

## **MAINE Department of Labor FAQs: FOR EMPLOYERS, regarding layoffs and Unemployment benefits**

### Coverage & Eligibility

1. If I must temporarily close part or all of my business operations due to the COVID-19 virus and lay off my employees, will they have to look for other work while they are collecting unemployment benefits?

A. No. As long as you plan to return them to their jobs when you resume operations, and provided they remain able and available to work for you and provide you with current contact information by which to reach them, they will not have to seek other work.

2. Can an employer who needs to temporarily lay off employees because of COVID-19 continue to pay health insurance premiums for the employee during the layoff period or will that negatively impact the employees' unemployment benefits?

A. Continuing to provide health insurance will not impact your employee's ability to receive unemployment benefits.

3. What if an employer is considering a reduction in work hours?

A. Employers are encouraged to contact MDOL's Bureau of Unemployment Compensation to learn about Workshare, an unemployment option that helps businesses retain their workforce during a temporary slowdown in work. The program allows employers to voluntarily reduce the hours of staff in lieu of layoffs. Employees of the business are allowed to collect a partial unemployment benefit to help them offset the loss of income.

(<https://www.maine.gov/unemployment/workshare>)

4. Is it better to lay off employees than have employees resign?

A. It is easier to determine unemployment eligibility in the case of a layoff because there is a clear separation from work. To be eligible for unemployment, individuals must lose their jobs through no fault of their own.

5. Will self-employed, sole proprietors be covered?

A. If the self-employed are incorporated, they will be eligible for unemployment benefits. However, most independent contractors, small business owners and other self-employed individuals are not incorporated, do not contribute to unemployment taxes and usually are not eligible for unemployment benefits. However, the new temporary federal unemployment programs will cover the self-employed. These new programs are complex, and we are working to implement them as quickly as possible. At this moment, those self-employed should wait to file a claim for benefits. Since these programs have not been implemented yet, filing at this point will only result in a denial. We will continue to provide information as it becomes available. Once implemented, benefits will be paid retroactively.

6. To what extent are the changes in the new bill applicable to people who work for large (500+ employees) employers?

A. The new state temporary measures in the new legislation are for all covered workers in the state.

7. What about Direct Reimbursement employers how will new unemployment measures affect us?

A. Unlike private sector employers, nonprofit and government employers can choose to either pay into the unemployment trust fund or to cover the cost of benefits paid out directly. Private employers must contribute to this social insurance program so that the resources are available during economic downturns. Those who choose not to pay the unemployment tax are typically responsible for 100% of the cost of any benefits paid to former employees. MDOL awaits final interpretation of the federal CARES Act from U.S. DOL; it appears that the legislation provides federal funds to cover 50% of the state unemployment benefits that would have otherwise been charged to direct reimbursable employers. Maine cannot waive the remaining 50%. Having no source of funding available to cover these costs would result in the transfer of the liability to taxable private employers. As of December 31, 2019, there were slightly over 1,000 direct reimbursable employers in Maine.

8. If an employer lives in Maine and owns a restaurant in New Hampshire and has employees who live in both states, in which state do the employees apply for unemployment?

A. The work is being performed in NH so all claimants (workers) will need to file claims in NH regardless of their individual residences.

9. Is an employer required to have employees exhaust all paid time off before putting them on temporary layoff (after which they will apply for unemployment)?

A. No. Employers are not required to pay out all paid time off before a layoff, but they are allowed to do so. Use of leave time during a temporary layoff depends on an employer's policies. The employer may require use or payout of leave time. Payments received by employee may have an impact on unemployment benefits paid to an individual.

10. Is it possible to find out if an employee is eligible for unemployment before the person files a claim?

A. No, MDOL can't determine whether an individual would be eligible for unemployment before that person separates from the employer. An individual must separate from their employer and then file a claim. MDOL reviews the case to make a determination. If an individual is not sure whether they would be eligible, it is best to apply. The individual must still be connected to the labor market in order to receive benefits, be able and available for work and retain contact with the employer.

11. Can I layoff my employees and they get unemployment, can they come back and volunteer to work for me?

A. Employees cannot volunteer at a for-profit business. Employees cannot volunteer to perform the same work they would normally get paid to do for a public employer. If employees are laid off—by a private or public employer—and then go back in to perform work for their employer, they are employed (not laid off) and must be paid wages. If they are truly laid off, they can apply for unemployment benefits through the online system.

12. I closed my business and laid my staff off a few weeks ago as a result of COVID-19 requirements. I plan to re-open in early May and have notified my employees I'd like them to return to do their jobs. However, many of them do not want to come back to work and prefer to stay on unemployment especially now that the additional \$600/week from the federal program is added to their benefit. What can be done to encourage these workers to come back to my business? Can they just stay on unemployment even if I have told them I want them back to work?

A. It depends. This is a complex situation and eligibility for unemployment will depend on the claimants' personal circumstances. When those receiving unemployment benefits file their required weekly certification, they must answer questions regarding whether they have been offered any work in the past week. Employers should let MDOL know if they have recalled employees back to work and if those employees have turned down the work offer. MDOL will analyze the circumstances on a case-by-case basis to see if there is a valid reason for refusing the work or not. For example, under the new federal programs (e.g. Pandemic Unemployment Assistance-PUA), unemployment benefits are made available to a broader set of people with circumstances affected by COVID-19. MDOL's determination may also depend upon the circumstances of the particular workplace, such as whether the employer is taking steps to minimize the risk of COVID-19 exposure, or such as by following recommendations by the Maine CDC that are in place at the relevant time. If MDOL determines that an offer of suitable work was made and that there was no valid reason to refuse it, unemployment benefits including the \$600 additional benefit would be disallowed. If regular unemployment benefits are denied, the additional \$600 a week in federal benefits (under Federal Pandemic Unemployment Compensation-FPUC) would also be denied. In any event, the additional \$600 benefit under FPUC is temporary and expires July 25th for all applicants.

13. My employees are applying for unemployment and I've been notified that MDOL needs wage information from me, what is the best way to share that information?

A. Establishing a person's eligibility for unemployment benefits is a case-by-case process and includes gathering wage and employment information from both the claimant and the employer. MDOL sends paper Separation Forms (B-1 Forms) to employers asking for this information. In this time of high volume of claims, MDOL cannot process paper forms efficiently. Starting immediately, we ask that employers send in the paper B-1 forms you've already received and then, from now on, please register for and use the online program called SIDES (State Information Data Exchange System)—a free nation-wide system separate from your ReEmployME account. Please register for the system so that going forward the needed wage and employment information can be transmitted electronically in both directions:

<https://reemployme.maine.gov/accessme/faces/sides/SEWEmployerWelcome.xhtml>. (For specific questions about SIDES, contact: [division.uctax@maine.gov](mailto:division.uctax@maine.gov) or 1-844-754-3508.)  
Financial

14. Will my experience rating record be affected if any of my employees receive unemployment benefits because of COVID-19?

A. If an individual receives unemployment benefits due solely to COVID-19, benefits paid to the worker would not be charged against the experience rating record of the employer.

15. I have laid off my employees and they have requested that their paid time off (PTO) is paid out to them. Will this affect their unemployment benefits?

A. If the employees have been truly laid off and are separated from you, their employer, then the payout of PTO will not count against unemployment insurance benefits. If it is an unpaid leave of absence due to COVID19 measures, employees can apply for and receive unemployment benefits. If employees are receiving pay for a leave of absence (in any of these forms: sick leave, vacation pay or regular wages), they are not unemployed and would not collect UI on top of their earnings. New federal legislation was enacted March 18th on paid sick leave and paid family and medical leave. There is more information for employees and employers on the website of U.S. DOL: on new federal paid sick leave or federal paid family and medical leave from U.S. DOL: <https://www.dol.gov/agencies/whd/pandemic> MDOL/Bureau of Unemployment Compensation Contact: If individuals are unsure if they would be eligible for unemployment insurance, the Maine Department of Labor recommends that they apply. More information on unemployment insurance can be found here: <https://www.maine.gov/unemployment/>

Claims are best filed online at:

- <https://reemployme.maine.gov/>
- 1-800-593-7660 (8 am – 3pm)
- Please use alphabetical calling: last names beginning with A-H call on Monday, I-Q on Tuesday; and R-Z on Wednesday. Thursday and Friday are left unassigned for those who miss their alphabetical day or need to call at that time.
- If you cannot use the phone system or need to leave a message, please do so in the Customer Messaging Portal (CMP): <https://www.maine.gov/labor/contact/index.html>

For more information and resources, visit the Department's COVID-19 page: <https://www.maine.gov/labor/covid19/>, and follow the Maine Department of Labor on Facebook @MElabor and Twitter @mainelabor.