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 2010-26
On Call or As Needed Employment Effects on U.I. Benefits

Purpose: To explain why claimants who are employed for any particular week on an on call or as needed basis and receive remuneration for personal services, or have work available from an on call or as needed employer, are not eligible for unemployment insurance benefits.

Rescissions
None

Background
A claimant must be totally, part-totally, or partially unemployed in order to be eligible for 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 rights of employees who are regularly and customarily employed on an on call or as needed basis.

Contents
The applicable Indiana Code cites is I.C. 22-4-3-3, which states as follows:

> **I.C. 22-4-3-3. Employment on an on-call or as-needed basis [effective July 1, 2011]**
>
> An individual is not totally unemployed, part-totally unemployed, or partially unemployed for any week in which the individual:
> **(1)** is regularly and customarily employed on an on call or as needed basis; and
> **(2)** has:
> **(A)** remuneration for personal services payable to the individual; or
> **(B)** work available from the individual's on-call or as needed employer.

The purpose of this policy is to define when a claimant is engaged in on call or as needed employment under Indiana law, and thus not eligible for unemployment insurance benefits for any week the claimant works for, or has work available from, an on call or an as needed employer.

Regularly and Customarily Employed on an On Call or As Needed Basis Defined

On call or as needed means that the claimant works whenever the employer's needs require, and the claimant does not have a set work schedule. Accordingly, the employer does not have an obligation to offer a set number of hours in any given calendar week. The Department will determine if the claimant was employed for any week on an on call or as needed basis by examining the specific terms and conditions of the claimant's employment. As part of the evaluative process, the Department will consider the following factors, including but not limited to: 1) Whether the claimant accepted a position with knowledge of a flexible work schedule; 2) Whether the claimant had a reasonable expectation of regular employment; 3) Whether the employer restricted the pool of applicants on the job description to ensure the on call or as needed employee is available; 4)Whether the employer had established policies and procedures that detail how the employer will make work available to the claimant; and 5) Whether the claimant's position is regularly or customarily known to the general public as an on call or as needed position.

Burden of Proving that the Claimant Accepted On Call or As Needed Employment

The employer will bear the burden of proving to the Department that the claimant knew that, at the time of hire, he or she would not have a set work schedule and that the hours would fluctuate according to the employer's need. The employer can produce copies of the job description, job posting, or written published policy about the claimant's specific position as evidence to prove that the claimant knew that he or she would work on an on call or as needed basis.

Burden of Proving that the Claimant Received Remuneration or Declined Available Work

If the Department finds that the claimant received remuneration for services during a particular week, or the claimant refused available work, the claimant will not be eligible for unemployment benefits. The employer will bear the burden of providing sufficient evidence to establish: that the claimant 1) accepted the offer to work; and 2) was subsequently paid for the services performed on behalf of the employer. In order to meet the burden of proof, the employer can provide copies of the claimant's paycheck, direct deposit form, or warrant which specifics the week(s) the claimant was paid.

The employer will also bear the burden of proving that the claimant declined available work at any point in time during the week or weeks at issue. The employer will be required to establish that: 1) the employer notified the claimant of available work; and 2) the claimant failed to report to work. Examples of acceptable evidence to prove that the claimant was properly notified includes copies of written communications that set forth the dates, times, and number of hours that is available to the claimant, or verbal testimony by the claimant's supervisor reflecting the same. The employer may also produce the established policy and procedures that the claimant is required to follow to determine if work is available, such as automated job lines or call in procedures.

Restrictions
None

Ownership
DWD Legal Department
10 North Senate Avenue
Indianapolis, IN 46204

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.