

Chapter 5: Suitable work

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Section 1: Statute

G. L. c. 151A, § 25(c)

No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter for—

(c) Any week in which an otherwise eligible individual fails, without good cause, to apply for suitable employment whenever notified so to do by the employment office, or to accept suitable employment whenever offered to him, and for the next seven consecutive weeks in addition to the waiting period provided in section twenty-three, and the duration of benefits for unemployment to which the individual would otherwise have been entitled may thereupon be reduced for as many weeks, not exceeding eight, as the commissioner shall determine from the circumstances of each case.

“Suitable employment”, as used in this subsection, shall be determined by the commissioner, who shall take into consideration whether the employment is detrimental to the health, safety or morals of an employee, is one for which he is reasonably fitted by training and experience, including employment not subject to this chapter, is one which is located within reasonable distance of his residence or place of last employment, is [one] which reasonably accommodates the individual’s need to address the physical, psychological and legal effects of domestic violence, and is one which does not involve travel expenses substantially greater than that required in his former work.

No work shall be deemed suitable, and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:—

- (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- (2) If the remuneration, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- (3) If acceptance of such work would require the individual to join a company union or would abridge or limit his right to join or retain membership in any bona fide labor organization or association of workmen.

An individual who is certified as attending an industrial retraining course or other vocational training course as provided under section thirty shall not be denied benefits by reason of the application of the first paragraph of this subsection relating to failure to apply for, or refusal to accept, suitable work.

Section 2: Principles

An otherwise eligible claimant will be disqualified under § 25(c) for any week in which, without good cause, the claimant refuses to accept an offer of suitable employment or to apply for suitable employment when notified to do so by the MassHire Department of Career Services (MDCS). The disqualification continues for up to the next seven consecutive weeks. Additionally, the duration of benefits to which the claimant otherwise would have been entitled may be reduced by up to eight weeks, depending on the length of employment refused.

A suitable employment analysis is only necessary when a claimant is “otherwise eligible.”¹ If a claimant did not apply for benefits during a week in which an offer was made, or was disqualified for that week under another section of the law, the claimant is not an otherwise eligible individual, and may not be disqualified under § 25(c).

Suitable work determinations depend on the individual circumstances of each particular case. It is essential to consider each of the factors specified in the statute that may be relevant and to understand why they do, or do not, apply.

Section 3: Fact-finding and analysis

For suitable employment to be an issue, it first must be found that: (1) the claimant was offered, or notified to apply for, a particular job with a particular employer; and (2) the claimant rejected the offer or failed to apply.

¹ Note that there are some claimants who are excused from the work search requirements. A claimant who is in attendance at an approved § 30 training program is not disqualified for refusing suitable work. Likewise, if the claimant has a definite recall date- or an approximate date of return to work- within the next four weeks, the claimant is not disqualified under § 25(c) for refusing suitable work. Indeed, a claimant with a definite return to work date within four weeks is not subject to disqualification under § 24(b) or § 25(c) for failing to seek or accept employment. (But a claimant with an approximate, not definite, return to work date must be capable of, available for, and actively seeking work to avoid a week-to-week disqualification under § 24(b). See Chapter 4- Capable Of, Available For, and Actively Seeking Work.)

A job offer includes an offer by an employer for whom the claimant has never worked and an offer of reemployment by a prior employer from which the claimant is permanently separated.

A. Did the claimant refuse, without good cause, to apply for suitable employment when notified to do so?

A claimant who fails to apply for a job after having been notified to do so by a state agency is disqualified under § 25(c). Note that a claimant who makes an intentionally ineffective application may be considered to have refused to apply. For example, a claimant might intentionally not respond, or not respond timely, to an offer of a job interview, or intentionally might omit information from a job application that the employer needs to decide whether to make an offer. As elsewhere, findings must be based on specific facts, supported by evidence. If the adjudicator determines that there was a refusal to apply when notified, the adjudicator must next determine whether there was good cause for the refusal, and whether the job was suitable.

B. Was a job offer made, received, and refused?

A claimant may not be disqualified under § 25(c) unless each of the following questions is answered affirmatively:

- Was there a **bona fide offer**, including sufficient detail regarding duties, location, pay, and hours?
- Was the offer communicated to the claimant? When and how (phone, email, letter, in person)?
- Did the claimant receive and understand the offer?
- Did the claimant refuse the offer? (How? When?) Note that a claimant can be considered to have refused an offer if the claimant failed to timely respond to the job offer, or ignored the job offer.

Note that if the answer to any of the above questions is “no”, the claimant is not disqualified under § 25(c).

C. If the claimant refused to accept or apply for a job, was there good cause?

If a claimant had good cause for refusing a job offer or for not applying for a job, then there is no disqualification under § 25(c). The issue of good cause is independent from the job’s suitability for the claimant.

Good cause includes circumstances beyond the claimant’s control that prevent the claimant from applying for or accepting a job. For example, a claimant whose car breaks down on the way to a job interview may have good cause for failing to apply for

the job. Likewise, a serious illness may be good cause for not accepting the offer of a job beginning while the claimant likely still will be sick. Note, however, that some good causes, such as a serious illness, may require disqualification under § 24(b). (See Chapter 4 - Able, available, and actively seeking work.)

Good cause may include personal reasons, for example, the lack of available childcare during the work hours of an offered job.²

The issue of good cause also may arise when a claimant refuses a job offer because of a sincerely-held religious or moral conviction. In deciding whether good cause exists, the adjudicator should consider whether:

- the claimant's refusal was based on an identified religious or moral belief; and
- specific job duties would require the claimant to violate the claimant's belief.

But if the claimant's refusal is in conflict with a clear, valid public policy, the refusal is not for good cause.

Example 1: Good cause would exist for refusing an offer of employment that required working on Saturdays, if the claimant believed that Saturday is the Sabbath and that one should not work on the Sabbath. But good cause would not exist for refusing an offer of employment because the employer, although willing to accommodate the claimant's religious beliefs, employed others on Saturdays who did not share those beliefs. The reason is that the specific duties of the job offered to the claimant did not require the claimant to violate the identified religious beliefs.

Example 2: Good cause would exist for refusing an offer of employment that required designing or making weapons, if the claimant believed one should not engage in such activity. But good cause may not exist for refusing an offer of employment by the same employer for a job that did not entail such activity, for example, in accounting or human resources. The reason is that the specific duties of the job offered to the claimant did not require the claimant to engage in designing or making weapons.

Example 3: In contrast, good cause would not exist if the claimant, based on a belief that same sex couples should not marry, refused employment as a town clerk required to provide marriage licenses on a nondiscriminatory basis. The reason is that Massachusetts has a clear public policy in favor of same sex marriage.

² *Conlon v. Director of the Div. of Employment Sec.*, 382 Mass. 19, 23 (1980).

D. Was the work refused suitable?

A claimant may not be disqualified under § 25(c) if the job at issue was not suitable. Factors to be considered in determining the suitability of the job include:

- In what area is the claimant's training or experience? How, if at all, did the job offered relate to the claimant's prior training or experience? Does the claimant have a reasonable prospect of finding new work in the claimant's customary occupation? At the claimant's accustomed level of pay, including the value of fringe benefits? How long is this likely to take? (See Chapter 4 - Able, available, and actively seeking work).
- Did the job endanger the claimant's health or safety?
- How far was the job from the claimant's home? From the claimant's most recent workplace? How long was the claimant's prior commute? How much would the new commute cost the claimant? What public or private transportation was available?
- What were the working hours and wages for the offered job? Were they comparable to other, similar jobs?
- What, if any, were the union membership requirements in the offered job?

Note, sometimes a claimant refuses the offer of a new job from a prior employer from which there had been a complete separation. A job from which a claimant **quit for good cause or was fired** will generally be regarded as unsuitable. If the claimant left employment for urgent, compelling, and necessitous reasons, the suitability of any subsequent offer of work from the former employer must be evaluated in light of those same circumstances, if they still apply.

Section 4: Circumstances and policies

A. Prevailing conditions of work test

Section 25(c) states that benefits shall not be denied "if the remuneration, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality." A claimant will be disqualified for refusing an offer of work if:

- the work is suitable for the claimant in terms of the claimant's previous wages and skill levels; and
- the wages, hours and other conditions of the work were not substantially less favorable to the claimant than those prevailing in the locality for similar work.

If the work does not meet the prevailing conditions of work test, then for purposes of § 25(c) it does not matter why the claimant refused it.

To determine the prevailing conditions of work, adjudicators should use online resources such as the LMI (Labor Market Information) listed on DUA's intranet website, or consult a manager.

B. Union considerations

1. Job available due to labor dispute

Under § 25(c)(1), a job is not suitable if it “is vacant due **directly** to a strike, lockout or other labor dispute[.]” (Emphasis added). Even if the employer was engaged in a labor dispute, this provision does not apply if the claimant was aware that the vacancy was not due directly to that dispute.

Example: A claimant refuses a job offer of suitable work because the employer is involved in a labor dispute. But the position was not vacant because of the dispute, which involved other jobs in the company, and the claimant was aware of this fact. The claimant is disqualified under § 25(c) because the vacancy was not due to the labor dispute.

2. Union membership

Section 25(c)(3) protects a claimant from having to accept employment that would require joining a company union or that would abridge the claimant's right to join or belong to a bona fide union. (A company union is one under the domination of the employer, as distinguished, say, from a union belonging to the American Federation of Labor-Congress of Industrial Organizations.)

C. Recalls

1. Recall refused

Whether a claimant's refusal of a purported recall is analyzed under § 25(c) or § 25(e)(1) depends, first, on whether the claimant has separated permanently from the employer. If so, then the purported recall actually was an offer of new employment to be analyzed under § 25(c). If there was not a permanent separation and if the new position is substantially the same as the former position, then the refusal must be analyzed under § 25(e)(1). (See Chapter 7 - Voluntary leaving.) If the new position is not substantially the same as the prior position, then, because it is a new job, the refusal must be analyzed under § 25(c).

Facts suggesting that the employment relationship was not completely severed include:

- the claimant having been recalled in accordance with the terms of a union contract; or
- at the time of the layoff, the employer gave the claimant a definite or approximate recall date; or
- the layoff having been seasonal or customary in the employer's business; or
- a pattern of the claimant having been laid off, recalled, and returning to work for the employer.

Facts suggesting that the employment was completely severed include:

- the employer laid off the claimant without giving a definite or approximate recall date, and there is no prior pattern of layoffs and recalls creating an implied understanding that the current layoff would be followed by a similar recall; or
- the claimant reasonably concluded, based on the passage of time or other reasonable considerations, that there had been a complete severance.

D. Transportation and travel

In general, no arbitrary, fixed figure can serve as a "reasonable" distance to travel to and from work. The adjudicator must compare the time, cost, and mode of transportation available for travel to the offered job with the claimant's previous commuting arrangements.

1. No public transportation available

A claimant refuses a job offer upon learning that public transportation to the place of work is unavailable. If the claimant needs public transportation to commute to and from work, then the refusal is not disqualifying under § 25(c). Consider, however, whether the claimant made reasonable efforts to find alternate transportation.

This principle also applies to a claimant who used to drive to work in a private car, but is no longer able to drive due to a change in the claimant's physical condition. (This may raise a capability issue.)

2. Increase in commuting time

A claimant refuses a job because of an increase in commuting time. If this increase makes the job unsuitable, the refusal will not be disqualifying under § 25(c). For

example, if the claimant's commute would increase from thirty minutes to ninety minutes, the job likely would be unsuitable; if so, the claimant would not be disqualified under § 25(c) for refusing it. On the other hand, if the claimant's commute would only increase from twenty-five minutes to thirty minutes, the job would not be unsuitable for that reason, and the claimant would be disqualified. Consideration should be given to the extent of the increase and commuting patterns in the area.

E. Travel expenses

1. Substantial increase in travel expenses

A claimant refuses a new job because the travel expenses will be greater than they were for the claimant's previous job. If the increase was substantial, then the job is unsuitable and the claimant may not be disqualified under § 25(c). Whether the increase was substantial is fact-specific and depends on the circumstances of the individual claimant.

First, the amount of the increase in travel expenses must be determined by finding and comparing the travel expenses for the previous job and the new job. Second, whether the increase was substantial should be determined in light of the amount of the increase in relation to the salary or wages offered for the new job and the claimant's other means.

2. Unaffordable travel expenses

Although there may not have been a substantial increase in travel expenses, or any increase at all, a claimant will have good cause for refusing a new job, and will not be disqualified under § 25(c), if the wages or salary of the new position are less than the prior position, making the travel expenses unaffordable for the claimant.

F. Training or experience

"Suitability is not a matter of rigid fixation. It depends upon circumstances and may change with changing circumstances."³ Generally, to determine whether refused work was suitable in terms of the claimant's training or experience, an adjudicator should consider:

- the claimant's skill and capacity;
- the claimant's reasonable expectation of finding equivalent employment; and
- the time required to find such work.

³ *Pacific Mills v. Director of the Div. of Employment Sec.*, 322 Mass. 345, 350 (1948).

G. Safety, health, and physical environment

When making suitability determinations, adjudicators must take into consideration whether the employment would be detrimental to the claimant's health or safety.

Although some types of work are inherently hazardous, such as demolition or some laboratory work, they are not necessarily unsuitable when the claimant has experience in the occupation and would be subject to the same risks as others performing the work. For example, a job requiring the handling of toxic chemicals is suitable, if (1) the employer uses methods and conditions that make working with the chemicals non-hazardous, and (2) the claimant is trained in those methods or the employer is willing to provide training.

The danger may apply only to the claimant or to individuals similarly-situated to the claimant. For example, a job that involves lifting may be suitable for most people but unsuitable for people with back conditions that make such lifting personally unhealthy. In determining whether a job offered is suitable, consider such factors as the claimant's physical condition, including strength and any injury. A claimant's physical condition may have changed since the claimant last worked. Generally, a claimant should be able to provide documentation supporting a claim that some medical or physical condition makes a job unsuitable. If the claimant's personal condition or experience would lead to greater risks than others would face, the job may be unsuitable.

Work is detrimental to a claimant's health or safety if it could result in danger to the claimant's physical or mental well-being. For purposes of determining suitability, this is an objective test. Therefore, a belief that a job is unsuitable does not, by itself, make the job unsuitable. But a reasonable belief that a job is detrimental to the claimant's health may provide the claimant with good cause for refusing the job.

H. Refusing lower-paid or less-skilled employment

"[W]ork at a substantially lower wage should not be deemed suitable unless a claimant has been given a reasonable period to compete in the labor market for available jobs for which he has the skill at a rate of pay commensurate with his prior earnings."⁴ Similarly, a claimant should have a reasonable period to search for a job requiring the same level of skill and training as the job from which the claimant separated. The length of time that is reasonable depends on the claimant's skills and experience in relation to the existing labor market.

This same principle applies when a claimant with multiple jobs separates from the primary employer and is offered full-time employment by the subsidiary employer. For a reasonable time, the claimant may refuse an offer that does not use the same level of

⁴ *Graves v. Director of the Div. of Employment Sec.*, 384 Mass. 766, 768–69 (1981) (internal brackets and quotation marks omitted).

skill or provide substantially as much in wages and benefits as the former full-time employment.

I. Pre-employment drug test – refusal to take test

An applicant for a job who refuses to take a pre-employment drug test, may be disqualified under § 25(c), if the employer had a substantial and valid interest in requiring the test. For example, if a position is safety-sensitive and requires random, non-suspicion-based drug tests, the employer may establish a substantial and valid interest in requiring a drug test prior to employment. A claimant who fails to apply for work or refuses to accept work because of such a drug test has failed to apply for or accept suitable work without good cause. (See Chapter 8 - Discharge, suspension, and conviction.)

J. Pre-employment drug test – positive test

An individual who accepts an offer or a referral of suitable work conditioned upon passing a drug test and then is not hired because of a positive test result has not refused an offer or referral of work and is not disqualified under § 25(c). Testing positive under this circumstance is analogous to failing a pre-employment physical examination.

K. Domestic violence

Adjudicators who learn that there may be a domestic violence-related reason for refusing work should obtain fact-finding from the claimant **and refer the case to the UI Policy and Performance Department, which will make the determination.**

A claimant who is a victim of domestic violence, or who has a dependent child who is a victim of domestic violence, may need certain work-related accommodations in order to address the physical, psychological and legal effects of domestic violence. These accommodations may include:

- A schedule of working hours that will allow the claimant to make required court appearances, meet with legal representatives, obtain, or continue treatment, or accompany a dependent child who requires such treatment.

An employer might accommodate such a need through a schedule of working hours that will enable the claimant to keep regularly-scheduled appointments or by allowing sufficient flexibility in the schedule of working hours to accommodate the claimant's needs, which may include court appearances and matters unrelated to treatment.

If a particular job cannot accommodate such a need, then it is not suitable.

- A work location or schedule of working hours that will permit the claimant to travel to and from the workplace in safety.
- A secure workplace not readily accessible by an abuser.

This above list is not exhaustive. Adjudicators will encounter a variety of circumstances in cases involving domestic violence. The claimant's responses on fact-finding questionnaires should detail the reason or reasons that the job conflicted with the claimant's need to address the effects of domestic violence and was thus unsuitable.

Section 5: Disqualification and benefit credit reduction

The disqualification imposed under § 25(c) is for the week in which the refusal of suitable work or a referral occurs and for the next seven weeks, for a total of eight weeks. The disqualification also reduces the remaining balance on the claimant's benefit credit.

If the duration of the available work was at least four, but fewer than eight, weeks, the benefit credit will be reduced by four times the benefit amount or by the entire benefit credit, if fewer than four weeks of credit remain.

If the duration of the available work was eight or more weeks, the benefit credit will be reduced by eight times the benefit amount, or by the entire benefit credit, if fewer than eight weeks remain.

A claimant who refuses work of four weeks or less is subject to disqualification under § 29(a) and 1(r), if the new work was suitable. The disqualification is for the duration of the period work was available, that is, two days, one week, etc.

A claimant who was a temporary employee of a temporary help firm that did not offer new work at the end of an assignment may be initially eligible for benefits. But if the claimant subsequently is offered and declines suitable work of more than four weeks, the claimant may be subject to disqualification under § 25(c).

If a claimant who was a temporary employee of a temporary help firm contacts the temporary help firm after completing an assignment, is offered a suitable new assignment, and refuses, the issue should be analyzed under § 25(e)(1). (See Chapter 7 - Voluntary leaving.)