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Title 22@ Social Security

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Division 1@ Employment Development Department

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Subdivision 1@ Director of Employment Development

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Division 1@ Unemployment and Disability Compensation

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Part 1@ Unemployment Compensation

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Chapter 5@ UNEMPLOYMENT COMPENSATION BENEFITS

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Article 1@ ELIGIBILITY AND DISQUALIFICATIONS

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Section 1253(c)-1@ Availability for Work -General Principles

1253(c)-1 Availability for Work -General Principles

(a) Scope. This section sets forth the principles the department shall apply to determine if a claimant is available for work as required by Section 1253(c) of the Code. A variety of conditions and circumstances affects a claimant's availability, including restrictions that are imposed by the claimant, such as the wages and other working conditions the claimant will accept, and legal restrictions, such as licensing requirements and the claimant's ability to establish his or her employment eligibility under Section 274 A of the Immigration and Nationality Act, 8 USC 1324a. If a claimant has good cause for a restriction, the claimant will not be ineligible under Section 1253(c) so long as a substantial field of employment remains open to him or her.

(b)

General Rule. A claimant is available for work during the week for which he or she claims benefits if the claimant is ready, willing, and able to accept suitable employment or has good cause for any restriction on his or her readiness, willingness, or ability to accept such employment and; notwithstanding such a restriction, a substantial field of employment remains open to the claimant in his or her labor market. A claimant is not available for work if he or she is unable to establish his or her employment eligibility upon hire in accordance with the requirements of Section 274 A(b) of the Immigration and Nationality Act, 8 USC

1324a(b).

(c)

Definitions. As used in the general rule, the following terms have the meanings assigned: (1) "Suitable work" means work in the claimant's usual occupation or work for which the claimant is reasonably fitted. Whether the work is work for which the claimant is reasonably fitted depends upon such factors as the claimant's age, health, prior training, and experience. "Suitable work" does not include work under the conditions specified in Sections 1258.5 or 1259 of the Code. (2) "Labor market" means that potential demand for the claimant's services in the locality where he or she offers them. A labor market may expand or contract with such factors as the season, weather, economic conditions, and consumer demands. (3) "Substantial field of employment" means the presence of potential job openings with more than a minimal number of employers who would use the services offered by the claimant. It does not mean that vacancies exist or that there is a likelihood of employment. It means only that the type of services the claimant offers are generally performed in the area in which he or she offers them. (4) "Good cause" means a compelling reason, one which would influence a prudent person in the same circumstances as the claimant, and who is genuinely desirous of working, to impose the restriction. A finding of good cause depends on a determination that the claimant had no reasonable alternative for discharging the obligation that led the claimant to place the restriction on his or her availability. Reasons of ambition, prestige, taste, or similar motives, though they may be commendable in certain instances, will usually not be considered to constitute good cause.

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claimant is reasonably fitted. Whether the work is work for which the claimant is reasonably fitted depends upon such factors as the claimant's age, health, prior training, and experience. "Suitable work" does not include work under the conditions specified in Sections 1258.5 or 1259 of the Code.

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"Labor market" means that potential demand for the claimant's services in the locality where he or she offers them. A labor market may expand or contract with such factors as the season, weather, economic conditions, and consumer demands.

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"Substantial field of employment" means the presence of potential job openings with more than a minimal number of employers who would use the services offered by the claimant. It does not mean that vacancies exist or that there is a likelihood of employment. It means only that the type of services the claimant offers are generally performed in the area in which he or she offers them.

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(d)

Burden of Proof. (1) With regard to a determination of availability under Code Section 1253(c), and any appeal therefrom, the claimant has the burden of proving that he or she was ready, willing and able to accept suitable employment

and that he or she had good cause for any restriction. (2) If the claimant meets the burden set forth in subdivision (d)(1), the department has the burden of proving that, nevertheless, a substantial field of employment did not remain open to the claimant.

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(e)

Employment Eligibility. (1) A claimant shall be unavailable and the department shall determine him or her ineligible under Section 1253(c) of the Code if the department finds that the claimant is unable to establish his or her employment eligibility. The claimant's inability shall be considered a restriction on his or her availability. (2) As used in this regulation "establish his or her employment eligibility" means the claimant presents the document or documents and makes the attestations required by Section 274 A(b) of the Immigration and Nationality Act, ("Act") 8 USC 1324a(b), on the form designated by the United States Attorney General for such purposes, commonly referred to as the "I-9," so that an employer can, if necessary to establish an affirmative defense to any liability asserted under the Act, verify the claimant's identify and work authorization. (3) The department may base its finding that the claimant is unable to establish his or

her employment eligibility on information from the claimant, information from prospective or former employers, information that results from the claimant's registration for work as provided by Section 1253(b) - 1 of these regulations, or information that results from the department's request to the INS to verify the claimant's immigration status for purposes of determining his or her eligibility for unemployment compensation benefits under Section 1326-13 of these regulations.

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purposes of determining his or her eligibility for unemployment compensation benefits under Section 1326-13 of these regulations.

(f)

Licenses. To be considered available under Section 1253(c) of the Code, a Claimant must keep current all licenses, certificates, and memberships necessary for him or her to be legally employed in his or her usual occupation or profession, or in work for which the claimant is reasonably fitted if there is no substantial field of employment for the claimant in his or her usual occupation.

(g)

Other Provisions. Except as provided by Sections 1253.1, 1253.12, 1253.15, 1253.2, 1253.5, 1253.7, 1258.8, or 1267 of the Code, a claimant who is determined to be unavailable for work is ineligible for benefits for the week in which the unavailability occurs and remains ineligible until the person demonstrates that he or she is available for work and is otherwise eligible for benefits.

(h)

If any subdivision of this regulation or its application to any person or circumstance is held invalid, the invalidity shall not affect other subdivisions or applications of this regulation which can be given effect without the invalid subdivision or application, and in this respect the subdivisions of this regulation are severable.