

RULES AND REGULATIONS

Title 34—LABOR AND INDUSTRY

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, amends §§ 65.11, 65.43 and 65.154 (relating to active search for work; claims for compensation—when to file; and payments), to read as set forth in Annex A.

Statutory Authority

These final-form amendments are promulgated under 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 This mainframe technology has now become outdated.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

The purpose of this final-form rulemaking is to amend the Department's existing UC regulations in §§ 65.11, 65.43 and 65.154. These 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.

Comments

The notice of proposed rulemaking was published at 50 Pa.B. 3108 (June 27, 2020). No public comments were received. The Department received comments from the Independent Regulatory Review Commission (IRRC). The Senate Labor and Industry Committee and the House Labor Relations Committee (Committees) did not comment. The Department's responses to IRRC's comments are as follows.

§ 65.43. Claims for compensation—when to file

Comment: This section requires a claimant to file in the Pennsylvania Unemployment Compensation Claims System “for compensation for a week no later than the last day of the second week after the end of the week claimed.” The Department states throughout the Regulatory Analysis Form (RAF) and the Preamble to the proposed regulation that claimants will have the option to file for compensation weekly or biweekly. However, the Department states in Regulatory Analysis Form (RAF)

Question # 10 and the Preamble to the proposed regulation that it is deleting “the language mandating and providing for biweekly filing.” (Emphasis added.) In addition, the RAF includes screenshots of the UC Claims System, which appears to only provide for weekly claims. Is it the Department's intent to allow claimants to file biweekly in the UC Claims System? We ask the Department to clarify in the final-form regulation statements regarding frequency of filings.

Response: The Department has reviewed this comment and is not making a change from the proposed regulation for the following reasons. The new Pennsylvania UC Claims System will allow claimants to file 1 or 2 weeks at a time by opening said weeks for online filing. To address this system change, the Department is amending § 65.43 by deleting the entirety of this section, which requires biweekly claims filing. Currently, claimants file their claims for compensation on a biweekly schedule, that is, 2 weeks at a time. The amendments in this section delete the language mandating and providing for biweekly filing. Additionally, the Department has added 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, and deletion of the current biweekly filing requirement, 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. Specifically, the Pennsylvania UC Claims System will require claimants to submit information chronologically, and therefore, a claimant must file for the earliest week first. However, should the claimant wish to do so, a second week of benefits may also be filed for. Any weeks “later than the last day of the second week after the end of the week claimed” will be considered untimely and will therefore not be available to the claimant for filing. This amendment gives claimants greater flexibility and reflects modern practice throughout the country, aligning this Commonwealth with practices in most other states.

Comment: [Section 65.43] will become effective upon publication of a separate notice in the *Pennsylvania Bulletin* “announcing the date of implementation” of the UC Claims System and “specify[ing] the applicability of the amendments,” anticipated to be October 2020. We have a concern regarding the implementation of this regulation. A delay between publication of the final-form regulation and the implementation notice may cause confusion among claimants regarding frequency of filings and compensation. We ask the Department to consider coordinating publication of the final-form regulation and the notice announcing the implementation of the UC Claims System in the same issue of the *Pennsylvania Bulletin* to ensure claimants efficiently transition to the new system.

Response: The Department has revised the effective date so that § 65.43 will become effective upon the date of publication in the *Pennsylvania Bulletin*, which will occur on the date of implementation of the Pennsylvania UC Claims System for UC benefits. The Department intends to schedule publication in the *Pennsylvania Bulletin* consistent with the go-live date of the new UC Claims System. The notice in the *Pennsylvania Bulletin* shall specify the applicability of the amendments to § 65.43.

Regulatory Analysis Form—economic or fiscal impacts

Comment: In response to RAF Question # 23, the Department describes anticipated savings to the Commonwealth as a result of implementing the UC Claims System. However, the Department does not include an estimate of these savings. We ask the Department to provide in the RAF submitted with the final-form regulation an estimate of potential savings or explain why it is not possible to do so.

Response: See answer to RAF Question # 23.

Summary of Final Form Rulemaking§ 65.11. *Active search for work*

The Department amends § 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 this Commonwealth to register with the employment service center that serves the claimant's labor market and with the Pennsylvania CareerLink® System. After § 65.11(f)(4) was promulgated, the United States Department of Labor advised the Commonwealth that requiring claimants whose labor markets are located outside of this Commonwealth to register with the Pennsylvania CareerLink® system conflicted with section 104(a)(9)(A) of the Federal Unemployment Tax Act (FUTA) (26 U.S.C.A. § 3304(a)(9)(A)) 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 104(a)(9)(A) of FUTA requires 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 amendment to subsection (f)(4), removing this requirement, is to reflect the waiver already approved by the Secretary. These claimants are still required to register for employment search services with the employment service that serves the claimants labor market.

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

The Department amends § 65.43 by deleting the entirety of this section, which requires biweekly claims filing. Currently, claimants file their claims for compensation on a biweekly schedule, that is, 2 weeks at a time. The Pennsylvania UC Claims System will allow claimants the option to file claims for compensation on a weekly basis or on a biweekly basis. Accordingly, the Department adds 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 allows claimants to file claims for compensation on a weekly basis, while still authorizing claimants to file on a biweekly basis if they so choose. If only 1 week of compensation is available to the claimant, either because they are not eligible for previous weeks or because they already filed for previous weeks, claimants will only be able to file for 1 week. The Pennsylvania UC Claims System will present questions pertaining to each available week in 1 week increments. If claimants are eligible for only 1 week of benefits, the system will ask them to provide information for only that

1 week of benefits. The Pennsylvania UC Claims System will ask claimants about wages earned that week, whether they searched for work that week, and if they were able and available to work that week.

The amendment, deleting the language mandating for biweekly filing, is necessary to reflect this new practice. Specifically, with the implementation of the new Pennsylvania UC Claims System, the Commonwealth will allow claimants to file claims depending on their preference and the number of weeks for which they are eligible. This amendment gives claimants greater flexibility and reflects modern practice throughout the country, aligning this Commonwealth with practices in most other states.

§ 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, is amended. The 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 amendments in this section delete 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.

Affected Persons

This final-form rulemaking will affect all claimants who file for UC benefits under the UC Law.

Fiscal Impact

As discussed previously, these final-form regulations are needed to implement the Pennsylvania UC Claims System. This new system replaces the outdated legacy system currently used to administer UC benefits and provides faster service for claimants and employers. Claimants may choose to receive communications from the UC system electronically, which will allow the Commonwealth to save on postage and mailing materials.

Currently, UC applicants can apply for benefits by phone or through the online legacy system. Of all applicants, 95.46% provide an e-mail address, indicating that they are willing and able to receive communications by means of e-mail. Additionally, 91.81% of UC applicants have applied for benefits using the online legacy system, while only 8.19% have called to file for benefits using the phone. This indicates that most claimants already prefer to use an electronic system for filing benefits.

Despite the previous, the Department has taken a conservative approach to approximating potential cost savings. The Department's estimates assume that 20% of claimants will opt to receive UC decisions and determinations by mailed communications, and that 80% will choose electronic communications of their determinations and decisions. By saving on postage through an increased use of the electronic system by claimants, the Department projects savings totaling \$4,794,328 in Fiscal Year 2020-2021.

There are no calculatable costs or savings for the regulated community or local government.

Reporting, Recordkeeping and Paperwork Requirements

This final-form rulemaking will not require the creation of new forms or reporting requirements.

Sunset Date

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

Contact Person

The contact person for this regulation is 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.

Effective Date

This final-form rulemaking will become effective upon the date of publication in the *Pennsylvania Bulletin*, which will occur at the date of implementation of the Pennsylvania UC Claims System for UC benefits. The Department intends to schedule publication in the *Pennsylvania Bulletin* consistent with the go-live date of the new 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 the notice of proposed rulemaking, published at 50 Pa.B. 3108 to IRRC and the Chairpersons of the Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, the Department is required to submit to IRRC and the Committees copies of comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the Committees, and the public.

Under section 5.1a(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on May 19, 2021, this final-form rulemaking was deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on May 20, 2021, and approved this final-form regulation.

Findings

The Department finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), known as the Commonwealth Documents Law, and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law and all comments were considered.

(3) The final-form rulemaking is necessary and appropriate for the administration and enforcement of the authorizing statutes.

Order

The Department, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 34 Pa. Code Chapter 65, are amended by amending § 65.11, 65.43 and 65.154 to read as set forth in Annex A.

(b) The Department shall submit this regulation to the Office of General Counsel and the Office of Attorney General for review and approval as to form and legality, as required by law.

(c) The Department shall submit this regulation to IRRC and the Committees as required by law.

(d) The Acting Secretary of the Department shall certify this regulation and deposit it with the Legislative Reference Bureau as required by law.

(e) This order shall become effective effect upon publication in the *Pennsylvania Bulletin*.

JENNIFER BERRIER,
Acting Secretary

(Editor's Note: See 51 Pa.B. 3210 (June 5, 2021) for IRRC's approval order.)

Fiscal Note: Fiscal Note 12-111 remains valid for the final adoption of the subject regulations.

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.

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(f) *Alternative requirements and waiver.*

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(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.

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Subchapter C. APPLICATION PROCEDURE

APPLICATION FOR BENEFITS AND CLAIMS FOR COMPENSATION

§ 65.43. Claims for compensation—when to file.

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 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.

[Pa.B. Doc. No. 21-887. Filed for public inspection June 4, 2021, 9:00 a.m.]

Title 58—RECREATION**GAME COMMISSION****[58 PA. CODE CHS. 139 AND 143]****Seasons and Bag Limits; Elk Management Area
and Hunt Zones; Hunting and Furtaker Licenses;
Elk Licenses; Correction**

The final-form rulemaking published at 51 Pa.B. 2937 (May 22, 2021) contained a typographical error in the fiscal note. The correct version of the fiscal note is as follows.

Fiscal Note: Fiscal Note 48-469 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 21-888. Filed for public inspection June 4, 2021, 9:00 a.m.]
