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HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

2939

December 10, 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 am writing to request that the Commission disapprove the Department of Labor & Industry's final-form rulemaking amending Chapter 65 of the Unemployment Compensation (UC) regulations.

I appreciate the department's efforts to incorporate several of my suggestions into this rulemaking, however, I remain concerned by several items that will impose strict requirements on claimants beyond what our members intended when they voted for final passage of Senate Bill 1030 (Act 6 of 2011). I hope that you will consider the following points in your final review of the department's rulemaking, as well as consider the comments previously submitted by both myself and Community Legal Services of Philadelphia (CLS).

1) The final-form rulemaking is not consistent with the legislative intent of Act 6 of 2011.

The regulation requires a claimant to apply for a minimum number of positions each week regardless of whether a position would provide employment and wages similar to those the claimant had prior to his or her unemployment and is within a 45 minute commuting distance.

Notwithstanding the "at minimum" statement contained in Act 6 of 2011, I believe that when the legislature approved the language contained in section 401(b)(1), we defined specific parameters for three activities that the department "shall include" in work search requirements, including the scope of employment for which a claimant must apply. Specifically, the three work search activities included in the law are: (1) registration by a claimant for employment search services offered by the PA Careerlink system within 30 days after the initial application for benefits; (2) posting a resume on the PA Careerlink system, unless resumes are not typically used in the

claimant's employment sector; (3) applying for positions that offer employment and wages similar to those the claimant had prior to his unemployment and which are within a 45 minute commuting distance. The department accepted the first and second work search activities as stated, but seeks to change the requirements of the third activity by requiring claimants to seek jobs outside of the boundaries provided by the General Assembly if it is necessary to meet the required minimum number of job applications per week.

Unlike the lack of specificity of the number of required job applications, the law is not vague in limiting the requirement to similar positions and placing a ceiling on commuting distances. By expanding this provision, the department will impose greater standards on claimants. While the department correctly states that, after a period of time unemployed, claimants may be penalized for failure to accept suitable work when offered even if the work provides substandard wages or requires additional travel time (under section 402(b) of the UC Law), it was not the legislative intent to penalize claimants for failure to actively seek substandard work, especially during the first two months of unemployment.

2) The final-form rulemaking is unreasonable for claimants.

A one-size-fits-all standard for work search activities may be simple for the department to administer, but will be burdensome for and unintentionally penalize individual claimants. Whether a job opening is considered "suitable work" has long been determined on an individual claimant basis. Moreover, it is my understanding that the courts have considered many factors in addition to length of time unemployed in considering whether a work opportunity may be suitable for an individual – including, for example, the claimant's prior work experience, availability of jobs in the claimant's field, wages, location and efforts to obtain transportation. It is also my understanding that the courts have not typically found "suitable work" to include situations where employment is both far below a claimant's previous pay rate and farther than a reasonable commuting distance. Accordingly, my previous comments requested that the department provide more flexibility than simply requiring a number of job applications per week.

Greater flexibility in job search activities would help the long term unemployed. The current economic environment and labor market has caused unemployed workers to spend more time looking for work. The department cites a report, "Job search of the unemployed by duration of unemployment," published in the Bureau of Labor Statistics' *Monthly Labor Review*. This report also states that prior to the effects of the recession on the job market, in years 1994-2008, the median duration of unemployment was about 5 weeks; however, in 2011, the median duration of unemployment extended to 10 weeks. The report further states that in 2011, 26.7% of successful job searches took at least 6 months, while only 10% of successful job searches lasted that amount of time in 2007. Legislative offices often hear that the problem for these workers is typically not a lack of willingness to submit job applications, but a lack of local employment opportunities or qualifications for available job opportunities.

Several other states have taken more flexible approaches to work search requirements. The US Department of Labor's *Comparison of State Unemployment Laws* (2012) includes a summary of minimum work search requirements by state; this list shows that 18 other states do not specify minimum weekly job applications. An informal review of several states that do specify a

number of applications per week shows some variance in what may be required – for example, Arizona assigns less job applications to claimants in rural areas and Indiana (which requires three work search activities per week) maintains a list of acceptable work search activities that includes items in addition to job applications, such as participating in skills assessments, job search seminars or workshops.

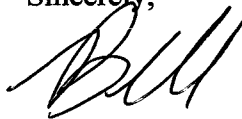
The two-year record retention is troubling in light of the expanded job application requirements and especially as the department indicates that work search records may be audited or challenged after a claimant has stopped receiving benefits. If a claimant fails to maintain such records or fails to apply for work that they did not believe to be suitable to their situation, the claimant may find themselves in a lengthy appeals process or may unintentionally cause a disqualification and an excessive overpayment.

As you can see from the legislative history of Senate Bill 1030, the final version of this bill was unanimously approved by the House of Representatives and Senate. It represents a careful negotiation of contentious issues between Republican and Democratic legislators of both chambers and was based on input and agreements by both labor and business groups.

Unfortunately, I believe that this regulation fails to maintain the cooperative efforts demonstrated by the legislature in crafting Senate Bill 1030 and imposes standards that are not in the best interest of eligible claimants. I urge the Commission to consider the real implications of these regulations on residents. By law, the UC system serves individuals who are eligible because they have lost their job through no fault of their own. The department's final-form rulemaking will likely cause numerous hard-working individuals to lose much-needed benefit payments.

I hope that my comments are helpful in your consideration of this important matter. Once again, I respectfully request that this final-form rulemaking be disapproved by the Commission. Should you have any questions or require further information, please do not hesitate to contact my office.

Sincerely,



William F. Keller, Democratic Chairman
House Labor & Industry Committee

cc: The Honorable Julia Hearthway, Secretary, Department of Labor and Industry
Sean F. Creegan, Deputy Chief Counsel, UC Division, Department of Labor and Industry
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