

## 1. ABILITY TO WORK

## A. ABLE TO WORK

When a claimant has physical or mental limitations which restrict the types of work that the claimant is able to perform, the extent of the restrictions must be examined carefully. In such situations, the deputy will consider, but will not be limited to, the following factors on a case-by-case basis:

1. The claimant's usual or customary occupation;
2. The nature of the restrictions;
3. Whether or not the claimant is qualified, by education, or by training and experience, to perform work within the restrictions which is less physically strenuous or mentally demanding;
4. The extent to which work is available, in the local area or within the scope of a claimant's usual commute, which is within the claimant's ability, and
5. The claimant's willingness to enter a new field that does not need extensive prior training and experience.

## B. WORKER'S COMPENSATION/SOCIAL SECURITY DISABILITY PAYMENTS

The Worker's Compensation Act and Social Security Act each make provisions for payments to persons who have certain disabilities. These provisions are independent of, and are not binding upon, the provisions of the Employment Security Law. However, if a person applies for disability benefits from either or both of these other agencies, the deputy would have to investigate the circumstances of such application in order to determine what effect these circumstances would have on the claimant's eligibility for unemployment benefits.

## 2. AVAILABILITY FOR WORK

In order to be considered to be "available for work," a claimant must be "attached to the labor market." This means that the claimant must be ready and willing to accept work for which he or she is qualified under the conditions which would normally be associated with the labor market or which correspond to his or her usual or customary hours and commute. The claimant must be available to work in locations in which, and during the hours in which, he or she could reasonably be expected to be employed. The deputy will take into consideration, but will not be limited to, the following factors on a case-by-case basis:

### A. HOURS

In order to meet the availability for work requirements of the Employment Security Law, a claimant must be available to accept work during the hours which are customary for the trade or occupation in which the claimant usually works or for the trade or occupation in which he or she has prior training or experience, or during the claimant's usual or customary hours. Claimants whose occupations normally involve working on more than one shift must be available to work on all such shifts. Exception to this requirement for good cause may be established in accordance with the provision in subsection 2 of Section 1192-A of the Employment Security Law.

### B. Part-time Work

Under certain circumstances a claimant who is not able and available for full-time work may remain eligible for benefits. A claimant who is eligible under subsection 1 of this provision shall be eligible to receive his or her full weekly benefit amount. A claimant who is eligible under subsection 2, subsection 3, subsection 4, or subsection 5 of this provision shall be eligible to receive prorated benefits for that portion of the week during which the individual was able and available. A claimant who is not able and available for full-time work shall not be ineligible for benefits if:

1. A majority (more than 50%) of the weeks worked during the claimant's base period were less than full time, and the claimant is able to work and available for and actively seeking work for a number of hours comparable to the number of hours worked during those weeks; or
2. A majority (more than 50%) of the weeks worked during the claimant's base period were less than full time, and the claimant is able to work and available for and actively seeking work for a number of hours that is less than and not comparable to the number of hours worked during those weeks due to circumstances that constitute good cause within the meaning of 26 M.R.S. Section 1192-A; or
3. The majority of the weeks worked during the claimant's base period were full time but the claimant is only able and available for less than full-time work due to the illness or disability of the claimant's immediate family member. The Bureau may require verification of such illness or disability through the provision of documentation as prescribed by the Bureau. Such documentation may include but not be limited to verification from a medical professional.

If a claimant under this sub-paragraph has returned to work and is working the full number of hours for which the claimant is able or available to work considering the illness or disability of an immediate family member, that claimant is not considered “partially unemployed” for purposes of sub-section 3 of Section 1191 and is not entitled to prorated benefits; or

4. The majority of the weeks worked during the claimant’s base period were full time but the claimant is only able and available for less than full-time work and the claimant’s limited availability is necessary for the safety or protection of the claimant or the claimant’s immediate family member, including protection from domestic abuse as defined in Chapter 1, Section 1, paragraph W of these regulations. The Bureau may require verification of such safety needs through the provision of documentation as prescribed by the Bureau. Such documentation may include but not be limited to verification from a medical professional, social service agency, law enforcement official, or school official.

If a claimant under this subparagraph has returned to work and is working the full number of hours for which the claimant is able or available to work considering the safety or need to protect him or herself or an immediate family member, that claimant is not considered “partially unemployed” for purposes of subsection 3 of Section 1191 and is not entitled to prorated benefits; or

5. The majority of the weeks worked during the claimant’s base period were full time but the claimant is only able and available for less than full-time work due to circumstances that constitute good cause within the meaning of 26 M.R.S. Section 1192-~~A~~.

#### C. TRANSPORTATION AND DISTANCE

In order to be considered available for work, a claimant must have a means of transportation to get to a job or to an area in which there are sufficient job opportunities. The claimant must be willing to travel a reasonable commuting distance for people living in the same area as the claimant or the distance of the claimant’s usual commute, whichever is further. Factors to be considered in determining whether this requirement has been satisfied shall include, but are not limited to, method of transportation; availability of public transportation; availability of alternative means of transportation, such as carpooling; demonstrated ability to obtain transportation to work; and the nature of the employment being sought.

#### D. TRAINING AND EXPERIENCE

The claimant's training and experience in relation to the type of work sought must be taken into consideration in determining whether or not the claimant meets the availability requirements of the Employment Security Law.

#### E. ATTENDANCE AT SCHOOL

Attendance at school is not automatically a restriction on availability. Each case must be examined individually in order to determine what effect the schooling has on the claimant's availability. In making such a determination, the deputy will consider, but will not be limited to, the following factors on a case-by-case basis:

1. Days of week and hours of the day of class attendance;
2. Whether the claimant previously worked full time while attending school;
3. Whether the claimant would leave school in order to accept employment; and
4. Whether the claimant would change his the claimant's class schedule in order to accept employment.

F. LENGTH OF UNEMPLOYMENT

The claimant's length of unemployment is also a factor which would be used in determining the type of work for which the claimant should be expected to be available. For a claimant who has only recently separated from work, it would normally be reasonable if he the claimant sought work that was closely related to the claimant's most recent job or to a type of work in which he or she had prior training and experience. However, as the length of unemployment increases, the claimant should increase his or her availability by seeking types of work less directly related to the claimant's previous training and experience.

G. ABSENCE FROM LABOR MARKET AREA

In order to be considered available for work, a claimant must be present in the claimant's labor market area during each day of the customary workweek for the occupation in which the claimant is normally employed. A claimant who is absent from the labor market area for one or more of the days of the customary workweek in that occupation will be ineligible from receiving benefits for the week in question unless the claimant can show good cause for his or her absence from the labor market area or can show that he or she was capable of returning to the labor market area in time to report for the next available shift in his or her occupation at all times during the absence.

For purposes of this provision, "the occupation in which the claimant is normally employed" refers to the claimant's normal trade, occupation, profession or business or, for claimants seeking work in a trade other than that in which they are normally employed, an alternate trade, occupation, profession or business in which the claimant is seeking employment and for which the claimant's prior training or experience shows the claimant to be fitted or qualified.

An exception to the above requirement would be claimants who travel outside their local labor market areas to seek work. Factors to be considered in determining whether a claimant has travelled outside their local labor market area to seek work shall include, but are not limited to:

1. The nature of the occupation being sought;
2. The claimant's past occupation(s);
3. The claimant's past experience working in the occupation being sought;
4. The claimant's general ability to perform work in the occupation being sought;
5. The claimant's past experience working in the geographic area where work is being sought; and

6. Demonstrated efforts by the claimant to attach him or herself to the new labor market, such as registration at a state job service or with employment agencies in the area in which employment is being sought.

H. INCARCERATION

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A claimant shall not be eligible for payment of unemployment compensation benefits for any weeks of unemployment during which the claimant is incarcerated after a conviction. A person is "incarcerated" if they are sentenced and committed to, transferred to, or detained in a correctional facility or jail.

3. SELF-EMPLOYMENT

An individual whose primary objective is performing services in self-employment will not be considered to be an unemployed individual for purposes of subsection 17 of Section 1043 of the Employment Security Law. "Primary objective" means that the individual is engaging in or in the process of establishing a self-employment venture and is not available for and/or willing to work as an employee for another employer on a full-time basis.

STATUTORY AUTHORITY: 26 M.R.S.A. Sec. 1082(2) and 26 M.R.S.A. Sec. 1192-A.

EFFECTIVE DATE:

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AMENDED:

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May 4, 1987 - Sec. 3

October 2, 1989 - Sec. 2.G

May 30, 2000 - Sec. 2.A

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NON-SUBSTANTIVE CORRECTIONS:

June 17, 2004 - spelling in Section 2.H, punctuation in Section 9.B