



To: Unemployment Insurance Claimants
Unemployment Insurance Program Staff
Workforce System Partners

From: Indiana Department of Workforce Development

Date: May 12, 2021

Subject: DWD Policy 2016-11, *Change 3*
Continuing Eligibility Requirements for Regular State Unemployment Insurance Benefits

Purpose

To provide information regarding continuing eligibility requirements for regular state unemployment insurance benefits. *Change 1* reformats the listing of qualifying work search activities into a table to help claimants better understand their work search requirements. *Change 2* updates the waiver requirements to match statutory language and to allow for some out-of-state claimants to utilize Indiana's job matching service.

Change Summary

The number of weekly work search activities went from 3 to 1 during every week in which the claimant files a weekly claim for UI benefits.

Rescission

DWD Policy 2016-11, *Change 2, Continuing Eligibility Requirements for Regular State Unemployment Insurance Benefits*, December 6, 2019

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

Content

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 of UI benefits 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 requirement, 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 to work full-time and available to work full-time;
- 3) make an effort to secure full-time work;
- 4) report to DWD; and
- 5) search for and accept suitable work.

1) 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.

a. Registration in Indiana Career Connect

Once a claimant files a claim for UI benefits, DWD will automatically start an account for the claimant in Indiana Career Connect, based on the information the claimant entered for his/her Uplink account. The information automatically transferred from the claim filing to Indiana Career Connect is sufficient to meet the registration requirement. The claimant should then log into Indiana Career Connect, using the same login information that the claimant uses to access his/her Uplink account. Once logged in, the claimant should then complete her/his profile and create a resume.

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. The claimant can also upload an existing resume. 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.

b. Failure to Register for Work

If a claimant fails to become registered for work within ten (10) days of filing an initial claim for benefits, DWD will not award UI benefits to the claimant. Until the requirement to register for work is met, the claimant will not be eligible for UI benefits.

c. Out-of-State Registration for Work

All claimants who reside outside of the State of Indiana and do not normally commute to work in Indiana must register for work in the job matching service available in that state. If a claimant fails to become registered for work in that state within ten (10) days of filing an initial claim for UI benefits, DWD will not award benefits to the claimant. Until the requirement to register for work is met, the claimant will not be eligible for UI benefits. If requested by DWD staff, the claimant must produce sufficient evidence showing that he/she is registered for work in the state where the claimant is residing.

¹ Ind. Code §22-4-14-2(a)(l).

d. *Exception to Requirement to Register for Work*

DWD will excuse compliance with the requirement that a claimant register for work if the claimant has a work search waiver as defined in Section 3 of this policy.

2) Ability to Work and Availability for Work

All claimants must be able to work full-time and available to work full-time during each week the claimant files a weekly claim for UI benefits². The claimant has the burden of proving to DWD that the claimant was able to work full-time and available to work full-time for each week claimed³. A claimant is not able and available in any week in which the claimant could not accept suitable work if such work were offered.

a. *Standard for Determining Ability to Work Full-Time*

The statute requires a claimant be both physically and mentally able to work full-time⁴. DWD will evaluate a claimant's ability to work full-time on a case-by-case basis. Ability to work does not solely relate to physical and mental circumstances that may limit a claimant's ability to perform certain work⁵. Nor does the presence of some incapacity necessarily render a claimant unable 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.

b. *Standard for Determining Availability to Work Full-Time*

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. To that end, DWD will use the following basic list of considerations when evaluating a claimant's availability for work⁶. 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 full-time work; and
- 4) the claimant's stated willingness to work full-time combined with conduct that is consistent with the claimant's stated willingness.

c. *Statutorily-Mandated Reasons a Claimant is Not Available*

Indiana Code § 22-4-14-3(c) sets forth the following reasons for which DWD must find a claimant unavailable for work:

- 1) the claimant is engaged by any federal, state, or local 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;
- 3) the claimant is suspended for misconduct in connection with the claimant's work; or
- 4) 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.

d. *Consequence for Failure to Meet Ability to Work Requirement*

² Ind. Code § 22-4-14-3(b)(1) and (2).

³ *Walton v. Wilhelm*, 91 NE2d 373, 375 (Ind. Ct. App. 1950).

⁴ Ind. Code § 22-4-14-3(b)(l).

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

⁶ *Id.* at 375.

If DWD finds that a claimant was not able to work full-time and available to work full-time during a week for which that claimant has filed a weekly voucher for UI benefits, DWD will find the claimant ineligible for UI benefits for that week. If DWD finds that a claimant was not able to work full-time and available to work full-time 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 week that the claimant is not able and available. If UI benefits for the week(s) 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.

e. Exceptions 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.

Additionally, claimants enrolled in training approved by DWD, whether or not the training is paid for by DWD, are exempt from the requirement that claimants must be able to work full-time and available to work full-time solely for the reason that the claimant is enrolled in training approved by DWD. If the claimant is not able to work full-time or available to work full-time for other reasons, such as an illness or a vacation, the claimant's eligibility for unemployment insurance benefits may be affected.

3. 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.⁷

a. Standard for Determining Effort to Secure Full-Time Work

A claimant's weekly search for work must include a work search activity during every week in which the claimant files a weekly claim for UI benefits.⁸ Any work search activity that is an application for employment may be done online, by telephone, or in person. A qualifying work search activity includes:

| Job Preparedness & Networking Activities | Employer Contact Activities | WorkOne Activities | Online Activities |
|-----------------------------------------------------|--------------------------------------------------|----------------------------------------------------------------|------------------------------------------------------------------------------------------------------|
| Create a resume | Submit a job application | Attend WorkOne (RESEA) Orientation | Search for jobs online (Indiana Career Connect, Indeed, LinkedIn, Monster, etc.) |
| Create a cover letter | Contact an employer inquiring about job openings | Create a Re-employment Plan @ WorkOne | Complete a Career Related Assessment (through Indiana Career Connect, Indiana Career Explorer, etc.) |
| Create a list of references | Interview for a job | Attend WorkOne Initial Interview or Follow-Up Meeting | Discover Labor Market Information |
| Create/Update a LinkedIn account | Job Shadowing | Complete a WorkOne Workshop | Complete an online Workshop |
| Attend a Job Fair/Networking Event | | Complete an Assessment/Test (TABE, Accuplacer, WorkKeys, etc.) | |

Claimants are encouraged to complete any work search activity which secures full-time work, or positions the claimant to secure full-time work. Other activities reported by a claimant will be reviewed to determine if the activity constitutes a valid work search activity.

⁷ Ind. Code § 22-4-14-3(b)(3).

⁸ Ind. Code § 22-4-14-3(b)(3)

b. Failure to Make an Effort to Secure Full-Time Work

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. DWD will find that a claimant has failed to make an effort to secure full-time work in any week where the claimant has followed a course of action designed to discourage prospective employers from offering suitable full-time work.

Furthermore, if DWD finds that a claimant has failed to make an effort to secure full-time work during a week for which that claimant has filed a weekly claim for UI benefits, DWD will issue a written warning to the claimant, notifying him/her of his/her failure to meet this requirement. If DWD again finds that the claimant has failed to make an effort to secure full-time work in a given week, DWD will find the claimant ineligible for UI benefits for that week. If UI benefits for the weeks in which the claimant is found to be ineligible were already paid to the claimant, DWD will establish an overpayment and the claimant must repay those benefits to DWD.⁹

No claimant will be denied benefits solely on the grounds that s/he has failed or refused to register with a private employment agency or any other placement agency that charges the job seeker a fee for its services.

c. Exceptions to Effort to Secure Full-Time Work Requirement

DWD will excuse the requirement that a claimant make an effort to secure full-time work if the claimant has a work search waiver. A work search waiver is awarded to a claimant whom DWD determines is:

- 1) enrolled in training approved by DWD¹⁰ (whether or not the training is paid for 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;
- 3) using a hiring service, a referral service, or another job placement service as defined by the department;
or
- 4) a member in good standing of a DWD-authorized union hiring hall.¹¹

Note that claimants with a start date of new or return work within 4 weeks of the date of voucher filing may be granted a Work Search Waiver for up to 4 weeks. Claimants excused from this requirement are still required to complete a weekly online voucher in order to receive UI benefits.

4. Reporting to DWD

A claimant must report whether the claimant has completed his/her required work search activities, as part of his/her effort to secure full-time work, to DWD on a weekly basis.¹²

a. Standard for Reporting to DWD

A claimant reports his or her effort to secure full-time work to DWD by answering the question(s) provided about his/her work search activities on the claimant's weekly voucher. A claimant must file a weekly voucher online through Uplink. Each claimant is responsible for keeping a log of his/her weekly work search activities and may be required to produce that log at any time to DWD.

Furthermore, DWD may request that a claimant report in person to a WorkOne office for purposes of job search assistance or other related reemployment services. Failure by the claimant to report in person to the WorkOne office when requested constitutes a failure to comply with the reporting requirement.¹³

⁹ Ind. Code § 22-4-13-1.

¹⁰ Ind. Code § 22-4-14-3(d).

¹¹ Ind. Code § 22-4-14-2(e).

¹² Ind. Code § 22-4-14-2(a)(2); 646 Ind. Admin. Code 5-9-2; 646 Ind. Admin. Code 5-9-4.

¹³ Ind. Code § 22-4-14-3(b)(4).

b. *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 voucher for UI benefits, DWD will find the claimant ineligible for UI benefits for those weeks. If UI benefits for the weeks in which the claimant is found to be ineligible were already paid to the claimant, the claimant must repay those benefits to DWD.¹⁴

5. Searching for and Accepting Suitable Work

DWD is responsible for determining when work is suitable for a claimant.¹⁵ Determinations regarding suitable work are done on a case-by-case basis. A claimant is required to apply for any position as directed by DWD. A claimant must accept suitable work if offered any time after the claimant receives notice of separation.

a. *Standard for Suitability*

Suitable work is defined by conditions that are unsuitable and by factors that DWD must consider in determining when work is suitable. Indiana Code § 22-4-15-2(f) mandates that:

No work shall be considered suitable and benefits shall not be denied under this article to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- 1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute.
- 2) If the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.
- 3) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining a bona fide labor organization.
- 4) If as a condition of being employed the individual would be required to discontinue training into which the individual had entered with the approval of the department.¹⁶

For individuals in their fifth through eighth consecutive week of benefit claims, work is not considered unsuitable solely because the work pays not less than ninety percent (90%) of the individual's prior weekly wage. After eight (8) consecutive weeks of claiming benefits, work is not considered unsuitable solely because the work pays not less than eighty percent (80%) of the individual's prior weekly wage.¹⁷

Furthermore, DWD must consider the following general factors:

- 1) the degree of risk involved to such individual's health, safety, and morals;
- 2) the individual's physical fitness and prior training and experience;
- 3) the individual's length of unemployment and prospects for securing local work in the individual's customary occupation; and
- 4) the distance of the available work from the individual's residence.

However, work under substantially the same terms and conditions under which the individual was employed by a base-period employer,¹⁸ which is within the individual's prior training and experience and physical capacity to perform, shall be considered to be suitable work unless the claimant has made a

¹⁴ Ind. Code § 22-4-13-1.

¹⁵ See 646 IAC 5-9-5(a).

¹⁶ Ind. Code § 22-4-15-2(f)

¹⁷ Ind. Code § 22-4-15-2(e).

¹⁸ 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.

bona fide change in residence which makes such offered work unsuitable to the individual because of the distance involved.¹⁹

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.

b) *Consequences for Failure to Accept Suitable Work*

If DWD determines that a claimant has failed to accept 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, DWD will find the claimant 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 must repay those benefits to DWD and will remain ineligible until he/she earns wages in an amount equal to or exceeding the claimant's weekly benefit amount in each of eight (8) weeks.²⁰ Moreover, 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.²¹

c. *Exception to Suitable Work Requirement*

DWD will excuse compliance with the requirement to accept suitable work if the claimant is:

- 1) enrolled in training approved by DWD (whether or not the training is paid for 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;
- 3) a member in good standing of a DWD-authorized union hiring hall;
- 4) was found eligible to receive UI benefits based upon a determination by DWD that the claimant was a victim of domestic violence; or
- 5) determined to have good cause for failure to comply with this requirement.

Effective Date

May 12, 2021

Ending Date

Upon rescission

Contact for Questions

policy@dwd.in.gov

¹⁹ Ind. Code § 22-4-15-2(e).

²⁰ Ind. Code §§ 22-4-13-1; 22-4-15-2(b).

²¹ Ind. Code § 22-4-15-2(d).