



**DEPARTMENT OF UNEMPLOYMENT ASSISTANCE
UI POLICY & PERFORMANCE
INTEROFFICE MEMORANDUM**

DATE: October 7, 2015

RESCISSION(s): All earlier policy statements and memoranda relating to the subject-matter of this memorandum are rescinded, including, but not necessarily limited to:

- Memorandum dated July 9, 2009, from UI Policy & Performance, entitled "Part-Time Availability"

REFERENCE NO.: UIPP 2015.10

TO: All DUA Managers, Career Center Field Operations Directors, Job Service Representatives, Compliance Officers, Review Examiners, Call Center Staff and Senior Staff Directors

FROM: Jennifer Lavin, Director, UI Policy & Performance

SUBJECT: Application of the Part-Time Availability Language in 430 CMR 4.45.

1. PURPOSE.

To provide guidance on the part time availability language in 430 CMR 4.45, which allows claimants to limit their availability for work in the benefit year to part time employment and to update the memorandum issued by UI Policy and Performance on July 9, 2009 entitled "Part-Time Availability."

2. REFERENCES.

- 430 CMR 4.42 – 4.45
- G.L. c. 151A, §24(b)
- G.L. c. 151A, §§29(b) and 1(r)

3. BACKGROUND.

The July 7, 2009 memorandum was issued in response to a decision issued in the case of Carolyn Leary vs. Edward Malmborg and Suzanne Bump by the Suffolk Superior Court. The Superior Court decision found that the Department of Unemployment Assistance regulations as they related to part-time availability (430 CMR 4.45) were invalid at that time. Shortly after the July 7, 2009 memorandum was issued, DUA revised 430 CMR 4.45 to reflect the decision issued by the Superior Court, but failed to rescind the memo.

4. DISCUSSION.

The July 7, 2009 memorandum stated claimants would be considered to meet the requirements of G.L. c. §24(b) even if their availability was limited to part-time work as long as they had good cause for such limitation and had not removed

themselves from the labor market as a result of the limitation. Also, claimants did not need a previous history of part-time availability to restrict them to part-time availability in the benefit year provided there was a good cause reason for the restriction. Good cause includes health issues that prevent the claimant from working full-time or domestic responsibilities, such as the need to care for a child or other family member. **Remember:** the claimant's preference for part-time work, attendance at school (other than a §30 approved program), or an unwillingness to exceed Social Security retirement income limits does NOT constitute good cause.

430 CMR 4.45 was revised to read as follows:

- (1) An individual otherwise eligible for benefits may limit his/her availability for work during the benefit year to part-time employment, provided, that the individual:
 - (a) has a prior work history of part-time employment; establishes to the satisfaction of the commission good cause for restricting availability during the benefit year to part-time employment and that such good cause reason is the same as, or is related to that which existed during the prior work history of part-time employment; and is available during the benefit year for at least as many hours of work per week as used to establish the prior work history of part-time employment; or
 - (b) establishes to the satisfaction of the commissioner that the reasons for leaving his or her employment were for such an urgent, compelling, and necessitous nature as to make his or her separation involuntary; and establishes to the satisfaction of the commissioner that the same or related urgent, compelling, and necessitous reasons require the individual to limit availability for work during the benefit year to part-time employment; and such limitation does not effectively remove the individual from the labor force, and
- (2) An individual who falls under the provisions of 430 CMR 4.45(1)(b) who obtains suitable part-time employment during the benefit year shall be determined not to be in partial unemployment and will not be eligible to receive partial unemployment benefits while so employed in the benefit year.
- (3) Notwithstanding the provisions of 430 CMR 4.45(1), an otherwise eligible individual who does not meet the requirements of 430 CMR 4.45(1) may limit his/her availability for work during the benefit year to part-time employment provided, that the individual is:
 - (a) a qualified individual with a disability;
 - (b) provides documentation to the satisfaction of the commissioner substantiating an inability to work full-time because of such disability; and

- (c) establishes to the satisfaction of the commissioner that such limitation does not effectively remove himself/herself from the labor force.
- (4) Any individual who meets the requirements of either 430 CMR 4.45(1) or (3) must be actively seeking and available for suitable work to be eligible for benefits. An offer of employment will not be considered an offer of suitable employment and the individual will not be disqualified for refusing such an offer where such offer:
 - (a) in the case of an individual who meets the requirements of 430 CMR 4.45(1)(a) requires greater hours than those used to establish the individual's prior work history of part-time employment; or
 - (b) in the case of an individual who meets the requirements of 430 CMR 4.45(3) requires greater hours than the individual is capable of working.

A claimant who is available to work only part-time may still meet the requirements of §24(b) by meeting *one* of the three sets of conditions for limiting availability described in 430 CMR 4.45. Although a claimant who is available for part-time work may be approved under §24(b), eligibility for partial benefits must be determined under §§29(b) and 1(r). *A claimant with restricted hours of availability who accepts a part-time job will not be considered to be in partial unemployment during any week in which the employer offers all of the part-time hours requested.* If the claimant is working all of the part-time hours requested, they are not eligible for partial benefits under §§29(b) and 1(r).

5. QUESTIONS.

If you have any questions, please contact the UI Policy & Performance Department at (617) 626-6422.