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1000 ABLE AND AVAILABLE

1001 STATUTE

§24(b)

"An individual, in order to be eligible for benefits pursuant to this chapter, shall... (b) Be capable of, available, and actively seeking work in his usual occupation or any other occupation for which he is reasonably fitted;"

1005 PRINCIPLES

(A) Capable of Work

In order for an individual to be considered capable of work, he or she must be able to perform some type of remunerative work even though it need not be his or her most recent or even customary occupation. [See §1(r)(3) of the Law for a definition of "remuneration".]"] For example, if an individual's physical condition has changed because of illness or injury, the most recent work performed may no longer be suitable, but he or she may still be *capable of* some other employment. Generally, a claimant is presumed to be capable of working unless an issue arises from:

- The claimant's own statement concerning his or her health; or
- Information from some other source with respect to capability.

When a question of capability arises due to a change in physical circumstances, the claimant must present medical evidence of his or her capability to work during the period for which benefits are claimed. The burden of proof is on the claimant to establish his or her capability. A statement by the claimant that he or she is not capable of working or a statement to that effect by a competent medical authority is sufficient grounds for disqualification. However a qualified individual with a disability who has not withdrawn from the labor market and who is able to work with or without a reasonable accommodation shall not be disqualified.

(B) Available for Work

A claimant will be considered available for work if he or she is genuinely attached to the labor market which may in part be determined by the readiness of a claimant to accept suitable work when offered. To fulfill this requirement the claimant must be ready and willing to work either in his or her usual occupation or in another occupation that reasonably matches his or her training or experience. The claimant may not impose unreasonable restrictions or limitations on the shifts of work, wages, type of work, or location of work, to the extent that such restrictions would make obtaining work unlikely. A claimant may also meet the requirements of §24(b) when available only for part-time work provided the claimant has good cause for limiting availability to part-time work.

A claimant may with *good cause* impose restrictions on his or her shifts of work. "Good cause" has been interpreted by the courts to include personal reasons such as family responsibilities or the availability of daycare services. It can also include reasons related to health or disability. For example, a claimant may restrict his or her availability to a "day shift" because of a need to be at home evenings with school-age children or a disabled family member. Part-time availability and good cause reasons for restricting availability to part-time work are covered in detail elsewhere in this section.

A claimant may meet the requirements of §24(b) while a full-time student provided the claimant is available during work hours typical for the claimant's occupation or is willing to rearrange his or her school schedule in order to accept employment. Refer to policies related to vocational or academic training elsewhere in this section.

(C) Actively Seeking Work

Claimants who *do not have a definite recall to work within four weeks*, must make an active and realistic search for work in order to obtain employment. To maintain continuing eligibility for unemployment insurance *a claimant must follow a course of action which is reasonably designed to result in prompt re-employment in suitable work*. Consideration shall be given to the customary methods of obtaining work in the claimant's usual occupation or one for which he or she is reasonably suited. There are a broad range of effective worksearch methods which should be considered depending upon a claimant's overall job search objectives. [See 1015: Fact Finding – Actively Seeking Work, and 1050: Circumstances and Policies – Actively Seeking Work].

(D) Part-Time Availability Exceptions

For most claimants, availability for work shall mean availability for full-time work but there may be occasions where availability for *part-time* work satisfies the requirement of the Law. Part-time employment is employment constituting less than the full-time work schedule customary for a particular occupation. An individual, who continues in on-call as opposed to "part-time" employment established during the base period, is *not* a part-time worker and remains ineligible for benefits for any week of less than full-time work. Availability for only part-time work satisfies the requirement of the Law if *all* of the following three conditions are met.

(E) Conditions for Part-Time Availability

- *The claimant must have a prior history of part-time work based upon good cause*. To meet the availability requirements of the Law, claimants may with good cause, restrict availability to part-time employment, and must demonstrate a history of part-time employment during a substantial period prior to filing a new claim for benefits (at least 20 of the most recent 26 weeks of employment prior to filing a claim). A qualified individual with a disability need not meet this requirement. See Part-Time Availability Qualified Individual with a Disability, below... For purposes of identifying the 26 weeks,

any work during a week will constitute a week of employment, although the work must be employment for an employer with whom there was an employer/employee relationship. Self-employment does *not* constitute a week of employment. A week during which a claimant was on a leave of absence does not constitute a week of employment, nor does a week of vacation pay issued at the time of a permanent separation. You must document the hours worked during each week and the good cause reason for the part-time employment restriction with each employer.

- *The claimant must have the same good cause reason to continue to restrict his or her schedule to part-time work during the benefit year.* If a claimant restricts his or her availability to part-time employment during the benefit year, and establishes good cause for such restriction, you must then establish a prior work history restricted to part-time work for the *same* good cause reason. "Good cause" includes illness or health conditions which prevent the person from working full-time, or domestic responsibilities such as the need to care for a child or other family member. Personal preference, attendance at school and unwillingness to affect Social Security Retirement benefits, are examples of reasons which do *not* constitute good cause.
- *The claimant must be available for part-time work for at least as many hours as previously worked.* The claimant must demonstrate that he or she is available for the same or a greater number of hours than he or she worked during the applicable prior history of part-time work. If the claimant worked a varied schedule of hours in the past, he or she must continue to be available for the same range of weekly hours as previously worked.

(F) Part-Time Availability Qualified Individual with a Disability

An otherwise eligible individual who does *not* have a history of part-time work may limit his or her availability for work during the benefit year to part-time employment if the individual meets the following conditions:

- *He or she is a qualified individual with a disability.* This means an individual with a disability who, with or without a reasonable accommodation, meets the essential eligibility requirements for the receipt of services or for participation in programs or activities provided by a public entity.
- *He or she provides documentation.* An individual must present medical documentation substantiating an inability to work full-time because of such disability.
- *He or she establishes to the satisfaction of the Commissioner that such limitation does not effectively remove himself/herself from the labor force.*

(G) Approved Illness (AI) Exception

The last paragraph of §24 of the Law makes provision for the limited payment of benefits during periods of illness as follows:

"No individual shall be considered ineligible for benefits because of failure to comply with provisions of said clause (b) if such failure is due to an illness or disability which occurs during a period of unemployment after he has filed a claim and registered for work, and has been determined to be otherwise eligible; provided, that no work which would have been considered suitable but for such illness or disability was offered to him after he became ill or disabled; provided further, that the exception granted pursuant to this paragraph shall apply to three weeks only within a benefit year."

This section of the Law provides that an ill or disabled claimant may receive benefits for up to three weeks of "approved illness" during a benefit year. However, the Law applies only to continued weeks claimed, not to a waiting period week, and only to a claimant who is otherwise eligible for benefits. In order for an individual to be determined eligible for unemployment insurance benefits a waiting period must first be served. The wait week precedes benefit eligibility and would, therefore, not be included in the approved illness exception.

The language of the above cited Law pertaining to approved illness requires that the claimant first "file a claim and register for work, and be determined eligible." Additionally, according to §24 of Chapter 151A, a claimant "shall be eligible for benefits for unemployment subsequent to a waiting period". Therefore, because approved illness applies to benefit eligibility not waiting period eligibility, the claimant may receive benefits for one or more weeks of approved illness only after a waiting period has been served.

(H) Three Weeks of Approved Illness

The first three times during the benefit year that an otherwise eligible claimant reports that he or she was ill or disabled for *all or any part of a week for which he files a continued claim*, the claimant may qualify for full benefits for those three weeks of approved illness, provided that no suitable work was offered to him during such weeks. A claimant who is incapable of working after three weeks of approved illness is subject to disqualification pursuant to §24(b) of the Law.

It will make no difference in granting approved illness whether a claimant's illness or disability during a week was for one day or for the entire week.

The three weeks of approved illness are applicable at any time during the benefit year. If a claimant is receiving extended benefits pursuant to §30 (RED) or §30(A) (EB), and eligibility for approved illness has not been exhausted, he or she is still entitled to benefits for approved illness while ill or disabled. The three-week approved illness maximum per claim is not increased as a result of eligibility for extended benefits. If the benefit year has expired, the claimant is not entitled to approved illness benefits even if still eligible to receive, for example RED or EB benefits beyond expiration of the benefit year.

A claimant may be paid benefits when there is a death in the immediate family. Such a period of bereavement may be treated as a period of approved illness. The immediate family extends to spouse, child, parent, brother, sister, grandparent, grandchild, parent of spouse or a person in the household of the claimant.

(I) Lost-Time Charge

If a claimant is unable to fulfill the requirements of §24(b) - - capable of, available for, and actively seeking full-time employment, for part of a week and has exhausted approved illness benefits, he or she may be subject to a lost-time charge equal to the amount of time he or she was unable or unavailable to accept full-time employment. If the claimant is unable to meet the requirements of §24(b) for a period such that a lost-time charge would reduce the claimant's benefit entitlement to zero, then issue a disqualification for the entire week or weeks in question. Lost-time charges will be determined by multiplying the average hourly earnings for the week by the number of hours lost or, if it is not possible to determine the average hourly earnings for the week, by computing the lost-time charge at 4% of the benefit rate for every hour lost.

If, for example, a claimant spends one day during the week attending to personal business a lost-time charge may be applied for the time he or she was not available to accept or seek employment. Although individual cases may vary, generally, eight hours of lost- time should be charged for each day for which the claimant was not fully in compliance with the provisions of §24(b). In addition, if the claimant refuses an offer of short term employment due to an inability or unavailability, the claimant may be subject to a lost- time charge equal to the average hourly earnings for the week multiplied by the number of hours lost. Refusals of offers of long term employment should be adjudicated pursuant to the suitable work provisions of §25(c).

1015 FACT FINDING**(A) Capable or Incapable?**

A claimant is presumed to be capable of working unless the claimant's own statement concerning his or her physical condition, or information from other sources raises an issue. In all cases where a question of a claimant's capability arises, the burden is upon the claimant to establish his or her capability to work during the period for which benefits are claimed. A Physician's Statement of Capability, Form 268, maybe used to evaluate a claimant's capability. Other documentation provided by the claimant, for example a note from the claimant's physician, may suffice. If a question of the claimant's capability to work arises, the following line of questioning may be used:

- Are you able to perform your regular or most recent work?
- If not, are you able to perform some type of full-time work for which you are reasonably fitted?
- What type of work are you looking for?
- If offered work, are you capable of accepting work immediately?

(B) Available or Unavailable?

To determine whether a claimant is available for work, the following questions may be asked:

- Are you available for full-time work? If not, you must determine whether the claimant has a prior history of part-time work and continuing good cause to restrict availability or is a qualified individual with a disability.
- What kind of work are you looking for?
- Are you placing any restrictions or limitations with respect to hours, shifts, wages, type of work or location? Why? What are they? Is the restriction a preference or a definite restriction?
- Is this shift preference/restriction based on prior experience or practices common to a particular industry?
- Do you expect to find work in your occupation or any other occupation for which you are reasonably fitted during this shift?

The claimant's potential for finding re-employment must not be diminished as a result of employment preferences or unreasonable self-imposed limitations with regard to availability. In all cases, however, the claimant is required only to be available for suitable work, not for any or all work.

(C) Actively Seeking Work?

Claimants are required to make a minimum of three worksearch contacts during each week for which benefits are claimed and maintain records of their weekly worksearch activities so that this information can be reviewed by DUA staff. Worksearch records should include a list of all contacts made, the dates on which contacts occurred, the names, addresses/URL's and phone numbers of any individuals contacted and the results of each contact. Productive work search contacts include, but are not limited to:

Registering for work and re-employment services with a local One- Stop Career Center

Completing a job application in person or online with employers who may reasonably be expected to have openings for suitable work

Mailing a job application and/or resume, as instructed in a public job notice

Making in-person visits to employers who may reasonably be expected to have openings

Sending job applications to employers who may reasonably be expected to have openings for suitable work

Interviewing with potential employers in person or by telephone

Registering for work with private employment agencies or placement services

Using the employment resources available at One- Stop Career Centers that may lead directly to obtaining employment, such as obtaining and using local labor market information, participating in skills assessments for occupation matching, participating in instructional workshops or obtaining and following up on job referrals from the Career Center.

Attending job search seminars, career networking meetings, job fairs or employment-related workshops that offer instruction on improving individual's skills for obtaining employment

Using online job matching systems, including the Massachusetts One- Stop Employment System's internet-based system, to submit applications/resumes, search for matches or request referrals and/or apply for jobs.

Reporting to Union Hall, if primary worksearch method.

Contacting professional associations who may have information about job openings

Using other job search activities relative to the type of occupation sought such as reviewing job listings on the internet, in the newspaper or in professional journals or speaking to colleagues or friends who may have information about job openings in order to maintain contact with active employer job openings.

To determine whether a claimant is or has been actively seeking work, ask the following questions if relevant to the case:

- What worksearch activities did you undertake?
- Where did you look for work?
- On which days did you engage in worksearch activities?
- What methods did you use to seek work?
- Have you refused to accept any employment that has been offered to you? (If the claimant indicates refusal to accept employment, investigate the matter pursuant to §25(c).)

Note: These are not the only questions to be asked. As in any case, the claimant's answer to a particular question may prompt the claim adjudicator to ask other questions.

(D) Part-Time Availability?

In order to substantiate a part-time work history, you must document in the claimant's statement of facts the following information from all employing units in the most recent 26 weeks of employment prior to the filing of the initial claim:

- The employer's definition of full-time work. Part-time work is defined as "less than a full-time schedule of hours". In order to determine if the claimant worked full-time or part-time, the full-time schedule of hours must be documented.
- The number of hours the claimant worked for each of his or her employing units in the most recent 26 weeks of employment prior to the filing of the initial claim. (Note: This may consist of more than 26 calendar weeks.) Document by week ending date the number of hours, for example: Week ending 10/8/94: 15 hours.
- Information from the employing unit about the reason for the claimant's restriction. Although the employing unit may not know of the specific reason, this information could confirm a claimant's statement as to the reason for working part-time.

If you are unable, despite valid attempts, to contact the employing units, information can be obtained from the claimant with adequate documentation (e.g., pay stubs, W-2).

1020 CIRCUMSTANCES AND POLICIES - CAPABILITY**1021 HEALTH OR PHYSICAL CONDITIONS**

A claimant must be capable of performing work of some type. An admission by the claimant that he is unable to work due to a health reason or a statement to that effect by a competent medical authority is sufficient evidence for disqualification. If the claimant is on a leave of absence granted or imposed by his or her employer, make a determination of the claimant's eligibility pursuant to §29(a) and §1(r)(2).

Note: An ill or disabled claimant may collect benefits for periods of approved illness for up to three weeks during the benefit year. A claimant may be eligible even if only able to work part-time due to disability in accordance with 430 CMR 4.42 – 4.45.

(A) Permanent Physical Disability

A claimant with a permanent physical disability is not subject to disqualification solely because of the disability. If he or she has a previous history of work, there is no reason to question his or her present ability to work.

(B) Physical or Psychological Condition

A claimant who is no longer able to work in his or her customary occupation because of a change in his or her physical or psychological condition remains eligible pursuant to §24(b), as long as the claimant is capable of, available for, and actively seeking work which reasonably matches his or her training or experience. For example, a claimant is no longer able to devote his or her entire work day to word processing due to carpal tunnel syndrome, but is qualified to perform other office work. If the claimant is willing to perform work notwithstanding physical limitations and such work is generally available, then the claimant is considered to be available for work pursuant to §24(b).

Reasoning Statement:

The claimant is capable of, available for, and actively seeking work for which he or she is reasonably fitted, and is therefore not subject to disqualification pursuant to the above-cited section of the Law.

(C) Exhausted Approved Illness Benefits

A claimant who is incapable of working *after* exhausting three weeks of approved illness benefits on a claim is subject to disqualification pursuant to §24(b) of the Law. Note: Be sure to determine whether or not a claimant who is a qualified individual with a disability is capable of working on a part-time basis in accordance with 430 CMR 4.42 – 4.45.

Form 3720 Explanation:

(You have stated) (Your physician's statement indicates) that you are unable to work. Since you have exhausted your approved illness benefits, you are subject to disqualification pursuant to the above-cited section of the Law.

(D) Failure to Return Requested Medical Statement

A claimant states that he or she is able to work even though an employer statement that unemployment is due to illness or disability seems to indicate otherwise. In such cases the employer statement cannot be the basis for a conclusion that the claimant does not meet the requirements of §24(b), however, it can be the basis of an inquiry as to the claimant's capability to work. The claimant should be issued a Physician's Statement of Capability, Form 268, for completion and given a reasonable opportunity to get the form completed or obtain alternative documentation. A failure to furnish a requested medical statement or other evidence within the time requested will result in a disqualification pursuant to §24(b).

Form 3720 Explanation:

Because of your failure to return a requested medical statement, you have not established that you are able to work. You are therefore subject to disqualification pursuant to the above-cited section of the Law.

If a claimant returns a requested physician's statement after a disqualifying determination has been made, and the document appears to warrant a re-evaluation of the claimant's eligibility, the case should be submitted to the Determinations Department for possible redetermination.

1022 DISABILITY PAYMENTS**(A) Permanent and Total Disability Payments**

A worker of any age who is permanently disabled, and has been disabled for more than six months may receive payments pursuant to the Federal Old Age and Survivors Disability Insurance program (OASDI, also known as Social Security Disability). A claimant who states that he or she is receiving disability payments pursuant to the OASDI program will be presumed to be totally disabled and incapable of work and will be disqualified pursuant to §24(b) of the Law unless the claimant produces a statement from a health care provider indicating that the claimant is able to work on at least a part-time basis.

A claimant who has applied for OASDI may be subject to disqualification pursuant to this section. While the fact that a claimant has applied for OASDI benefits would suggest that he or she is unable to meet the capability requirements, the mere fact that he or she has applied is not disqualifying. If the claimant can document that he or she is capable of working then the claimant should not be disqualified. In either case, documentation is necessary in order to make this determination.

Form 3720 Explanation:

You are receiving (have applied for) OASDI benefits due to disability. Since you have not established that you are capable of work you are subject to disqualification pursuant to the above-cited section of the Law.

(B) Claimant Returns to Work After OASDI Award

A claimant may recover from a disability sufficiently to return to work and still receive disability payments for a trial period of nine months or longer. In this case the claimant may prove through recent work (i.e., work that he or she has done after the start of disability payments) that he or she is capable of working and is not subject to disqualification solely because of the OASDI payments. If you have any doubt about the capability of a claimant to work, request a Physician's Statement of Capability, Form 268.

(C) Temporary Disability Payments

A claimant who is receiving short or long term temporary disability payments (other than worker's compensation for partial disability) does not meet the requirements of §24(b) of the Law. If the claimant disputes his inability to work, the claim adjudicator should request medical documentation.

Form 3720 Explanation:

Since you are receiving disability payments because of your inability to work, you do not meet the capability requirements of the Law and therefore, you are subject to disqualification pursuant to the above-cited section of the Law.

(D) Social Security Benefits During Illness

The claimant may be entitled to approved illness even though the claimant has applied for Social Security Disability (OASDI) benefits. However, if the illness or disability is not a recent one, you should investigate the claimant's ability to work in earlier weeks for which he or she had signed for benefits. If it appears that a redetermination of the claimant's eligibility is warranted, follow re-determination procedures.

1030 CIRCUMSTANCES AND POLICIES - AVAILABILITY**1031 RESTRICTIONS ON WAGE OR TYPE OF WORK****(A) Minimum Level of Wages**

A claimant's "accustomed remuneration" is one factor to be considered when determining the suitability of work for which a claimant must be available. Whenever a claimant places a limitation on the minimum amount of wages for which he or she will work you must determine whether:

- the claimant possesses the skills or abilities required for the type of work desired;
- work paying the desired wages is available in the locality where the claimant is seeking work;
- the wages sought are higher than the prevailing rates for the type of work the claimant is seeking.

If the claimant states that he or she will only accept a wage level that exceeds the prevailing rates, you should explore the claimant's reasons for this wage requirement and determine whether he or she has realistic verifiable prospects of receiving such wages. If not, the claimant is considered to have so restricted his or her availability that he or she does not meet the requirements of §24(b) of the Law. A claimant who has been employed at wages higher than the prevailing rate should be given a *reasonable* period of time to find work paying similar wages. A reasonable period of time is determined according to such factors as the claimant's prior salary, training or educational level, and likelihood of finding a job for which he or she is reasonably fitted, in his or her labor market area. As a general principle, work at a lower wage should not be deemed "suitable" [See 1100: Suitable Work] unless a claimant has been given a reasonable period of time to look for work for which he or she has the skill, in his or her labor market at a rate of pay commensurate with prior earnings.

For example, a claimant was last employed as an experienced welder at a wage of \$15.00 per hour, plus fringe benefits when the employing unit -- a shipyard, closed. The nearest shipyard is outside the claimant's labor market area and beyond a reasonable commuting distance from the claimant. The prevailing wage rate for welders in the claimant's labor market area is \$10.00/hr. Unless the claimant can present evidence of realistic prospects of obtaining a job at his customary wage, the claimant is subject to a disqualification pursuant to §24(b) if he or she refuses to seek a job at the prevailing wage of \$10 per hour.

Form 3720 Explanation:

You have limited your availability for employment to a rate of pay which is in excess of the prevailing rate for your work in your present location. Therefore, you do not meet the availability requirements of the Law and are subject to disqualification pursuant to the above-cited section of the Law.

(B) Restriction to Certain Occupation or Type of Work

A claimant limits his or her availability to a certain occupation or type of work that he or she is qualified by training or experience to perform. In addition, such work exists in the locality in which he or she is seeking work. If these conditions are met, then the claimant is available pursuant to §24(b).

Reasoning Statement:

The claimant has limited his or her availability to a certain type of work that he or she is qualified by training or experience to perform, and such work exists in the claimant's labor market area. The claimant is not subject to disqualification pursuant to the above-cited section of the Law.

(C) Reasonable Period to Find Customary Work

A claimant is entitled to a reasonable period of time, depending on the nature of the work sought, after filing a claim, to find work in his or her customary occupation, provided such work exists in the area in which the claimant is seeking work. The more skilled the job, the more time may be required to obtain the work.

After such reasonable period, if it becomes clear that the claimant has little or no prospects of finding work in his or her previous or customary occupation but the claimant insists on such limitation and will not seek other suitable work, then the claimant will be disqualified because of the unreasonable restrictions on availability pursuant to §24(b) of the Law.

Form 3720 Explanation:

Your worksearch has been limited to a type of work which you have been unable to obtain after a reasonable period of time. Therefore, you do not meet the availability requirements of the Law and you are subject to disqualification pursuant to the above-cited section of the Law.

(D) Restriction to One Employer

A claimant who restricts his or her availability to employment with one employer -- remains eligible for benefits as long as you can verify with the employer that he or she has been given a *definite* date to return to work with this employer within four weeks. If there is no definite return to work date, and the claimant still insists on restricting availability to this particular employer, he or she will be disqualified pursuant to §24(b) of the Law.

Form 3720 Explanation:

You have limited your employment to work with (name of employer) and you have no definite recall date. Therefore, you do not meet the availability requirements of the Law, and you are subject to disqualification pursuant to the above-cited section of Law.

1032 LOCATION, TRAVEL AND ACCESS TO TRANSPORTATION**(A) Remote Area - Lack of Transportation**

A claimant who resides in a rural or remote area and states that he or she is not available for *any* work that might be offered due to a lack of transportation (public or private) is considered not available pursuant to §24(b) of the Law because the claimant has effectively removed himself/herself from the labor market.

Form 3720 Explanation:

You have stated that you are not available for work because of lack of transportation. Therefore you do not meet the availability requirements of the above-cited section of the Law, and you are subject to disqualification.

(B) Restriction to Specific Area

A claimant who *unreasonably* restricts his or her availability to work in a specific area (e.g. downtown area, within walking distance of home, etc.) does not meet the §24(b) availability requirement. To determine what is reasonable for a particular claimant, investigate prior working arrangements, commuting opportunities, employment opportunities in the area, and time and expense of travel outside the area.

Form 3720 Explanation:

You have stated that you are restricting your acceptance of work to (area). Therefore you do not meet the availability requirements of the Law, and you are subject to disqualification pursuant to the above-cited section of the Law.

(C) Main Purpose of Travel is to Seek New Employment

A claimant who travels during a week or part of a week for which benefits are claimed is not disqualified or charged for lost-time if he or she was traveling directly from one area to another for the main purpose of seeking new employment or reporting for a pre-arranged job interview. "Main purpose" of travel is satisfied when the claimant can substantiate pre-arranged job interviews, and/or other worksearch activities. You *may* ask for documentation to substantiate these activities or events.

Reasoning Statement:

The claimant's travel (during the week) (during part of the week) was mainly for the purpose of seeking new employment. Therefore, the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

(D) Time Spent Traveling for Personal Reasons

A claimant who travels for personal reasons during a week for which benefits are claimed is considered not to be available pursuant to §24(b) of the Law. Examples of such personal reasons include vacations, visits to friends and relatives, time spent en route to another area for health reasons, time spent traveling to join one's spouse in another area, etc.

Form 3720 Explanation:

During the time spent traveling for personal reasons, you were not available for work. Therefore you did not meet the availability requirements of the Law and you are subject to disqualification pursuant to the above-cited section of the Law.

(E) Transient Claimants - Inside the U.S.

A transient claimant (i.e. a claimant who goes to an unemployment office other than the one where he or she initially filed a claim) may be paid benefits if he or she is out of the unemployment registration area for worksearch purposes. The filing of a continued claim in another state is considered a "courtesy claim", and should be filed whenever a claimant travels to another state to look for work.

The burden of proof is on the claimant to substantiate his or her need to seek work in areas outside his or her labor market area. You must determine whether:

- the claimant had reasonable prospects of finding work in the area he or she visited; or
- he or she exhausted all possibilities of finding work in the local area; or
- the occupation is such that it would require the claimant to look for work in many areas.

Note: Courtesy claims may be filed for no more than a two-week period by claimants seeking work within the U.S. and Canada. Should the claimant remain in the state from which benefits were claimed for longer than a two-week period, the claimant should file an *interstate claim*. While a short-term absence may create an availability issue, a long-term absence may create a filing and registration issue. Determine the claimant's eligibility pursuant to §25(a) before investigating his or her eligibility pursuant to §24(b).

(F) Transient Claimants - Outside the U.S.

A transient claimant who is outside the U.S. may be paid benefits only when he or she is out of the United States to look for work.

It must be established that the claimant had reasonable prospects of finding work in the area to which he or she traveled:

- Was the main reason for traveling to a foreign country to seek work?
- Does the claimant have a permit to work in the country in which work is being sought?
A United States citizen must obtain a work permit to be eligible for employment in Canada as well as any other foreign country.
- If the claimant states that he or she is seeking work with an American employer overseas, ask the following questions:
 - Why wasn't the interview conducted in the United States?
 - Was the interview scheduled prior to leaving the United States?
 - If the employment was for a foreign subsidiary of an American employer, has the claimant applied for a work permit?

Form 3720 Explanation:

You traveled out of the country to look for work without establishing reasonable prospects for such work. Therefore, you do not meet the availability requirements of the Law, and are subject to disqualification pursuant to the above-cited section of the Law.

Note: For the purpose of determining whether a claimant has left the country, 430 CMR: .4.05 Interstate Claims (c) contains a definition of "state" which "includes the District of Columbia and Puerto Rico". The terms of a reciprocal agreement between the US and Canada allow for the filing and continuance of claims filed in either country from within these two countries. There being no similar reciprocal agreement between the US and any foreign country, other than Canada, travel outside the US to any other foreign country may raise a filing and registration issue pursuant to the provisions of §25(a). Resolve the filing and registration issue before investigating the claimant's eligibility pursuant to §24(b).

1033 VOCATIONAL OR ACADEMIC TRAINING

This section is *not* applicable to approved §30(c) courses because claimants attending school or training pursuant to §30(c) are exempted from the availability and worksearch requirements once they are approved for training, enrolled and in attendance at an approved course.

For all other courses, document the name of the school, the course, the number of hours and actual schedule of the course, the number of credits to be earned, and the claimant's intentions if suitable work is offered.

(A) Full-Time Vocational or Academic Training

A claimant who is registered for and attending full-time day classes or training (12 or more credit-hours) is generally considered not to be 'available' pursuant to §24(b) of the Law. Only, if the claimant *can* demonstrate a prior history of working full-time and simultaneously going to school full-time, may the claimant be considered available for work. Remember, it must be established that work is available during the hours the claimant is not in school.

Form 3720 Explanation:

You are in attendance at a full-time (vocational) or (academic) program and have not demonstrated a prior history of both studying and working full-time. Therefore, you are subject to disqualification pursuant to the above-cited section of the Law.

(B) Part-Time Vocational or Academic Training

A claimant attending vocational training on a part-time basis (1-19 hours per week) or academic training on a part-time basis (1-11 credit hours per week) meets the requirements of §24(b) if the claimant is willing and able to quit the training program or transfer to either day or evening classes if offered a suitable job which conflicts with school attendance.

Form 3720 Explanation:

Because of attendance at training or school, you are available for work only during the hours of _____ to _____ (e.g. 7 to 3). Therefore, you do not meet the availability requirements of the Law and are subject to disqualification pursuant to the above-cited section of the Law.

(C) Training Period at No Pay

A claimant who has been hired for a job which requires a one or two week on-the-job training period with no pay (or a stipend and/or expenses only) is considered available for those weeks. Payment of benefits for on-the-job training with no pay for a period of longer than two weeks must be sent to the Determinations Department for resolution.

(D) Not Attending Classes but Devoting Time to Study

If a claimant is doing graduate work (studying for a masters or doctorate degree) you should question the claimant to determine how many hours of outside study are required on a weekly basis to obtain the degree.

1034 Part-Time Availability**(A) Same Good Cause for Part-Time Restriction During the Benefit Year**

A claimant worked part-time (25 hours) during 20 of the most recent 26 weeks of employment prior to the filing of the initial claim. The restriction to part-time work was due to family responsibilities, care of a young child. The claimant became unemployed under non-disqualifying circumstances. At the time the claim is filed, the claimant is only able to continue to work part-time (25 hours) due to his or her continuing family care needs. Since the claimant had a prior part-time work history based on good cause and is available to work at least the same number of hours in the benefit year in spite of the same "good cause" restriction, the claimant will be approved pursuant to §24(b) of the Law.

Reasoning Statement:

The claimant has a history of restricting availability for good cause. Although the claimant continues to restrict availability for the same good cause, the claimant is available to the same extent as the prior history of work and meets the availability requirements of §24(b). Therefore the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

(B) No Good Cause for Part-Time Restriction During the Benefit Year

A claimant worked part-time for a substantial portion of his or her base period due to a temporary medical restriction. After separation from that employment, the claimant's medical situation improves to the extent that the claimant is now able to work a full-time schedule, but the claimant refuses to accept any full-time work. If it is determined that the claimant does not have good cause for restricting availability during the benefit year, the claimant will be disqualified pursuant to §24(b) of the Law.

Form 3720 Explanation:

Because you have restricted your availability to part-time work, without good cause, you do not meet the availability requirements and are subject to disqualification pursuant to the above-cited section of the Law.

(C) Insufficient Prior History of Part-Time Employment for Good Cause

A claimant seeks to work only part-time during the benefit year. In the 26 weeks immediately preceding the filing of the claim, the claimant worked 10 weeks on a full-time basis and 16 weeks on a part-time basis. Since the prior employment history of the claimant does not demonstrate the required 20 weeks of part-time work within the most recent 26 weeks of employment, the claimant must be denied benefits pursuant to §24(b).

Form 3720 Explanation:

Because you have limited your availability to part-time work without substantial history of prior part-time employment, you do not meet the availability requirements and are subject to disqualification pursuant to the above-cited section of the Law.

In some cases it may be necessary to review the claimant's employment history during more than the 26 weeks prior to the filing of the claim. Remember that the most recent 26 weeks of *work* must be reviewed. For example, if a claimant seeks to work part-time during the benefit year and during the 15 weeks immediately preceding the filing, the claimant had worked part-time but had not worked during the 10 weeks prior to that, then, a more extended review of the claimant's work history that encompasses even earlier employment will be necessary.

(D) Qualified Individual with a Disability

During the base period of a claim, a claimant works full-time as a nurse's aide. The claimant is separated under non-disqualifying circumstances. The claimant suffers a back injury. As a direct result of the back injury, the claimant can no longer work full-time. The claimant submits documentation from a health care provider substantiating his or her inability to work full-time because of such disability. The claimant does not need to demonstrate a prior part-time work history because his or her restriction to part-time work is based on a bona-fide disability. The claimant meets the eligibility requirements of §24(b).

Reasoning Statement:

The claimant has limited his/her availability to part-time work due to a disability. The claimant is capable of, available for and actively seeking work for which he or she is reasonably fitted. Therefore the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

(E) Eligibility for Partial Benefits

Although a claimant, available for part-time work, may be approved pursuant to §24(b), eligibility for partial benefits must be determined pursuant to §29(b) and §1(r). Note that a claimant who accepts a part-time job and imposes a restriction on the number of hours of his/her availability will not be considered to be in partial unemployment during any week in which the employer provides him/her with all of the part-time hours requested. [See 1400: Other Pay and Benefits.]

(F) Suitable Work for Claimants with a Part-Time Restriction

A claimant who has established a part-time work history for good cause, and continues to restrict his/her availability for the same good cause, must be willing to seek and accept suitable work. [See 1100: Suitable Work.]

1035 Self-Employment or Other Work**(A) Plans to Enter Self-Employment**

If the claimant states that he or she is not available for work because plans to enter self-employment (i.e., independent business enterprise, sole proprietorship, partnership etc.) make him or her unavailable for work with an employer, then he or she is considered to have withdrawn from the labor market and is ineligible for benefits. If, however, the claimant states that he or she is available for work, but upon questioning the claimant you discover that he or she has in fact spent a majority (more than 20 hours per week) of his or her time in preparation for a self-employment venture, you must consider this information in making your determination. Preparation activities include but are not limited to cash investments, property and equipment rentals, staff hirings, office supply ordering, and solicitation of customers.

Form 3720 Explanation:

You are no longer seeking work because of plans to start your own business. Therefore, you do not meet the availability requirements of the Law, and you are subject to disqualification pursuant to the above-cited section of the Law.

Note: If your fact finding indicates that the claimant is partially or totally self-employed, see 1400: Other Pay and Benefits.

(B) Part-Time Odd Jobs

A claimant who performs part-time odd jobs may continue to receive benefits as long as the work does not interfere with an active worksearch or acceptance of employment. However, if you can establish that the claimant was unavailable because of the part-time work, you must then determine whether to impose a disqualification or lost-time charge, depending on the number of days of unavailability. If the claimant received pay for such odd jobs, the amount of net earnings should be deducted pursuant to §29(b) of the Law.

Form 3720 Explanation:

You have stated that you are not available for work because (reason for unavailability). Therefore you do not meet the availability requirements of the Law, and you are subject to disqualification pursuant to the above-cited section of the Law.

(C) Part-Time Services for Charity or Welfare Agency

A claimant receiving aid from a welfare agency or other charitable organization in return for part-time services is not subject to disqualification, as long as services do not interfere with his or her availability and ability to obtain employment.

1036 Home-Based Work

(A) Criteria in Restricted Industries

Under Federal Department of Labor regulations, certain restricted industries are allowed to employ homeworkers, under a certificate, who meet certain criteria:

1. They are unable to adjust to factory work because of age, physical or mental disability.
2. They are unable to leave their home because their presence is required to care for an invalid.
3. They are engaged in industrial homework under the supervision of a state Vocational Rehabilitation agency. These industries are:
 - Embroideries
 - Women's apparel
 - Gloves and mittens
 - Jewelry
 - Knitted outerwear
 - Buttons and buckles
 - Handkerchiefs

No work in the above industries can be done in or about a home, apartment, tenement or a room in a residential establishment unless a special homework certificate is issued or in effect either for an individual or authorizing employment of homeworkers for a particular employer.

Because of the restrictions on availability of these homeworkers, a claimant with a homeworker's permit in any of the above industries is not considered to meet the requirements of §24(b), regardless of whether the unemployment is partial or total.

Form 3720 Explanation:

You have restricted your availability to work at home. Therefore, you do not meet the availability requirements of the above-cited section of the Law.

(B) Homeworkers

A claimant with a homeworker's permit who has been working in a non-restricted industry or a claimant who does homework of a type not requiring a Federal permit may be eligible. If the claimant is not available for work outside the home - for any reason - then disqualification pursuant to §24(b) applies.

Form 3720 Explanation:

You have restricted your availability to work at home. Therefore, you do not meet the availability requirements of the above-cited section of the Law.

1037 Social Security Payments/Restrictions to Part-Time Work

As long as a recipient of non-disability Old Age and Survivors Insurance (OASI, or Social Security) is otherwise eligible and available for full-time suitable work, he or she qualifies for benefits pursuant to the Law.

However, while the actual receipt of Social Security payments does not disqualify a claimant pursuant to §24(b), it may raise a question with respect to his or her availability.

Claimants limiting their availability to part-time work so as not to affect their OASI benefit payment are disqualified.

Form 3720 Explanation:

You are available for work only to the extent that it does not affect your eligibility for Social Security benefits. Therefore you do not meet the availability requirements of the Law, and you are subject to disqualification pursuant to the above-cited section of the Law.

1038 Legal Detention or Incarceration

During any period of incarceration or other legal detention, a claimant is not considered to be available within the meaning of §24(b) of the Law. Charge lost-time for one or two days' absence or disqualify the claimant for the entire week if he or she is unavailable for three or more days.

Form 3720 Explanation:

Because you were not available for work due to incarceration or legal detention during the week ending (date), you do not meet the availability requirements of the Law, and you are subject to disqualification pursuant to the above-cited section of the Law.

Note: In some cases it may be appropriate to investigate whether or not there is a separation resulting from the incarceration.

1039 Jury Duty

An otherwise available claimant summoned for jury duty during a period of unemployment continues to be eligible for benefits pursuant to §24(b) of the Law during the period of jury service.

1040 Non-Citizens

If a claimant self-certifies that he or she is a non-citizen then he or she must establish legal authorization to work in order to meet the availability requirements of §24(b). This means the claimant must have documents establishing legal authorization to work. (See list of documents below.) If a claimant presents at least one document from List A or one *each* from List B and List C, and the documents reasonably appear to be genuine, then the claimant has provided all the documentation required to establish availability for work. *It is the claimant's right to choose which document(s) to submit.* If a claimant submits an Employment Authorization Document (I-688B) to establish satisfactory immigration status during the base period of the claim and the card has expired, the claimant does not have to get this particular card renewed in order to establish *current availability* to work and eligibility for UI. The claimant must be given the option of presenting alternative documents from the list below.

If a claimant chooses to present a document from List A, but is not able to present an unexpired original document, then he or she must provide a *receipt* or *affidavit* demonstrating that the claimant has applied to the Bureau of United States Citizenship and Immigration Services (CIS) for a replacement of the document. The receipt from CIS or affidavit attesting to such application for a replacement document must be presented within *four weeks* from the date of filing a claim.

If an *original* CIS document from List A has not been presented within *90 days* of the application for its replacement with CIS because the CIS has not issued an original document to the claimant, give the claimant a copy of the legal services referral. The claimant must present an original CIS interim employment authorization document no later than 100 days from the date of the application for the A-list document.

If a claimant chooses to present document(s) from list B and C, then these documents must be presented within four weeks from the date the claimant filed the claim.

Note: These documents establish *availability for work only* and you must continue to determine claimant eligibility based both on current availability as outlined above, and on the claimant's *immigration status during the base period of the claim.* [See 1510: Special Determinations]

A claimant may present either one document from List A or one document each from List B and C. It is the claimant's choice as to which documents he or she presents to establish current authorization (availability) for work.

**ACCEPTABLE DOCUMENTS FOR UI PURPOSES
TO ESTABLISH AVAILABILITY PURSUANT TO §24(b)**

Work Authorization <i>and</i> Identity
List A
U. S. Passport (unexpired or expired)
Permanent Resident Card of Alien Registration Receipt Card (Form I-551)
An unexpired foreign passport with a temporary I-551 stamp
An unexpired Employment Authorization Document that contains a photograph (Form I-766, I-688, I-688A, I-688B)
An unexpired foreign passport with an unexpired Arrival-Departure Record, Form I-94, bearing the same name as the passport and containing an endorsement of the alien's non-immigrant status, if that status authorizes the alien to work for the employer.

**ACCEPTABLE DOCUMENTS FOR UI PURPOSES
TO ESTABLISH AVAILABILITY PURSUANT TO §24(b)**

Identity Only
List B
Driver's license or ID card issued by a state or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, sex, height, eye color and address
ID card issued by federal, state, or local government agencies or entities provided it contains a photograph or information such as name, date of birth, sex, height, eye color, and address
School ID card with a photograph
Voter's registration card
U.S. Military card or draft record
Military dependent's ID card
U.S. Coast Guard Merchant Mariner Card
Native American tribal document
Driver's license issued by Canadian government authority.
For persons under age 18 who are unable to present a document listed above: <div style="text-align: center;"> School record or report card Clinic, doctor or hospital record Day-care or nursery school record </div>

**ACCEPTABLE DOCUMENTS FOR UI PURPOSES
TO ESTABLISH AVAILABILITY PURSUANT TO §24(b)**

Work Authorization Only
List C
U.S. social security card issued by the Social Security Administration (other than a card stating it is not valid for employment)
Certification of Birth Abroad issued by the department of State (Form FS-545 or Form DS-1350)
Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal
Native American tribal document
U. S. Citizen ID Card (Form I-197)
ID Card for use of Resident Citizen in the United States (Form I-179)
Unexpired employment authorization document issued by DHS (other than those listed under List A)

1041 Religious Beliefs

A claimant who is unavailable for work on a specific day or days of the week because of religious beliefs is not disqualified or charged for lost-time, as long as he or she is available for work during the remainder of the week.

1042 Family Care

After a person has left work to care for a child or ill family member in circumstances, that are considered urgent, compelling and necessitous, pursuant to §25(e) of the Law [See 1200: Voluntary Leaving], the question remains whether this person meets the availability requirements set out in §24(b) of Chapter 151A. Although a claimant must care for a child or an ill family member, this fact does not, in itself, make the claimant unavailable for work. A claimant does not need to have someone provide substitute child care or ill family member care during the period of unemployment, but must be able and willing to arrange for suitable child care or ill family member care when he or she goes on job interviews or obtains employment. A claimant will be considered available for work if she/he can establish that the situation which caused his or her leaving work has changed so that the claimant is ready to re-enter the work force. Availability is a week-to-week issue. Although an individual may not be available in the first week of separation, she/he may be available in a later week. The crucial issue is whether the claimant's circumstances have changed since his or her separation so that the claimant is once again available for work.

1043 DOMESTIC VIOLENCE

Chapter 69 of the Acts of 2001, An Act Relative To The Eligibility For Unemployment Benefits For Victims Of Domestic Violence was signed into Law on August 11, 2001. The act amended several sections of MGL Chapter 151A to provide for UI eligibility for victims of domestic violence. The provisions came into effect on November 9, 2001. The changes apply to the adjudication of voluntary leaving, misconduct, suitable work issues and the requirements of §24(b) that claimants be able, available and actively seeking work.

The revised text of the several sections of MGL Chapter 151A amended by this act are incorporated pursuant to Domestic Violence in the 1100: Suitable Work, 1200: Voluntary Leaving and 1300: Misconduct sections of the handbook.

Important definitions of “domestic violence” and “abuse,” as well as information on documentation requirements and claimant confidentiality are detailed in the 1200: Voluntary Leaving and 1300: Misconduct sections. This information is pertinent when adjudicating any eligibility issue that involves domestic violence and should be referenced by claim adjudicators as necessary.

(A) Domestic Violence – Ability to Work

Claimants who are victims of domestic violence [See the definition in 1200: Voluntary Leaving and 1300: Misconduct sections] or whose dependent children are victims of domestic violence must meet the requirements of MGL Chapter 151A, §24(b). These claimants must be physically and mentally capable of performing some type of suitable work, must be available to accept suitable work and must conduct an active search for suitable work in order to qualify for Unemployment Insurance benefits. The definition of “suitable work” as it applies in cases involving domestic violence is discussed in detail in the 1100: Suitable Work section of this handbook.

(B) Suitability of Work

The definition of suitable work has been modified to include additional criteria applicable in cases of domestic violence. In these cases, suitable work is defined (in addition to the standard criteria) as work that “reasonably accommodates the individual’s need to address the physical, psychological and legal effects of domestic violence.” This includes, for example, the need to keep medical or counseling appointments necessary to pursue treatment for the effects of domestic violence on the claimant or dependent children, appear in court, meet with school officials, or the need to fulfill the requirements of a shelter for domestic violence survivors such as housing search.

The claimant meets the availability requirements of §24(b) by being available to perform work that is suitable. Suitable work in this context is work that reasonably accommodates the individual’s need to address the physical, psychological and legal effects of domestic violence.

If the claimant is not available to perform suitable work due to the physical, psychological or legal effects of domestic violence, then the claimant is not able to work and will be disqualified. Such claimants may qualify for the payment of benefits for up to three weeks pursuant to approved illness provisions.

Claim adjudicators will obtain the claimant's statement of facts and refer the case to the Determinations Department for the issuance of a determination.

(C) Shelter Restrictions on Availability

Claimants who must seek shelter with an agency that provides temporary shelter to victims of domestic violence may be required to restrict their availability for work while a resident of the shelter facility. The organization providing shelter may require that the claimant leave work with a current employer [See 1200: Voluntary Leaving] or not work while a resident at the shelter. This stipulation is often imposed in order to protect the claimant and/or dependents as well as other shelter residents who might be endangered should an abuser contact the claimant at a known place of employment or follow the claimant from a place of employment to the shelter. The shelter may also require that the claimant devote a substantial amount of time conducting a search for permanent housing as a condition of staying in the shelter.

If the sole reason that the claimant is restricting availability is to comply with the requirements of a shelter provider in order to receive or continue to receive shelter from an agency that provides shelter to victims of domestic violence, the claimant may still be available for suitable work. If the claimant indicates a willingness to look for work and to relocate from the shelter within a reasonable period of time if offered a job, no disqualification will be imposed.

Claim adjudicators will obtain the claimant's statement of facts and refer the case to the Determinations Department for the issuance of a determination.

(D) Domestic Violence – Childcare Requirements

In some domestic violence cases, the claimant's dependent children, rather than the claimant, may be the direct victim of abuse. The claimant may indicate a need to provide direct care to dependent children due to the physical or psychological effects of abuse, or remain in direct custody of dependent children threatened with abuse. The claimant does not need substitute childcare during their period of unemployment to qualify for benefits. The claimant must be able and willing to arrange appropriate childcare, however, in order to look for work or accept work.

Claim adjudicators will obtain the claimant's statement of facts and refer the case to the Determinations Department for the issuance of a determination.

(E) Domestic Violence – Worksearch Requirements

Claimants who are victims of domestic violence must conduct an active search for suitable work. However, the claimant's worksearch efforts may also "reasonably accommodate the individual's need to address the physical, psychological and legal effects of domestic violence." If the claimant is willing to engage in an active search for work and does not unreasonably limit worksearch activity, the claimant may be eligible for benefits.

Claim adjudicators will obtain the claimant's statement of facts and refer the case to the Determinations Department for the issuance of a determination.

1050 CIRCUMSTANCES AND POLICIES – ACTIVELY SEEKING WORK**(A) Worksearch Requirements**

Claimants will be expected to conduct an active worksearch which is likely to lead to the claimant's obtaining and accepting such work. Worksearch efforts must be reasonable in light of the claimant's abilities, aptitudes, and prior work experience.

Individuals filing claims for benefits will be responsible for meeting the worksearch requirements for every week claimed. There are two exemptions: claimants approved and attending training pursuant to §30 and those with a definite date to return to work or begin new work within four weeks of a new, additional or continued claim.

Claimants are required to make a minimum of three worksearch contacts during each week for which benefits are claimed and maintain records of their weekly worksearch activities so that this information can be reviewed by DUA staff. Worksearch records should include a list of all contacts made, the dates on which contacts occurred, the names, addresses/URL's and phone numbers of any individuals contacted and the results of each contact. Productive work search contacts include, but are not limited to:

Registering for work and re-employment services with a local One- Stop Career Center

Completing a job application in person or online with employers who may reasonably be expected to have openings for suitable work

Mailing a job application and/or resume, as instructed in a public job notice

Making in-person visits to employers who may reasonably be expected to have openings

Sending job applications to employers who may reasonably be expected to have openings for suitable work

Interviewing with potential employers in person or by telephone

Registering for work with private employment agencies or placement services

Using the employment resources available at One- Stop Career Centers that may lead directly to obtaining employment, such as obtaining and using local labor market information, participating in skills assessments for occupation matching, participating in instructional workshops or obtaining and following up on job referrals from the Career Center.

Attending job search seminars, career networking meetings, job fairs or employment-related workshops that offer instruction on improving individual's skills for obtaining employment

Using online job matching systems, including the Massachusetts One- Stop Employment System's internet-based system, to submit applications/resumes, search for matches or request referrals and/or apply for jobs.

While a claimant may make an independent search for work, in order to fulfill the job search requirements, he or she must make a minimum of three worksearch contacts during each week for which benefits are claimed.

Repeated application to the same employer during the week or week after week with no encouragement from the employer as to when or if work will be available does *not* constitute an active search for work.

Reporting to Union Hall, if primary worksearch method.

Contacting professional associations who may have information about job openings

Using other job search activities relative to the type of occupation sought such as reviewing job listings on the internet, in the newspaper or in professional journals or speaking to colleagues or friends who may have information about job openings in order to maintain contact with active employer job openings.

(B) Failure to Meet Worksearch Requirements

During any week in which a claimant fails to meet the worksearch requirements, the claimant is not considered to have been actively seeking work within the meaning of §24(b) of the Law.

Form 3720 Explanation:

Because you failed to establish that you were actively seeking work during the week ending (DATE), you are subject to disqualification pursuant to the above cited section of the Law.

1051 VACATION SHUTDOWN OR BRIEF LAYOFF

A claimant who is temporarily unemployed because of a vacation shutdown or a brief layoff not to exceed four weeks with a definite date to return to work with the same employer is not required to be available for work or actively seeking work with other employers (e.g., a manufacturer has a vacation shut-down every July for 2 weeks). The claimant must file a claim initially and the claimant must be otherwise eligible and meet all the standard filing and registration requirements for weeks during which benefits are claimed.

This section is not applicable to those seasonal industries which involve long term layoffs e.g. ski resorts, summer employment on Cape Cod or in the Berkshires, landscaping contractors, etc. Individuals on such long-term layoffs must actively seek work in order to meet the requirements of §24(b).

1052 UNION RULES

Union members are required to actively seek work. Very few unions restrict their members to work obtained exclusively through the union hiring hall. Members of such unions who limit their worksearch in this fashion will be considered to be making an active search for work as long as they are a confirmed member in good standing and are adhering to all reporting and availability requirements imposed by the union.

Some unions do not provide a hiring hall but do prohibit members from performing non-union work in their regular occupation. Such union members are expected to seek union work on their own and should do so in accordance with the requirements imposed on all claimants, i.e., during three days a week.

Additionally, some union members may have skills which enable them to seek work in an occupation other than that governed by their union membership. If seeking and obtaining non-union work in other occupations does not affect their union affiliation, after a three month period of unemployment, such union members must also seek other work for which they may be suited.

1060 PROCEDURES

(A) Reasoning Statement

Whether the claimant is approved or disqualified, every adjustment folder must contain a reasoning statement for valid workload credit. For disqualification, the reasoning statement is contained on a Form 3720. Because §24(b) is a single party issue, there is no need to issue a Form 124 when the issue is approved. This does not relieve the claim adjudicator of the responsibility to have a documented reason for the determination in the folder. The components of a reasoning statement are:

- Summary of facts
- Reason for allowing or disallowing benefits
- Legal result

(B) Workload Credit

When the components of §24(b) (capable and available and actively seeking work) create a potential disqualification, workload credit may be valid. Valid workload credit requires:

- Effect on past, present, or future benefits of the claimant
- Benefits for the week in question must be claimed
- Documentation of the facts
- Reasoning statements (which may be in the form of a written determination.)
- The opportunity for rebuttal

If a formal determination is issued, workload credit may be taken. If the lost-time charge is for 1 or 2 days and the claimant accepts it, no workload credit may be taken.

(C) Employer Complaints

If specific employer information is received and raises a question of availability, an eligibility review interview concerning the claimant's availability for work and his or her efforts to obtain work should be scheduled. During this interview, determine whether the claimant meets the availability requirements pursuant to the Law. Claimants who are not available for work, or who are not actively looking for work will be disqualified.

Examples of such complaints may be a comment on the Form 1062 that the claimant is not available for work or a complaint received by phone or in writing after an employer receives his monthly benefit charge statement. Information provided by the employer must be specific as to the reason(s) that the claimant is not available for work. For example, the employer may indicate that upon meeting the claimant recently, the claimant indicated that he had decided to spend the next several months at home with children because his wife had been provided full-time work by her employer. General statements that the claimant is “not available for work,” without further elaboration as to why,, provide an insufficient basis to warrant adjudication of an availability issue.

(D) Multiple Disqualifications

Do not issue a disqualification pursuant to §24(b) for the same period for which a disqualification is issued pursuant to another section of the Law. Only one disqualification may be applied to a specific period of time.. In those cases where the claimant may be subject to disqualification pursuant to §24(b) as well as some other section of law, multiple issue records should be created and complete fact finding on the availability issue conducted.. If the facts appear non-disqualifying, resolve accordingly. If the facts would appear to warrant disqualification, suspend the availability issue pending the resolution of other issues.. If the claimant reopens the claim following the expiration or reversal of another disqualification, question the claimant on his or her *current* availability and/or capability and if still appropriate, issue a disqualification pursuant to §24(b).

(E) Lost-Time

Whenever lost-time is to be assessed because work was available to the claimant and the claimant was unable or unavailable to work for part of a week for which benefits are claimed, the lost- time charge will be calculated by multiplying the average hourly earnings for the week by the number of hours lost. If it is not possible to ascertain the average hourly earnings for the week for which the lost-time charge is to be assessed, such earnings shall be computed at 4% of the benefit rate for each hour lost.

When a claimant, not eligible for approved illness, is ill, disabled, or otherwise unavailable for part of a week for which benefits are claimed, he or she is subject to a lost-time disqualification pursuant to §24(b). Generally, lost- time should be assessed at a rate of 8 hours per day lost. When the amount of the lost-time charge exceeds the weekly benefit amount, disqualify the claimant for the entire week pursuant to §24(b).

For intrastate claimants, a Notice to Claimant of Disqualification, Form 3720, is not required if the claimant accepts the lost-time charge. Document acceptance of the lost-time charge in the claimant's statement. For example, "I accept a lost-time charge of \$___ for week ending ___." If the claimant disputes the lost-time charge, issue a Notice to Claimant of Disqualification, Form 3720, informing the claimant of the reason for disqualification and providing appeal rights. Use the following reasoning statement when the lost-time charge is calculated based on the hours lost.

Form 3720 Explanation:

You were not available for work ___ days during the week ending ___ because you (reason for unavailability). \$(amt) will be deducted from your benefit check for that week. Your benefit rate is \$(amt). Lost-time is computed at the rate of 4.0% of your benefit rate for each hour of lost-time.

Alternatively, use the following explanation when the lost-time charge is based on the actual gross wages lost due to the claimant's unavailability.

Form 3720 Explanation:

Because work was available to you with (name of employer), you were not unemployed within the meaning of the above-cited section of the Law for () days during the week ending (date). (Therefore, \$(amt), the amount of money you would have earned, is being deducted from your check.) [or] (Since the amount of money you would have earned is in excess of your benefit rate, you are not entitled to benefits for the week(s) at issue.)

(F) Approved Illness Versus Lost-Time

Use a week of approved illness even when the claimant expresses a preference for lost-time charges rather than approved illness. When a claimant has used three weeks of approved illness benefits during a benefit year, he or she will subsequently be disqualified for any week or portion of a week during which he or she does not meet the requirements of §24(b).

(G) Change in Circumstances

A claimant previously denied benefits due to unavailability may report that the circumstances which previously resulted in the denial no longer exist. In this case, reopen the claim and obtain a new statement of facts. If the new facts establish that the otherwise eligible claimant is now available for work, he or she is entitled to benefits beginning with the effective week of the reopened claim.

If you cannot establish that he/she is now available pursuant to §24(b), and no appeal is pending, issue another Form 3720 to the claimant stating the reason for disqualification relative to the prior determination.

If the availability situation is unchanged and an appeal is pending, do not issue another Form 3720. Add the new fact-finding statement to the Adjustment File. If the case material has already been submitted to the Hearings Department or the Board of Review forward the new fact-finding statement to the appropriate department indicating to the recipients that an appeal is pending.

(H) Redeterminations - Availability and Actively Seeking Work

When a claimant is referred to a claim adjudicator after an eligibility review interview or under other circumstances in which an issue has arisen because of apparent failure to actively seek work, the claimant should first be questioned regarding worksearch activity during the most recent week(s) for which the claimant is claiming benefits. If the facts gathered warrant a disqualification pursuant to §24(b) determine if benefits have been paid. If benefits have not been paid, issue a Notice to Claimant of Disqualification, Form 3720, in accordance with normal procedures. If, during the course of the fact finding interview, it appears that the claimant has not been actively seeking work during the weeks for which benefits have already been paid, the determination is issued on a Notice of Redetermination and Overpayment, Form 3727-B.

In some cases, an issue related to the claimant's availability for work or efforts to find work may arise from information provided by an employer, often via an employer charge protest. The information provided by the employer may indicate that the claimant has refused work which was offered or that the claimant has indicated to the employer or others that he is not looking for work. Whenever such an issue involves a second party, then standard redetermination procedures apply. The claim adjudicator must prepare a Notice of Claim Discrepancy, Form 3733, and inform the claimant that a potentially disqualifying issue has arisen regarding past weeks for which the claimant has already received benefits. Schedule a date within the next two weeks for the claimant to contact the claim adjudicator to conduct a redetermination interview regarding eligibility pursuant to §24(b).

If the employer alleges that the claimant refused an offer of work, then a suitable work issue should be adjudicated. If the suitable work issue involves a former base period or benefit year employer, then the claim should be reopened for the week during which the offer was allegedly made, a Request for Separation and Wage Information, Form 1074, issued to the employer and, assuming the form is returned with a protest and in a timely manner, the employer should be given full rights as an interested party during the adjudication process.

If any employer provides information alleging that the claimant has not been seeking work during weeks for which benefits have already been paid then an availability issue will be adjudicated.

When the claimant contacts the claim adjudicator for the interview you must prepare a statement regarding the claimant's worksearch activity during the prior weeks in question and make a determination accordingly. If the facts gathered establish that the claimant has not met the "actively seeking work" requirements of §24(b) for any or all of the past weeks, you must issue a Form 3727-B "Notice of Redetermination and Overpayment" for the appropriate period. Do not re-determine eligibility for any past weeks until the normal re-determination procedures have been followed [See 1430: Special Determinations].

(I) Redeterminations – Capability

DUA may make a redetermination with respect to weeks previously paid if it is discovered that during the weeks in question the claimant was incapable of working. This issue may arise because the claimant is determined to be eligible to receive OASDI (Social Security Disability) or sick pay benefits from an employer financed plan. Claim adjudicators must issue a Form 3733 and follow the same procedure as outlined above.

(J) Workload Credit and Approved Illness Benefits

When a claimant will be using an approved illness benefit for a week during which he or she was ill or disabled, no workload credit can be taken since there is no potential for disqualification.

(K) Data Entry of Part-Time Availability Issues

A part-time availability issue which is raised by a claimant's health or medical condition (i.e., the claimant's physical/mental ability to work) should be resolved using Resolution Code 04/Able to Work. Part time availability issues arising from circumstances unrelated to the claimant's health should be resolved using Resolution Code 05/Availability to Work.. In either case whether approved or denied, you must enter the number of hours of work for which the claimant is available by entering the number in the data entry fields immediately following the resolution code (e.g., 04-25).). In cases where an individual has *no* history of part-time employment, such as a qualified individual with a disability, but now has good cause to restrict availability to part-time employment, data enter the Resolution Code as 04 or 05-PT.