going to cut it.

On the other hand, a factory worker on an assembly line where no one is wearing a mask or other protective gear might have a reasonable fear and therefore be eligible for unemployment

compensation even if the employer wants everyone back on the line. In such circumstances that employee might also have a claim to be filed with either the federal or state OSHA authorities.

Lastly, keep in mind that an employer retains the right to appeal a state decision to pay unemployment compensation. The state could change course and determine that the worker actually was not eligible for the payouts. For the worker, that could mean the state orders repayment of all amounts provided from the start of the claim.

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