

My Employer is Reopening and I'm Being Asked to Return to Work – But I'm Scared of COVID-19 Exposure

Can I Keep Receiving Unemployment?

When someone is getting unemployment insurance and their last employer makes work available, the Virginia Employment Commission (“VEC”) generally will expect the person to accept that work.

You are required to report offers of work on your weekly claims to the VEC. If you report that you turned down work that was offered to you, this will create an issue on your claim the VEC will evaluate.

In such cases, the VEC will ask three questions. If there was a bona fide offer of suitable work, that a worker rejects without good cause, the worker will be disqualified for additional weekly claims.

1) Was there a “bona fide” offer of work?

Did the worker get a real offer of work, that was clear as to its terms? There must be an understanding about the duties, a starting/back-to-work date, and the rate of pay. (In a return-to-work situation, some of this may already be understood.) The offer must be communicated to the worker. A general statement of availability or possible work is not a bona fide offer of work.

2) If so, was the work that was offered “suitable work”?

State law says that “[i]n determining whether or not any work is suitable for an individual, the [VEC] shall consider the degree of risk involved to his health, safety and morals, his physical fitness and prior training, his experience, his length of unemployment and the accessibility of the available work from his residence.” (Va. Code 60.2-618(3)(B)) In many cases, the same job that the worker was doing previously (before COVID-19 slowdowns) will be considered suitable. But sometimes a worker’s former job could be unsuitable. For example, *if a worker can show that going back to work will harm their health (such as by medical documentation from a provider, or other objective evidence about dangers at that specific jobsite [such as COVID-19 cases among co-workers]), then the job may not be suitable. A worker’s general fears about safety, although understandable, are not usually enough to make the job unsuitable.*

3) If it was “suitable work”, did the person have “good cause” to reject the offer?

Good cause is not defined in state law but means that there is a really good reason. *If a worker gets an offer of suitable work, the worker will need to try to resolve any reasons that prevent them from accepting the work.* If the worker has concerns about COVID-19 exposure, they should ask the employer to take steps to reduce that risk. Depending on the job, that could include better protective equipment; physical changes to the jobsite; or other changes like a different shift, telecommuting, or a leave of absence. If you need changes to make the job safer, ask for them. If your employer makes changes, then you will be better protected if you then decide to return to work. If your employer refuses to make changes, then you are more likely to have “good cause” to reject the offer (and protect your continuing eligibility for unemployment insurance) if you decide not to return.