



DEPARTMENT OF UNEMPLOYMENT ASSISTANCE
UI POLICY & PERFORMANCE
INTEROFFICE MEMORANDUM

Date: November 25, 2020

Rescission(s): None

Reference No.: UIPP 2020.14

TO: All DUA Managers and Staff

FROM: Emmy Patronick, Director of Policy and Performance

SUBJECT: Suitable Work, Total or Partial Unemployment, and COVID-19

1. PURPOSE:

This policy memo is intended to clarify how the expanded definition of “suitable work” as discussed in UIPP 2020.12 applies to “total and partial unemployment” issues under §§ 29(a), 29(b), and 1(r) during the COVID-19 pandemic. In sum, when adjudicating these issues, staff should use the expanded definition of suitable work until instructed otherwise.

2. ATTACHMENTS:

- UIPL 10-20
- UIPL 13-20
- UIPL 13-20, Change 1

3. BACKGROUND:

Due to the COVID-19 emergency, there are several ways in which work that was once suitable has become unsuitable for many claimants, due to situations beyond the control of both claimants and employers. The CARES Act was passed to lighten the burden on claimants and employers whose livelihoods were affected by COVID-19. Accordingly, the United States Department of Labor (USDOL) has urged that the states be flexible in adjudicating claims during the pandemic. See UIPL 10-20 (3/12/2020). (Note: under the CARES Act, the federal government is paying 100% of benefits for claims marked “COVID-19” for

contributory employers, and 50% for reimbursable employers, through the end of 2020, and 100% of PEUC and PUA.¹ Under the CARES Act, EB is federally funded 100% except for governmental reimbursable employers.)

USDOL has granted states flexibility in interpreting state laws to allow states to pay benefits in scenarios that might not have been possible prior to the onset of the pandemic. UIPP 2020.12 (issued October 8, 2020) described the newly expanded definition of “suitable work” and its application to able and available issues. JSRs and review examiners should apply the expanded definition of “suitable work” from UIPP 2020.12 to “total and partial unemployment” issues under §§ 29(a) and 1(r).²

Employment is not suitable if:

- It poses a substantial risk to the claimant’s health or safety, or
- the individual’s health or safety would be compromised due to an underlying medical or other condition if the claimant accepted the employment, or
- the claimant has a reasonable belief that one of the above factors applies.³

Total and Partial Unemployment:

The concept of total or partial unemployment is an element of UI eligibility under G. L. c. 151A, §§ 1(r) and 29(a) and (b).

Under G. L. c. 151A, § 1(r)(2), “an individual shall be deemed to be in total unemployment in any week in which [the individual] performs no wage-earning services whatever, and for which [the individual] receives no remuneration, and in which, though capable of and available for work, [the individual] is **unable to obtain any suitable work.**” (Emphasis added).

¹ Flexibility is addressed in the Families First Coronavirus Response Act, Division D Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISSA), section 4102(b) and the Coronavirus Aid, Relief and Economic Security (CARES) Act, Pub. L. 116-136, including Title II, Subtitle A, Relief for Workers Affected by Coronavirus Act. Flexibility for “actively seeking work” under PEUC is in section 2107(a)(7)(B) of CARES. Flexibility for reimbursing employers is in CARES, sec. 2103. In addition to UIPL 10-20 (3/12/2020), see UIPL 13-20 (3/22/2020) at p. 7; UIPL 13-20, Change 1 (5/4/2020), Qs. 14 & 15 (includes EB).

² And, as appropriate, to quit issues under § 25(e). See example D, below.

³ UIPP 2020.12.

In other words, if an individual does not perform paid work, the individual must be capable of and available⁴ for, some kind of suitable work (applying the flexible standards in UIPP 2020.12). If the individual is unable to obtain suitable work, the individual is in total unemployment and eligible for benefits under §§ 29(a) and 1(r), and § 24(b).⁵

The critical issue in determining whether or not someone is in “total unemployment” is whether or not the individual is receiving any wages or remuneration. A claimant receiving paid sick leave equaling their full wages is not “in unemployment.” A claimant on an unpaid leave of absence, however, is “in unemployment.” The Supreme Judicial Court directly addressed whether an individual who is on an unpaid maternity leave is “in unemployment” under G. L. c. 151A, § 1(r). See *Director of Div. of Employment Sec. v. Fitzgerald*, 382 Mass. 159 (1980). In *Fitzgerald*, the SJC interpreted the meaning of the term “total unemployment” and found that a claimant on maternity leave can be in total unemployment if the claimant intends to return to her regular job, provided she is available for some type of suitable work while on leave.

So if the individual is in total unemployment after separating from a job, due to a furlough, or while on any type of unpaid definite or indefinite leave of absence (regardless of which party initiated the leave), the claimant is not subject to disqualification under §§ (29)(a) and 1(r), or § 24(b), so long as the reason for the claimant’s inability to work is related to COVID-19.

Similarly, if individual is in partial unemployment after separating from a job, due to a furlough, or while on any type of unpaid definite or indefinite leave of absence (regardless of which party initiated the leave), the claimant is not subject to disqualification under §§ (29)(a), 29 (b)and 1(r), or § 24(b), so long as the reason for the claimant’s inability to work full-time is related to COVID-19. For example, a claimant who had been working two part time jobs but lost one of them for a COVID-19 related reason, may be approved for partial benefits, subject to the earnings disregard.

Note: DUA is using the flexibility granted by USDOL during the COVID-19 pandemic to temporarily allow claimants to limit their availability to part-time employment for COVID-19 related reasons. This is in addition to the reasons listed in 430 CMR § 4.45.

⁴ Including being considered “able and available” using the flexibilities described in UIPP 2020.12.

⁵ As always, these determinations are week to week. A claimant can be “not in unemployment” for one week, then in total unemployment for the next, and in partial unemployment for the following week, for example.

Also, staff are reminded that during the time period the emergency regulations authorizing standby status were in effect (March 16, 2020 - November 2, 2020), “[t]he individual will be considered unemployed due to lack of work regardless of whether the individual’s workplace is shut down or the individual needs to stay home for any reason related to COVID-19.”⁶

Finally, as stated in UIPP 2020.15, work search requirements are waived until further notice.

Examples:

A. The claimant’s position as a counselor at a nursing home was rendered unsuitable due to his chronic severe asthma and heightened risk if exposed to COVID-19. The claimant stopped working and asked for other work that could be performed off-site. The employer had no suitable position to offer the claimant. Additionally, the claimant has 5 children who do not attend school in order to limit the claimant’s exposure to COVID-19.

The claimant is “in unemployment” due to a lack of suitable work and is eligible for benefits, provided the claimant is available for some type of work that he can perform for all or a part of the week, given the limitations caused by COVID-19.

B. The claimant took a leave of absence from the employer due to a lack of childcare. The employer asked the claimant to return to work two months later, however, she still lacked childcare. When the claimant’s childcare resumed, the employer had filled her position. The only position available required a schedule that would not enable the claimant to pick up her child from school.

The claimant is “in unemployment” due to a lack of suitable work and is eligible for benefits provided the claimant is available for some type of work that she can perform for all or a part of the week, given the limitations caused by COVID-19.

C. The claimant contracted COVID-19 on the job and was hospitalized for several weeks. As a result of COVID-19, she developed serious health issues requiring kidney dialysis and is awaiting a transplant. When asked to return to work, the claimant declined to avoid the risk of exposure to COVID-19.

⁶ UIPP 2020.13 (Nov. 2, 2020) The emergency regulations are at 430 CMR 22.00 et. seq., effective March 16, 2020 and 430 CMR 22.00 et. seq., effective August 8, 2020.

The claimant is “in unemployment” due to a lack of suitable work and is eligible for benefits for weeks during which she was not hospitalized, provided the claimant is available for some type of work that she can perform for all or a part of the week, given the limitations caused by COVID-19. Staff are reminded, however, that claimants are entitled to three weeks where they may be exempted from all of the requirements of § 24(b) if claimants are ill. However, the exemption cannot pay to the first week of the claim.

D. The claimant, who worked as a Medical Assistant, flew her mother in from outside the United States to provide childcare during the pandemic. The claimant’s mother’s visa expired, and she had to leave the country. The claimant asked for FMLA leave from the employer so that she could take care of her child. The employer stated that they could not grant the claimant leave because her family members were not sick, and they did not want to hold her position open. The claimant researched childcare options, but they were unreasonably expensive given the claimant’s circumstances. The claimant quit her job to take care of her child.

The claimant’s quit was for urgent, compelling and necessitous reasons, and the separation is not disqualifying. The claimant should be approved on the § 25(e)(1) issue.

4. ACTION:

As of November 3, 2020, the date the emergency regulations ended. DUA should be abiding by this policy when adjudicating issues under §§ 29(a), 29(b), and 1(r), as well as under § 24(b) and § 25(e)(1).

5. QUESTIONS:

Please email UIPolicyandPerformance@detma.org