

# **JOINT NECA/IBEW NDERA Q&A (3.19.2020)**

*The intent of the National Disease Emergency Response Agreement (“NDERA”) is to address the current public health emergency and provide guidance on safety and referral issues in a fair manner. Several questions have arisen at a local level, and this guidance is intended to answer as many as possible. This guidance is subject to being revised by NECA and the IBEW as often as necessary.*

**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 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.*

**1. Does the NDERA supersede any local recall/furlough language that provides a right of recall than would be available under the NDERA?**

Yes, unless the recall/furlough language provides a longer right of recall, in which case the longer right of recall would remain in place.

**2. If employees who lose their jobs due to coronavirus sign the out-of-work list, can they still be recalled by the contractor they were working for before losing employment?**

Yes. The NDERA allows those who (i) are laid off due to a coronavirus shutdown, (ii) were absent due to being quarantined, or (iii) refused to be present at the jobsite out of a genuine belief that being present would place them in imminent danger of contracting coronavirus, to return to their original positions with their employer upon the resumption of work on the jobsite, and/or their ability to return, without the need of the referral process, and irrespective of whether such employees have signed their local union’s out-of-work list. Nothing in the NDERA prohibits an employee from signing the out-of-work list.

**3. To what jobs does this Agreement apply?**

All jobs covered by an agreement between any chapter of NECA and any local union of the IBEW. This includes any agreements with signatory employers not normally considered construction agreements such as Trade Show Agreements, Test Site Agreements, etc., and to National Agreements that adopt local referral practices.

**4. If employees lose their job due to coronavirus, sign the out-of-work list and obtain a regular “long-term” referral, may they still be recalled by contractor for which they were working before losing their job due to coronavirus?**

No. However, if employees only take a short-term call, then they may still be recalled by the contractor for which they were working before losing their job due to coronavirus. For purposes of this NDERA, a short-term call shall be as defined in the applicable Local Agreement or in the Local’s referral procedures. If a Local does not have an Agreement or referral procedure defining the length of a short-term

call, then for such Locals for purposes of this NDERA only, a short-call shall mean a call of 14 calendar days or less.

**5. Does the NDERA prohibit a Local and a Chapter from entering into their own agreement that addresses the impact of coronavirus and provides for different terms?**

No. While the intent of the NDERA is to address the issues surrounding coronavirus, NECA and the IBEW recognize there may be unique circumstances in a local area. This is the purpose of the exclusion for locally negotiated agreements or MOUs in the NDERA. If the local parties mutually choose to bargain their own agreement on the impact of coronavirus, it must deal specifically with coronavirus, be reduced to writing, and signed by both parties. There shall be no requirement on any Local Union or Chapter to bargain their own agreement on coronavirus.

**6. If a Local and a Chapter do not enter into their own agreement addressing the impact of coronavirus, does the NDERA apply to the construction agreements between that Local and Chapter?**

Yes. As the NDERA states: *“This Agreement (NDERA) shall supersede any conflicting provisions in a construction agreement between any chapter of NECA and any local union of the IBEW, except that it shall not supersede any locally negotiated MOU or agreement between a chapter of NECA and an IBEW local union addressing the impact of coronavirus.”*

**7. If a worker is sent home due to suspected coronavirus contraction, who must the contractor inform and how timely?**

The employer should follow all guidance and protocols provided by the appropriate federal agencies if there is a suspected case of coronavirus on their jobsite. The NDERA contains links to resources for the employer’s reference.

**8. Is there a maximum length for a furlough?**

- a. For employees observing the CDC recommended quarantine period due to exposure to coronavirus or similar disease, the furlough should end when the employee has completed the recommended quarantine period and provided a doctor’s release to return to work.
- b. For employees who have been restricted or denied access to a jobsite due to coronavirus, the furlough shall end when the jobsite reopens.
- c. All furloughs pursuant to the NDERA will end when the Parties terminate the NDERA.

**9. When will employees be permitted to return to work when a jobsite reopens?**

Employees will be permitted to return to work if/when their original position is available as determined by the employer. Everyone who was furloughed and still meets the eligibility requirements for recall, however, shall be offered recall before an employer may seek employees for that project through referral.

## 10. What are the responsibilities of the employees if they have or suspect a coronavirus related illness?

If an employee is exhibiting the symptoms of coronavirus: fever, cough, and/or shortness of breath, or if an employee sees another employee exhibiting those symptoms, the employee has a responsibility to report that to their employer's representative as soon as reasonably possible. It is then up to the employer to follow all guidance and protocols following such report. Current guidance may be found at:

<https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>

Employees have a duty to self-quarantine if they reasonably believe they have contracted the coronavirus as recommended by the Center for Disease Control. A doctor's release will be required to return to work.

## 11. Should the Local and Chapter devise a system to ensure that each is informed of which employees have lost employment due to coronavirus?

Yes, the IBEW and NECA encourage the parties to devise such a system on the local level.

### 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.

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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?
- 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?
- 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?
- 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?
- 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?
- 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?
- 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:

- 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](#)