

**United States Senate**  
WASHINGTON, DC 20510-3203

May 19, 2020

The Honorable Eugene Scalia  
Secretary of Labor  
U.S. Department of Labor  
200 Constitution Ave. NW  
Washington, DC 20210

Dear Secretary Scalia:

We are writing to request that the Department of Labor (the Department) clarify circumstances under which an individual may refuse to return to work and continue to claim Unemployment Insurance (UI) or Pandemic Unemployment Assistance (PUA). Given that returning to work during the current public health emergency presents a serious risk to the health and safety of many workers, it is crucial that the Department make clear that individuals cannot be forced to choose between keeping their income and putting their lives in danger.

In recent weeks, many public officials have indicated that they hope to push businesses to reopen, against the recommendations of leading public health experts. Because UI and PUA claimants generally cannot turn down a “suitable” job and continue to claim benefits, reopening has raised concerns that individuals claiming UI or PUA who are offered a job would be forced to choose between going back to work in unsafe conditions, or continuing to social distance and losing their only source of income. Fortunately, there are rules in existing federal laws and regulations that unambiguously state that workers cannot be forced off of UI or PUA to return to unsafe work conditions. While the Department issued limited guidance related to some of these issues, the Department needs to take immediate action to make these rules more clear as they apply to situations where the employer has not taken adequate health and safety precautions.

First, we appreciate the Department’s online Frequently Asked Questions that clarify that workers who qualify for PUA for one of the COVID-related reasons outlined in section 2102 of the CARES Act and related Department guidance may claim PUA if they turn down an offer of employment. However, we request additional guidance on two related points. The Department must make clear that under the CARES Act, a person who is unable to work (or accept a job offer) because they have been advised to self-quarantine due to a health condition or vulnerability of a member of their household would qualify for PUA. Additionally, the Department should provide guidance for states to help them facilitate the transition for UI claimants who lose their UI eligibility but become eligible for PUA. For example, a worker who

began claiming UI when they were laid off and must turn down an offer to return to work for a PUA-covered reason may begin claiming PUA if they no longer qualify for UI. States should proactively help these claimants switch over to PUA.

Second, the Department must issue guidance clarifying that individuals may continue to claim PUA if they turn down a job because it poses a risk to their health and safety. Section 625.13(b)(2) of the regulations for Disaster Unemployment Assistance (DUA) states that:

“a position shall not be deemed to be suitable for an individual if **the circumstances present any unusual risk to the health, safety, or morals of the individual**, if it is impracticable for the individual to accept the position, or if acceptance for the position would, as to the individual, be inconsistent with any labor standard in section 3304(a)(5) of the Federal Unemployment Tax Act, 26 U.S.C. 3304(a)(5), or the comparable provisions of the applicable State law.”

Section 2102(h) of the CARES Act says that DUA regulations also apply to PUA, and COVID-19 unequivocally presents an “unusual risk to the health [and] safety” of workers, especially when employers fail to take appropriate precautions to protect their employees. Therefore, the Department must make clear that PUA claimants may turn down a job that presents risks to their health and safety and continue to claim PUA. Furthermore, for regular UI claimants, federal law [26 U.S.C. 3304(a)(5)(B)] says that states cannot deny a claim if the individual has turned down work because “conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.” A situation in which an employer fails to take adequate steps to protect workers from COVID-19 would clearly be “conditions...substantially less favorable to the individual than those prevailing for similar work,” thus allowing the individual to turn down the job and continue to claim UI.

The Centers for Disease Control and Prevention (CDC) has issued numerous recommendations for public safety and workplace protections during the COVID-19 crisis that should serve as a basis for determining whether an employer offering an individual a job is adequately providing for the safety of their workers. Offers of employment where the employer does not comply with CDC recommendations should be deemed to present “an unusual risk to the health [and] safety” of workers in the case of PUA, and to be offering work conditions substantially less favorable than prevailing conditions in the case of UI. Furthermore, when evaluating cases in which an individual turns down a job, states should also look to CDC guidance, public health conditions, and the individual’s circumstances (such as any underlying health issue or risks from commuting to the job) to determine whether any aspect of accepting the position would “present any unusual risk to the health [or] safety” of the individual.

Third, the Department should provide better guidance to states and employers around reporting employees who turn down opportunities to work. Unemployment Insurance Program Letter (UIPL) No. 23-20 says that “states are strongly encouraged to request employers to provide information when workers refuse to return to their jobs for reasons that do not support their continued eligibility for benefits.” While employer reporting is one way that states can identify workers who are refusing to return to suitable work, the guidance fails to recognize that many of the reasons a person could turn down a job and remain on PUA could be unknown to the

employer, such as an underlying health condition or the need to care for a dependent. Furthermore, given that an individual could refuse to return to work because the employer is not providing safe work conditions, relying on the employer's report of an individual's refusal to return to work should not alone be sufficient to determine that an individual should no longer be eligible for UI or PUA. The Department should issue additional guidance to states reminding them that an employer's report that an individual turned down an offer of employment should not be the sole factor considered in determining whether an individual continues to qualify for benefits. The state must consider whether an individual has a reason for continuing to claim UI or PUA, including whether the employer has failed to provide safe working conditions.

Please respond to this letter no later than Monday, May 25, 2020. Thank you for your attention to this important matter, and for your continuing efforts to implement the UI expansions in the CARES Act.

Sincerely,

[/s/ Ron Wyden](#)

---

Ron Wyden  
United States Senator

[/s/ Edward J. Markey](#)

---

Edward J. Markey  
United States Senator

[/s/ Richard Blumenthal](#)

---

Richard Blumenthal  
United States Senator

[/s/ Sherrod Brown](#)

---

Sherrod Brown  
United States Senator

[/s/ Elizabeth Warren](#)

---

Elizabeth Warren  
United States Senator

[/s/ Mazie K. Hirono](#)

---

Mazie K. Hirono  
United States Senator

[/s/ Benjamin L. Cardin](#)

---

Benjamin L. Cardin  
United States Senator

[/s/ Debbie Stabenow](#)

---

Debbie Stabenow  
United States Senator

[/s/ Patty Murray](#)

---

Patty Murray  
United States Senator

[/s/ Bernard Sanders](#)

---

Bernard Sanders  
United States Senator

[/s/ Robert Menendez](#)

---

Robert Menendez  
United States Senator

[/s/ Tim Kaine](#)

---

Tim Kaine  
United States Senator

[/s/ Chris Van Hollen](#)

---

Chris Van Hollen  
United States Senator

[/s/ Richard J. Durbin](#)

---

Richard J. Durbin  
United States Senator

[/s/ Robert P. Casey, Jr.](#)

---

Robert P. Casey, Jr.  
United States Senator

[/s/ Jeffrey A. Merkley](#)

---

Jeffrey A. Merkley  
United States Senator

[/s/ Margaret Wood Hassan](#)

---

Margaret Wood Hassan  
United States Senator

[/s/ Patrick Leahy](#)

---

Patrick Leahy  
United States Senator

[/s/ Sheldon Whitehouse](#)

---

Sheldon Whitehouse  
United States Senator

[/s/ Tammy Duckworth](#)

---

Tammy Duckworth  
United States Senator

[/s/ Tammy Baldwin](#)

---

Tammy Baldwin  
United States Senator

[/s/ Cory A. Booker](#)

---

Cory A. Booker  
United States Senator