

Featured Professionals

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Benefits**Employment Question of the Day: April 6, 2020****Legal Update**

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Question

Can an essential worker self-quarantine and refuse to come to work because they are afraid of contracting the virus?

Answer

In general, no, a properly-classified essential worker cannot preemptively self-quarantine and refuse to come to work due to a generic fear of the virus. There are some caveats though.

First, this post addresses employees who are not ill and not subject to a government quarantine. If an employee is experiencing COVID-19 symptoms or is being ordered to quarantine, he or she should not come to work.

Second, an employee wanting to preemptively self-quarantine may be entitled to do so (and be paid for it) under the Families First Coronavirus Response Act (FFCRA). Eligible employees are entitled to paid leave under the FFCRA if they have been advised by a health care provider to self-quarantine due to COVID-19 concerns. This is true even if the employee is deemed an essential worker (unless he or she is otherwise exempt). Thus, the employer should engage in an interactive conversation with the employee to understand the underlying reasons for the desire to self-quarantine. If there are health-related concerns, the employee should speak to a health care provider about whether self-quarantine is advisable, and the employer should treat the situation as a request for reasonable accommodation.

Third, even if the FFCRA does not apply, unpaid leave might be a reasonable accommodation under the Americans with Disabilities Act (if the desired quarantine is related to a health condition).

Fourth, circumstances might justify an employee's refusal to come to work—and create employer liability for requiring an employee to work under those conditions. For example, federal (and most state) OSHA laws require employers to provide workplaces that are “free from recognized hazards that are causing or are likely to cause death or serious physical harm.” (Section 5(a)(1) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 654(a)(1).)

These laws also give employees the right to refuse to work under conditions the employee, in good faith, reasonably believes presents an imminent danger of death or serious physical harm—and protects employees from retaliation for lawfully refusing to work in such conditions. According to the Minnesota Department of Labor and Industry, this includes “a reasonable belief of the employee that the employee has been assigned to work in an unsafe or unhealthful manner with an infectious agent.” See DOLI Q&A No. 18

In other words, if an employer is not taking all of the recommended actions to protect employees and minimize risk of spreading COVID-19, an employee may be justified in refusing to return to work. The same may be true for an employee who is not actually an essential worker but is being ordered to go to work during a stay-at-home order anyway.

Note, while this post is geared toward employees currently working, the same concerns and analysis apply to furloughed employees who refuse to return to work based on a generalized fear. Such employees risk becoming ineligible for unemployment benefits if they improperly refuse to return to work.

Takeaways

- Essential employees cannot preemptively refuse to come to work just because we are in the middle of a pandemic.
- Employees may have legitimate reasons supporting the refusal to come to work, including having underlying health conditions that warrant self-quarantine or working in an unsafe work environment that does not have the precautions in place to minimize risk of infection.
- When faced with an employee who is refusing to come to work due to COVID-19 concerns, employers should engage in an interactive conversation to understand the employee's concerns and tailor the response accordingly.
- Employers should implement all precautions recommended by the CDC and other health officials to help protect workers, minimize the spread of the virus and mitigate risk of liability.

If you have questions or need assistance navigating the process of responding to an employee refusing to come to work, please reach out to any member of the Employment & Labor Group.