**Section 2865.110 Available For Work**

a) An individual is available for work - even if he imposes conditions upon the acceptance of work - unless a condition so narrows opportunities that he has no reasonable prospect of securing work.

 Example: An individual who lives in a remote rural area limits his availability to jobs within walking distance of his home. If few jobs for which he is qualified are located within walking distance of his home it could be found that he has no reasonable prospect of securing such work and therefore would not be available for work.

b) If domestic circumstances prevent an individual from working during the normal days and hours that exist in his occupation (or other work for which he is qualified), he is unavailable for work.

1) Example: An individual, who was employed as a security guard, has children who require full-time care. The individual is able to obtain child care during evenings only, leaving him free to work nights only. Because there is a labor market for night-shift security guards, he would be determined to be available for work.

2) Example: An individual and her husband obtain a divorce, and she is awarded custody of their children. She then quits her job as a hospital respiratory therapist because she is required to work rotating shifts and be on emergency call and because she wishes to spend all nights and weekends with her children. She states that she still applies for work as a respiratory therapist, but has had to eliminate from her list most hospitals because they will not guarantee day-shift work, the only time for which she will arrange child care. She would be determined to be unavailable for work.

3) Example: When the individual is laid off from her job as a bank teller, she, in turn, lays off her babysitter, who is not needed so long as the individual is at home. She states that, if she is offered a job, she will rehire her babysitter. Despite the fact that she currently has no babysitter, this individual would be determined to be available to work.

c) If the individual demands a wage that is unreasonable and, thereby, prices himself out of the labor market, he is unavailable for work. Whether a wage demand is unreasonable is determined by factors including, but not limited to: the individual's prior wages and qualifications, the prevailing wage, labor laws, union agreements, and the length of unemployment; generally, the individual must lower his wage demand the longer he is unemployed.

1) Example: An individual worked for 25 years as a bookkeeper for a small but prosperous business that was eventually bought out. She last earned $600 per week. Upon re-entering the labor market, she discovers that her wage demand – inflated by her many years of service – is much greater than that most employers are willing to pay. In the early weeks of unemployment, she may seek work paying $600 per week, based upon her prior wages and her qualifications. In ensuing weeks, she must lower her wage expectations. As her unemployment approaches 26 weeks (or the time when an "extended benefits" period might begin), she must further lower her wage expectations. If, as time goes by, she adapts her wage expectations to meet market conditions, she would be determined to be available for work.

2) Example: The individual is a union electrician. After 20 weeks of unemployment, he still insists upon the wage he was last paid, which is union scale. He explains that the union has agreements affecting a substantial percentage of the jobs in his locality and, were he to accept a job paying below union scale, he would be disciplined by being denied future job opportunities. His insistence upon union scale is not unreasonable. However, if he is seeking work in another locality, where his union is not active, his wage demand with respect to that locality is unreasonable.

3) Example: The individual worked as a fast food counter clerk, earning $0.50 above minimum wage. During the first weeks of unemployment, he sought work paying that same wage. For the next few weeks, he sought work paying minimum wage. Even though he has now been unemployed for 25 weeks, he has not reduced his wage expectation any further. This is not unreasonable: to require him to seek work paying less than minimum wage would violate minimum wage laws.

d) If there are no work opportunities that an individual can reach from his home, he is unavailable for work. If the individual unreasonably restricts the distance or time he will travel to work, he is unavailable for work. Reasonableness is determined by factors including, but not limited to: where work opportunities are located, the customs of workers similarly situated (as to location or occupation), the types and costs of transportation, physical capabilities, and the length of unemployment; generally, an individual is expected to extend the area in which he will seek work the longer he is unemployed. Generally, in metropolitan areas, 1½ hours, each way, is not an unreasonable travel time.

1) Example: An individual owns no car, and there is no public transportation near his home. He used to obtain work through a temporary help service that transported him to clients' job sites. He no longer works as a temporary. He states that he will work for any employer, provided it will furnish transportation to the job. He would be determined to be unavailable for work since the majority of employers do not furnish transportation for their employees.

2) Example: The individual resides in a suburb 30 miles northwest of downtown Chicago. He was last employed as an attorney, working in a small practice in that suburb, where his travel time to work was 10 minutes. In the first weeks of unemployment, he unsuccessfully sought work in his community and neighboring suburbs. Although he has now been unemployed for 2 months, he still does not seek work in downtown Chicago, to which most attorneys commute, because rush hour travel time would be nearly 1½ hours each way. He would be determined to be unavailable for work, because he has not extended the area in which he will seek work, commuting to downtown Chicago is customary for workers in his occupation, and 1½ hours travel time is not unreasonable.

3) Example: Although the individual is mentally retarded, she is capable of working in certain unskilled occupations. At her last job, she swept floors in a local drug store. Her father testifies that she must work within walking distance of home, because, if she rides public transportation, she becomes confused and lost. In this case, the individual's restriction upon distance to work in reasonable, provided that work opportunities continue to exist within walking distance of her home, in which case she will be determined to be available for work.

e) If an individual's personal habits are inconsistent with the type of work he or she is seeking, he or she is unavailable for work.

 Example: The individual, a punch press operator, was discharged because she would not cut her waist-length hair or wear a hair net or remove oversized rings she wore on her fingers; her hair and rings are considered safety hazards. She states that she is seeking work as a punch press operator, but that she will not work for any employer who requires her to cut her hair or wear a hair net or remove her rings. She would be determined to be unavailable for work.

f) An individual shall not be held unavailable for work on the basis of refusing to consider particular work that he honestly believes would violate sincere religious or moral convictions. However, an individual shall be held unavailable if his convictions eliminate virtually all of the labor market.

 Example: For many years, an individual was a hot dog vendor, working in sports stadiums on Saturdays and Sundays. The individual states that he will no longer work in the food service industry, nor will he work on Sunday. He explains that he has recently married and that his wife has introduced him to religion. Among the tenets of his religion are strict dietary laws, forbidding even handling of many commonplace foods; also, Sunday is prescribed as a day of rest. If it is determined that his religious convictions are sincere, he would not be held unavailable for work solely on the basis of refusing to consider food service or Sunday work, even though these may have been suitable previously. Still, he must demonstrate that he is available for other types of work at other times.

g) If the individual is self-employed, availability depends upon the nature and extent of that self-employment; whether the individual's investment of time or capital prevents him from accepting other work in the labor market.

 Example: The individual worked as a secretary in a real estate agency. When she was laid off, she grew depressed, until she watched a cable television show. The host explained how to buy property without making down payments and how to enhance cash-flow. It sounded so easy that she immediately rearranged the den in her house to serve as an office. In the morning, she would read newspapers and make telephone calls. She went to foreclosure sales and auctions. Most afternoons and evenings, she would inspect properties. She also applied for jobs in her usual occupation, secretary. This individual would be determined available for work, if the trier of fact finds that she had not yet made a substantial commitment to her own business. If, however, she had purchased properties, and was involved in the management of those properties to the extent that it would conflict with normal working hours, she would be determined to be unavailable for work.

h) Whether a seasonal worker is available for work during the off-season is determined by whether there is some prospect of obtaining work in his customary occupation. If there is no prospect of obtaining such work, the individual must seek other work for which he is qualified.

 Example: The individual is a golf course maintenance man. The courses at which he works are open from April through October. He has never been employed during the off-season. On his certification form, for weeks in January, he indicates that he is seeking work in the field of lawn care and maintenance, for which there are no prospects of work. He would be determined unavailable for work.

i) Whenever an individual appears to be imposing a condition upon his acceptance of work, it is essential to establish whether he is merely expressing a preference as opposed to actually imposing a condition.

 Example: The individual last earned $4.50 per hour, the prevailing wage in her occupation. On a questionnaire, she writes that she will accept $6 per hour, for similar work. On a claim certification form - applicable to the same weeks as the questionnaire – she lists job contacts, for work paying closer to $4.50 than $6. This might indicate that $6 was a preference, not a condition. Therefore, she would be determined to be available for work.

j) The best evidence that an individual is "available for work" is that he readily secures work, despite the imposition of a condition.

 Example: The individual is laid off from her job in an occupation that ordinarily provides daytime work only. She files a claim for benefits, and, on an initial questionnaire, she writes that she will work nights only, because her child care arrangements have changed. That week, she makes employer contacts for night-shift work. As a result of that work search, she readily secures work beginning the next week. She would be determined to be available for work for the prior week.

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