



Common Recall Scenarios:

How to Respond to an Employee Who Refuses to Return to Work

1 If the refusal is due to the employee's own medical need:

- ✓ **ADA interactive process:** Provide employee with a reasonable accommodation, if possible
- ✓ **FFCRA emergency paid sick leave:** Provide 2 weeks of paid leave at regular rate
- ✓ **FMLA:** Not applicable unless employee is actually sick with COVID-19. Having another condition which makes you fearful of COVID-19 does not qualify.
- ✓ **PTO:** follow your standard policies
- ✓ **Unemployment:** Under the CARES Act, employees may quit and qualify for unemployment if they cannot work due to diagnosis with COVID-19, a quarantine order, or an advisement to quarantine by a healthcare provider

2 If the refusal is due to an at-risk or sick family or household member:

- ✓ **FFCRA emergency paid sick leave:** Provide 2 weeks of paid leave at 2/3 the employee's regular rate
- ✓ **FMLA:** Not applicable unless employee's spouse or child is actually sick with COVID-19. Having another condition which makes you fearful of COVID-19 does not qualify.
- ✓ **PTO:** follow your standard policies
- ✓ **Unemployment:** Under the CARES Act, employees may quit and qualify for unemployment if they cannot work due a family member's diagnosis with COVID-19 or they are providing care for a family member who has been diagnosed

3 If the refusal is due to school and/or childcare:

- ✓ **FFCRA emergency paid sick leave:** Provide 2 weeks of paid leave at 2/3 the employee's regular rate
- ✓ **FFCRA expanded FMLA leave:** Provide up to 12 weeks of leave, with the first 10 days unpaid and the remaining days paid at 2/3 the employee's regular rate
- ✓ **FMLA:** Provide up to 12 weeks of unpaid leave to care for a family member with a serious health condition
- ✓ **PTO:** follow your standard policies
- ✓ **Unemployment:** Under the CARES Act, employees may quit and qualify for unemployment if they cannot work due to caregiving responsibilities caused by COVID-19



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If the refusal is due to safety concerns:



Due to noncompliance of a specific government mandate: Remedy immediately and the employee has retaliation protection



In general: No protection and can be terminated for job abandonment