

# Employers Fear Not – State Unemployment Agencies Are Implementing Methods for You to Report Employee Refusals to Return to Work

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On December 27, 2020, President Trump signed the Consolidated Appropriations Act, 2021 (CAA) into law, providing a long-awaited additional round of economic relief related to the COVID-19 pandemic. However, this new law, which resumes Federal Pandemic Unemployment Compensation (FPUC), also known as the federal bump to state unemployment compensation, may be causing employers concern regarding the difficulty of recalling workers in light of the renewed FPUC.

Earlier in the pandemic, many employers found it difficult to motivate workers to return to work because some low-wage workers were receiving more money from unemployment compensation than their weekly wages. While the \$600 FPUC supplement expired on July 31, 2020, the new federal law resumes FPUC for weeks of unemployment beginning after December 26, 2020, as a \$300 supplement.

Previously, state unemployment agencies have been slow and inconsistent implementing procedures to address employee refusals to return to work and claimant fraud. The good news is that Congress learned from the problems caused by the previous FPUC provisions and has included a new provision, Section 251, that specifically addresses the difficulty employers have experienced with recalling workers due to the federal bump. Section 251 of the CAA requires state unemployment agencies to create tools that assist employers with reporting refusals to return to work and unemployment fraud.

Further, on December 30, 2020, the Department of Labor (DOL) issued [Unemployment Insurance Program Letter No. 9-21](#), which clarifies the specific actions state unemployment agencies need to take by January 26, 2021, to implement the procedures required by Section 251.

Specifically, state unemployment agencies must promptly take the following actions:

**1) Implement a Process for Addressing Work Refusal** – States must have a method to address circumstances in which an individual refused to return to work or accept an offer of suitable work without good cause. This includes a method for receiving employer reports, evaluating employer reports of employee refusals to return and a procedure for determining the impact on an individual's continued eligibility for unemployment benefits.

**2) Reporting Method for Employers** - States must provide a reporting method for employers to notify the state agency when an individual refuses an offer or employment, which can include phone contact, email contact, or an online portal the employer can use to notify the state agency.

**3) Notification to Individuals** – States must provide a plain-language notice to claimants who refuse to return to work or accept an offer of suitable work without good cause, which must include:

- A summary of state unemployment compensation laws regarding an individual's return to work;
- An explanation of what constitutes suitable work under state unemployment compensation law;
- An explanation of the individual's right to refuse work that poses a risk to the individual's health or safety (if permissible and defined under state law); and
- Instructions for contesting a denial of benefits.

States are working quickly to implement these policies and mechanisms. Be on the lookout in the coming weeks for the specific procedures implemented by the unemployment agency in the state(s) where your business operates. Familiarity with these resources and tools will be extremely beneficial in the event that previously laid-off employees decline to return to work in light of the new \$300 federal supplement to unemployment compensation. You may also consider notifying furloughed employees of this development in order to proactively discourage refusals to return to work.

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