

Question to NM Workforce Solutions about Employees Being Rehired

Your question regarding NMSA 51-1-7 was referred to me for response.

As you stated, the work search requirement has been stayed by the Secretary. It was previously an internal policy that we were adhering to but has been put into an emergency rule effective on April 24, 2020. (See 11.3.300.320 NMAC) But with that said, once circumstances allow businesses to reopen and bring back employees, circumstances will arise whereby employees are asked to return to their regular jobs – whether merely just an increase in hours or return to full time positions. If an employer has notified the employee of the ability to return to work (complete with a statement regarding the number of hours worked, the pay, the job duties), the Department considers this an offer of suitable work that may only be refused upon a showing of good cause.

The important parts to remember about this are that a claimant receiving benefits remains eligible so long as their wages are below the weekly benefit amount paid by the Department, which means employees must report their earnings to the Department when they certify, and employees must remain attached to the work force. If an employee refuses to return and the employer determines that this is a “voluntary resignation” situation, the Department should be notified of the change in employment circumstances so that a new determination may be made as to the individual’s ongoing eligibility. This would also be true in the case where an employer terminates the employee for failure to return to work as instructed, but would be determined under the misconduct standard making employer carry the burden of proof.

Return-to-Work Notification to Send Employees - Statement regarding the number of hours worked, the pay, the job duties.

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