

STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY
MICHIGAN UNEMPLOYMENT INSURANCE APPEALS COMMISSION

In the Matter of the Claim of:

Appeal No. 20-024143

Case No. 24375735

Christine M. Holifield,

ALJ Lindsay Wilson

Claimant SSN: [REDACTED]

Claimant-Appellant,

RECEIVED

v.

APR 19 2021

Michigan Unemployment Insurance Agency,

UNEMPLOYMENT INSURANCE
APPEALS COMMISSION

Agency-Appellee.

Motion for Leave to Submit Amicus Brief

Legal Aid of Western Michigan

Karen M. Tjapkes (P58467)

Mikhail Albuseiri (P56529)

LEGAL AID OF WESTERN MICHIGAN

April 19, 2021

*Counsel for Amicus
Legal Aid of Western Michigan*

NOW COMES Mikhail Albuseiri, Esq., of Legal Aid of Western Michigan, and hereby states as follows in furtherance of the motion:

1. The Commission previously permitted Claimant-Appellant to submit additional written argument under Michigan Administrative Code, R. 792.11423(3).
2. Legal Aid of Western Michigan, through undersigned counsel, hereby states that it has an interest in the issue before the tribunal and has prepared a proposed amicus brief for the Commission's consideration.
3. The amicus brief speaks to a potential statutory ambiguity and how such a conflict should be resolved; furthermore, the brief also addresses how the Unemployment Insurance Agency's has traditionally treated DUA benefits and the import to the present analysis under PUA.

WHEREFORE, Legal Aid of Western Michigan prays that this Court grant it leave to submit for consideration its amicus brief under Michigan Administrative Code, R. 792.11423(8).

Mikhail Albuseiri

Date: April 19, 2021

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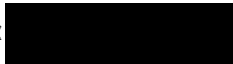
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Brief of Amicus Curiae

Legal Aid of Western Michigan

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STATEMENT OF INTEREST

Legal Aid of Western Michigan is a non-profit legal services organization assisting the residents of 17 counties in West Michigan and is funded, in part, by Legal Services Corporation (LSC). Its mission is to secure justice and protect the rights of low-income individuals, which invariably correlates with protecting the rights of the most vulnerable subset of our population. Of course, the COVID-19 pandemic has had a disastrous effect on the job market and exacerbated the plight of unemployed Michiganders. The Unemployment Insurance Agency has adjudicated the claims of many traditional part-time workers, such as those who are unable and/or unavailable to perform full-time work, by denying them pandemic unemployment assistance benefits specifically earmarked for them.

QUESTIONS PRESENTED

- I. Whether the Employment Security Act's failure to define full-time work creates a statutory ambiguity, and whether this ambiguity must be construed in favor of Michiganders applying for PUA benefits as a matter of law?

- II. Whether imposing more restrictive eligibility requirements under PUA than under DUA constitutes legal error?

STANDARD OF REVIEW

Michigan's Employment Security Act grants the Unemployment Insurance Appeals Commission ("the Commission") broad appellate powers:

The Michigan compensation appellate commission, on the basis of evidence previously submitted and additional evidence as it requires, shall **affirm, modify, set aside, or reverse the findings of fact and decision of the administrative law judge** or a denial by the administrative law judge of a motion for rehearing or reopening.

MCL 421.34(2). In essence, both the factual findings and legal conclusions of the Administrative Law Judge (ALJ) are reviewed *de novo*.

STATEMENT OF FACTS

Amicus curiae adopts Appellant's statement of facts.

ARGUMENT

I. The Employment Security Act does not define full-time work, and this ambiguity must be construed in favor of Michiganders applying for PUA benefits as a matter of law.

Like the Pandemic Unemployment Assistance (PUA) statute under the CARES Act,¹ the Michigan Employment Security Act (MESA), MCL 421.1 *et seq.*, is a **remedial** act designed to “safeguard the general welfare through the dispensation of benefits intended to ameliorate the disastrous effects of involuntary unemployment.” *Korzowski v Pollack Indus*, 213 Mich App 223, 228-229; 539 NW2d 741 (1995). Indeed, in the law’s enactment, the Michigan legislature expressly provided for a written declaration explaining that the act’s central policy goal was to prevent the economic insecurity attendant with involuntary unemployment:

The legislature acting in the exercise of the police power of the state declares that the public policy of the state is as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. .
Involuntary unemployment is a subject of general interest and concern which requires action by the legislature to prevent its spread and to lighten its burden which so often falls with crushing force upon the unemployed worker and his or her family, to the detriment of the welfare of the people of this state.

MCL 421.2(1).

Consistent with the remedial nature of the act and the state legislature’s written declaration, the Michigan Supreme Court elucidated the act’s **statutory construction** as follows:

(T)he Employment Security Act is a legislative construct intended to “provide relief from the hardship caused by involuntary unemployment” *Storey v Meijer, Inc*, 431 Mich 368,377, 429 NW2d 169 (1988). Accordingly, **this Court will not “broaden or extend the disqualifications fixed, in plain language, by the legislature.”** *Thomas v Employment Security Comm*, 356 Mich 665, 669, 97 NW2d 784 (1959). **We will, however, keep in mind the legislative purpose of the statute, “to get ‘money into**

¹ A statute is remedial in nature where it is “designed to protect human health[.]” See e.g., *Sierra Club, Inc v Tyson Foods, Inc*, 299 FSupp2d 693, 710 (2003).

the pocket of the unemployed worker at the earliest point that is administratively feasible.’ ” Storey, 431 Mich 377, 429 NW2d 169, quoting *California Dep't of Human Resources Development v Java*, 402 US 121, 135; 91 S Ct 1347, 1355-56; 28 LEd2d 666 (1971).

Paschke v Retool Industries, 445 Mich 502, 511; 519 NW2d 441 (1994).

The specific statutory subsection of the CARES Act at issue herein reads as follows:

(3) COVERED INDIVIDUAL.—The term “covered individual”— (A) means an individual who—

(i) is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107, including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107; and

(ii) **provides self-certification** that the individual—

(I) is otherwise able to work and available for work within the meaning of applicable State law, except the individual is unemployed, partially unemployed, or unable or unavailable to work because—

Section 2102(a)(3)(A)(ii)(I) of the CARES Act, being Pub. L.116-136, §2102(a)(3)(A)(ii)(I), 134 Stat. 281 (2020). Based on its statutory interpretation of the language, “**is otherwise able to work and available for work within the meaning of applicable State law**,” of Section 2101(a)(3)(ii)(I), the Agency has denied PUA benefits to thousands of Michigan individuals who have histories of part-time employment and have self-certified that they are not able and available to perform “full-time” work. However, nowhere within Section 2102 did Congress hint at an intent to limit PUA benefits to individuals able and available to only perform full-time work; indeed, the term “full-time” employment or work appears nowhere within Section 2102 of the CARES Act.

Furthermore, the PUA statutory section, being Section 2102 of the Act, was clearly intended to find uniform application across the states given the global pandemic; at a minimum, there is no indication that the hastily drafted provisions were specifically drafted with Michigan

unemployment insurance laws in mind. Indeed, the opposite is more likely to be true because the majority of our sister states will allow workers “with a history of part-time work to remain eligible for unemployment compensation while seeking part-time work.” See *Lessons from a Pandemic: The Need for Statutory Reform to Michigan’s Unemployment System*, Michigan Law Workers’ Rights Clinic, March 2021, p. 34 – **Attachment 1**; see also Department of Labor’s Comparison of State Unemployment Insurance Laws (2019), at 5-27 – **Attachment 2**. Furthermore, the Department of Labor’s *Comparison of State Unemployment Insurance Laws (2019)* expressly singled out Michigan and West Virginia as the states that “require that an individual be available for full-time work.” Department of Labor’s Comparison of State Unemployment Insurance Laws (2019), at 5-28 – **Attachment 2**.

The present analysis is further complicated because, as noted by the Michigan Poverty Law Program’s submission, the Employment Security Act, being MCL 421.1 et seq., provides no definition for the term “full-time work.” However, our appellate courts have sought to define what constitutes “full-time work” in the context of “aid to dependent children for the reason of incapacity” provision of the Social Welfare Act, specifically MCL 400.56d, now repealed. See *Timmons v Director, State Dept of Social Services*, 89 Mich App 330; 280 NW2d 515 (1979). In *Timmons*, citing to 45 CFR 233.100(a)(1)(i), the Court adopted the federal regulation that defined someone as unemployed “**who is employed less than 100 hours per month.**” *Id.* at 335.² This translates into 23 hours per week. An argument can be made that these statutes should be read *in pari materia* as they both involve the definition of full-time work in relation to unemployment or work loss.

² The Aid to Families with Dependent Children statute under the Social Welfare Act has been replaced with the Temporary Assistance for Needy Families.

At best, however, this renders the term “full-time” work or employment ambiguous under the statute. One claimant might entertain the notion that full-time employment constitutes 40 hours per week and whereas another might adhere to the 23 hours per week set forth in *Timmons, supra*, thereby resulting in inconsistent self-certifications. For instance, assuming that both claimants have traditionally been able and available to work 28 hours per week, the former will certify not being able and available to work “full-time” whereas the latter will. This exercise is antiquated under the best of times, but during a pandemic it becomes tragic, with needless ineligibility determinations further crippling Michiganders during the worst economic disaster in the last 100 years.

Fortunately, Michigan case law provides that where an act or statute is remedial in nature, any ambiguity therein requires judicial construction of said act or statute, which construction dictates that the terms “should be liberally construed **to grant rather than to deny benefits.**” *Paschke v Retool Industries*, 445 Mich at 511. Here, the application of this principle is facilitated by the aforementioned fact that Section 2102 of the CARES Act does not provide, explicitly or implicitly, that an individual seeking part-time employment must, nevertheless, certify his or her ability and availability to perform full-time work.

The Commission should read PUA as not mandating that those applicants seeking part-time employment must self-certify that they are able and available to work full-time. This aligns with the principle that remedial statutes must be read broadly to expand benefits to the intended beneficiaries and that disqualification fixed by statute may not be expanded upon and should be read narrowly. See *Paschke, supra* at 511.

II. It constitutes legal error to effectively impose more restrictive eligibility requirements under PUA than under DUA.

The PUA statute derives from the Disaster Relief Act (DRA) of 1974, being 42 USC 5121, et seq., which itself provides for Disaster Unemployment Assistance (DUA) under 42 USC 5177, with attendant regulations found under 20 CFR 625 and administered by the U.S. Department of Labor.

As the Labor Department explained on April 27, 2020, states have been urged to administer the PUA program “using the same initial application, continued claims forms, and adjudication procedures utilized by the state for the DUA program.” See *UI Program Letter No. 16-20 Change 1*.³

The DUA Rights Guide Sheet (revised August 2017) reveals the following pertinent to this discussion: (1) part-time workers were expressly covered by DUA (“Part-time workers who are not entitled to at least the minimum will get a percentage of the minimum”); and (2) the requirement to be able and available to perform full-time work was never a precondition for the issuance of federal unemployment assistance benefits under DUA. See *Disaster Unemployment Assistance Rights Guide Sheet* (Rev. 08-17).⁴

Given that the Labor Department has expressly required close adherence to DUA, it is inexplicable why PUA, designed to counteract a global pandemic and not merely a more common disaster, e.g., blizzards, floods, etc., would require the imposition of more restrictive eligibility

³ https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Change_1_acc.pdf

⁴ [1071 Disaster Unemployment Assistance DUA Rights Guide Sheet MANUAL 470468 7.pdf \(michigan.gov\)](https://www.michigan.gov/1071/Disaster_Unemployment_Assistance_DUA_Rights_Guide_Sheet_MANUAL_470468_7.pdf)

requirements. To the extent that the ALJ's decision, affirming the Agency's determination, reads into PUA a requirement for showing ability and availability to perform full-time work, this interpretation is simply wrong as a matter of law.

CONCLUSION

Amicus curiae prays that the Commission grant Appellant's sought relief.

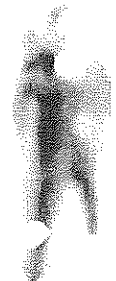
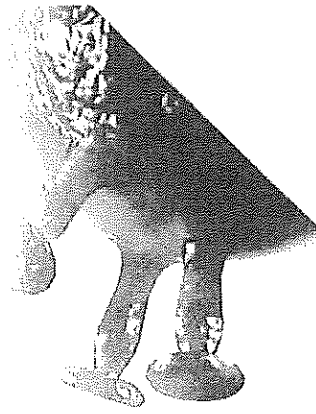
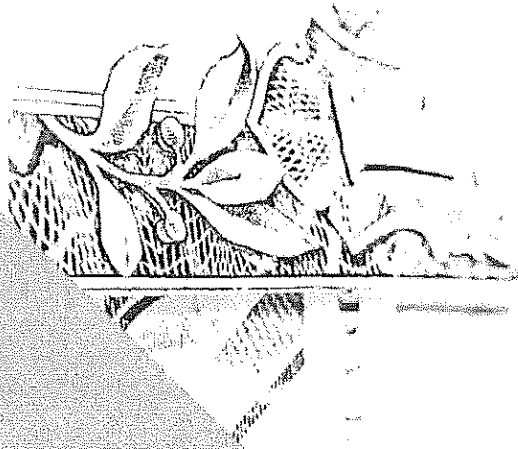
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ATTACHMENT 1

12



**LESSONS FROM A
PANDEMIC:
THE NEED FOR STATUTORY
REFORM TO MICHIGAN'S
UNEMPLOYMENT SYSTEM**

Prepared by

*Michigan Law Workers'
Rights Clinic*

With Support From

*University of Michigan
Poverty Solutions*

PART-TIME COVERAGE

Unemployment insurance coverage of part-time workers is important because, as of early 2020, nearly 30 million people work part-time. [20] When it comes to part-time work, the main difference across jurisdictions is in how each one deals with the “work search” and availability for work requirements. Based on these differences, described in further detail below, jurisdictions could score up to 90 points on the scorecard. The full 90 points were awarded to a jurisdiction when part-time work could fulfill the “work search” requirement without qualification, 45 points were awarded when there were qualifiers, and 0 points were awarded if part-time work did not count for “work search” purposes at all.

Jurisdictions vary in whether or not searching for part-time work qualifies the worker for benefits across several dimensions. Some jurisdictions such as Oregon and Virginia, allow part-time positions to count for work search for a broader group of people, regardless of their history of part-time work. [21] A smaller number of states allow for part-time work availability in some situations. These include if the claimant has specific medical conditions if someone in their family has certain medical conditions and requires care if there are concerns of domestic violence, if the claimant is in school, or if a claimant’s family has certain childcare needs that require a caregiver to work only part-time. [22]

However, the most common way in which jurisdictions engage with part-time work within their unemployment insurance system is in the “actively seeking work” requirement. Most states only allow workers with a history of part-time work to remain eligible for unemployment compensation while seeking part-time work. These workers are only eligible if they had a qualifying separation from a part-time job or a history of working part-time. [23] While this type of qualified eligibility is an improvement over not allowing a worker’s part-time “work search” to count at all, it leaves out workers whose life situations have changed. Say, for example, that a worker has a family member that suddenly needs additional care or if the worker’s health no longer allows for full-time work. If these workers do not have a history of part-time employment, they won’t receive benefits even though access to this economic safety net would provide crucial temporary support.

While most of the country allows part-time availability to qualify a claimant for benefits—whether this coverage is universal or just for a subset of particularly vulnerable workers—Michigan is one of the few jurisdictions that does not allow workers to claim benefits if they are only seeking part-time work. Michigan is one of the most restrictive jurisdictions when it comes to the requirements placed upon a worker to maintain eligibility. Under state law, to be eligible to receive unemployment benefits an individual must be available to perform suitable full-time work. [24] This strict law limits claimants from seeking potentially productive employment arrangements. This limitation is antithetical to the purpose of

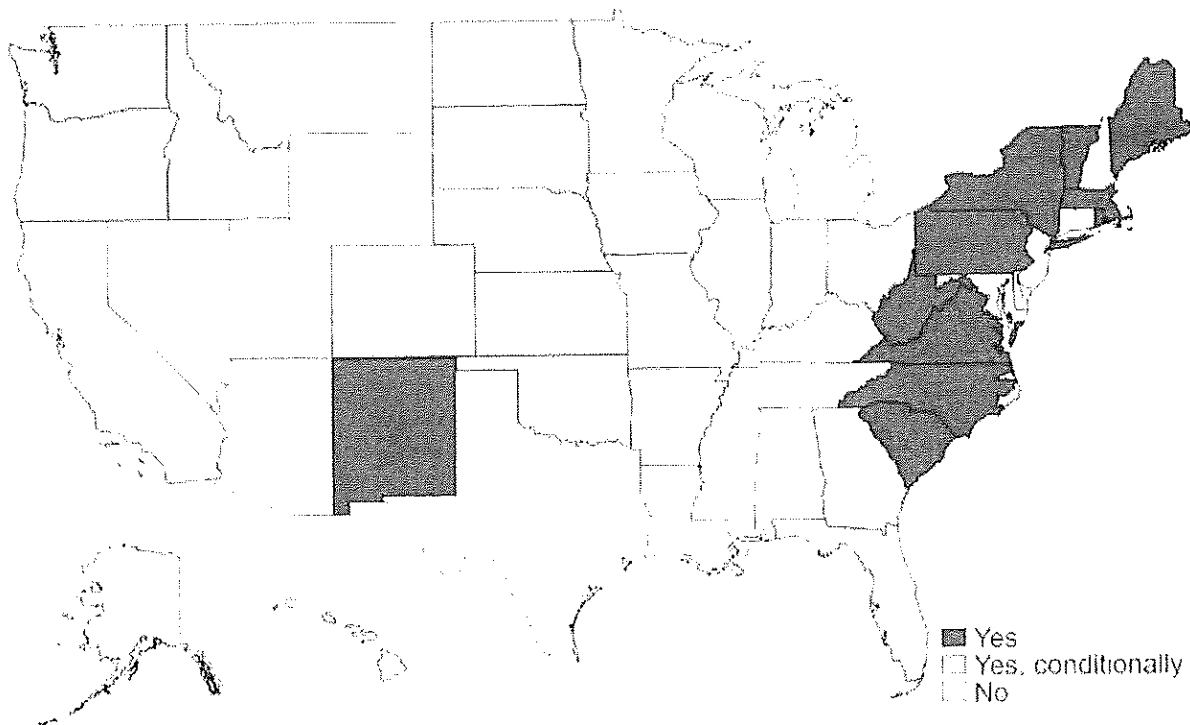
unemployment insurance as it deprives workers who, by definition are unable to earn a full-time wage, from accessing any benefits.

Recommendation

Michigan should address this gap in its unemployment insurance coverage by joining states like Oregon and Virginia and allowing workers seeking part-time work to qualify as “available for work.” This could easily be changed in the Michigan statute by removing the “full-time” qualifier on the available for work provision.

Even if Michigan doesn't take the full step of allowing all claimants who apply for part-time positions as part of their job search requirement to qualify as being available for work, significant improvements in coverage could be made by including exceptions under the jurisdiction's availability requirement for claimants who can demonstrate the existence of childcare, family care, or medical care restrictions that limit a claimant's ability to work full time.

Coverage for Part Time Workers



ATTACHMENT 2

CHAPTER 5

NONMONETARY ELIGIBILITY

IN GENERAL

Along with monetary requirements, each state's UI law requires individuals to meet nonmonetary requirements. Federal law mandates some of these requirements. The general rule is that individuals must have lost their job through no fault of their own and must be able to work, available for work, and actively seeking work. By examining the individual's current attachment to the labor force, these provisions delineate the type of risk covered by UI law – primarily, unemployment caused by economic conditions.

This chapter is organized from the perspective of an individual experiencing the claims process. First, the state would determine if there are any issues related to the individual becoming unemployed. Second, issues concerning week-to-week eligibility would be explored, as would any refusals of suitable work. Third, the state would examine whether the individual received any "deductible income" causing a reduction in benefits payable.

Usage Note: There is often a distinction between issues that result in disqualification and issues that result in weeks of ineligibility. A disqualified individual has no right to benefits until s/he requalifies, usually by obtaining new work or by serving a set disqualification period. In some cases, benefits and wage credits may be reduced. An ineligible individual is prohibited from receiving benefits until the condition causing the ineligibility ceases to exist. Eligibility issues are generally determined on a week-to-week basis.

SEPARATIONS FROM EMPLOYMENT

VOLUNTARILY LEAVING WORK—Since the UI program is designed to compensate wage loss due to lack of work, voluntarily leaving work without good cause is an obvious reason for disqualification from benefits. All states have such provisions.

In most states, disqualification is based on the circumstances of separation from the most recent employment. These disqualification provisions may be phrased in terms such as "has left his most recent work voluntarily without good cause." In a few states, the agency looks to the causes of all separations within a specified period. An individual who is not disqualified for leaving work voluntarily with good cause is not necessarily eligible to receive benefits. For example, if the individual left because of illness or to take care of a family member who is ill, the individual may not be able to work or available for work. This ineligibility would generally last only until the individual was again able and available.

NONMONETARY ELIGIBILITY

Generally, approved training is limited to vocational or basic education training, thereby excluding regularly enrolled students from collecting benefits under the approved training provision.

Some states, in addition to providing regular benefits while the individual attends an industrial retraining or other vocational training course, provide for an extended duration of benefits while the individual remains in training/retraining. See Chapter 4 concerning programs for extended duration.

While in almost all states the participation of individuals in approved training courses is voluntary, in the District of Columbia and Washington an individual may be required to attend such training under certain circumstances.

In Oregon, individuals who do not attend their approved training during a particular week will be required to meet regular eligibility requirements for that week.

AVAILABILITY FOR PART-TIME WORK—Many states require individuals to be available for full-time work. Other states allow individuals to be available for part-time work under certain conditions. The following table indicates those states paying benefits to workers who seek only part-time employment. Please note that considerable differences may exist between states with entries in the same column.

State	If Otherwise Eligible	Claim Based on Part-Time Work, or History of Part-Time Work	Medical Restrictions or Restrictions Due to Disabilities	Other
AR	I	L		
CA		L		
CO		L, R		
CT			L, R	
DE		L ¹		Good Cause - I
DC				Good Cause - I
FL		I		
GA		L ¹		
HI		L		
IL			R	Only if part-time work is suitable because of circumstances beyond individual's control - R
ID		L ¹		
IA		L, R		
KS		L ¹ , I		
LA		I		
ME		L, R	L, R ²	L, R ²
MD		L ¹		
MA		R	R	
MN		L		
MT		L	R	
NE		L ¹		

NONMONETARY ELIGIBILITY

Table 5-15: STATES WITH AVAILABILITY OF PART-TIME WORKERS PROVISIONS States That Pay Benefits To Part-Time Workers Under Certain Conditions				
State	If Otherwise Eligible	Claim Based on Part-Time Work, or History of Part-Time Work	Medical Restrictions or Restrictions Due to Disabilities	Other
NV		R	I	I ³
NH		L	L	R ⁴
NJ		L, R		
NM	L, R ³			L, R ⁵
NY		L		
ND		I		
OH		I		
OK		L ¹		
OR			R	
PA	I ⁶			
PR		I		
SC		L ¹		
SD		L ¹		
UT			R	
VT		I		
VA			I	
VI	L			
WA		L, R		
WY		R	R	

KEY: L = law, R = regulation, I = interpretation

¹ DE - if individual is willing to work at least 20 hours per week, is available for the number of hours comparable to part-time work in base period, or is available for the hours comparable to his or her work at the time of most recent separation; GA, ID, and NM - if individual is willing to work at least 20 hours per week; KS and OK - provided the individual is available for the number of hours per week that are comparable to part-time work experience in base period; MD - provided that the individual worked at least 20 hours per week in part-time work for a majority of the weeks of work in the base period and is in a labor market in which a reasonable demand exists for part-time work; NE - provided that the majority of weeks of work in the base period included part-time work and that the individual is available for at least 20 hours of work per week; SC and SD - provided the majority of weeks of work in the base period include part-time work.

² When majority of weeks in base period were full-time but individual is only able, available and seeking part-time work due to own or immediate family member's illness or disability, or when necessary for safety or protection of individual or immediate family member, including protection from domestic abuse.

³ Student provision applies to high school students who can only work part-time while attending school.

⁴ In certain circumstances, if individual is the only adult suitable to care for a child.

⁵ Only for individuals who attend school full time and are actively seeking at least part-time work, and for whom school attendance was not a factor in separation from work.

⁶ The Superior Court has stated that the availability requirement is met as long as an individual is ready, willing, and able to accept some substantial and suitable work.

Michigan and West Virginia require that an individual be available for full-time work. Pennsylvania considers an individual ineligible for benefits for any week in which his or her unemployment is due to failure to accept an offer of suitable full-time work to pursue seasonal or part-time work. New Hampshire requires that an individual be available for and seek temporary work, whether full-time or part-time, if permanent work for which the individual is qualified is not immediately available within the individual's labor market area, if the individual is reasonably expected to be recalled in 4 to 26 weeks, and if the wages, hours, and other conditions

