

RESOLUTION 05-02-04

DIGEST

Unemployment Insurance: Pro Rata Payment for Availability

Amends Unemployment Insurance Code section 1253(c) to allow individuals to obtain pro rata unemployment insurance if they are unavailable for one or more days.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Similar to Resolution 11-09-99 which was approved in principle.

Reasons:

This resolution amends Unemployment Insurance Code section 1253(c) to allow individuals to obtain pro rata unemployment insurance if they are unavailable for one or more days. This resolution should be approved in principle because it incorporates into existing law the exceptions created by the California Unemployment Insurance Appeals Board in its precedent decisions to the rules for being able and available for work.

Since *Sanchez v. CUIAB* (1977) 20 Cal.3d 55 defined the meaning of able and available, further exceptions have continued to expand the definition. Besides the statutory exceptions in sections 1253.1, 1253.2 and 1253.5, there are other exceptions including jury duty, work furlough programs, part time work, probating wills, and custody proceedings. (EDD. Unemployment Insurance. Able and Available AA360.) This resolution provides a simple method to calculate the amount of unemployment insurance by prorating benefits based on actual days an individual is available for work.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates recommends that legislation be sponsored to amend Unemployment Insurance Code section 1253(c) to read as follows:

- 1 §1253
- 2 An unemployed individual is eligible to receive unemployment compensation
- 3 benefits with respect to any week only if the director finds that:
- 4 (a) A claim for benefits with respect to that week has been made in accordance
- 5 with authorized regulations.
- 6 (b) He or she has registered for work, and thereafter continued to report, at a public
- 7 employment office or any other place as the director may approve. Either or both of the
- 8 requirements of this subdivision may be waived or altered by authorized regulation as to
- 9 partially employed individuals attached to regular jobs.
- 10 (c) He or she was able to work and available for work for that week. If an
- 11 individual is, in all other respects, eligible for benefits under this part, and becomes unable

12 to or unavailable for work, for any reason other than an excuse provided under any
13 statutory or regulatory provision, for one or more days during such week, he or she shall
14 be paid unemployment compensation benefits at the rate of one-seventh the weekly benefit
15 amount payable for that week for each day for which he or she is able to and available for
16 work. The amount of benefits payable, if not a multiple of one dollar (\$1) shall be
17 computed to the next highest multiple of one dollar (\$1). An individual shall not be
18 entitled to unemployment compensation benefits for any day in which he or she is unable
19 to or unavailable for work for any reason.

20 (d) He has been unemployed for a waiting period of one week as defined in Section
21 1254, unless this waiting period has been waived pursuant to Section 8571 of the
22 Government Code.

23 (e) He or she conducted a search for suitable work in accordance with specific and
24 reasonable instructions of a public employment office.

25 (f) He or she participated as required by the director in reemployment activities,
26 such as orientation and assessment if the individual has been identified pursuant to an
27 automated profiling system as likely to exhaust regular unemployment benefits unless the
28 individual has shown good cause for failure to participate.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

Existing Law: Under accepted unemployment insurance law practice, and as provided for in Precedent Benefit Decisions P-B-18 and P-B-32 of the California Unemployment Insurance Appeals Board (CUIAB), the general rule has been followed that an individual who is unavailable for work for any reason during one or more regular working days of the week is ineligible for unemployment insurance benefits for the entire week under code section 1253(c).

Exceptions to this Draconian rule have been made in both administrative decisions and statutes. Section 1253.1 of the Code permits granting of benefits to an individual who is incarcerated for a short period of time during the week and the charges are dismissed. Section 1253.2 permits payment of benefits to an individual who attends a funeral for a limited number of days. Section 1253.5 provides for a pro rata payment of unemployment insurance benefits to individuals who may be ill themselves for part of the week but looked for work and are available for work the rest of the week.

Precedent Benefit Decision P-B-459, decided by the CUIAB in 1990, sets forth a further exception to the provisions of Code section 1253(c) as above interpreted. In that case the claimant was not available for work for one regular workday of the week because she had to attend a hearing affecting the custody of a minor child. The CUIAB held that this was a compelling obligation on the part of the claimant and under the circumstances, held that the claimant was entitled to benefits for the entire week under Code section 1263c.

The CUIAB has invalidated scores of its precedent decisions on the ground that they are contrary to the law set forth in *Sanchez v. CUIAB*, 20 Cal 3d 55 (1977), and has issued new precedent decisions attempting to interpret the Sanchez case. Among the decisions supposedly invalidated are P-B-18 and P-B-32, but the EDD still applies P-B-18 and P-B-32 for the proposition that unavailability for more than 4 hours in any one normal working day results in ineligibility under Code section 1253(c) for the entire week. No new law has been developed by the courts or by the CUIAB since this resolution was first approved by the conference in 1999.

This Resolution: Would set up a pro rata system for payment of unemployment insurance benefits under Code section 1253(c) by the day rather than by the week when, for any reason whatsoever (with the exceptions set forth in the narrow statutory exceptions above discussed), the claimant is not available for work part of the week but available for work the rest of the week.

An identical resolution was adopted by the 1999 Conference of Delegates, as Resolution 11-09-99, was placed by the Executive Committee in Category II, but has not been introduced into the Legislature.

The Problem: It is unfair to deny benefits for an entire week to a claimant who has some exigent problem, other than illness, which prevents the claimant from looking for work or being available for work part of the week. The Legislature has recognized that the rule denying benefits for an entire week is unfair, at least with respect to illness of the particular claimant. A uniform system of paying benefits to the claimants on a pro rata basis would be fairer and easier to administer.

IMPACT STATEMENT

This proposed resolution does not affect any other law, statute or rule.

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COUNTERARGUMENT

SAN DIEGO COUNTY BAR ASSOCIATION

California Unemployment Insurance Code section 1253(c) provides that an unemployed individual is eligible to receive unemployment compensation benefits with respect to any week only if he or she is able to work and available for work for that week. California legislative, administrative, and judicial authority interprets section 1253 to permit recovery of employment benefits for partial weeks when "good cause" exists with respect to the claimant's unavailability

to work during a portion of the work week. "Good cause" has been found to exist in situations where the claimant is unavailable for a portion of the work week due to child care responsibilities (see, *Sanchez v. Unemployment Insurance Appeals Board* (1977) 20 Cal.3d 55); is incarcerated for a short period of time during the week, and the charges are ultimately dismissed (Unemployment Insurance Code section 1253.1); attends a funeral of a family member for a limited number of days during the work week (Unemployment Insurance Code section 1253.2); and is ill for part of the work week, but is available during the rest of the week (Unemployment Insurance Code section 1253.5). Resolution 05-02-04 would dispense with this "good cause" requirement, thereby enabling claimants to refuse to make themselves available for substantial portions of the work week, yet still receive benefits.

As set forth in *International Union, United Auto. Aerospace and Agr. Implement Workers of America (UAW) v. California Department of Human Resources Development* (1976) 58 Cal.App.3d 924, the purpose of the provision requiring employees to be available for the entire work week is to ensure that benefits are not paid to persons who could be working, and to encourage those persons to find suitable work. This resolution, if passed, would permit claimants to recover (partial) benefits even in situations where they are not actively seeking employment, and are not reasonably making themselves available for employment, thereby defeating the purpose of the program.