

# PROPOSED RULEMAKING

## DEPARTMENT OF LABOR AND INDUSTRY

[ 34 PA. CODE CH. 65 ]

### Unemployment Compensation; Employee Provisions

The Department of Labor and Industry (Department), Office of Unemployment Compensation Benefits Policy, proposes to amend §§ 65.11, 65.43 and 65.154 (relating to active search for work; claims for compensation—when to file; and payments), as set forth in Annex A.

#### *Statutory Authority*

This proposed rulemaking is authorized under the authority of section 201(a) of the Pennsylvania Unemployment Compensation Law (UC Law) (43 P.S. § 761(a)) which authorizes the Department to promulgate and amend rules and regulations necessary to administer the UC Law.

#### *Background*

The Department is currently undergoing a significant upgrade to its information technology system for administration of the Unemployment Compensation (UC) program. The Pennsylvania UC Claims System is replacing the 40-plus year-old legacy system (legacy) currently used to administer UC benefits and appeals. Legacy is comprised of multiple systems and logins used to perform day-to-day job functions. This mainframe technology has now become outdated. As a result, it is more expensive and less efficient to use. Further, the legacy technology has not kept up with the needs of the Commonwealth. In contrast, the Pennsylvania UC Claims System is a single, integrated benefits system that requires fewer logins and will enhance customer service, improve business processes, and increase system integrity and reliability while meeting business needs, and complying with Federal and State law.

#### *Purpose*

This proposed rulemaking amends the Department's existing UC regulations in §§ 65.11, 65.43 and 65.154. These proposed amendments will allow for the implementation of the Pennsylvania UC Claims System and will align the regulations with Federal law, State law and current practice.

#### *Summary of Proposed Rulemaking*

##### *§ 65.11. Active search for work*

The Department is proposing to amend § 65.11(f)(4) to reflect current practices relative to work search requirements. Currently, this section requires a claimant whose labor market is located outside of Pennsylvania to register with the employment service that serves his or her labor market and with the Pennsylvania CareerLink® System. After section § 65.11(f)(4) was promulgated, the United States Department of Labor advised Pennsylvania that requiring claimants whose labor markets are located outside of the Commonwealth to register with the Pennsylvania CareerLink® system conflicted with 26 U.S.C.A. § 3304(a)(9)(A) of the Federal Unemployment Tax Act (FUTA) and 20 CFR Part 604.3(b) (relating to able and available requirement—general principles) of the Regulations for Eligibility for Unemployment Compensation (Federal Regulations). Section 3304(a)(9)(A) of FUTA re-

quires state law to ensure that “compensation shall not be denied or reduced to an individual solely because he files a claim in another State. . . or because he resides in another State. . . at the time he files a claim for unemployment compensation.” 20 CFR Part 604.3(b) establishes that a state must limit its implementation of the able and available requirement (of which work registration is a part) to a “geographical scope.” On August 25, 2018, the Secretary of the Department (Secretary) published a notice in the *Pennsylvania Bulletin* waiving the requirement in subsection (f)(4) to register with the Pennsylvania CareerLink® system. The proposed amendment to subsection (f)(4), removing this requirement, is to reflect the waiver already noted by the Secretary. These claimants are still required to register for employment search services with the employment service that serves his or her labor market.

##### *§ 65.43. Claims for compensation—when to file*

The Department is proposing to amend § 65.43 by deleting the entirety of this section, which requires biweekly claims filing. The Department proposes to add the language: “A claimant shall file a claim for compensation for a week no later than the last day of the second week after the end of the week claimed.” The addition of this language will allow claimants to file claims for compensation on a weekly basis, while still authorizing claimants to file on a biweekly basis if they so choose. Currently, claimants file their claims for compensation on a biweekly schedule, that is, two weeks at a time. With the implementation of the new Pennsylvania UC Claims System, Pennsylvania will allow claimants to file claims for compensation on a weekly basis. This proposed amendment gives claimants greater flexibility and reflects modern practice throughout the country, aligning Pennsylvania with practices in most other states. The proposed amendments in this section delete the language mandating and providing for biweekly filing.

##### *§ 65.154. Payments*

Under § 65.154, the number of dependent allowances a claimant may receive is limited to the maximum number of weeks for which the claimant may receive full UC benefits. This section reflects that rule but is outdated and thus, must be amended. The proposed amendments in this section are necessary to reflect the current maximum number of weeks of benefits allowable under the UC Law for both regular UC Benefits and Extended UC Benefits. Currently, sections 404(c) and 405-A of the UC Law (43 P.S. §§ 804(c) and 815) allow for a maximum of 26 weeks of regular UC Benefits, and a maximum of 13 weeks of Extended UC Benefits. The proposed amendments in this section remove the outdated references to both 30 weeks of regular UC benefits and 9 weeks of extended UC benefits, and state that the number of payments is equal to “the number of weeks that the claimant is entitled to benefits” under sections 404(e)(3) and 405-A of the UC Law.

#### *Compliance with Executive Order 1996-1, Regulatory Review and Promulgation*

The Department provided a summary of the proposed amendments to 11 valued stakeholders, allowing them to provide comments. The following stakeholders were contacted: Geoffrey Moomaw, Pennsylvania AFL-CIO, Pennsylvania Chamber of Business and Industry, Mon Valley Unemployed Committee, National Federation of Independent Businesses, Heiss Gibbons and Company, Inc., Com-

munity Legal Services, Inc., Philadelphia Unemployed Project, Friends of Farmworkers, Inc., Pennsylvania Building Trades and Philadelphia Legal Assistance.

The Department also discussed this proposed rulemaking with the majority and minority executive directors for the House and Senate Labor and Industry committees, and representatives from the Pennsylvania Chamber of Business and Industry. The Department did not receive any substantive comments regarding the proposed regulatory package.

*Affected Persons*

This proposed rulemaking will affect all claimants who file for UC benefits under the UC Law.

*Fiscal Impact*

This proposed rulemaking does not have any appreciable fiscal impact.

*Public Comment*

Interested parties are invited to submit written comments, objections or suggestions about this proposed rulemaking to Becky Keen, Office of UC Benefits Policy, Department of Labor and Industry, 6th Floor, Labor and Industry Building, 651 Boas Street, Harrisburg, PA 17120, (717) 787-6021, rekeen@pa.gov within 30 days following publication in the *Pennsylvania Bulletin*.

*Reporting, Recordkeeping and Paperwork Requirements*

This proposed rulemaking will not require the creation of new forms or reporting requirements.

*Sunset Date*

A sunset date is not appropriate for this proposed rulemaking. However, the Department will continue to monitor its effectiveness.

*Effective Date*

Sections 65.11(f)(4) and 65.154 will become effective upon final-form publication in the *Pennsylvania Bulletin*.

Section 65.43 will become effective upon the date of publication of a notice in the *Pennsylvania Bulletin*, announcing the date of implementation of the Pennsylvania UC Claims System. The notice in the *Pennsylvania Bulletin* shall specify the applicability of the amendments to § 65.43.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 16, 2020, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Committee on Labor and Industry and the House Labor and Industry Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the rulemaking by the Department, the General Assembly and the Governor.

W. GERARD OLEKSIK,  
*Secretary*

**Fiscal Note:** 12-111. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 34. LABOR AND INDUSTRY**

**PART II. BUREAU OF EMPLOYMENT SECURITY**

**Subpart A. UNEMPLOYMENT COMPENSATION**

**CHAPTER 65. EMPLOYEE PROVISIONS**

**Subchapter B. PREREQUISITES FOR ELIGIBILITY**

**ACTIVE SEARCH FOR WORK**

**§ 65.11. Active search for work.**

\* \* \* \* \*

(f) *Alternative requirements and waiver.*

\* \* \* \* \*

(4) For purposes of subsection (c), if a claimant's labor market is located outside of this Commonwealth the claimant shall register for employment search services with the employment service that serves the claimant's labor market [ **in addition to registering with the Pennsylvania CareerLink® system** ].

\* \* \* \* \*

**Subchapter C. APPLICATION PROCEDURE**

**APPLICATION FOR BENEFITS AND CLAIMS FOR COMPENSATION**

**§ 65.43. Claims for compensation—when to file.**

[ (a) **Claims for compensation shall be filed bi-weekly in accordance with this subsection.**

(1) **The Department will establish a schedule of consecutive 2-week periods for each claimant, and may revise a claimant's schedule as necessary.**

(2) **At the end of each 2-week period for a claimant, the claimant may file claims for compensations for both of the weeks or a claim for compensation for one of the weeks. The claims or claim shall be filed no later than the last day of the week immediately following the 2-week period.**

(b) **Notwithstanding the provisions of subsection (a), the Department may allow a claimant to file a claim for compensation for the first week of a 2-week period before the 2-week period has ended. The claim shall be filed no later than the last day of the 2-week period. ]**

**A claimant shall file a claim for compensation for a week no later than the last day of the second week after the end of the week claimed.**

**Subchapter H. ALLOWANCES FOR DEPENDENTS**

**§ 65.154. Payments.**

Dependent's allowance shall be paid for valid claim weeks whether full or partial weekly benefit amount is payable. The number of payments shall be limited to [ **30 under section 404(e)(3) of the law (43 P.S. § 804(e)(3)), and the number of payments shall be limited to nine under section 405A of the Law (43 P.S. § 815) ] **the number of weeks that the claimant is entitled to benefits under sections 404(e)(3) and 405A of the law (43 P.S. §§ 804(e)(3) and 815, respectively.****

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