



Kansas State Council of SHRM, Inc.
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KS SHRM COVID-19 WEBINAR DISCUSSION

May 13, 2020

Topic: Unemployment and Kansas Share Work Program, Revisited

Guests:

- Laurel Searles – Kansas Department of Labor
- Phillip M. Hayes, SPHR – The Arnold Group, Chairman of Kansas Employment Security Board of Review

Questions answered on the call:

The Kansas Department of Labor reminds unemployed Kansans that they must return to work if called back by their employer. While exceptions do exist for employees, such as those who have been exposed to COVID-19, or individuals who must care for a family member, those who refuse to return to suitable work may risk losing benefits.

As businesses are allowed to slowly reopen safely across the state, per the Governor's Executive Order, we have heard from employers that individuals are refusing to work or accept their employment wages because they are 'making more' on unemployment.

KDOL Guidelines Regarding COVID-19 Emergency / Reasons for Job Refusal:

1. **At high risk.** People 65 years or older are at a higher risk for getting very sick from COVID-19.
2. **Household member at high risk.**
3. **Diagnosed with COVID-19.** The individual has tested positive for COVID-19 by a source authorized by the State of Kansas and is not recovered.
4. **Family member with COVID-19.** Anybody in the household has tested positive for COVID-19 by a source authorized by the State of Kansas and is not recovered and 14 days have not yet passed.
5. **Quarantined.** Individual is in 14-day quarantine due to close contact exposure to COVID-19.
6. **Child care.** Child's school or daycare is closed and no alternatives are available.
7. Any other situation will be subject to *a case-by-case review* by KDOL based on individual circumstances.
 - a. More information can be found at <https://www.dol.ks.gov/docs/default-source/default-document-library/job-refusal-info>

Job Refusal / Fraud Reporting:

1. What would the Department communicate to individuals refusing suitable work (able available and actively seeking work) or refusing employment wages through their employer?

Employers have been communicated to report this activity, which will be investigated and may constitute unemployment insurance fraud and disqualify them from receiving benefits.



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2. If an employer believes an employee is unjustly refusing working, how can they report this activity as potential fraud for investigation?

UI Fraud Reporting Methods are KDOL.Fraud@ks.gov or UICC.JobRefusals@ks.gov.

Job Refusal Questions:

3. What if you're a healthy person who's not in the high-risk category? And then you also say, "I don't want to go back to work because I'm going to be in front of the public, and I don't want to catch COVID-19?"

There are many factors looked at: Is this a workplace that does its best to practice safety? Are they following government guidelines? Do they provide masks or temperature checks to employees? KDOL follows the Governor's guidance and phasing protocol. If the employer is doing everything to protect health and safety, then it could be a disqualification of UI benefits.

4. What advice do you have for claimants if and when they are called back to work even with reduced hours?
If offering reduced hours, the claimant may be eligible for a partial UI benefit. They must report the hours worked and the gross earnings and a calculation will determine if they are entitled to a partial benefit or not.

Work Search Requirement:

5. So, now that we're reopening the economy, when will the "work search" requirements take effect and how will that be communicated?

Right now, the work search waiver is incorporated in the Governor's executive order 20-17 and will expire May 31, 2020. A bill is being put together by the Commerce Committees of both houses in the Kansas Legislature that will allow KDOL to incorporate some of the CARES Act requirements into statute. If the Legislature doesn't address it, and the Governor doesn't extend the executive order, the waiver will expire May 31.

KDOL Office Hours:

6. As Kansas is reopening, when will KDOL offices including *Appeals* be opening?

KDOL is getting ready for renovations so we may continue some work from home indefinitely but almost all employees are back to work in some form or another. We are still closed to the public through Phase 1 and potentially through Phase 2, but we'll have more employees back in the building by Phase 3.

Unified School Districts and Reasonable Assurance:

7. Is the reasonable assurance clause being handled any differently than prior to the pandemic and do you expect any changes moving forward?

We are having this conversation now as school employees are not being paid. We're not sure if that will apply to the fall or not and we welcome hearing from schools.

Timeliness, Determination Notices and Chargeability for Employers:

8. What assurances do employers have that benefits were not simply awarded to claimants regarding separations unrelated to COVID-19?

Those decisions are made on a case by case basis. If you receive a decision that you feel is erroneous, appeal that determination. We encourage you to appeal any decision you disagree with.

9. How forgiving will KDOL be on timeliness?



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USDOL has told us we are not to offer flexibility if the employer fails to respond in a timely manner. We understand businesses are closed and are sympathetic to the constraints. We will try to find a way to do what is right while staying within the confines of the USDOL guidance, so we don't jeopardize funding. We encourage you to appeal and indicate the reasoning if your appeal is late.

10. What volume and timeframe do you anticipate KDOL to process disputed claims?

We got behind due to the increased volume of appeals and the closure of the office for several weeks. We're now looking at increasing staffing and improving technology to hear cases more efficiently. We're working to process disputed claims as quickly as possible.

11. What recourse do employers have if the appeals window has expired and the notice was received outside the appeal window due to the mandated state shutdown or the delay in receiving timely notices from the USPS?

We're doing the best we can. We hope to get better and shorten the gaps in processing determinations.

12. As reimbursing employers are receiving a 50% credit for their claims, is there any consideration for a similar credit for all rated-employers?

That's another piece of potential legislation we are looking into. We had our program ready to go in only charging reimbursing employers 50% but the USDOL required that we charge 100%.

13. If an employee works for an essential business and quits how can the employer be sure that the employee is not taking the additional \$600 in unemployment if unemployment is allowed for this employee? If the employer responds with this information on the separation information request, will that be sufficient to stop this employee from receiving the additional \$600?

The \$600 payment is a completely federally funded program. Those programs won't hurt Kansas employers but are looking into solvency triggers in legislation and need more time to flesh this out in 2020. Keep an eye on the Legislature.

14. How do we contest the amount UI is identifying as chargeable to the employer?

Go through the appeals process.

15. What can employers expect in regard to determinations? We have received very few.

I expect there will be more coming as the office reopens more fully. Keep an eye on your mailbox and expect anywhere from 4-8 weeks for the determinations. My advice is to respond quickly. There is no way to confirm the information is received other than calling. Documentation is important!

16. We received a determination stating that we had not completed the Employer Notice. We submitted it well in advance of the deadline on the SIDES system. How can we make sure that KDOL is receiving our information?

SIDES allows you to create a PDF of the documentation.

Eligibility

17. Are you eligible to apply for unemployment benefits if you don't lose hours, but your employer cuts your pay?

Again, this will be a case by case analysis. If you are cutting pay but still working full time, you are ineligible for UI benefits. But if you are working less than full time, you may be eligible.

18. What determines eligibility for the federal unemployment benefit of \$600?

If you qualify for even one dollar of Kansas UI benefits, you'll receive the federal add-on through July 31, 2020.



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UI Funding & Rates

19. Looking long-term, will the Federal reimbursement be enough to cover the cost of non-charging the employers. Will we be looking at surcharging or increasing rates and contributions to still replenish the trust fund long-term?

We don't know yet and need to wait and see. If you have a case, make your case and keep documentation.

Misc.

20. How do we figure out who our company rep at UI is? Calling doesn't really work these days.

The Field Representative / Auditor is assigned by zip code. At this point your best contact is by email. Employers will use KDOL.UITax@ks.gov and claimants will use KDOL.UICC@ks.gov.

Chat Questions

21. Has the extra \$600 federal money begun to be distributed yet? I heard some UI recipients haven't received their federal money yet.

The payments are happening right now but there was an issue with filings from Sunday and Monday because of a retroactive benefit cap that was hit. We are working to get that resolved as soon as possible.

22. If a claimant is still in a holding pattern, what is the time frame for resolution?

Last week, we had 1,500 people that had not received their waiting week. The older mainframe system and implementing legislative changes in a timely manner has delayed things but we're working on it.

23. If an employee states they are at a higher risk for getting very sick from COVID-19 and refuse to return to work as a result, do we request a doctor's note confirming they are at a higher risk?

The claimant has the burden to prove they are high risk to KDOL and it is their obligation to provide the doctor's note. If you both agree they are at high risk, note that you are aware of their health risk situation when you fill out the job refusal form.

24. For the Shared Work Program participants that were in the program at the beginning and then were furloughed after two or three weeks, what happens to the overpayment offset if they have already spent that overpayment money?

There have been a few issues with error in reporting hours and a correction has been established for the overpayment. The overpayment can be paid back and it is noted that all federal UI benefits are taxed in case you want to withhold some tax.

25. We have a part-time employee that is employed with the fire department and they are not allowing those people to work with their 2nd employer such as us. Is he eligible for partial UI?

Potentially but we must do a case by case analysis. The first responder aspect would allow good cause not to return to work. Regulation is being pursued to make a presumption that if a first responder/essential employee got sick with COVID-19, it was contracted at their workplace and covered under workers compensation. Unsure if the potential legislation will go anywhere.



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26. What if an employee claims a family member is high risk? Do we have the right to ask what that risk is?
It is not on the employer to prove a family member's risk and asking about the risk is currently out of the purview of the UI program. Be sure to document but it's the claimant's burden to show good cause.
27. If there are cases of overpayments, will the person who receives the money have to repay it?
Yes, they will have to repay the overpayment back to KDOL. We continue to offset the benefits each week to cover any overpayment but the we are unable to offset the \$600 payment from the federal government (child support is the only reason to offset federal government benefits).