



To: Indiana's Workforce Investment System

From: Regina Ashley, Chief Strategy Officer
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REA JDR

Date: April 29, 2016

Subject: DWD Policy 2015-07
Effect of a Regularly Scheduled Vacation Period on Unemployment Insurance Eligibility

Purpose

The purpose of this policy is to provide guidance regarding a claimant's eligibility for U.I. benefits during employer-designated vacation periods. This policy outlines the criteria that the Department will use to determine if a claimant was on an employer mandated vacation week due to the: 1) terms of a written contract or 2) employer's regular vacation policy and practice.

When analyzing a particular event for purposes of this statute, the Department will consider the insurance nature of the program and the goal of compensating individuals who have experienced a loss of regular employment. To the extent that an individual is out of work as part of a regular practice of the employer, there is no compensable loss of employment pursuant to Indiana Code 22-4-3 et seq.

Rescission

DWD Policy 2011-07 Planned Shutdown Effects upon U.I. Benefits

References

IC 22-4-3-1. "Totally unemployed" defined

Sec. 1. An individual shall be deemed "totally unemployed" in any week with respect to which no remuneration was payable to him for personal services.

IC 22-4-3-2. "Partially unemployed" defined

An individual is "partially unemployed" when, because of lack of available work, he is working less than his normal customary full-time hours for his regular employer and his remuneration is less than his weekly benefit amount in any calendar week, but no individual shall be deemed totally, part-totally, or partially unemployed in any week which he is regularly and customarily employed full-time on a straight commission basis.

IC 22-4-3-4. Exception; vacation period with remuneration

(a) An individual is not totally unemployed, part-totally unemployed, or partially unemployed for any week in which the department finds that the individual is:

- (1) on a vacation week; and
- (2) receiving, or has received, remuneration from the employer for that week.

IC 22-4-3-5. Unpaid vacation

(a) An individual is not totally unemployed, part-totally unemployed, or partially unemployed for any week in which the department finds the individual:

- (1) is on a vacation week; and
- (2) has not received remuneration from the employer for that week, because of:
 - (A) a written contract between the employer and the employees; or
 - (B) the employer's regular vacation policy and practice.

(b) Subsection (a) applies only if the department finds that the individual has a reasonable assurance that the individual will have employment available with the employer after the vacation period ends.

Content

The Indiana Department of Workforce Development (the "Department") establishes this policy to provide guidance regarding an individual's eligibility for unemployment benefits during a vacation period.

Vacation Period Defined

The Department recognizes that an employer has the right and the ability to designate certain weeks as "paid vacation" or "unpaid vacation" for its employees. According to Indiana Code § 22-4-3-4 and Indiana Code § 22-4-3-5, such a designation by an employer is not binding on the Department. Nor is an employer required to make an explicit declaration in advance of designating a "paid vacation" or "unpaid vacation" week; however, such a declaration would be indicative of the employer's intent. The employer's intent is a question of fact to be determined by the Department, as the finder of fact, in each case.

The Department is charged with making a determination under Indiana Code § 22-4-3-1 et seq. based upon statutory criteria. The Department will consider a mandated or planned facility shutdown to be a vacation week pursuant to Indiana Code § 22-4-3-4 and Indiana Code § 22-4-3-5. The Department will consider the following factors to determine whether an employee is on a vacation week:

1. Whether a written contract between the employer and the employee provides for a paid or unpaid vacation week designation;
2. Whether a vacation week was the result of an employer's regular vacation policy and practice;
3. Whether an employer provided a reasonable assurance to the employee that the employee would have employment available with the employer after the vacation period ends. Such an assurance is not required to be provided by explicit declaration or direct communication, but may be inferred by past employer or employee conduct, policy, practice or custom, such that the employee knew or should have known of his/her employment availability. Additionally, such an assurance shall provide more than a speculative date of return to employment in order to be reasonable;
4. Whether, as part of the above-mentioned reasonable assurance, an employer gave reasonable notice to the employee concerning the vacation week or facility shutdown. Such notice is not required to be provided by explicit declaration or direct communication, but may be inferred by past employer or employee conduct, policy, practice or custom, such that the employee knew or should have known of the vacation week or mandated facility shutdown;
5. Whether the employer, on their own initiative, has provided the Department with advance notice of any vacation week or shutdown period.

This list of considerations is not exclusive, and the Department will make its determinations on a case-by-case basis.

Regular Vacation Policy and Practice

The Department recognizes that regular vacation policies and practices of employers vary widely. The Department will analyze an employer's "regular vacation policy and practice" on a case-by-case basis.

When analyzing whether a week of unemployment is due to an employer's "regular vacation policy and practice," the Department will request from the employer and the individual information on the following areas:

1. Timing

A break from work occurring on or about the same weeks, starting on or about the same date, or otherwise occurring in a recognizable pattern, as determined by the Department, is an indication that the break is part of a regular vacation policy and practice. Simply knowing in advance when a layoff will begin or end does not conclusively indicate a planned shutdown.

2. Duration

A break from work occurring at the same or similar time and for the same or similar duration in successive years, as determined by the Department, is evidence of a regular vacation policy and practice.

However, a claimant who was found to be ineligible because of a vacation period would resume eligibility for benefits if the break extends beyond the regular policy and practice of the employer. For example, if a vacation period has typically existed for two weeks in July of prior years, but in the present year lasts for three weeks, a claimant would be ineligible for the first two weeks because those weeks constitute a vacation period as part of the regular vacation policy and practice. The third week would not be consistent with the regular vacation policy and practice; thus, the claimants would become eligible for only the third week of the break period.

3. Size

The number of affected workers of a particular employer in relation to break periods in prior years is evidence of, and a factor in, determining whether a break is part of an employer's regular vacation policy and practice. A class that changes in size from one year to the next could indicate that the break is not regular as to every claimant in the affected class.

4. Identifiable units or sub-groups

The particularity with which a group of affected workers can be identified as part of unit or sub-group of the employer's business is evidence of, and a factor in, determining whether a break is part of an employer's regular vacation policy and practice. For example, if the affected employees belong to the same identifiable unit or sub-group of the employer's business from one year to the next, this is evidence of an employer's regular vacation policy and practice. Conversely, if the affected employees belong to two or more different identifiable units or sub-groups of the employer's business and only one of those units or sub-groups is involved in a break from one year to the next, this information may be considered evidence that some of the affected employees do not fall under the employer's regular vacation policy and practice.

5. Economic or market-related conditions

Economic or market-related conditions can be evidence of, and a factor in, determining whether a break is part of an employer's regular policy and practice. The Department will consider whether unusual or temporary market conditions were the cause of a particular break in work. Even when an employer has a known and regular vacation policy and practice, the Department shall consider whether temporary or unusual market-related conditions have changed the break in a way that depart from that regular vacation policy and practice.

For example: At a particular employer, employees in department X are typically off for two weeks in July due to the customary vacation period of its client/buyer. However, employees of the same employer in department Y may typically not experience the same layoff. Market conditions cause department Y to experience a break in work due to an unexpected reduction in demand from a separate client/buyer at the same time as department X's two-week shutdown in July. In that situation, it would be appropriate for the Department to conclude that the employees in department X are not unemployed and are ineligible for benefits, while the employees in department Y are unemployed and eligible for benefits.

Effective Date

Immediately.

Ending Date

Upon rescission.

Contact for Questions

policy@dwd.in.gov

Action

Indiana's workforce investment system will follow the guidance contained in this policy. Directors and managers will ensure that staff who work with this policy's subject matter are aware of the details contained in this policy and follow its guidelines.