



DEPARTMENT OF UNEMPLOYMENT ASSISTANCE
UI POLICY & PERFORMANCE
INTEROFFICE MEMORANDUM

Date: March 23, 2018

Classification: Reasonable Attempts

Rescission(s): Reasonable Attempt Memo, October 1, 2014

Reference No.: UIPP 2018.02

TO: All DUA Managers, Adjudication and Call Center staff, Compliance Officers, Senior Staff Directors
FROM: Jennifer Lavin, Director, UI Policy and Performance Department
SUBJECT: Revision of Reasonable Attempt Policy for Adjudication of Pending Issues

1. PURPOSE.

To provide updated guidance on reasonable attempts to obtain the material facts from the parties to a disputed UI benefit claim.

2. BACKGROUND.

State unemployment insurance agencies must obtain all relevant and critical facts regarding a claim, or document that they have made a reasonable attempt to obtain these facts. Recently, DUA has reconsidered our prior policy of making a second attempt to a claimant or employer who failed to return the initial request for information when an issue was created on a claim for benefits.

When a claimant files a claim for benefits and creates an issue, UI Online sends initial fact finding to both the claimant and the employer. Regardless of how they choose to receive correspondence, each of them has 10 days to respond. DUA now believes this initial fact finding questionnaire can be considered a reasonable attempt and does satisfy the Department of Labor requirement. DOL's ET Handbook No. 301 states that the minimum criteria to satisfy the reasonable attempt requirement will be met under the following circumstances:

"If the (reasonable) attempt is in writing, the notice must advise that information is needed to determine an issue and that failure to respond by a certain date will result in a decision based on the information on file. The notice may or may not include questions. If questions are included, they will not be

evaluated until they have been answered by the claimant, employer, or third party. A copy of all correspondence written in the course of the investigation and documentation/evidence that supports the action taken must be present (or referenced) in the case file.

If a party fails to respond timely to a request for information made as part of the fact finding process, a determination may be issued based on available information even if subsequent adverse information is received from the other party.

If the claimant is advised by an automated system, either by mail or by recorded message, that it is necessary to contact the agency before benefits can be paid, it will be considered a reasonable attempt to obtain information."

3. ACTION.

Effective immediately, if fact finding for an outstanding issue **has not been returned** by the deadline date, adjudicators may proceed with adjudicating the issue utilizing the information available. This means that if the party with the burden of persuasion for the issue fails to respond to the initial fact finding, that party will most likely receive an adverse determination. For example, if the claimant indicated they quit their employment when they filed a claim for benefits, but failed to return the initial fact finding for the quit issue, they are unlikely to meet the burden of persuasion necessary for quit issues and establish that their leaving was for either an urgent, compelling, necessitous reason, or for reasons attributable to the employing unit and will therefore be determined ineligible for benefits.

If fact finding **has been returned** by the deadline date, adjudicators are still responsible for determining whether all discrepancies have been clarified and all aspects of the issue have been addressed. If there are still questions that need to be answered or facts that need to be rebutted before an eligibility determination can be made, adjudicators should proceed with established procedure and contact the party for additional information by telephone. This contact must be documented in UI Online. If parties are not available, adjudicators *must leave a detailed message requesting information pertaining to the pending issue* with a 48 hour deadline for response. The claimant/employer/TPA should be instructed to contact the Fact Finding line within the 48 hours to provide the additional requested information. Adjudicators will leave a **detailed description** of the information requested in the voicemail (including the phone number called) in the "Add Notes" section to inform anyone looking at the claim that an additional contact was made.

Adjudicators must communicate to the claimant/employer/TPA during the phone call, or when leaving a message, exactly what information is needed to resolve the

outstanding issue. **No adjudicator shall refuse to give the claimant/employer/TPA the details of the missing information when the call is made. Also, no adjudicator shall tell the contacted party that DUA Fact Finding staff will tell them what information is needed to resolve the issue.**

If the employer/TPA refuses to participate in the fact finding process, either because the adjudicator cannot provide the claimant's social security number or the employer/TPA disagrees with the amount of information requested, adjudicators should inform the employer/TPA that it will be noted they would not provide information needed to adjudicate the claim and a determination will be made based on the available information. A detailed note must then be placed in the claim explaining exactly how the employer/TPA refused to participate in the process, for example: "TPA stated she could not find the record with only the last 4 digits of the SSN or the claimant name."

If there is no active phone number available to contact the party, send a custom fact finding questionnaire requesting the additional information by the designated correspondence preference using a **five day deadline**. Be sure to leave a detailed note to explain your action. *Staff should not send a custom fact finding questionnaire because the employer/TPA would not provide information needed to adjudicate the claim.*

4. QUESTIONS.

Any questions regarding reasonable attempts should be directed to the UI Policy and Performance Department.