



COMMUNITY LEGAL SERVICES  
OF PHILADELPHIA

December 10, 2012

By email only: [irrc@irrc.state.pa.us](mailto:irrc@irrc.state.pa.us)

2939

Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17101

2012 DEC 11 AM 8:45

RECEIVED  
IRRC

Re: Proposed Regulations on Active Work Search Rules  
for Unemployment Compensation (Regulation #12-  
96)(IRRC #2939)

To Whom It May Concern:

On behalf of the unemployed and low income workers who are our clients, *Community Legal Services, Inc. ("CLS")* urges the *Independent Regulatory Review Commission ("IRRC")* to disapprove the final-form active work search rules proposed by the Pennsylvania Department of Labor and Industry ("the Department").

CLS recognizes and appreciates that some of the recommendations that we made in our comments about the rulemaking package originally published by the Department have been adopted. However, the formulaic work search requirements that are at the heart of this package remain unchanged and are unacceptable. Moreover, the lack of a good cause exception exposes the unwary to loss of benefits and overpayments for unintentional mistakes.

**1. The Work Search Requirements Are Inflexible and Inconsistent with the Unemployment Compensation Law.**

In essence, the work search rules are the proposed amendments to 34 Pa. Code § 65.11(e) ("Section 65.11(e)"), the "weekly work search activities" requirements. The requirements are substantially different as of the ninth week of filing of claims for unemployment compensation ("UC") benefits. Stated simply:

- **During Weeks 3-8**, an unemployed person must apply for at least two jobs, and may limit his applications to those that are similar to his prior employment and are within a 45 minute commuting distance. Section 65.11(e)(1). These

limitations are consistent with the statutory requirements created by Act 6. Section 401(b)(1)(iii) of the UC Law, 43 P.S. § 801(b)(1)(iii) ("Section 401(b)(1)(iii)").

- **Starting Week 9**, the unemployed person must apply for at least three jobs; if needed to make these applications, he may not limit his search to similar jobs within a 45 minute commute. Section 65.11(e)(2).

Notably, a person may not "repeat" an application unless he has a reasonable basis to believe that the employer's hiring circumstances have changed. Section 65.11(e)(3)(ii).

There are numerous ways in which this rigid and inflexible scheme simply does not work.

- a. Unemployed workers should not be penalized for an aggressive initial job search and incentivized to ration their job applications.**

When the average person becomes unemployed, he does not think about how to save his potential job applications to reach out over the anticipated duration of his unemployment. Instead, he identifies his best job opportunities and applies to them all at the outset. What better way to get the job that he wants, and as soon as possible, than apply for all the best possibilities immediately? But by doing so, he risks not having appropriate opportunities to apply for down the road, especially as of the ninth week when he is expected to broaden his search. The Department exacerbates this dynamic by refusing to allow the "excess applications" to be used later in the claim (Department's Comments to Final-Form Rulemaking ("Department's Comments"), at 12). The mismatch between the proposed rules and an aggressive job search is reason enough for IRRC to disapprove the regulatory package.

- b. There is no justification for the nine week delineation, after which the person may need to apply for dissimilar jobs and/or jobs that are more than 45 minutes away.**

Asked by IRRC to justify the nine-week line that it has drawn, the Department relies upon suitability case law from decades ago (Department's Comments, at 7-8). This justification is not sufficient, given the realities of the labor market and the consequences of the heightened job search requirements to the unemployed.

Over the last few decades, employment has become ever more specialized and skilled. Compared to the last generation, workers in this generation have been urged to enhance their education and training to maximize both employability and wages. But a cost of specialization is that the next appropriate job may not immediately available. Should a phlebotomist give up her training and experience after only two months because the next phlebotomy job has not yet presented itself? Should an electrician be forced to look for laborer's jobs?

And what of a person who has additional employment barriers? A person with a criminal record will inevitably need to look longer and harder than someone whose background is clear. Does that mean that he will always be forced to look for dissimilar work?

In 2010, the *average duration* of UC claims paid was 19.9 weeks,<sup>1</sup> meaning, of course, that a large number of claimants suffered significantly longer unemployment spells. And yet the Department does not use this average as a point at which the unemployed might be expected to lower expectations; rather remarkably, it determines instead that this point should occur at less than half of the average duration. Nor does it measure this point of diminished expectations in reference to the usual maximum duration of a regular claim under the UC Law of 26 weeks. Nor does the Department tell us what percentage of its recipients make 9 or fewer weeks of claims.

We wish that the nine-week demarcation were a reasonable line at which most of the unemployed could be expected to find appropriate new jobs. If it were, much suffering would be alleviated. But even in the best of times, it is not, and the line should not be drawn there.

**c. There is no statutory authority for the nine-week delineation.**

As we noted in our initial comments, the Department's proposed regulation grafts additional requirements for work search not found in Act 6. Section 401(b)(1)(iii) only requires unemployed workers to apply for job with wages similar to their prior employment and within a 45 minute commuting distance. There is no statutory support whatsoever for an arbitrary line at week nine after which this provision is no longer applicable. By creating such a line, the Department's regulation guarantees that it will be susceptible to litigation.

**d. The one-size-fits-all approach provides no flexibility for differing needs and conditions around the Commonwealth.**

The proposed regulations apply the same work search rules to everyone. There is simply no accommodation of the significant differences that may make finding new employment significantly more difficult for some unemployed workers.

- The proposed regulations treat all skill sets the same. Thus, a person in an occupation of limited jobs but high skills is required to abide by the same rules as a person to whom replacement jobs are much more available.
- The proposed regulations would apply in all economic conditions. No matter what the unemployment rate or the average claim duration, the same rules apply. People would be required to broaden their job searches at the ninth week, whether

---

<sup>1</sup> PA Dep't of Labor and Industry, Actuarial Evaluation 2010: Financial Operations of the Pennsylvania Unemployment Compensation Program, at 33. This average duration for 2010 should be compared to the lowest average during over the last 20 years, which was still 15.0 weeks in 2001. Id.

their unemployment spell comes during a period of “full employment” or the Great Recession.

- The rules do not take into account the local labor market. Thus, the same rules apply whether a person lives in an area in which jobs are readily available and accessible, or in a rural area in which jobs are both scarce and distant.
- Most problematic, some unemployment workers will find themselves in positions that are disadvantaged in multiple ways, such as living in rural areas of high unemployment. But the proposed rules make no accommodation whatsoever for such conditions. To the contrary, such workers are further disadvantaged by the limitation on reapplications.

The Department indicates that it seeks administrative ease in implementing the active work search requirement (Department’s Comments, at 9-10). But the General Assembly’s goal in enacting Act 6 was to ensure that unemployed people were looking for work, not making implementation as easy as possible for the Department. It should be required to come up with better calibrated standards that are well-grounded in the law.

## **2. The Proposed Regulations Are Flawed in Failing to Include a “Good Cause” Exception.**

The Department specifically declined to include a “good cause” exception to the work requirements. While recognizing that “good cause” exceptions are present throughout the UC Law, it refused to include such an exception on the grounds that there is no explicit good cause provision in the statute (Department’s Comments, at 14).

The consequence of the Department’s decision is to impose a strict liability standard on unemployed workers. If they have not complied, any good reasons for failing to do so will not be entertained. We are not aware of another provision in the UC Law, a remedial statute that is to be construed in favor of the unemployed worker,<sup>2</sup> in which this is the case.

By way of example of how this scenario is likely to play out, there certainly have been unemployed workers who are unclear about how these complex work search rules apply to them. Yet over the last few months, the UC Service Centers have been virtually inaccessible to people seeking to do business with them.<sup>3</sup> If a person has been unsure of

---

<sup>2</sup> Fulton v. Unemployment Compensation Board of Review, 126 Pa. Commw. 363, 366 (Pa. Commw. 1989).

<sup>3</sup> E.g., Dave Bohman, *Unemployed Need Help, Get Busy Signal* (Oct. 18, 2012), available at <http://wnep.com/2012/10/18/unemployed-need-help-get-busy-signal/>; Jane M. Von Bergen, *Hearing Looks at Problems with Filing for Pennsylvania Jobless Aid*, *Phila. Inquirer* (Oct. 24, 2012), available at [http://articles.philly.com/2012-10-25/business/34709271\\_1\\_benefit-claims-unemployment-benefits-unemployment-office](http://articles.philly.com/2012-10-25/business/34709271_1_benefit-claims-unemployment-benefits-unemployment-office); Spencer Soper, *Unemployed Decry Jammed Phone Lines*, *Allentown Morning Call*

the requirements and cannot get the answer to his questions from the UC system staff, should he be penalized if he is not in compliance? We submit that the answer is no.

The Department suggests that the new waiver procedure that it has created will eliminate the need for a good cause provision (Department's Comments, at 14). However, a person cannot be expected to seek a waiver if he does not know that he has done something wrong. The regulations should not be permitted to be implemented without a good cause exception, particularly where the Department is specifically resolving against having one.

\*\*\*\*\*

For these reasons, CLS urges that the regulatory package be disapproved by the IRRC, until the Department has resolved these critical deficiencies.

Should there be any questions, feel free to contact me at 215-981-3719 or [sdietrich@clsphila.org](mailto:sdietrich@clsphila.org). Thank you for your attention to these remarks.

Very truly yours,



SMD

SHARON M. DIETRICH  
Managing Attorney

cc: Julia Hearthway, Secretary, Department of Labor and Industry (*email*)  
Gregg Shore, Deputy Secretary, Department of Labor and Industry (*email*)  
Sean F. Creegan, Deputy Chief Counsel, Department of Labor and Industry (*email*)  
Michaele A. Totino, Regulatory Analyst, Independent Regulatory Review Commission (*email*)