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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

ED 4-2021

CHAPTER 471

EMPLOYMENT DEPARTMENT

FILED

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Availability requirements for Unemployment Insurance Benefits

EFFECTIVE DATE: 09/26/2021 THROUGH 03/24/2022

AGENCY APPROVED DATE: 09/22/2021

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NEED FOR THE RULE(S):

The temporary rule amendment is needed to ensure the Unemployment Insurance eligibility guidelines are updated to reflect the shift in nature of the workforce economy. On March 8, 2020, the Governor for the State of Oregon, Kate Brown, declared a State of Emergency due to COVID-19. While the state of emergency has ended, COVID-19 outbreaks continue to impact the workforce availability due to child care and school schedules. The Employment Department believes that this temporary rule will assist people whose availability to work continues to be impacted by these factors, as well as those with underlying conditions that need to limit their exposure to COVID-19. This temporary rule may impact UI benefit recipients and employers subject to UI taxes and reimbursement obligations. However, this impact is reduced through the tax relief provided for in HB 3389 (2021).

JUSTIFICATION OF TEMPORARY FILING:

This rule amendment provides more clear guidance to the workers, businesses, and others regarding the availability of UI benefits and expands the availability of benefits to people still impacted by COVID-19. With this temporary rule customers will have a clearer understanding of the expectations and requirements to receive UI benefits, reducing the need for adjudication and the possibility for overpayments. It may also help provide economic stability to local communities if there is a large number of people who are no longer working or receiving pay due to the impact of COVID-19.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Oregon Revised Statutes, available online at www.oregonlegislature.gov or from the agency; and Oregon Administrative Rules, available online at sos.oregon.gov/archives/Pages/oregon_administrative_rules.aspx or from the agency.

AMEND: 471-030-0036

RULE TITLE: Eligibility Factors

RULE SUMMARY: This temporary rule amendment clarifies when workers are considered available to work in order to be eligible to receive Unemployment Insurance benefits.

RULE TEXT:

(1) In considering suitable work factors under ORS 657.190 and for purposes of determining eligibility under 657.155(1)(c), the Director may require an individual to actively seek the type of work the individual is most capable of performing due to prior job experience and training except that:

(a) If an individual is unable to secure the individual's customary type of work after contacting the potential employers in their labor market, or if the individual is unable to meet the requirements of section (3)(c) of this rule, the Director may require the individual to seek less desirable but similar work or work of another type which the individual is capable of performing by virtue of experience and training.

(b) If the type of work an individual is most capable of performing does not exist in the labor market where the individual is claiming benefits, the Director may require the individual to seek any work that exists in the labor market for which the individual is suited by virtue of experience and training.

(c) After the individual has contacted the potential employers in the labor market where benefits are being claimed and is still unable to obtain work as described in (1)(a) and (b) of this section, the Director may require the individual to further expand work-seeking activities.

(2) For the purposes of ORS 657.155(1)(c), an individual shall be considered able to work in a particular week only if physically and mentally capable of performing the work the individual actually is seeking during all of the week except:

(a) An occasional and temporary disability for less than half of the week shall not result in a finding that the individual is unable to work for that week; and

(b) An individual with a permanent or long-term "physical or mental impairment" (as defined at 29 CFR 1630.2(h)) which prevents the individual from working full time or during particular shifts shall not be deemed unable to work solely on that basis so long as the individual remains available for some work.

(3) For the purposes of ORS 657.155(1)(c), an individual shall be considered available for work if, at a minimum, the individual is:

(a) Willing to work full time, part time, and accept temporary work opportunities, unless such part time or temporary opportunities would substantially interfere with return to the individual's regular employment; and

(b) Capable of accepting and reporting for suitable work opportunities within the labor market in which work is being sought, including temporary and part time opportunities; and

(c) If the department determines suitable work in the individual's customary occupation is performed:

(A) During only one shift in their labor market, the individual must be available to work during the days and hours for that work, except the individual may seek other types of suitable work that are normally performed more than one shift in their labor market, and for which they are capable of performing by virtue of experience or training, so long as they are available for at least one shift; or

(B) During more than one shift, the individual must be available to work at least one shift during the week; and

(d) Physically present in the normal labor market area as defined by section (5) of this rule, every day of the week, unless:

(A) The individual is actively seeking work outside their normal labor market area; or

(B) The individual is infrequently absent from the normal labor market area for reasons unrelated to work search, for less than half of the week, and no opportunity to work or referral to work was missed by such absence.

(e) When an individual receives their work through a union hiring hall, they must be available and willing to work the usual days and hours of the work for which the union would dispatch other members for similar work.

(f) An individual with a permanent or long-term physical or mental impairment (as defined at 29 CFR 1630.2(h)) which prevents the individual from working full time or during particular shifts shall not be deemed unavailable for work solely on that basis so long as the individual remains available for some work.

(g) For the purposes of sections (2) and (3) of this rule, shift means the normally scheduled hours of the week in which work is performed by an employee during a full-time schedule of hours. Shifts or shiftwork may take various forms, such as day shift, swing shift, night shift, split-shift, and 24-hour shifts. Shifts are typically 5 days per week but can vary based on the occupation and labor market. The Employment Department shall define the customary days and hours the

occupation is performed within the labor market of the individual.

(h) For the purposes of ORS 657.155(1)(c), an individual is not available for work in any week claimed if:

(A) The individual turns down an offer of or misses scheduled, suitable work; or

(B) During the week, the individual is incarcerated during any days or hours customary for the type of work the individual is seeking as defined by the Employment Department for the purposes of administering this section.

(i) "Incarcerated" means in custody at a city, county, state, or federal law enforcement or correctional facility to include any "arrest" as defined in ORS 133.005 or a similar law in another state or jurisdiction.

(ii) When an individual is in an alternative sentencing facility operated pursuant to a community corrections plan that individual will not be considered unavailable for work solely because of their non-traditional custody. Alternative sentencing is defined by the jurisdiction responsible for supervision of the suspect or offender.

(iii) "Incarcerated" does not include a "stop" as authorized under ORS 131.605 to 131.625.

(iv) "Incarcerated" does not mean being involved in questioning by peace officers as part of an investigation where the individual is free to leave and not charged with a crime.

(C) The individual's work search for the week does not demonstrate they meet the requirements of section (3)(c) of this rule.

(i) An individual will be considered not available for work if the individual fails or refuses to seek the type of work required by the Director pursuant to section (1) of this rule.

(j) Providing the individual is otherwise eligible for benefits pursuant to OAR 471-030-0036(3)(a) through (i), a person who has been found to be qualified for benefits under the provisions of ORS 657.176(2)(f) or (g) or 657.176(9)(b)(A) shall be considered available for work only during weeks in which the individual is enrolled in and participating in a recognized drug or alcohol treatment program if such participation was a condition in the determination to allow benefits. This provision does not apply if the individual has satisfactorily completed the course of treatment in accordance with the terms and conditions of the recognized treatment program.

(A) An individual is participating when engaged in a course of treatment through a recognized drug or alcohol rehabilitation program;

(B) A recognized drug or alcohol rehabilitation program is a program authorized and licensed under the provisions of OAR chapter 415.

(k) An individual is not available for work in any week claimed under ORS 657.155 if the individual resides or spends the major portion of the week:

(A) In Canada unless the individual is authorized to work in Canada;

(B) In a country not included in the Compact of Free Association with the United States of America; or

(C) Outside of the United States, District of Columbia or any territory or political division that is directly overseen by the United States federal government; except,

(i) If the individual is the spouse or domestic partner of an individual stationed at a military base or embassy located outside the United States;

(ii) Job opportunities exist on the military base or embassy for family members of those stationed there;

(iii) The individual lives within a reasonable commuting distance to job opportunities at the military base or embassy; and

(iv) The individual is willing to accept the conditions and terms of the available employment provided they are not inconsistent with ORS 657.195.

(4) This section addresses the requirements for actively seeking work, as required under ORS 657.155(1)(c):

(a) Unless the individual is temporarily unemployed, as described in section (b), or a member of a dispatching union, as described in section (c), or otherwise directed by the director or an authorized representative of the Employment Department, they must conduct at least five work-seeking activities per week. Two of the five work-seeking activities must be a direct contact with an employer who might hire the individual.

(A) Work-seeking activities include but are not limited to registering for job placement services with the Employment Department, attending job placement meetings sponsored by the Employment Department, participating in a job club

or networking group dedicated to job placement, updating a resume, reviewing the newspaper or job placement websites without responding to a posted job opening, and making direct contact with an employer.

(B) Direct contact with an employer means making contact with an employer in person, by phone, mail, or electronically to inquire about a job opening or applying for job openings in the manner required by the hiring employer.

(b) For an individual who is temporarily unemployed:

(A) They are considered to be actively seeking work when they remain in contact with their regular employer and are capable of accepting and reporting for any suitable work with that employer;

(B) There is a reasonable expectation that they will be returning to work for their regular employer. The work the individual is returning to must be full time or pay an amount that equals or exceeds their weekly benefit amount;

(C) The department will not consider the individual to be temporarily unemployed if they were separated from their employer for reasons other than a lack of work, the work the individual is returning to is not with their most recent employer, or the length the individual is unemployed is longer than the period described in subsection (D) of this section; and

(D) The department will consider that the period for which an individual is temporarily unemployed:

(i) Begins the last date the individual performed services for the employer. In the case of an individual still working for the employer, it is the last date worked during the week in which the individual had earnings less than their weekly benefit amount; and

(ii) Cannot be greater than four weeks between the week the individual became temporarily unemployed and the week the individual returns to work as described in subsection (B) of this section.

(c) For an individual who is a member in good standing of a union that does not allow members to seek non-union work, such individual is actively seeking work by remaining in contact with that union and being capable of accepting and reporting for work when dispatched by that union if the union dispatches its members for work. If the union does not allow its members to accept non-union work but does not dispatch their members to available work, the individual must meet the requirements of subsection (a) of this section.

(d) For an individual who is filing a continued claim for the first week of an initial or additional claim:

(A) If the individual worked less than full time and remuneration paid or payable to the individual for services performed during the week is less than the individual's weekly benefit amount, each day the individual worked for the employer shall be considered a direct employer contact.

(B) An individual does not meet the requirements of this subsection if the individual performed no work for an employer during the first week of an initial or additional claim; therefore the individual must seek work consistent with subsection (a) of this section.

(e) In determining whether to modify the requirements in this section for an individual the Employment Department may consider among other factors, length of unemployment, economic conditions in the individual's labor market and prospective job openings, weather conditions affecting occupations or industries, seasonal aspects of the individual's regular occupation, expected date of return to work in regular occupation, seniority status of individual, registration with a union hiring hall and normal practices for obtaining the type of work which the individual is seeking pursuant to section (1) of this rule. The department shall provide a written copy of the work search requirements to the individual if the individual's work search requirements are modified.

(5)(a) An individual's normal labor market shall be the geographic area surrounding the individual's permanent residence within which employees in similar circumstances are generally willing to commute to seek and accept the same type of work at a comparable wage. The geographic area shall be defined by the Employment Department, based on criteria set forth in this section;

(b) When an individual seeks work through a union hiring hall, the individual's normal labor market area for the work sought is the normal referral jurisdiction of the union, as indicated by the applicable contract.

(6) Nothing in this rule shall prohibit an individual who is a citizen, permanent legal resident, or otherwise legally authorized to work in the United States from seeking work in other labor market areas in any state or country.

STATUTORY/OTHER AUTHORITY: ORS 657.610

STATUTES/OTHER IMPLEMENTED: ORS 657