

ILLINOIS REGISTER

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF EMERGENCY AMENDMENTS

TITLE 56: LABOR AND EMPLOYMENT
CHAPTER IV: DEPARTMENT OF EMPLOYMENT SECURITY
SUBCHAPTER f: ELIGIBILITY FOR BENEFITS

PART 2865
CLAIMANT'S AVAILABILITY FOR WORK, ABILITY TO WORK AND
ACTIVE SEARCH FOR WORK

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- 2865.215 When an Individual's Prospects for Finding Work Shall be Deemed to Be Good

AUTHORITY: Implementing and authorized by Sections 409, 500, 1700 and 1701 of the Unemployment Insurance Act [820 ILCS 405]

SOURCE: Adopted at 10 Ill. Reg. 11887, effective July 1, 1986; amended at 14 Ill. Reg. 18466, effective November 5, 1990; amended at 17 Ill. Reg. 17917, effective October 4, 1993, amended at 18 Ill. Reg. 4160, effective March 3, 1994; emergency amendment at 18 Ill. Reg. 17764, effective November 28, 1994, for a maximum of 150 days; amended at 19 Ill. Reg. 6555, effective April 28, 1995; amended at 29 Ill. Reg. 1927, effective January 24, 2005; amended at 33 Ill. Reg. 9675, effective August 1, 2009; amended at 35 Ill. Reg. 6154, effective March 25, 2011; amended at 43 Ill. Reg. 6522, effective May 14, 2019; emergency amendment at 44 Ill. Reg. _____, effective _____, for a maximum of 150 days; amended at 44 Ill. Reg. _____, effective _____.

SUBPART B: REGULAR BENEFITS

Section 2865.100 Work Search Requirements for Regular Unemployment Insurance Benefits

EMERGENCY

- a) Unless otherwise instructed, the claimant must establish that he or she is able to work, available for work and actively seeking work during each week for which he or she is claiming benefits.
 - 1) The claimant must register with the Illinois Employment Service unless otherwise instructed by the local office for one of the following reasons:
 - A) The claimant's unemployment is due to a labor dispute at his or her last employing unit even if the claimant is not involved in the dispute;
 - B) The claimant's unemployment is due to a temporary lay-off not exceeding 10 weeks in duration;

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- C) The claimant is a member of a labor union whose placement service has been certified by the Department under this Part;
- D) The claimant is still attached to a regular job but he or she is only partially employed due to a temporary reduction in hours;
- E) The claimant is a seasonal worker who is between seasons and has a reasonable expectation of returning to the same job in the next succeeding season. For example, park, golf course and landscape workers would fall within this subsection (a)(1)(E) during a winter shutdown;
- F) The claimant is an academic worker, such as a teacher or school administrator, or a non-academic employee, such as a food service worker or school bus driver, who is seeking work at an educational institution or for a company that contracts with an educational institution during a period between academic years or terms;
- G) The claimant is a construction worker seeking construction work, whether or not he or she belongs to a union that operates a hiring hall defined in Section 2865.50;
- H) The claimant is enrolled and participating in training, whether or not that training is approved under Section 500C5 of the Act;
- I) The claimant is a resident of a state that borders Illinois and has filed a claim in this State; ~~or~~
- J) The Department determines that, based on local labor market information, registration with the Illinois Employment Service would not increase the likelihood of the claimant's return to work; or;
- K) The claimant's unemployment is due to a temporary lay-off resulting from a temporary closing attributable to the COVID-19 virus.

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- 2) The claimant must show that he or she is conducting a thorough, active and reasonable search for appropriate work on his or her own by keeping records of what he or she is doing to find work, including:
 - A) The names and addresses of the employing units contacted and the names of the specific persons contacted, if possible;
 - B) The dates, methods and results of the contacts;
 - C) The types of work that the claimant has been seeking, including wages and hours requested or desired; and
 - D) Any other information regarding work search efforts.
- b) The claimant shall provide the written records required by this Section to the Department whenever requested, under Section 2720.115, or, in the event of a Claims Adjudicator's interview, an appeal or a hearing in which work search is an issue. Even if the claimant has been denied benefits, he or she must either continue to certify by telephone (see Section 2720.112) or complete and file the Claim Certification through the internet every 2 weeks and meet the eligibility requirements of the Act for each week for which he or she expects payment upon reversal of that denial.

(Source: Amended by Emergency Rulemaking at 44 Ill. Reg. _____, effective _____, for a maximum of 150 days)

Section 2865.105 Able to Work

EMERGENCY

- a) An individual is able to work when he or she is physically and mentally capable of performing work for which he or she is otherwise qualified. An individual is considered able to work to the full extent permitted by 20 CFR 604, effective February 15, 2007, except where inconsistent with the express holding of published Illinois case law.

EXAMPLE: A claimant who had been a clerk at a retail store is responsible for a minor child who is prevented from attending school due

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to closures resulting from the COVID-19 virus. The claimant must stay home from work to watch his/her child under school reopens. However, the claimant is able to perform work that could be performed from the isolation of his/her home (e.g., transcribing, data entry, virtual assistant services). While the claimant has most recently worked at retail locations, he/she is able to work due to his/her ability to work at home.

b) The focus is upon the individual's condition, the employer's willingness to hire him or her is not relevant.

1) EXAMPLE: An individual is 60 years old, worked as a warehouseman for 40 years and is physically able to continue doing so. Employers' reluctance to hire him, because of his age, does not render him unable to work.

2) EXAMPLE: An individual tests positive for tuberculosis, a contagious disease, and, by law, is not permitted to continue working as a school teacher. He applies for jobs as a school teacher. It is the individual's condition, not school districts' unwillingness to hire him, that renders him unable to work. The individual would be considered able to work if he was seeking jobs that the law permitted him to perform and which he was physically and mentally capable of performing.

3) EXAMPLE: The individual has been discharged from numerous jobs because of repeated absenteeism due to habitual alcohol and drug use. When he reports to his local office, he reeks of alcohol and slurs his words. This individual will be determined to be unable to perform any type of work. It is his condition, not an employer's unwillingness to hire him, that renders him unable to work.

c) The focus is upon any work for which the individual is qualified, not limited to his or her usual or most recent job.

EXAMPLE: An individual, who is 7 months pregnant, quits her job as an assembler because the job is strenuous and requires her to be constantly on her feet. She applies for desk work as a telephone receptionist, a job for which she is qualified. She would be determined to be able to work.

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- d) The best evidence that an individual with a disability is able to work in a particular occupation is that he or she has actually performed the work.

EXAMPLE: An individual has cerebral palsy, which impairs his bodily functions and reduces his work output. However, he has training and experience as a computer operator and has shown that he is capable, within his physical limitations, of performing the work. He would be determined to be able to work.

(Source: Amended by Emergency Rulemaking at 44 Ill. Reg. _____, effective _____, for a maximum of 150 days)

Section 2865.110 Available for Work
EMERGENCY

- a) An individual is available for work, even if he or she imposes conditions upon the acceptance of work, unless a condition so narrows opportunities that he or she has no reasonable prospect of securing work. An individual is considered available for work to the full extent permitted by 20 CFR 604, effective February 15, 2007, except where inconsistent with the express holding of published Illinois case law.

EXAMPLE 1: An individual who lives in a remote rural area limits his availability to jobs within walking distance of his home. If few jobs for which he is qualified are located within walking distance of his home, it could be found that he has no reasonable prospect of securing the work and therefore would not be available for work.

EXAMPLE 2: A claimant who had been a clerk at a retail store is responsible for a minor child who is prevented from attending school due to closures resulting from the COVID-19 virus. The individual must stay home to watch his/her child until school reopens. However, the claimant is able to perform work that could be performed from the isolation of his/her home (e.g., transcribing, data entry, virtual assistant services) and makes himself/herself available to perform that work. While the claimant is not currently available for work at a retail location, he/she is available for work due to his/her availability for work that could be performed from home.

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- b) If domestic circumstances prevent an individual from working during the normal days and hours that exist in his or her occupation (or other work for which he or she is qualified), he or she is unavailable for work.
- 1) **EXAMPLE:** An individual, who was employed as a security guard, has children who require full-time care. The individual is able to obtain child care during evenings only, leaving him free to work nights only. Because there is a labor market for night-shift security guards, he would be determined to be available for work.
 - 2) **EXAMPLE:** An individual and her husband obtain a divorce, and she is awarded custody of their children. She then quits her job as a hospital respiratory therapist because she is required to work rotating shifts and be on emergency call and because she wishes to spend all nights and weekends with her children. She states that she still applies for work as a respiratory therapist, but has had to eliminate from her list most hospitals because they will not guarantee day-shift work, the only time for which she will arrange child care. She would be determined to be unavailable for work.
 - 3) **EXAMPLE:** When the individual is laid off from her job as a bank teller, she, in turn, lays off her babysitter, who is not needed so long as the individual is at home. She states that, if she is offered a job, she will rehire her babysitter. Despite the fact that she currently has no babysitter, this individual would be determined to be available to work.
- c) If the individual demands a wage that is unreasonable and, thereby, prices himself or herself out of the labor market, he or she is unavailable for work. Whether a wage demand is unreasonable is determined by factors including, but not limited to: the individual's prior wages and qualifications, the prevailing wage, labor laws, union agreements, and the length of unemployment; generally, the individual must lower his or her wage demand the longer he or she is unemployed.
- 1) **EXAMPLE:** An individual worked for 25 years as a bookkeeper for a small but prosperous business that was eventually bought out. She last earned \$600 per week. Upon re-entering the labor market, she discovers

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that her wage demand – inflated by her many years of service – is much greater than that most employers are willing to pay. In the early weeks of unemployment, she may seek work paying \$600 per week, based upon her prior wages and her qualifications. In ensuing weeks, she must lower her wage expectations. As her unemployment approaches 26 weeks (or the time when an "extended benefits" period might begin), she must further lower her wage expectations. If, as time goes by, she adapts her wage expectations to meet market conditions, she would be determined to be available for work.

- 2) **EXAMPLE:** The individual is a union electrician. After 20 weeks of unemployment, he still insists upon the wage he was last paid, that is union scale. He explains that the union has agreements affecting a substantial percentage of the jobs in his locality and, were he to accept a job paying below union scale, he would be disciplined by being denied future job opportunities. His insistence upon union scale is not unreasonable. However, if he is seeking work in another locality, where his union is not active, his wage demand with respect to that locality is unreasonable.
- 3) **EXAMPLE:** The individual worked as a fast food counter clerk, earning \$0.50 above minimum wage. During the first weeks of unemployment, he sought work paying that same wage. For the next few weeks, he sought work paying minimum wage. Even though he has now been unemployed for 25 weeks, he has not reduced his wage expectation any further. This is not unreasonable: to require him to seek work paying less than minimum wage would violate minimum wage laws.
- d) If there are no work opportunities that an individual can reach from his or her home, he or she is unavailable for work. If the individual unreasonably restricts the distance or time he or she will travel to work, he is unavailable for work. Reasonableness is determined by factors including, but not limited to: where work opportunities are located, the customs of workers similarly situated (as to location or occupation), the types and costs of transportation, physical capabilities, and the length of unemployment; generally, an individual is expected to extend the area in which he or she will seek work the longer he or she is unemployed. Generally, in metropolitan areas, 1½ hours, each way, is not an unreasonable travel time.

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- 1) **EXAMPLE:** An individual owns no car, and there is no public transportation near his home. He used to obtain work through a temporary help service that transported him to clients' job sites. He no longer works as a temporary. He states that he will work for any employer, provided it will furnish transportation to the job. He would be determined to be unavailable for work since the majority of employers do not furnish transportation for their employees.

- 2) **EXAMPLE:** The individual resides in a suburb 30 miles northwest of downtown Chicago. He was last employed as an attorney, working in a small practice in that suburb, where his travel time to work was 10 minutes. In the first weeks of unemployment, he unsuccessfully sought work in his community and neighboring suburbs. Although he has now been unemployed for 2 months, he still does not seek work in downtown Chicago, to which most attorneys commute, because rush hour travel time would be nearly 1½ hours each way. He would be determined to be unavailable for work, because he has not extended the area in which he will seek work, commuting to downtown Chicago is customary for workers in his occupation, and 1½ hours travel time is not unreasonable.

- 3) **EXAMPLE:** Although the individual is ~~developmentally disabled~~**mentally retarded**, she is capable of working in certain unskilled occupations. At her last job, she swept floors in a local drug store. Her father testifies that she must work within walking distance of home, because, if she rides public transportation, she becomes confused and lost. In this case, the individual's restriction upon distance to work is reasonable, provided that work opportunities continue to exist within walking distance of her home, in which case she will be determined to be available for work.

- e) If an individual's personal habits are inconsistent with the type of work he or she is seeking, he or she is unavailable for work.

EXAMPLE: The individual, a punch press operator, was discharged because she would not cut her waist-length hair or wear a hair net or remove oversized rings she wore on her fingers; her hair and rings are considered safety hazards. She states that she is seeking work as a punch press operator, but that she will not work for any employer who requires

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her to cut her hair or wear a hair net or remove her rings. She would be determined to be unavailable for work.

- f) An individual shall not be held unavailable for work on the basis of refusing to consider particular work that he or she honestly believes would violate sincere religious or moral convictions. However, an individual shall be held unavailable if his or her convictions eliminate virtually all of the labor market.

EXAMPLE: For many years, an individual was a hot dog vendor, working in sports stadiums on Saturdays and Sundays. The individual states that he will no longer work in the food service industry, nor will he work on Sunday. He explains that he has recently married and that his wife has introduced him to religion. Among the tenets of his religion are strict dietary laws, forbidding even handling of many commonplace foods; also, Sunday is prescribed as a day of rest. If it is determined that his religious convictions are sincere, he would not be held unavailable for work solely on the basis of refusing to consider food service or Sunday work, even though these may have been suitable previously. Still, he must demonstrate that he is available for other types of work at other times.

- g) If the individual is self-employed, availability depends upon the nature and extent of that self-employment; whether the individual's investment of time or capital prevents him or her from accepting other work in the labor market.

EXAMPLE: The individual worked as a secretary in a real estate agency. When she was laid off, she grew depressed, until she watched a cable television show. The host explained how to buy property without making down payments and how to enhance cash-flow. It sounded so easy that she immediately rearranged the den in her house to serve as an office. In the morning, she would read newspapers and make telephone calls. She went to foreclosure sales and auctions. Most afternoons and evenings, she would inspect properties. She also applied for jobs in her usual occupation, secretary. This individual would be determined available for work, if the trier of fact finds that she had not yet made a substantial commitment to her own business. If, however, she had purchased properties, and was involved in the management of those properties to the extent that it would conflict with normal working hours, she would be determined to be unavailable for work.

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- h) Whether a seasonal worker is available for work during the off-season is determined by whether there is some prospect of obtaining work in his or her customary occupation. If there is no prospect of obtaining that work, the individual must seek other work for which he or she is qualified.

EXAMPLE: The individual is a golf course maintenance man. The courses at which he works are open from April through October. He has never been employed during the off-season. On his work search record, for weeks in January, he indicates that he is seeking work in the field of lawn care and maintenance, for which there are no prospects of work. He would be determined unavailable for work.

- i) Whenever an individual appears to be imposing a condition upon his or her acceptance of work, it is essential to establish whether he or she is merely expressing a preference as opposed to actually imposing a condition.

EXAMPLE: The individual last earned \$7.50 per hour, the prevailing wage in her occupation. During her interview with the claims adjudicator, she states that she will accept \$9.00 per hour for similar work. During the interview, the adjudicator reviews her work search record and asks what the wages were for her contacts during the period under review. The work search contacts were for work paying closer to \$7.50 than \$9.00. This might indicate that \$9.00 was a preference, not a condition. Therefore, she would be determined to be available for work.

- j) The best evidence that an individual is "available for work" is that he or she readily secures work, despite the imposition of a condition.

EXAMPLE: The individual is laid off from her job in an occupation that ordinarily provides daytime work only. She files a claim for benefits, and, on an initial questionnaire, she writes that she will work nights only, because her child care arrangements have changed. That week, she makes employer contacts for night-shift work. As a result of that work search, she readily secures work beginning the next week. She would be determined to be available for work for the prior week.

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(Source: Amended by Emergency Rulemaking at 44 Ill. Reg. _____, effective _____, for a maximum of 150 days)