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HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

2939

June 26, 2012

The Honorable Silvan B. Lutkewitte, III, Chairman
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

**RE: Regulation #12-96: Unemployment Compensation; Active Search for Work
(IRRC #2939)**

Dear Chairman Lutkewitte:

As the Democratic Chairman of the House Labor and Industry Committee, I respectfully submit the enclosed comments on behalf of the Democratic Members of the House Labor and Industry Committee to assist in the Independent Regulatory Review Commission's review of the above-referenced proposed rulemaking submitted by the Department of Labor & Industry.

As you are aware, the proposed rulemaking would amend Title 34 of the Pennsylvania Code by adding requirements for unemployment compensation claimants to actively search for work while collecting unemployment compensation benefits. This requirement was established by Act 6 of 2011, which amended the Unemployment Compensation Law.

The enclosed comments detail our specific concerns for the Department's proposed regulations. However, please know that we are also supportive of comments submitted by Community Legal Services (CLS) of Philadelphia. I believe our comments as well as those submitted by CLS necessitate a thorough review of the proposed rulemaking by the Commission.

To provide a brief overview of our comments, we believe that several areas of the regulations are inconsistent with or exceed the intent of the work search requirement established by Act 6. Specifically, our concerns for the proposed regulations include the following:

- The department cannot enforce work search requirements against claimants for any weeks prior to the date that approved regulations are published in the Pennsylvania Bulletin.
- The department must ensure claimants will receive detailed instructions of the work search registration process as well as confirmation of completed registration.
- The requirement to retain work search records for two-years after an initial claim for benefits and make them available for audits by the department is excessive.

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- The requirement for claimants to submit a minimum number of job applications to employers each week is arbitrary, exceeds the intent of the law, and may be counter-productive for claimants and employers.
- The two-tiered system of work search requirements which increases requirements based on benefit weeks may be confusing and exceeds the work search requirement intended by the law.
- The regulations fail to include several waivers or exemptions, including those for claimants seeking work in industries or occupations in which resumes are not commonly used, for situations where compliance with work search requirements would be oppressive or inconsistent with the intent of the law, and for certain claimants who are notified of a work recall date.
- The regulations fail to identify a process by which claimants may obtain allowable waivers or exemptions.
- The regulations should allow for leniency to claimants who are limited in work opportunities due to a disability or other special circumstances.
- Good cause exceptions should be provided where failure to comply with the regulations is not willful or through no fault of the claimant's.

I respectfully submit on behalf of the Democratic Members of the House Labor and Industry Committee the enclosed comments for the commission's consideration and strongly urge the department to address the issues and concerns identified. If you have any questions or need further clarification, please do not hesitate to contact my office.

Sincerely,



William F. Keller, Democratic Chairman
Labor and Industry Committee
Pennsylvania House of Representatives

cc: The Honorable Julia Hearthway, Secretary, Department of Labor and Industry
Sean F. Creegan, Deputy Chief Counsel, UC Division, Department of Labor and Industry
Fiona E. Wilmarth, Analyst, Independent Regulatory Review Commission
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Democratic Members of the House Labor & Industry Committee

**Comments of Chairman William F. Keller and the Democratic Members of the
Pennsylvania House of Representatives Labor & Industry Committee on the
Proposed Unemployment Compensation Active Search for Work Regulations
Regulation # 12-96 (IRRC # 2939)**

§ 65.11. Active search for work.

(a) Initial procedures; and (b) Work registration.

- **The proposed changes to subsection (a) regarding initial procedures should be clarified to ensure that the Department of Labor and Industry (“department”) will provide detailed instructions on the work search registration process as well as confirmation of completed registration to the claimant.**

The need to provide detailed registration instructions is exceedingly important in light of the penalty for failing to register as provided in subsection (b) of the proposed regulations. Subsection (b) provides that a claimant will be considered ineligible for unemployment compensation (“UC”) benefits for failing to register for work search services in the Pennsylvania Careerlink® system during any weeks after the 30-day requirement and until registration is completed.

As of January 2012, the department has posted “Active Search for Work Requirements” on its website. (This is an issue that we will address in more detail later in our comments.) These requirements are similar to the proposed regulations and state that all claimants applying for UC benefits after January 1, 2012, “are required to register for employment search services with the Pennsylvania CareerLink® system within 30 days after you file your application for benefits, conduct an active search beginning with the third consecutive week of your benefit year, and keep a record of your work search activities and provide the record to the department when requested to do so.”

Since January, Chairman Keller’s office has fielded questions from claimants on the work search requirements regarding the Pennsylvania Careerlink® registration process. All claimants seeking such assistance had used the online system. Several claimants were unsure as to whether they had completed the required work search registration. At least two claimants believed they had properly registered, but had since received letters providing notice of warning of the loss of benefits for failure to comply with the registration. They also expressed difficulty in navigating the online system.

Unfortunately, the department’s staff informed Chairman Keller’s office that the department lacks the ability to verify a claimant’s status in the Pennsylvania Careerlink® system. In fact, the staff explained that Pennsylvania Careerlink® is separated from the UC system and operated by a third-party vendor.

Upon further investigation of the Pennsylvania Careerlink® website, little assistance is made available to claimants who may not be “Internet-savvy” – in fact, when clicking on “Contact Us”, the user is directed to an e-mail form to submit questions.

Additionally, while 65 Pennsylvania Careerlink® offices exist throughout the state, many serve several counties or wide geographical regions and are out of reach of claimants who lack transportation. As well, it is unclear whether the department intends for these offices to register claimants for work search services.

Under the UC system, claimants may submit claims for benefits online or by phone. As such, it seems reasonable to also ensure the availability of call-in assistance for work search registration for claimants who lack Internet skills or online access.

Once again, we believe that these questions and concerns highlight the need for the department's regulations to provide clear and detailed instructions on the registration process as well as a confirmation after the registration process is completed.

- **The proposed regulations must provide an exemption from posting a resume on the Pennsylvania Careerlink® System for claimants seeking work in an employment sector in which resumes are not commonly used.**

Subsection (a) of the proposed regulations states that claimants will be provided information “regarding the process to register for employment search services and post a resume in the Pennsylvania Careerlink® system....” There are no listed exceptions in the proposed regulations regarding posting a resume in the Careerlink® system. However, § 401(b)(1)(ii) of the Unemployment Compensation Law (“UC Law”) as amended by Act 6 of 2011, requires “posting a resume on the system’s database, unless the claimant is seeking work in an employment sector in which resumes are not commonly used.” Without an exemption for claimants seeking work in an employment sector in which resumes are not commonly used, the regulations are in conflict with the UC Law.

(c) Weekly requirements.

- **Subsection (c) of the proposed regulations should be clarified to ensure that the department will inform claimants of the desired format of work search records.**

In summary, paragraphs (2),(3), and (4) of subsection (c) of the proposed regulations require claimants to create a record of work search activities, retain these records for two years, and produce them for the department’s review at such times and in such formats as required by the department. To facilitate compliance with these requirements, claimants should be advised of the department’s preferred format for these records at the start of the claim. Furthermore, it is our understanding that the department has developed a form on which claimants may record work search activities, which is mailed to new claimants and made available online. As such, the regulations could indicate that claimants will be provided forms containing the recommended format for recording work search activities. However, it should also be made clear in the regulations that use of the department’s form is not mandatory.

- **The two-year record retention requirement under paragraph (3) of subsection (c) is excessive and should be decreased to require the claimant to maintain work search records through the conclusion of their benefit year.**

The requirement to maintain a work search record for two years after benefits are approved is problematic. First, the two-year period would allow the department to audit work search records, in some cases, long after benefits have been paid to the claimant. Should an audit uncover mistakes or omissions in a work search record long after a claimant has been paid their full benefit allowance, it may be unlikely that a claimant will have adequate resources to repay any overpayments assigned. Additionally, it may be unlikely that all claimants will properly store records for a significant length of time after their benefit payments have concluded. More realistically, claimants should be expected to maintain work search records throughout their benefit year.

- **The regulations should include a good cause exception to the recordkeeping requirements.**

As noted above, the two-year record retention requirement provided in paragraph (3) of subsection (c) is impractical, and without a good cause exception, unfortunate claimants who through no fault of their own cannot maintain records for the required two-year period may be forced to pay overpayments that cause an unreasonable burden on the claimant. Many examples of why a good cause exception is necessary have been provided in comments submitted on these regulations by Community Legal Services, including a claimant who suffered a home fire or a basement flood or moved because of foreclosure or financial difficulties. Moreover, including a good cause exception is good policy and in line with the UC Law.

(d) Weekly work search activities.

- **Unintentional violations of work search requirements by claimants may result from confusion over the two-tiered system of work search requirements proposed by the department.**

Subsection (d) of the proposed regulations creates two tiers of work search requirements that claimants must meet depending on how many weeks they have received benefits. However, many times, claimants who contact legislative offices are unsure how many weeks they have claimed benefits – such confusion may be due to benefit payments that are typically delayed for several weeks after the initial application is submitted or the result of another reason. We are concerned this two-tiered system may be difficult for some claimants to follow, especially if the department does not provide notice of the date that a claimant would be subject to the second tier of requirements. We are concerned that unintentional non-compliance and unnecessary penalties may result from any confusion over benefit weeks or the applicable tier.

- **The work search requirements in section (d)(2)(ii) of the proposed regulations exceed the intent of the UC Law.**

As stated above, subsection (d) of the proposed regulations create a two-tiered system of work search requirements. Paragraph (d)(1)(ii) of the proposed regulations include requirements of the first tier of work search requirements, which apply to a claimant during the third through eighth consecutive week of the benefit year. This paragraph generally matches the limitations on work search requirements imposed by the UC Law, providing that “the claimant may limit his application to the positions that would provide employment and wages similar to those the claimant had prior to his employment and are within a 45 minute commuting distance or a commuting distance that is generally accepted in the claimant’s labor market, whichever is greater.” In comparison, § 401(b)(1)(iii) of the UC Law provides that an active work search for suitable employment includes “applying for positions that offer employment and wages similar to those the claimant had prior to his unemployment and which are within a fort-five (45) minute commuting distance.”

Conversely, paragraph (d)(2)(ii) of the proposed regulations includes requirements of the second tier of work search requirements, which apply to a claimant after the eighth week of the benefit year. The paragraph states that “the claimant may not limit his applications to positions described in paragraph (1)(ii) if doing so would result in an insufficient number of applications during the week.”

We believe that Act 6 of 2011 intended the limitations added to § 401(b)(1)(iii) of the UC Law to apply to active work searches during all weeks of the benefit year. Thus, claimants should not be faulted for failure to apply for positions that do not meet these criteria. Moreover, these limitations

were created to further define “suitable employment” and avoid ambiguity in the term. While we understand that claimants may need to reasonably expand their work search activities after a time, the legislature did not intend to penalize claimants who fail to apply for jobs that may be inaccessible due to distance or well outside of their industry, expertise or salary needs.

- **The proposed regulations require an arbitrary weekly work search standard that may not work for every claimant.**

Paragraphs (d)(1) and (2) of the proposed regulations require claimants to apply for a minimum number of jobs each week. This arbitrary requirement may prove burdensome and counter-productive to both claimants and employers.

In a local setting, it is very likely that claimants will, from week to week, temporarily exhaust local and suitable job openings or advertisements for which they may apply. The arbitrary requirement of applying for a minimum number of jobs may result in claimants applying for any and all work opportunities they find, regardless of whether the employer is hiring or whether they are qualified or can realistically accept the position.

Instead of requiring a minimum number of job applications each week, we strongly recommend incorporating the list of acceptable work search activities under paragraph (d)(4) of the regulations to serve as alternative options to job applications. This would allow claimants to, in any week, vary between applying for work positions and the activities listed, which include attending a job fair, utilizing an employment agency, taking a pre-employment test, etc.

(e) Alternative Requirements.

- **The regulations should include a process for a claimant to obtain waivers.**

Paragraph (e)(4) of the proposed regulations is identical to § 401(b)(3) of the UC Law. This section of the law authorizes the department to issue waivers of work search requirements to a claimant whose job search efforts include actions that are traditionally used in the claimant’s industry or occupation. The regulations should identify a consistent process by which a claimant may seek approval under this section.

(f) Applicability

- **The exemption for claimants with a return to work date must allow for verbal work recall dates.**

Under the UC Law, § 401(b)(5) provides an exemption for “a claimant who is laid off of work for lack of work and advised by the employer of the date on which the claimant will return to work.” Paragraph (f)(2)(i) of the proposed regulations expands upon this exemption by stating that the recall date must be provided to the employee in writing.

It is important to note that the UC Law’s exemption provides a solution for a significant concern raised by employers whose workers often encounter seasonal or cyclical layoffs. These employers seek to avoid the loss of an established and well-trained workforce should their employees be required to search for other work opportunities during temporary layoffs.

The proposed regulations' requirement of a written work recall date is reasonable in many cases. However, it may be burdensome for workers in industries that have multiple or shorter periods of layoffs or where work recall dates can be affected by weather or product delays. It is our view that Act 6 of 2011 intended to include these situations within this exemption. Accordingly, the proposed regulations should ensure that the exemption may apply under these circumstances.

Additional Concerns

- **In accordance with § 401(b)(6) of the UC Law, the proposed regulations must provide for exemptions to the work search requirements for situations where compliance would be oppressive or inconsistent with the purposes of the UC Law.**

The proposed regulations do not include the exemption set forth in § 401(b)(6) of the UC Law, which enables the department to "waive or alter the requirements of this subsection in cases or situations with respect to which the secretary finds that compliance with such requirements would be oppressive or which would be inconsistent with the purposes of this act." The General Assembly intended for such an exception to exist, and as such, the department must integrate the exception into the proposed regulations. It is important to inform claimants of the opportunity to apply for this waiver as well as to provide criteria under which a claimant may qualify.

Please note that legislative offices have been contacted by claimants seeking an exemption for situations where compliance seems oppressive or unnecessary. For example, Chairman Keller's Office was contacted by a claimant who had a valid, full-time job offer that was conditional upon completion of the company's part-time training program as well as a claimant who was limited to specific work opportunities due to a disability. However, Chairman Keller's staff was informed by the department that there is no clear process in place to request such an exemption. Instead, the department instructed Chairman Keller's staff to advise claimants to contact a UC call center, reference the section of law under which they would like to request the exemption, and explain their circumstances. To our knowledge, such requests were then directed to the Office of the Director of Unemployment Compensation and claimants were to wait for review.

It is our view that without a clear and stated process to make such requests for exemptions, many claimants will be unaware of their right to do so or too intimidated by the lack of direction to make such requests. Additionally, UC call center staff may be unprepared to handle such requests, and department staff may be unable to respond in a timely manner.

- **The regulations should include a good cause exception for claimants whose failure to comply with the regulations is not willful.**

As suggested in comments submitted by Community Legal Services, there are many circumstances which may inhibit an individual from fully complying with work search requirements. Where failure to comply was unintentional and through no fault of the claimant's, an exception should be granted.

- **The regulations should provide exemptions to the work search requirements allowing leniency to claimants who have unique circumstances, such a disability or another limitation to the scope of work they may accept.**

We believe that the department should ensure that these individuals may seek a complete waiver or significantly reduced work search requirements. We believe that it is adverse to the intent of the UC Law to place a heavy burden on individuals who may have limited work opportunities or to force

such individuals to apply for job opportunities each week that they realistically cannot accept or perform. As an alternative, it may be beneficial to consider a claimant's participation in educational programs, vocational rehabilitation services, or similar community services to satisfy all work search requirements.

- **The department cannot enforce the active search for work requirements until the final-form regulations have gone through the proper vetting process, are approved and published in the Pennsylvania Bulletin.**

In the department's proposed rulemaking submittal, it states that the regulations "would affect all claimants who file an application for UC benefits that takes effect on or after January 1, 2012." Moreover, as previously noted, in January 2012, the department posted "Active Search for Work Requirements" on its website and began mailing the work search requirements to new claimants. The requirements, which are substantially similar to the proposed regulations, state that all claimants applying for UC benefits after January 1, 2012, "are required to register for employment search services with the Pennsylvania CareerLink® system within 30 days after you file your application for benefits, conduct an active search beginning with the third consecutive week of your benefit year, and keep a record of your work search activities and provide the record to the department when requested to do so."

Currently, the department does not have the authority to enforce the "Active Search for Work Requirements" or the proposed regulations. The department will not have enforcement authority until the proposed regulations are properly vetted through the regulatory review process, are approved by IRRC and published in the Pennsylvania Bulletin. Therefore, a claimant cannot be disqualified from collected UC benefits for violation of any work search requirement for any week before the effective date of the approved, final-form regulations.