

**Maine Department of Labor
Bureau of Unemployment Compensation**

**Basis Statement
and
Summary of Comments and Responses**

Chapter 9: Able and Available

The Rule explains the requirement under Maine Statute and Federal Regulations regarding a claimant’s able and available status. The Rule explains the criteria that will be used by the Bureau of Unemployment Compensation (“Bureau” or “BUC”) to determine whether a claimant may be considered wholly or partially able and available. In developing the changes to the Rule, the BUC looked to guidance from the United States Department of Labor.

This rulemaking of the Bureau of Unemployment Compensation is authorized by 26 M.R.S. § 1082. The proposed Rules were posted on March 25, 2026. A public hearing was held on Monday April 13 at the Maine Department of Labor, Frances Perkins Conference Room, 45 Commerce Drive, Augusta ME 04330. No public comments were received at the public hearings. One set of written comments was submitted by:

Commenter: Maine Equal Justice

The public comment period ended on April 24, 2026.

Summary of Public Comments and Responses

1. Chapter 9, Section 1 – Able to Work

Consolidated comment: The commenter encouraged the Bureau to adopt the federal standard for “able to work,” which focuses on whether a claimant has withdrawn from the labor market. Illness, injury, or disability should not automatically disqualify someone if they remain attached to the workforce. Claimants should generally be considered able unless they refuse suitable work. Clarify prorated eligibility for partial-week availability due to medical reasons, reduce documentation burdens, and eliminate vague evaluative factors that lack clear standards.

Response: The rule as written reflect the longstanding federal “able and available” standard, which requires that claimants be capable of performing suitable work and genuinely attached to the labor market. Because this standard is a condition of federal conformity, the state bears responsibility for administering its

unemployment insurance program in a manner consistent with federal law and guidance.

Accordingly, the state must evaluate information provided by claimants regarding any physical or mental restrictions and how they affect the claimant's ability to work and availability for suitable employment. A categorical approach would be inconsistent with federal expectations; instead, adjudicators should determine the extent to which reported restrictions limit the range of work the claimant can perform, the conditions under which they can accept work, and whether a reasonable labor market remains accessible to them.

In practice, this requires an individualized review and possible determination based on the totality of the circumstances.

Lastly, the proposed change suggests no prorating of benefits, which goes against statute per §1192-A(2)(D), paragraph 3.

2. Chapter 9, Section 1(A)(4) – Commuting Distance

Consolidated comment: A request to retain flexibility that accounts for a claimant's actual commuting circumstances, including reliance on public transit, walking, or disability-related limitations. Claimants should not be penalized for seeking work within their customary commute.

Response: The proposed change to the rule in 1(A)(4) by adding “*within the scope of a claimant's usual commute*” addresses this concern. The work search requirement per §1192-A(2)(C) requires work search activity on a weekly basis. A claimant who conducts a weekly work search and limits jobs applied to, to meet the transportation options available to them to get to work, meets this requirement.

3. Chapter 9, Section 1(B) – Worker's Compensation / Social Security Applications

Consolidated comment: Request to remove this provision. Applying for or receiving disability-related benefits should not trigger an automatic investigation into ability to work, as disability status does not necessarily mean a claimant is unable to work or detached from the labor market.

Response: Our response here is the same as to the first comment. We do not automatically deny benefits to individuals who are receiving Worker's Compensation or Social Security Disability Payments. Rather, we conduct fact-findings and render individualized determinations based on the totality of the circumstances if applicable.

4. Chapter 9, Section 2 – Availability for Work (General)

Consolidated comment: Define availability based on a claimant’s realistic ability to accept work within a reasonable timeframe, not immediate, unrestricted availability. Temporary limitations (e.g., short-term illness) should not disqualify claimants unless they indicate true withdrawal from the labor market. Clarify that claimants need only be available for suitable work.

Response: In practice, this has not presented a significant issue. Situations where it arises are generally limited to cases in which a claimant declines suitable work because the employer requires an earlier start date than the claimant can accommodate due to personal obligations, such as childcare or elder care. Most employers anticipate a typical two-week transition period when hiring, and as a result, these conflicts are uncommon/not seen as an issue. Given their very limited occurrence, we do not believe this issue necessitates additional rulemaking.

5. Chapter 9, Section 2(A) – Hours

Consolidated comment: Align the rule with statute by evaluating availability based on the claimant’s own customary work hours, not industry-wide norms. Account for individual circumstances such as health and caregiving responsibilities and incorporate statutory “good cause” exceptions.

Response: The proposed change to the rule in 2(A) addresses this concern by adding “*or during the claimant’s usual or customary hours.*” The changes to section 2(A) align the rule with the requirements in 26 M.R.S. § 1192-A(2)(d) that an individual is available either “at the individual’s usual or customary hours,” or available “in such other trade, occupation, profession or business for which the individual’s prior training or experience shows the individual to be fitted or qualified.”

6. Chapter 9, Section 2(B) – Part-Time Work / Documentation

Consolidated comment: Reduce documentation requirements and allow self-attestation unless there is clear reason to doubt a claim. Excessive verification creates unnecessary barriers, especially in cases involving medical issues or domestic violence.

Response: In practice, we request documentation only when a claimant’s ability to work and availability for work are limited for medical reasons. We will review the standard medical form to determine whether all fields, particularly those related to the medical basis for the limitation, are necessary to support an informed decision.

We do recognize the sensitive nature of cases involving domestic violence and do not typically require documentation in these circumstances. Consistent with this approach, we will remove the documentation requirement outlined in Section 2(B)(4). The following language will be removed: *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.*

7. Chapter 9, Section 2(C) – Transportation & Distance

Consolidated comment: Evaluate availability based on the claimant’s own customary commute, not regional averages. Do not deny benefits based on lack of transportation, absent a specific job offer. The rule should reflect modern work conditions, including remote work, and avoid disproportionate impacts on low-income individuals and people with disabilities.

Response: During fact-finding we consider the totality of the circumstances, including where the claimant lives, their prior mode(s) of transportation to get to work, and whether there has been a change in circumstances that affects the claimant’s ability to accept and get to work within a reasonable commuting distance, *or the distance of the claimant’s usual commute* (newly added). The central question is whether the claimant could report to work if it were offered, which directly addresses this concern.

The changes to section 2(C) also better align the rule with the requirements in 26 M.R.S. § 1192-A(2)(d) that an individual is available either “at the individual’s usual or customary...commute,” or available “in such other trade, occupation, profession or business for which the individual’s prior training or experience shows the individual to be fitted or qualified.”

The work search requirement per §1192-A(2)(C) requires work search activity on a weekly basis. A claimant who conducts a weekly work search and limits jobs applied to, to meet the transportation options available to them to get to work, meets this requirement.

8. Chapter 9, Section 2(D) – Training and Experience

Consolidated comment: Clarify that availability must be assessed in relation to suitable work, considering the claimant’s training, experience, and current circumstances. Claimants should not be disqualified for being unable to perform their prior occupation if they are available for other suitable work.

Response: We assess a claimant's able and available status by reviewing the totality of the circumstances, including all relevant training and work experience, not solely their most recent position. A claimant will not be denied benefits if they can no longer perform a particular job due to physical or mental limitations, provided they are qualified for and capable of performing other suitable work. This is current process and practice.

9. Chapter 9, Section 2(E) – Attendance at School / Training

Consolidated comment: Prioritize determining eligibility for approved training before assessing availability. Automatically evaluate claimants in training for waivers or training benefits, provide clear notice of options, and presume approved training if no timely determination is made.

Response: If a claimant has both an able and available (general) and able and available training issue associated with their claim, we assess their availability as it relates to being able to successfully attend and complete the training first and foremost. This is current process and practice.

10. Chapter 9, Section 2(F) – Length of Unemployment

Consolidated comment: Limit the impact of unemployment duration to wage considerations only, as required by statute. Do not require claimants to broaden job searches beyond their training or experience. Protect low-wage workers from being forced to seek or accept even lower-paying jobs.

Response: The statute as written already establishes a balanced framework for determining suitable work. There is no requirement in the statute that claimants broaden their job search beyond their training or experience; rather, those factors are central to the suitability analysis, particularly in the initial weeks of a claim. The work search requirement per §1192-A(2)(C) requires work search activity on a weekly basis. A claimant who conducts a weekly work search and limits jobs applied to, to their individual training and experience, meets this requirement.

11. Chapter 9, Section 2(G) – Absence from Labor Market Area

Consolidated comment: Revise this provision to allow reasonable travel. Temporary absence should not disqualify claimants if they remain able to search for work, communicate with employers, and return as needed. The current rule is overly restrictive and outdated.

Response: While we recognize that the employment landscape has evolved significantly since this section was first drafted, the proposed changes could

unintentionally permit brief vacations or other activities that remove individuals from their local labor market without good cause.

Although some work search activities, such as applications and interviews, can now be conducted remotely, not all claimants have equal access to or ability to engage in work through electronic means. Adopting the proposed changes would risk creating two different standards of availability within the same labor market: one for individuals who can search for and perform work remotely, and another for those who cannot.

To maintain fairness and a consistent standard of availability across all claimants, we decline to make further changes.

12. Chapter 9, Section 3 – Self-Employment

Consolidated comment: Remove or revise this section. Participation in gig or supplemental self-employment should not disqualify claimants who are actively seeking traditional employment. Existing income offset rules already prevent misuse of benefits.

Response: We do not believe revision of this section is necessary. The current rule does not disqualify individuals simply for participating in gig or supplemental self-employment. Rather, the key consideration is whether the individual's primary objective is self-employment and whether they look for and remain available to accept work with a subject employer.

When an individual's primary objective shifts to self-employment and they are no longer looking for or willing to accept work with a subject employer, they are not considered unemployed because they are no longer available for work within the meaning of the law.