



HAWAII WORKERS CENTER

Know Your Rights During COVID-19

The COVID-19 pandemic has brought new and concerning issues to every workplace. This information is only intended to provide general guidance during these unprecedented times and does not constitute legal advice. *Because every person's experience is different, all legal inquiries should be evaluated on a case by case basis.*

When is your employer required to provide paid leave during COVID-19?

In addition to any leave you may be entitled to under law or your employer's policies, you may be entitled to leave under COVID-19 specific legislation. Certain employers with fewer than 500 employees (*small businesses may be exempt*) are required to provide:

- Two weeks of paid sick leave at the employee's regular pay rate if they are unable to work because of a COVID-19 related reason
- Two weeks of paid sick leave at two-thirds the employee's regular rate of pay if the employee is unable to work to care for another individual for a COVID-19 related reason
- Up to 10 additional weeks of paid leave at two-thirds of an employee's regular rate to care for a child if childcare is unavailable due to COVID-19, *if the employee has been employed for 30 calendar days.*

If your employer provides you with paid sick leave or expanded family and medical leave, you are not eligible for unemployment insurance.

Can your employer require you to return to work?

If you are receiving unemployment benefits and your employer requests that you return to work, you will no longer be eligible for unemployment benefits should you refuse to return to work. However, **you are entitled to a safe workplace.** If your employer is not following federal, state, or local guidelines and you believe your workplace is unsafe, you are strongly encouraged to file a complaint with the relevant agencies below.

What is your employer allowed to do when you return to the workplace?

Your employer **may**:

- Require that you complete a questionnaire about COVID-19 symptoms in order to enter the workplace.
- Ask you if you have potentially been exposed to COVID-19 or have had COVID-19 symptoms,.
- Require that you complete a temperature check as you enter the workplace and confidentially record those results.
- Require that you wear personal protection equipment and adopt infection-control practices.
- Send you home if you display COVID-19 symptoms.

What is your employer not allowed to do when you return to the workplace?

Your employer **may not**:

- Require that you use employer-provided paid leave during the COVID-19 pandemic.
- Require that you do not travel to high-risk areas for personal reasons.
- Require that you are tested for COVID-19 antibodies.
- Ask you about any other medical information excluding COVID-19 symptoms.
- Ask you if you have a medical condition that would make you particularly vulnerable to COVID-19.
- Refuse to accommodate safety concerns if these concerns could be avoided with reasonable accommodation.
- Share your private medical information, including temperature checks.
- Fire you or negatively impact your employment because you:
 - Requested or wore personal protective equipment.
 - Reported a COVID-19 positive diagnosis.
 - Reported unsafe working conditions.
 - Have a medical condition that may put you at a higher risk for COVID-19.
 - Are associated with an individual who has tested positive for COVID-19.

Can you refuse to perform a task you believe is unsafe?

You **may** refuse to perform a task that you believe is unsafe if:

- 1) The employer has refused to make the task safer when asked,
- 2) The employee actually believes they are in danger, **and**
- 3) The average person would agree that performing the task is dangerous.

However, if the hazard is related to COVID-19 and your employer is following CDC guidelines, it is not likely that the average person would believe the task is dangerous.

What should you do if your employer asks you to perform a task you believe is dangerous, and refuses to make the task safer?

- 1) Ask your employer to correct the hazard, or assign other work
- 2) Tell your employer that you will not perform the work unless and until the hazard is corrected, **and**
- 3) Do **not** leave the worksite **until your employer orders you to leave.**

If you are a potential employee, can your future employer still screen you for COVID-19?

Yes, employers may screen a potential employee for COVID-19. However they may do so **only** after making a job offer. An employer may withdraw a job offer if the individual tests positive for COVID-19 or symptoms which would create a danger to themselves or others in the workplace.

If you believe your rights have been violated, you are **strongly encouraged to file a claim with the relevant agencies immediately. *Filing your claim now will protect you in the future.***

If you believe that your employer is refusing to provide paid sick leave, you may call the Department of Labor Wage and Hour Division at 1-866-487-9243 or visit www.do.gov/agencies/whd to file a complaint. If your complaint is regarding state provided family leave, direct your complaint to the Wage Standards Division of Hawaii at (808) 586 - 8777.

If you believe that your working conditions are unsafe, you may file a confidential complaint with HIOSH at (808) 586 - 9092 or email at dlir.hiosh.complaints@hawaii.gov. Secondly, you may file a complaint with the US Occupational Safety and Health Administration by completing the OSHA online complaint form at <https://www.osha.gov/pls/osha7/eComplaintForm.html>. To report an emergency situation to OSHA, call 1-800-321-6742.

If you believe that you have been discriminated against in the workplace, you may contact the Hawai'i Civil Rights Commission at (808) 586 - 8636 or the local Equal Employment Opportunity Commission at 1-800-669-4000. An EEOC complaint may be filed in person or over the phone.

If you believe that your employer is putting others at risk by disregarding COVID-19 precautionary measures, you may contact the State Department of Health at (808) 586-4400.

If you believe that your employer is discriminating against you on the basis of an underlying disability, you may file an Americans with Disabilities Act Complaint at <https://civilrights.justice.gov/report/>.

To file a claim for Unemployment Insurance you may visit the website at huiclaims.hawaii.gov, or call (808) 762 - 5752.

If you would like to have your unemployment insurance claim backdated, email dlir.ui.backdate@hawaii.gov

If you have been notified that you have been disqualified from unemployment insurance, please email dlir.ui.disqualified@hawaii.gov

If you would like to request language assistance from the unemployment insurance office, please email dlir.ui.languageassistance@hawaii.gov.

Those who do not qualify for employment benefits may apply for Pandemic Unemployment Assistance provided through COVID-19 specific legislation at <https://pua.hawaii.gov/>.