



**DEPARTMENT OF UNEMPLOYMENT ASSISTANCE
UI POLICY & PERFORMANCE
INTEROFFICE MEMORANDUM**

Date: October 8, 2020

Rescission(s): None

Reference No.: UIPP 2020.12

TO: All DUA Managers and Staff

FROM: Emmy Patronick, Director of Policy and Performance

SUBJECT: Availability and Suitable Work Issues- Caregiver Responsibilities During the COVID-19 Public Health Emergency

1. PURPOSE:

To provide guidance to DUA staff regarding the important flexibilities that must be applied during the COVID-19 Public Health Emergency.

2. ATTACHMENTS:

None

3. BACKGROUND:

At the beginning of the COVID-19 public health emergency, USDOL informed state workforce agencies, including DUA, that we “have significant flexibility in implementing [the able, available, and work search] requirements, as well as in determining the type of work that may be suitable given the individual’s circumstances.” (See U.S. Department of Labor, Unemployment Insurance Program Letter (UIPL) 10-20, dated March 12, 2020.) According to USDOL’s guidance, a claimant who is “available for any work for all or a portion of the week claimed” may be considered to be available under G. L. c. 151A, § 24(b), “provided that any limitation placed by the [claimant] on his or her availability does not constitute a withdrawal from the labor market.” Indeed, a claimant

“may be quarantined or otherwise affected by COVID-19 but still [be] eligible” for UI.

Many claimants have caregiving responsibilities for family or household members. This guidance is intended to clarify DUA’s policy and to reiterate the important flexibilities that must be applied in the context of refusal of work.

Adjudicators and DUA staff are reminded that in order to be eligible for benefits, a claimant only needs to be available for suitable work which the claimant has no good cause to refuse. G. L. c. 151A, § 25(c). Unless there is evidence to the contrary, a claimant is presumed to be available for work.

Adjudicators must resolve two questions where the issue is whether a claimant has refused work:

- (1) is the work suitable, and, if so,
- (2) does the claimant have good cause to refuse the work?

Suitable work:

Employment is not considered suitable if it would pose a substantial risk to the claimant’s health or safety. (DUA Adjudication Handbook, Chapter 5, section G). If the claimant’s personal condition or experience would lead to greater risks than others would face, the job may be unsuitable.

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.

Good Cause:

DOL allowed states to adopt a more expansive interpretation of “good cause” provisions to account for the COVID-19 pandemic. Therefore, a claimant will have good cause to refuse suitable work if the health or safety of the claimant’s child or dependent, an immediate family member, or another household member is put at unreasonable risk by the conditions of the employment. Similarly, a claimant is not disqualified under § 25(c) for refusing otherwise suitable work if,

due to age, medical condition, or other condition or infirmity, another individual requires the claimant's full-time care and no alternate care is available due to COVID-19.¹

Childcare, adult day care, camp, and school options are limited in many areas of the state due to COVID-19. Some claimants will not be able to get a spot in school or daycare for one or more dependents or may be unable to send one or more dependents to school or daycare due to one of the factors listed above. In such circumstances, consider whether no suitable work is available to the claimant, or the claimant has good cause to refuse otherwise suitable work. If so, the claimant should not be subject to disqualification under § 24(b) or § 25(c).

When reviewing the claimant's responses to fact-finding questions, adjudicators must keep in mind that many things are beyond any individual claimant's control. For example, a claimant whose child has a mental or physical health condition or who is too young to wear adequate personal protective equipment such as a mask should not be penalized for being unable to send their child to daycare or school due to reasonable concerns about exposing themselves or their families to COVID-19. Such a claimant has good cause for refusing otherwise suitable work.

Because claimants need only be available "for any work for all or a portion of the week claimed," a claimant who is caring for a child or adult at home may be considered available for work if the claimant could work from home via a teleworking or remote set-up.

Substantial Risk:

A claimant who has a reasonable belief that the claimant, the claimant's child, or a member of the claimant's immediate family or household member will suffer a substantial risk to health and safety is not disqualified based on unavailability under § 24(b), or for refusing work under § 25(c).

School Related Issues:

When reviewing claims relating to schools, keep in mind that USDOL has issued guidance relating to Pandemic Unemployment Assistance (PUA) and fully remote or hybrid school situations. See UIPL 16-20, change 3. That guidance is

¹ Good cause may include personal reasons such as needing to care for a child or dependent adult. (See Adjudication Handbook, Rev. 3-1-2020, Chapter 4.)

applicable to this issue as follows:

- If the school is fully on-line, it is considered “closed.”
- If the school is operating on a hybrid model, the school is “closed” on the days the student cannot attend in person.
- If the school offers a choice between on-line and in-person learning, and the claimant chooses not to send the student to school, the claimant’s actions must be reasonable.

Other issues to consider include whether or not the school is located in a low-risk district according to the Governor’s COVID-19 Community-Level Data Map (<https://www.mass.gov/info-details/community-level-covid-19-data-reporting>), whether the school or classroom is following the state’s safety guidelines, whether the claimant, the claimant’s child or immediate family or household members have preexisting medical conditions and whether the child has any condition which may make remote or hybrid learning problematic. When in doubt, adjudicators are encouraged to use the flexibility granted by USDOL in determining these issues.

4. **ACTION:**

Effective immediately, DUA should be abiding by this policy when adjudicating issues under § 24(b) and § 25(c).

5. **QUESTIONS:**

Please email UIPolicyandPerformance@detma.org