

FAQ – Work Search Requirements and Suitability of Work 11/7/2012

RSA 282-A:31, I(d) has been changed to add that:

- (1) if permanent work which the claimant is qualified to do is not immediately available within their labor market, they must also be available for and seeking temporary, full-time or part-time work
- (2) an individual temporarily out of work that reasonably expects to be recalled by their employer in 4 to 26 weeks to permanent full-time or part-time work, must instead be available for and seeking temporary, full-time or part-time work for which they are qualified.

RSA 282-A:32, I(d) has been changed to provide separate suitable work expectations depending on the individual's circumstances.

- (1) If work is determined to be immediately available, the suitable work criteria remain substantially the same. Housekeeping changes were made to change "his" to "individual's" and separate the distance and rate of pay criteria.
- (2) If work is determined not to be immediately available, the suitable work criteria have been substantially duplicated from (1). An important and new criterion has been added. (E) "That the work, part-time or full-time, pays minimum wage or an hourly rate which when multiplied times 40 is equal to or greater than 150 percent of the individual's weekly benefit, whichever is greater."
- (3) If work is refused that is deemed suitable under this section, the denial shall be for the same period that the work would have lasted. AKA: 2-week temp job offered that is deemed suitable work results in a 2-week denial.

These changes will take effect with the week ending 10/13/2012.

Please note that no changes were made to the exceptions cited in RSA 282-A:32, I(d)(3) other than to renumber the section from (2) to (3). This section includes reference to strike and lockout; union membership; shift work exemption to care for a child; and what is considered full or part-time work based on certification of a licensed physician and a permanent disability.

Administrative Rules have been submitted and are expected to be in place in October.

Question: Does this mean that seasonal workers, like construction or paving, have to look for work during the winter?

Answer: Yes. If they have reasonable assurance of returning to work in the spring, when construction work is again available, they must look for temporary work during the winter.

Question: Does this mean that school bus drivers have to look for work in the summer?

Answer: Yes. If they have reasonable assurance of returning to work in the fall, when school is again in session, they must look for temporary work during the summer.

Question: What is reasonable assurance?

Answer: The individual has a history of working for the same employer and going back to work each season. A history is considered more than one year.

Question: Does the employer still have to provide a letter that says the individual will be coming back to work?

Answer: No. If Mass Layoff paperwork is submitted, the employer can provide an expected return-to-work date, but a separate letter is no longer required.

Question: What if the bus driver is on the on-call list and gets periodic work for charters during the summer?

Answer: Unless the individual has a regular schedule and has guaranteed work, they must look for temporary work during the summer. The individual will not be penalized if they quit a temporary job to accept work with their regular permanent employer when called.

Question: What is the difference between permanent work and temporary work?

Answer: This will be addressed in Administrative Rule. "Permanent work" is work with no definite end date that is expected to last more than 26 weeks from the start date, or work with a definite end date that is more than 26 weeks from the start date. "Temporary work" is work with a definite end date of less than 26 weeks from the start date, or with no definite end date but is expected to last no more than 26 weeks from the start date.

Question: What kind of temporary work?

Answer: In short, suitable temporary work is any work that the individual is capable of doing that pays more than 150% of their weekly benefit amount, when calculated to an hourly rate x 40. It does not have to be in their customary occupation.

Question: What if the claimant does not look for temporary work?

Answer: The individual will be denied benefits until such time as they meet this eligibility requirement.

Question: What if the claimant refuses an offer of temporary work?

Answer: The job offer will be reviewed for suitability. In making a determination of suitability, the following factors are considered:

- the degree of risk to the individual's health, safety and morals*
- the individual's physical fitness allows them to do the essential functions of the work*
- the individual's prior training and/or experience allows the individual to do the work or acquire the skills to do the work*
- the distance of the work location from the individual's residence*
- the wages for the work, when calculated to an hourly rate, are more than 150% of the individual's weekly benefit amount*

If the job is determined to be suitable, the individual will be denied benefits for the same amount of time as the length of the temporary work, but no less than one week.

Question: What if the offer is only for a 2-day job?

Answer: If the hourly rate for the 2-day job is equivalent to more than 150% of the individual's weekly benefit amount when multiplied by 40, and the work meets the suitability criteria, the individual is expected to accept the work.

If the individual refuses the job and it is suitable, the individual will be denied for one week of benefits.

Question: What if the offer is not definite in the length? What if it is offered as lasting between 2 to 4 weeks?

Answer: If the hourly rate for the job is equivalent to more than 150% of the individual's weekly benefit amount when multiplied by 40, and the work meets the suitability criteria, the individual is expected to accept the work.

If the individual refuses the job and it is suitable, the individual will be denied for four weeks of benefits, which is the maximum the job would have lasted.

Question: What if the offer is temp to perm?

Answer: If the hourly rate for the job is equivalent to more than 150% of the individual's weekly benefit amount when multiplied by 40, and the work meets the suitability criteria, the individual is expected to accept the work. The individual will not be penalized if they quit a temporary job to accept work with their regular full-time permanent employer when called.

If the individual refuses the job and it is suitable, the individual will be denied indefinitely, as this work could have been permanent work.

Question: How does someone again become eligible after a job refusal disqualification?

Answer:

A: If the denial is for a specific period of time, such as 3 weeks for refusal of a 3 week assignment, the denial only impacts those 3 weeks identified in the denial determination. The individual would remain eligible for benefits for other weeks.

B. If the denial is for more than 5 weeks, such as 9 weeks for refusal of a 9-week assignment, the individual may become eligible sooner than 9 weeks if he/she works and earns at least 120% of their weekly benefit amount in 5 of those 9 weeks. If he/she requalifies before the 9 week disqualification is over, he/she would be eligible for the remainder of the 9 weeks.

C. If the denial is indefinite, the individual must work and earn at least 120% of their weekly benefit amount in 5 separate weeks to reestablish eligibility.

NOTE: The separation from the employer that provided 5 weeks of wages would have to be non-disqualifying.

Question: What if the employer has no intention of calling the individual back even though he/she was laid off with the rest of the seasonal workers?

Answer: If the department is aware of this intention, the individual will be required to seek both permanent and temporary work, as his/her normal occupation is not immediately available and they have no reasonable assurance of returning to work with their former employer.

Question: What if the individual has no intention of going back to work for the employer?

Answer: If the department is aware of this intention, the individual will be required to seek both permanent and temporary work, as his/her normal occupation is not immediately available and they have no reasonable assurance of returning to work with their former employer.

If the employer is not aware of this fact and calls the individual back to work, and the individual refuses, the employer should report this to the department and a job refusal eligibility issue will be explored.

Question: What does "not immediately available" mean?

Answer: This will be addressed in Administrative Rule. "Not immediately available" means that based on the current labor market, the claimant is not likely to obtain such work in 27 or fewer calendar days.

Question: What if the individual refuses work and doesn't report it?

Answer: New Hampshire Employment Security performs numerous cross-matches and quality review checks to ensure the integrity of the program. When it is discovered that an individual refused work that was suitable, he/she will be found guilty of fraud. Consequences include loss of wage credits and benefits for up to one year, overpayment of benefits, 20% penalty on the amount of the overpayment, fees, fines and potential jail time.