

TITLE 72

WORKER'S COMPENSATION AND RELATED LAWS -- INDUSTRIAL COMMISSION

CHAPTER 13

EMPLOYMENT SECURITY LAW

72-1303A. ABLE AND AVAILABLE FOR SUITABLE WORK. (1) "Able to work" means having the physical and mental ability to perform work for which the claimant is qualified under conditions ordinarily existing during a normal workweek. It does not mean that a person must be able to perform work in his customary occupation or the same kind of work he last performed. A person who is able to work only part of the workday or part of the work week is not considered able to work.

(2) An individual with a disability under the Americans with Disabilities Act (2008) (as defined by 29 C.F.R. Sec 1630.2(g)), and whose disability prevents the claimant from working full-time or during particular shifts is not deemed unable to work or unavailable for work for so long as the claimant demonstrates he is able to perform some work and remains available for work to the full extent of his ability. A qualified claimant with a disability who is able to work with or without a reasonable accommodation will be considered as having complied with the requirement of being available for work when the claimant is willing to work the maximum number of hours the claimant is able to work. Qualified claimants with disabilities must meet all other eligibility requirements, including the illness provisions of this section.

(3) (a) A claimant who withdraws from the labor market because of illness or injury prior to filing a claim is not eligible for unemployment benefits until he is able and available for work; provided, no claimant shall be considered ineligible with respect to any week of unemployment for failure to comply with this section if the failure is due to an illness or disability that commences after applying for unemployment benefits and no work which would have been suitable prior to the beginning of the illness or injury has been offered the claimant.

(b) A person who claims benefits under this illness provision must remain available for job referral by the department; however, he may leave the area for treatment of his illness and continue to be eligible under this section.

(c) The illness provisions of this section will continue to apply even though the current benefit year has ended and a transitional claim is filed the following year or the claim is reopened after a period of not filing with no intervening employment.

(4) "Available for suitable work" means remaining within, and actively seeking suitable work, either in a locality in which the individual has earned wages subject to this chapter during the individual's base period, or if the individual moves his permanent residence outside of that locality, then in a locality where suitable work normally is performed. Being available for suitable work is a state of mind that encompasses a readiness, ability, and willingness to work, and a desire to find a job, including the possibility of marketing one's services in the claimant's area of availability. The

type of work for which the claimant is available must exist in the claimant's area to the extent that a normal unemployed person would generally find work within a reasonable period of time.

(5) For the purposes of this section, "workweek" means:

(a) Attached. The claimant's normal work week as defined by the employer or union.

(b) Workseeking. Monday through Friday, 8 a.m. to 5 p.m.

(c) Approved Training. Regular class hours.

(6) Claimant work availability requirements are waived on Independence Day, Thanksgiving Day, Christmas Day, and New Year's Day.

(7) Distance to Work. A claimant seeking work must be willing to travel the distance normally traveled by other workers in his area and occupation.

(8) Full-Time/Part-Time Work. An individual who restricts availability to part-time work pursuant to Section 72-1366(4)(c), Idaho Code, is fully employed and ineligible to receive benefits if the individual works hours comparable to the part-time work experience in their base period. A claimant must be available for a full workweek and a full, normal workday unless the claimant establishes that the majority of weeks worked during claimant's base period were for less than full-time work, which is established where the total base period wages divided by claimant's last regular rate of pay does not exceed two thousand seventy-nine (2,079) hours.

(9) Incarceration/Work Release. A claimant who is incarcerated for any part of the workweek is not eligible for benefits for that week, unless the claimant can establish he has work release privileges which would provide him a reasonable opportunity to meet his work search requirements and obtain full-time employment.

(10) Moving to Remote Area. A claimant who moves to a remote locality where there is little possibility of obtaining suitable work will be ineligible for benefits.

(11) Public Official. A public official who receives pay and performs full-time service is employed and not eligible for benefits. Part-time officials, even though receiving pay, may be considered available for work the same as any other individual employed on a part-time basis.

(12) Public Service. Performing public service, including voluntary non-remunerated service, does not disqualify an individual for benefits as long as he is meeting the other requirements of this section.

(13) Restricting Work to Within the Home. A claimant who restricts his availability to only work done within the home which severely limits the work available to him is ineligible for benefits, unless the claimant works in an industry where teleworking is common.

(14) School Attendance or a Training Course. A person who is attending school or a training course may be eligible for benefits provided the attendance does not conflict with that person's

availability for work or for seeking work and he will discontinue attendance upon receipt of an offer of employment that creates a conflict between employment and the schooling or training.

(15) Temporary Absence from Local Labor Market to Seek Work. All claimants, regardless of their attachment to an industry or employer, must meet the same standard of remaining within their local labor market area during the workweek in order to be considered available for work, unless the primary purpose of a temporary absence is to seek work in another labor market. Claimants otherwise eligible to receive benefits while participating in an approved training program or course are not deemed ineligible when the training or course occurs outside of their local labor market due to the unavailability of similar programs or courses within their local labor market.

(16) To remain eligible for benefits, claimants must remain within a state, territory, or country included in the U.S. Department of Labor's Interstate Benefit Payment Plan.

(17) Unreasonable Restrictions on Working Conditions. A claimant who places unreasonable restrictions on working conditions that significantly hinder his availability and search for work is ineligible for benefits.

(18) Vacation. A person on a vacation approved by his employer during time when work is available is not eligible for benefits.

(19) Wages. A claimant is eligible for benefits if the wages or other conditions of available work are substantially less favorable to the claimant than those prevailing for similar work in the local area.

(20) Demanding Higher Wages. A claimant is ineligible for benefits if he unduly restricts his availability for work by insisting on a wage rate that is higher than the prevailing wage for similar work in that area.

(21) Prior Earnings. The claimant's prior earnings and past experience are considered in determining whether work is suitable.

(22) Waiver of Two-Year Training Limitation. For purposes of approving a waiver of the two (2) year limitation on school or training courses specified by section 72-1366(8)(c)(ii), Idaho Code, for claimants who lack skills to compete in the labor market, the following criteria must be met:

(a) Financial Plan. The claimant must demonstrate a workable financial plan for completing the school or training course after his benefits have been exhausted.

(b) Demand for Occupation. The claimant must establish there is a demand for the occupation in which the claimant will be trained. An occupation is in demand when work opportunities are available and there is not a surplus of qualified applicants.

(c) Duration of Training. At the time that the claimant applies for the waiver, the usual duration of the school or training course is no longer than two (2) years.

09.01.30.100. ABLE TO WORK.

“Able to work” is the physical and mental ability to perform work under conditions ordinarily existing during anormal workweek. It does not mean that a person must be able to perform work in his customary occupation or the same kind of work he last performed. Ref. Sec. 72-1366(4), Idaho Code.

01. Able to Perform Some Type of Work. A person must be able to perform work of some type for which he can qualify at the time he files an initial claim for unemployment insurance.

02. Able to Work Part-Time. A person who is able to work only part of the workday or part of the workweek is not considered “able to work” for the purposes of Section 72-1366(4), Idaho Code. This rule does not apply to claimants who establish eligibility under Section 150 of these rules, “Claimants with Disabilities.”

03. Disability Compensation. A claimant’s receipt of disability compensation does not in itself establish that he is unable to work or unavailable for work, even though the payee has been declared totally disabled.

04. Illness Provision. A person who claims benefits under the illness provision must remain available for local office job referral; however, he may leave the area for treatment of his illness and continue to be eligible under the illness provision.

05. Illness Provision as Applied to Transitional or Reopened Claim. The illness provision will continue to apply even though the current benefit year has ended and a transitional claim is filed the following year or the claim is reopened after a period of not filing with no intervening employment.

06. Withdrawing from Labor Market Because of Illness. A claimant who withdraws from the labor market because of illness or injury prior to filing a claim is not eligible until he is able and available for work.

09.01.30.150. CLAIMANTS WITH DISABILITIES.

An individual with a disability under the Americans with Disabilities Act (2008) (as defined at 29 C.F.R. Sec 1630.2(g)), and whose disability prevents the claimant from working full time or during particular shifts is not deemed unable to work or unavailable for work for so long as the claimant is able to perform some work and remains available for work to the full extent of his ability.

01. Availability Requirement. A qualified claimant with a disability who is able to work with or without a reasonable accommodation will be considered as having complied with the requirement of being available for work provided the claimant is willing to work the maximum number of hours the claimant is able to work.

02. Burden of Proof. Claimant has the burden of proving eligibility under this provision with competent evidence.

03. Additional Eligibility Requirements. Qualified claimants with disabilities must meet all other

eligibility requirements, including the illness provision of Section 100 of these rules.

09.01.30.175. AVAILABLE FOR WORK.

“Available for work” is a state of mind that encompasses a readiness and willingness to work, and a desire to find a job, including the possibility of marketing one’s services in the claimant’s area of availability. There must remain a reasonable possibility of a claimant finding and obtaining, or being referred and hired for, suitable work. Ref. Sec. 72-1366(4), Idaho Code.

01. Availability Requirements. The type of work for which the claimant is available must exist in the claimant’s area to the extent that a normal unemployed person would generally find work within a reasonable period of time.

02. Child Care. Child care must be arranged so as not to restrict a claimant’s availability for work or for seeking work.

04. Conscientious Objection. No person may be held to be unavailable for work solely because of religious convictions not permitting work on a certain day.

05. Contract Obligation. A person who is bound by a contract that prevents him from accepting other employment is not eligible for benefits.

06. Distance to Work. A claimant seeking work must be willing to travel the distance normally traveled by other workers in his area and occupation.

07. Domestic Circumstances. A claimant is not eligible for benefits if domestic circumstances take precedence over the claimant’s availability for work or for seeking work.

08. Equipment. Claimants will be required to provide necessary tools or equipment in certain occupations. The lack of these tools or equipment will directly affect a claimant’s availability for work, unless he will accept other work.

09. Evidence. A claimant is responsible for providing proof of his availability for work and for seeking work if his availability is questioned or proof is required by these rules.

10. Experience or Training. A claimant is expected to be available for work consistent with his past experience or training, provided there is no change in his ability to perform that work.

11. Full-Time/Part-Time Work. An individual who restricts availability to part-time work pursuant to Section 72-1366(4)(c), Idaho Code, is fully employed and ineligible to receive benefits if the individual works hours comparable to the part-time work experience in their base period. A claimant must be available for a full workweek and a full, normal workday unless the claimant establishes:

a. The majority of weeks worked during claimant’s base period were for less than full-time work, which is established where the total base period wages divided by claimant’s last regular rate of pay does not exceed two thousand seventy-nine (2079) hours; or

b. Eligibility under Section 150 of these rules, “Claimants with Disabilities.”

12. Incarceration/Work Release. A claimant who is incarcerated for any part of the workweek is not eligible for benefits for that week, unless the claimant can establish he has work release privileges which would provide him a reasonable opportunity to meet his work search requirements and obtain full-time employment.

13. Jury Duty/Subpoenas. A claimant serving on jury duty or subpoenaed is excused from the availability and work-seeking requirements of the law for that time period, and may refuse work that would commence during that time period.

14. Licensing or Government Restrictions. A claimant prohibited by law from engaging in certain work must be available for other employment to be eligible for benefits.

15. Moving to Remote Area. A claimant who moves to a remote locality where there is very little possibility of obtaining work will be ineligible for benefits.

16. Public Official. A public official who receives pay and performs “full-time” service is not unemployed or eligible for benefits. Part-time officials, even though receiving pay, may be considered available for work the same as any other individual employed on a part-time basis. Ref. Sec. 72-1312(1).

17. Public Service. Performing public service, including voluntary non-remunerated service, does not disqualify an individual for benefits as long as he is meeting the availability and work-seeking requirements.

18. Restricting Work to Within the Home. A claimant who restricts his availability to only work done within the home which severely limits the work available to him is ineligible for benefits.

19. School Attendance or a Training Course. A person who is attending school or a training course may be eligible for benefits if the attendance does not conflict in any way with that person’s availability for work or for seeking work and if he will discontinue attendance upon receipt of an offer of employment that creates a conflict between employment and the schooling or training.

20. Temporary Absence from Local Labor Market to Seek Work. All claimants, regardless of their attachment to an industry or employer, must meet the same standard of remaining within their local labor market area during the workweek in order to be considered available for work, unless the primary purpose of a temporary absence is to seek work in another labor market. Claimants otherwise eligible to receive benefits while participating in an approved training program or course are not deemed ineligible when the training or course occurs outside of their local labor market due to the unavailability of similar programs or courses within their local labor market.

a. To remain eligible for benefits, claimants will remain within the state, territory, or country included in the USDOL Interstate Benefit Payment Plan.

21. Time.

a. Time Restrictions. A claimant may not impose restrictions on his time, including either hours of

the day or days of the week, which will limit his availability to seek or accept suitable work.

b. Shift Restrictions. A claimant who restricts his availability to a single shift may not be fully available for work if the restriction significantly reduces his chances of becoming employed.

22. Transportation Difficulties. Lack of transportation is not a bona fide reason for a claimant to fail to be available for or to seek work. Transportation is the responsibility of the claimant.

23. Unreasonable Restrictions on Working Conditions. A claimant who places unreasonable restrictions on working conditions so as to seriously hinder his availability and search for work is ineligible for benefits.

24. Vacation. A person on a vacation approved by his employer during time when work is available is not eligible for benefits.

25. Wages. A claimant is eligible for benefits if the wages or other conditions of available work are substantially less favorable to the claimant than those prevailing for similar work in the local area. Ref. Sec. 72-1366(7)(b), Idaho Code.

a. Demanding Higher Wages. A claimant is ineligible for benefits if he unduly restricts his availability for work by insisting on a wage rate that is higher than the prevailing wage for similar work in that area.

b. Prior Earnings. The claimant's prior earnings and past experience are considered in determining whether he is available for suitable work.

26. Waiver of Two-Year Training Limitation. For purposes of approving a waiver of the two (2) year limitation on school or training courses, specified by Idaho Code Section 72-1366(8)(c)(ii), for claimants who lack skills to compete in the labor market, the following criteria must be met:

a. Financial Plan. The claimant must demonstrate a workable financial plan for completing the school or training course after his benefits have been exhausted.

b. Demand for Occupation. The claimant must establish there is a demand for the occupation in which the claimant will be trained. A "demand occupation" is one in which work opportunities are available and there is not a surplus of qualified applicants.

c. Duration of Training. At the time that the claimant applies for the waiver, the duration of the school or training course is no longer than two (2) years to completion.

d. Denial. No claimant will be denied a waiver of the two (2) year limitation on school or training because the claimant is already enrolled or participating in the school or training at the time he requests the waiver.