



TO: All NECA Chapters and IBEW U.S. Local Union Business Managers

CC: All NECA and IBEW District and Regional Field Operations, Officers and Staff

FROM: IBEW International President Lonnie R. Stephenson, NECA CEO David Long

SUBJECT: Questions and Answers (Q&A) - National Disease Emergency Response Agreement (NDERA) – Second Round

DATE: March 30, 2020

We are continuing our efforts to address questions that have been raised regarding the application of the National Disease Emergency Response Agreement (NDERA).

The attached round two NDERA Questions and Answers have been written to address additional questions and concerns that we have received from the field.

These questions and answers, like those before, are subject to being revised by NECA and the IBEW as often as necessary.

This threat remains ongoing and must be continually monitored by the parties who have agreed to discuss any questions, new legislation or regulation related to the coronavirus or similar disease that may impact this agreement.

If you have any questions, please be sure to contact either the IBEW or NECA national organizations.

Signed for NECA

David Long

CEO

Date: 3/30/20

Signed for IBEW

Lonnie R. Stephenson

International President

Date: 3/30/20

JOINT NECA/IBEW NDERA Q&A – Round 2 (3.30.2020)

IMPORTANT: Unless they have adopted their own agreement at the local level, Local Unions must post the NDERA and these Q&As on their website; if possible, in their referral halls; and should, if possible, email them to their members. If a Local Union and Chapter have entered adopted their own coronavirus agreement instead of the NDERA, then that locally negotiated agreement must be distributed and posted by the Local Union as set forth in this paragraph.

12. Does the NDERA protect an employee's right to refuse to be present and/or request a layoff/furlough if he/she has a reasonable belief that being present would place them in imminent danger of contracting coronavirus?
 - o Yes. The NDERA is designed to facilitate a return to work of employees who are out due to coronavirus, or who stay home because they have a genuine belief that being present would place them in imminent danger of contracting coronavirus. If the absence is for those reasons, then the recall rights, protections against adverse action, and unemployment protections in the NDERA apply. However, the employee must inform the employer that he/she is staying home due to coronavirus or because being present would place them in imminent danger of contracting coronavirus. Employees cannot be asked to go into any details about whether the employee has an underlying health condition or other concern. If the employee refuses to be present or is absent for other reasons, then the recall rights and protections under the NDERA do not apply.
13. Can the employer deny an unemployment claim if an employee stays home because of a genuine belief that being present would place them in imminent danger of contracting coronavirus?
 - o No. The Agreement provides that in such situations, unemployment shall not be contested. However, the employee must inform the employer as set forth above.
14. Does having an imminent danger of contracting coronavirus take into account an individual's own health and/or family situation?
 - o Yes. If an employee's own underlying health conditions or family situation (having an elderly relative at home, etc.) is such that the employee has a genuine belief that reporting to the job site would place him/her in imminent danger of contracting coronavirus, the recall rights, protection against adverse actions, and unemployment protections in the NDREA would apply. The employee must inform the employer as set forth above.
15. Is there a difference between furlough and layoff? Is an employer required to furlough if a jobsite is restricted/denied access or may the employer issue a lay-off? Is there a difference under the NDERA?
 - o No. There is no difference. We have seen questions asking if a layoff is somehow more severe or permanent than a furlough, and the answer is no. For purposes of the NDERA, the employer has the option to furlough/layoff under appropriate circumstances and use the recall process described in the Agreement. The employee is protected against adverse action as described in the NDERA.

16. Do furloughed employees get sick or FMLA benefits under the newly passed Federal legislation?
- o This and similar questions are not within the purview of the NDERA. The law and regulations of the legislation will guide these responses.
17. Does the language of the NDERA that specifies that the employer shall not “contest” unemployment benefits require the employer to fraudulently fill out the state unemployment paperwork?
- o No. The employer is not required or encouraged to violate federal, state or local law when responding to unemployment inquiries from the government. While forms vary, if leave is taken consistent with this Agreement, where possible the employer should note that separation of employment is due to “the COVID-19 Crisis” or similar language. The state at issue will make the unemployment determination.

Comment:

- o Locals and chapters are encouraged to develop their own screening procedures, which can include requiring temperatures to be taken. More guidance is available from the EEOC with respect to allowable screening procedures, and can be accessed here: [EEOC Guidance](#) North America’s Building Trades has also published guidance, available here: [NABTU Guidance](#)