



INDIANA
WORKFORCE
DEVELOPMENT
AND ITS **WorkOne** CENTERS

TO: Indiana's Workforce Investment System

FROM: Joshua Richardson, Deputy Commissioner of Unemployment
Indiana Department of Workforce Development

THROUGH: Jeffrey M. Gill, General Counsel
Indiana Department of Workforce Development

DATE: October 7, 2011

SUBJECT: DWD Policy 2011-04
Continuing Eligibility Requirements for Regular State Unemployment Insurance Benefits

Purpose

To provide information regarding continuing eligibility requirements for regular state unemployment insurance benefits.

Rescissions

DWD Policy 2008-44, Revised, Continuing Eligibility Requirements for Regular State Unemployment Insurance, issued on March 2, 2010

References

Indiana Code §§ 22-4-2; 22-4-13-1; 22-4-14-2; 22-4-14-3, 22-4-15-1; 22-4-15-2

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Applicability

The Indiana Department of Workforce Development (DWD) establishes this policy in the interest of providing information regarding continuing eligibility for regular state unemployment insurance (UI) benefits. This policy applies to initial determinations of eligibility as well as any subsequent appeals of those determinations to DWD's UI Appeals Division or UI Review Board.

Background

A claimant must, among other requirements, demonstrate a willingness to return to work, given the opportunity to do so, to be eligible for UI benefits for each week in which the claimant files a claim for UI benefits throughout the duration of the claimant's benefit year. Failure to comply with the continuing eligibility requirements will subject a claimant to penalties up to and including denial of the claim. This policy outlines the requirements for continuing eligibility, the consequences for failure to comply with each, and the circumstances under which a claimant may be excused from compliance with the requirements.

Requirements for Continuing Eligibility

In order to remain eligible for UI benefits for the duration of a claimant's benefit year, a claimant must do the following in each week for which UI benefits are claimed: 1) be registered for work; 2) remain able and available for work; 3) make an effort to secure full-time work; 4) report to DWD; and 5) search for and accept suitable work.

Registration for Work

All claimants must register for work in the DWD job matching service.¹ Registration for work is accomplished when a claimant is enrolled in the Indiana Career Connect (www.IndianaCAREERconnect.com) database. Indiana Career Connect is the most comprehensive source of Indiana job openings and is a free service available to individuals and employers.

Once a claimant files a claim for unemployment insurance benefits, DWD will automatically start an account for the claimant in Indiana Career Connect, based on the information the claimant entered for their Uplink account. The information automatically transferred from the claims filing to Indiana Career Connect is sufficient to meet the registration requirement. The claimant should then log into Indiana Career Connect, using the login information from the filing of their claim. Once logged in, the claimant should then complete his or her profile and create a resume. The claimant can also upload an existing resume.

If for some reason a claimant fails to become registered within ten (10) days of filing an initial claim for benefits, the claimant will be denied UI benefits. The claimant will not be eligible for benefits until the requirement has been completely met.

Claimants may use Indiana Career Connect to create an employer searchable resume and may search for work among the job listings found in the Indiana Career Connect database. As indicated above, claimants can log into Indiana Career Connect at www.IndianaCAREERconnect.com or by following the link to Indiana Career Connect on DWD's website at www.in.gov/dwd.

NOTE: If a claimant has a work search waiver, which includes DWD-approved training, a return to work date of sixty (60) days or less, or is an active member of a union hiring hall, the claimant does not have to be registered in Indiana Career Connect, and does not have to report their work search efforts each week. However, they are still required to complete a weekly online voucher.

Able and Available for Work

All claimants must be able and available for work during each week the claimant files a weekly claim for UI benefits.² The claimant has the burden of proving to DWD that the claimant was able and available for work for each week claimed.³ A claimant is not able and available in any week in which the claimant could not accept suitable work if such work were offered.

Standard for Determining Ability

The statute requires a claimant be both physically and mentally able to work.⁴ DWD will evaluate a claimant's ability to work on a case-by-case basis. Ability to work does not solely relate to physical and mental circumstances that may limit an individual's ability to perform certain work.⁵ Nor does the presence of some incapacity necessarily render an individual unable

¹ IC § 22-4-14-2(a)(1)

² IC§ 22-4-14-3(b)(1) and (2)

³ Walton v. Wilhelm, 91 N.E.2d 373, 375 (Ind. Ct. App. 1950)

⁴ IC §22-4-14-3(b)(1)

⁵ Wallace v. Review Bd. of Indiana Employment Sec. Div., 510 N.E.2d 1371 (Ind. Ct. App. 1987)

to work. If a claimant is able to perform some work for which the claimant is qualified, DWD will find that the claimant is able to work.

Standard for Determining Availability

DWD will also evaluate whether a claimant is available for work on an individual basis and will take into consideration the facts and circumstances of the individual's case and measure those against the purposes and objectives of the statute governing availability for work.⁶ To that end, DWD will use the following basic list of considerations when evaluating a claimant's availability for work. This is not intended to be an exhaustive list, but is rather intended to serve as a starting point for the evaluation process. Availability is understood to include: 1) a claimant's attachment to the workforce; 2) a claimant making a good faith offering to the employer of the claimant's services; 3) the claimant actively and openly seeking work; and 4) the claimant's stated willingness to work combined with conduct that is consistent with the claimant's stated willingness.⁷

Statutorily Mandated Reasons a Claimant is Not Available

The statute sets forth the following reasons for which DWD must find a claimant unavailable for work: 1) the claimant is engaged by any federal or state agency in charge of public works or assistance through public employment; 2) the claimant is in full-time active military service of the United States or is enrolled in civilian service as a conscientious objector to military service; and 3) the claimant is in attendance at public or private school during the customary hours of the claimant's occupation or is in any vacation period intervening between a regular school terms; however, if the student was regularly employed prior to the unemployment that is the subject of this claim and remains available for full-time employment, DWD will find the claimant available for work.⁸

Consequence for Failure to be Able and Available

If DWD finds that a claimant was not able and available for work during a week or weeks for which that claimant has filed a weekly claim for UI benefits, the claimant will be found ineligible for UI benefits for those weeks. If DWD finds that a claimant was not able and available for part of the week for which the claimant filed a weekly claim for UI benefits, the amount of the claimant's weekly benefit amount will be reduced by one-third for each day of the claimant is not able and available.⁹ If UI benefits for the weeks in which the claimant is found to be ineligible have already been paid to the claimant, the claimant is responsible for repayment of those benefits.¹⁰

Exception to Able and Available Requirement

A claimant who is determined eligible to receive UI benefits pursuant to the statutory modification regarding domestic or family violence may restrict availability for work because of the claimant's need to address the effects of being a victim of domestic or family violence.¹¹

Additionally, claimants enrolled in training approved by DWD are exempt from the requirement that claimants must be able and available for work.¹² For purposes of this policy, training approved by DWD means that the claimant is enrolled in and receiving Workforce Investment

⁶ Id. at 375

⁷ Id. at 375

⁸ IC § 22-4-14-3(c)

⁹ IC § 22-4-14-3(b)

¹⁰ IC § 22-4-13-1

¹¹ IC § 22-4-15-1(a)

¹² IC § 22-4-14-3(d)

Act (WIA) services and is enrolled in training approved by DWD. However, the claimant need not be enrolled in training paid by DWD.

Effort to Secure Full-Time Work

A claimant must make an effort to secure full-time work during each week the claimant files a weekly claim for UI benefits.¹³

Standard for Determining Effort

A claimant's weekly search for work must include a search for three positions during every week in which the claimant files a weekly claim for UI benefits. The searches may be done online, by telephone, or in person.¹⁴

Additionally, a claimant must not take any action that would be inconsistent with an attempt to find suitable work, such as, but not limited to, failure to pass a drug test, arriving at an interview inappropriately dressed, or searching solely for positions for which the claimant is either over- or under-qualified.

Consequences for Failure to Make an Effort

If DWD finds that a claimant has failed to make an effort to secure full-time work during a week or weeks for which that claimant has filed a weekly claim for UI benefits, DWD will issue a written warning to the claimant, notifying them of their failure to meet this requirement. If DWD again finds that the claimant has failed to make an effort to secure full-time work, the claimant will be found ineligible for UI benefits for those weeks. If UI benefits for the weeks in which the claimant is found to be ineligible have already been paid to the claimant, DWD will establish an overpayment, and the claimant will be responsible for repayment of those benefits.¹⁵

Exception to Effort to Secure Full-Time Work Requirement

Claimants enrolled in training approved by DWD are exempt from this requirement.¹⁶ For purposes of this policy, training approved by DWD means that the claimant is enrolled in and receiving WIA services and is enrolled in training approved by DWD. However, the claimant need not be enrolled in training paid by DWD.

Reporting to DWD

A claimant must report the claimant's effort to secure full-time work to DWD on a weekly basis.¹⁷

Standard for Reporting to DWD

A claimant reports his or her effort to secure full-time work by completing the information requested on the claimant's weekly, online claim form, available through DWD's Uplink claimant self-service system. In addition, if DWD requests a claimant to report in person to a WorkOne office near the claimant's home for purposes of job search assistance or other related reemployment services, failure to so report is a failure to comply with the reporting requirement.¹⁸

Consequences for Failure to Report

If DWD finds that a claimant has failed to report to DWD during a week or weeks for which that claimant has filed a weekly claim for UI benefits, the claimant will be found ineligible for UI

¹³ IC § 22-4-14-3(b)(3)

¹⁴ Id.

¹⁵ IC § 22-4-13-1

¹⁶ IC § 22-4-14-3(d)

¹⁷ IC § 22-4-14-2(a)(2)

¹⁸ IC § 22-4-14-3(b)(4)

benefits for those weeks. If UI benefits for the weeks in which the claimant is found to be ineligible have already been paid to the claimant, the claimant is responsible for repayment of those benefits.¹⁹

Exceptions to Reporting Requirement

DWD will excuse compliance with the reporting requirement if the claimant is: 1) enrolled in training or retraining approved by DWD; 2) a job-attached worker with a specific recall date that is not more than 60 days from the date the claimant was separated from employment; or 3) using a department authorized hiring hall.²⁰ However, claimants using a hiring service, referral service, or other job placement service may be excused from the reporting requirement for no more than 60 days. For purposes of this policy, training approved by DWD means that the claimant is enrolled in and receiving WIA services and is enrolled in training approved by DWD. However, the claimant need not be enrolled in training paid by DWD.

Additionally, a claimant will be excused from the reporting requirement, if the claimant can show good cause for the claimant's failure to report to DWD.²¹ Good cause will be found only where a claimant can establish that the claimant was unable to report to the department through no fault of his or her own.

Searching for and Accepting Suitable Work

A claimant must search for suitable work and must accept any offer of suitable work made to the claimant.²² What work will qualify as suitable is variable based on the claimant's work experience, training, and duration of the claimant's unemployed.

Standard for Suitability

In determining whether work is suitable, DWD must consider: 1) the degree of risk involved to the claimant's health, safety, and morals; 2) the claimant's physical fitness and prior training experience; 3) the claimant's length of unemployment and prospects for securing local work in the claimant's customary occupation; and 4) the distance of the available work from the claimant's residence.²³ For UI purposes, a reasonable distance is any distance less than 30 miles from the individual's residence, actual or legal, or most recent worksite.

A claimant is required to apply for any position as directed by DWD. Additionally, a claimant must accept suitable work if offered any time after the claimant receives notice of separation.

Exceptions to Suitability Standard

However, work under substantially the same terms and conditions under which the claimant was employed by an employer in the claimant's base period, which is within the claimant's prior training and experience and physical capacity to perform, will be considered suitable work unless the claimant has moved causing the work to be unsuitable due to the distance between the claimant's new residence and the work.²⁴

The statute governing suitable work was recently amended as follows to include additional conditions for determining whether work is suitable: 1) work is not considered suitable if the work pays less than Indiana's minimum wage; 2) during the fifth through the eighth consecutive

¹⁹ IC § 22-4-13-1

²⁰ IC § 22-4-14-2(e)

²¹ IC § 22-4-14-2(b)

²² IC § 22-4-15-2(a)(1) and (2)

²³ IC § 22-4-15-2(e)

²⁴ The claimant's base period is the first four of the last five completed calendar quarters following the date the initial claim for benefits is filed; Id.

week of claiming UI benefits, work is suitable as long as it pays at least 90% of the claimant's most recent regular weekly wage and is not otherwise unsuitable; and 3) after eight consecutive weeks of claiming unemployment, work is suitable as long as it pays at least 80% of the claimant's most recent regular weekly wage and is not otherwise unsuitable.²⁵ The department will adjudicate this issue to determine whether the work offered was suitable under the statute.

Additionally, work will not be considered suitable under the following conditions: 1) the position offered is vacant due directly to a strike, lockout, or other labor dispute; 2) if the wages, hours, or other conditions of the offered work are substantially less favorable to the claimant than those prevailing for similar work in locality; 3) if, as a condition of employment, the claimant is required to join a company union or to resign from or refrain from joining a bona fide labor organization; or 4) if, as a condition of employment, the claimant is required to discontinue training, which the individual entered with the approval of DWD.²⁶

Consequences for Failure to Accept Suitable Work

If DWD finds that a claimant has failed to search for or suitable work at any time during the claimant's benefit year, regardless of whether failure occurred during a week in which the claimant has filed a claim for weekly benefits, the claimant will be found ineligible for UI benefits. If the claimant has received UI benefits and is later found ineligible for failure to search for or accept suitable work, the claimant is responsible for repayment of those benefits and remains ineligible until the claimant earns wages in an amount equal to or exceeding the claimant's weekly benefit amount in each of eight weeks.²⁷ Additionally, the maximum benefit amount on any subsequent initial claim for benefits will be reduced as follows:

- 1) For the first occurrence, the maximum benefit amount will be 75% of the maximum computed benefit amount based on the individual's claim, and prior to any additional deductions for deductible income;
- 2) For the second occurrence, the maximum benefit will be 85% of the current maximum benefit amount based on the individual's claim, and prior to any additional deductions for deductible income; and
- 3) For the third occurrence; the maximum benefit amount will be 90% of the current maximum benefit amount based on the individual's claim, and prior to any additional deductions for deductible income.²⁸

Exception to Suitable Work Requirement

DWD will excuse claimants from compliance with the requirement to search for and accept suitable work, if the claimant: 1) is enrolled in training approved by DWD; or 2) can show good cause for failure to comply with the requirement.²⁹ For purposes of this policy, training approved by DWD means that the claimant is enrolled in and receiving WIA services and is enrolled in training approved by DWD. However, the claimant need not be enrolled in training paid by DWD. Good cause will be found only where a claimant can establish that the claimant was unable to report to the department through no fault of his or her own.

Frequently Asked Questions

1) I completed my profile on Indiana Career Connect, but don't have all the information I need to create a resume. Am I registered for work?

Yes. You are registered for work. However, you will want to complete both your profile and your resume on Indiana Career Connect to assist with your job search.

²⁵ Id.; Indiana's minimum wage is determined pursuant to IC § 22-2-2

²⁶ IC § 22-4-15-2(f)

²⁷ IC §§ 22-4-13-1; 22-4-15-2(b)

²⁸ IC § 22-4-15-2(d)

²⁹ IC §§ 22-4-15-2(a); 22-4-14-3(d)

2) I plan to go to Florida to visit my parents. Will I get UI benefits for that week?
No. You must be available to take work if it is offered to you. If you are in Florida visiting your parents, it is unlikely you could return to Indiana to start a new job. Therefore, you are not available for work.

3) I hurt my back and I am restricted from lifting more than 5 pounds. Does that mean I'm not eligible for UI benefits until my back is better?
No. If you are qualified for and seeking work that does not require you to lift more than 5 pounds, you are able to work and eligible for UI benefits.

4) Since I lost my job, instead of sending my children to daycare, the children are at home with me. Am I still eligible for UI benefits?

Yes. If you can arrange for childcare that would allow you to start a new job, if a job is offered to you, you are available for work.

5) I'm looking for work as cashier. I contacted 3 grocery stores, but none of the stores were hiring. Did I meet the work search requirement?

Yes.

6) I've been unemployed and filing weekly benefit claims for 14 weeks. I was offered a job, but didn't take it because it pays only \$490 per week and my last job paid \$600 per week. Am I ineligible because I didn't take that job?

Yes. After 8 weeks of claiming UI benefits, work is suitable if it pays at least 80% of your most recent weekly wage.

Review Date

September 1, 2012

Ownership

Director of UI Benefits
Indiana Department of Workforce Development
10 North Senate Avenue
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Telephone: 317.233.0107

Effective Date

October 7, 2011

Action

Indiana's workforce investment system will follow the guidance contained in this policy. Directors and managers will ensure that staff that work with this policy's subject matter are aware of the details contained in this policy and will follow its guidelines.