INDIANA
WORKFORCE
DEVELOPMENT
AND ITS WorkOne CENTERS

TO: Indiana's Workforce Investment System

FROM: Robert K. Robisch
Interim General Counsel

DATE: June 29, 2011

SUBJECT: DWD Policy 2010-25
Pension, Retirement, or Annuity Plans Distributions– U.I. Legislative Changes

Purpose
The purpose of this policy is to define when the Department will determine that a claimant used the distribution from a pension, retirement, or annuity plan, at least partially funded by a base period employer, to satisfy a severe financial hardship resulting from an unforeseeable emergency that is the result of events beyond the individual's control, based upon amendments to I.C. 22-4-15-4.

Rescissions
None

Background
Generally, when a claimant receives a distribution from a pension, retirement, or annuity plan of a base period employer, whereby the employer contributes a portion or all of the money, the claimant cannot concurrently draw unemployment benefits when the plan distribution equals or exceeds the claimant's weekly benefit amount. However, if a claimant receives a distribution to satisfy a severe financial hardship resulting from an unforeseeable emergency that is the result of events beyond the claimant's control, said distribution is not deductible from the claimant's unemployment benefits. Because of recent legislative changes to the Indiana Employment and Training Services Act, the Department is issuing this Policy to clarify unemployment benefit or waiting period rights of individuals who receive such pension, retirement, or annuity plan distributions.

Content
The applicable Indiana Code section is I.C. 22-4-15-4, which states as follows:

> **IC 22-4-15-4. Income received from other sources -- Receipt of retirement benefits [effective July 1, 2011].**

(a) An individual shall be ineligible for waiting period or benefit rights for any week with respect to which the individual receives, is receiving, or has received payments equal to or exceeding the individual's weekly benefit amount in the form of:

(1) deductible income as defined and applied in IC 22-4-5-1 and IC 22-4-5-2; or

(2) any pension, retirement or annuity payments, under any plan of an employer whereby the employer contributes a portion or all of the money. The following apply to a disqualification under this subdivision:

(A) The disqualification shall apply only if some or all of the benefits otherwise payable:

(i) are chargeable to the experience or reimbursable account of such employer; or

(ii) would have been chargeable except for the application of this chapter.

(B) Notwithstanding clause (A), the disqualification does not apply to a distribution from a pension, retirement, or annuity plan of an employer when an individual uses the distribution to satisfy a severe financial hardship resulting from an unforeseeable emergency that is the result of events beyond the individual's control.

(C) Federal old age, survivors, and disability insurance benefits are not considered payments under a plan of an employer whereby the employer maintains the plan or contributes a portion or all of the money to the extent required by federal law.

(b) If the payments described in subsection (a) are less than an individual's weekly benefit amount an otherwise eligible individual shall not be ineligible and shall be entitled to receive for such week benefits reduced by the amount of such payments.

(c) This section does not preclude an individual from delaying a claim to pension, retirement, or annuity payments until the individual has received the benefits to which the individual would otherwise be eligible under this chapter. Weekly benefits received before the date the individual elects to retire shall not be reduced by any pension, retirement, or annuity payments received on or after the date the individual elects to retire.

Severe Financial Hardship Distribution

If a claimant uses the distribution from a pension, retirement, or annuity plan of a base period employer to satisfy a severe financial hardship resulting from an unforeseeable emergency that is the result of events beyond the claimant's control, said distribution shall not be set off against the claimant's weekly benefit amount. The claimant shall have the burden of proving that the distribution was taken to satisfy 1) a severe financial hardship, 2) resulting from an unforeseeable emergency, and that 3) is the result of events beyond the individual's control. The Department shall make this determination on a case-by-case basis.

Restrictions
This policy is not intended to serve as the only basis upon which a claimant who receives a distribution from a pension, retirement or annuity plan of an employer may or may not be determined to be eligible for unemployment benefits.

Ownership
DWD Legal Department
10 North Senate Avenue
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Effective Date
Immediately

End Date
Upon Rescission

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