

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Unemployment Insurance
	CORRESPONDENCE SYMBOL OUI-DL
	DATE April 19, 2012

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 16-12

TO: STATE WORKFORCE AGENCIES

FROM: JANE OATES /s/
Assistant Secretary

SUBJECT: Payment of Unemployment Compensation to Individuals who are Volunteering

1. **Purpose.** To strongly encourage states to both promote volunteerism in their communities, and interpret state law to not disqualify individuals from receipt of Unemployment Compensation (UC) as a result of volunteer activities.

2. **References.**

- Sections 3304 and 3306 of the Federal Unemployment Tax Act (FUTA);
- Title III of the Social Security Act (SSA);
- Section 134 of the Workforce Investment Act of 1998 (WIA);
- Fair Labor Standards Act of 1938 (FLSA);
- 20 CFR Part 604;
- Training and Employment Guidance Letter (TEGL) No. 12-09, Joint Guidance for States Seeking to Implement Subsidized Work-Based Training Programs for Unemployed Workers; and
- Unemployment Insurance Program Letter (UIPL) No. 787, “The Secretary’s Decision in the South Dakota Conformity Hearing Held July 7, 1964, Disqualification for Base-Period Wages of \$6,000 or Over.”

3. **Background.** The Department of Labor (Department) has encouraged America’s unemployed workers to pursue education and training opportunities as the economy recovers to improve their skills and better position themselves for employment opportunities in the future. In TEGL No. 12-09, the Department previously issued guidance to states seeking to implement subsidized work-based training programs for unemployed workers. In this UIPL, the Department recognizes that volunteering for governmental entities and non-profit organizations can help unemployed workers develop and maintain skills, expand their network of contacts, and enhance their resumes, all while making a positive impact on their communities.

Volunteerism can be a viable and successful strategy that supports reemployment and does not need to interfere with UC recipients’ responsibilities to be able and available for work and actively seeking work. Therefore, the Department encourages states: to promote volunteering by individuals receiving UC; to review their current “able and available” and

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“work search” requirements; and implement policies that allow individuals to volunteer consistent with the requirements of Federal law without making them ineligible for UC.

This UIPL provides guidance for states regarding volunteerism and also reminds states of some limitations in Federal law.

4. **Application of Able and Available and Work Search Requirements.** Federal regulations at 20 CFR part 604 require state UC law to provide that individuals must be able to work and available for work (A&A) to be eligible for UC. Generally speaking, a state may consider an individual available for work if he or she is “available for all work for all or a portion of the week claimed, provided that any limitation placed by the individual on his or her availability does not constitute a withdrawal from the labor market.” 20 CFR 604.4(a). This regulation provides some latitude to states in deciding whether participation in certain activities would remove the individual from the labor market. For example, a state may provide that an individual remains available for work while performing volunteer activities provided the individual is willing to stop the volunteer activity upon an offer of suitable work. Additionally, states may, consistent with this regulation, determine an individual to be available for work while performing a volunteer activity when the individual’s volunteer activity does not occur when the individual would customarily work or is otherwise of a sufficiently limited nature that it “does not constitute a withdrawal from the labor market.”

States have significant flexibility in establishing work search requirements. For example, states may limit the number of hours an individual may volunteer to ensure sufficient time to actively seek work. In addition, states may establish different work search requirements that apply to individuals who volunteer. Individuals who volunteer should, of course, continue a rigorous search for work that satisfies the requirements of the state against which they are claiming benefits.

Note that the Middle Class Tax Relief and Job Creation Act of 2012 (Public Law 112-96), enacted on February 22, 2012, added a new paragraph (12) to section 303(a), SSA, to require that a state’s law, as a condition of UC administrative grants, provide that “as a condition of eligibility for regular compensation for any week, a claimant must be able to work, available to work, and actively seeking work.” The Department will be issuing guidance in the near future to address this new statutory requirement.

5. **Prohibition on Conditioning UC Eligibility on Volunteer Work.** Section 3304(a)(4) FUTA requires, as a condition for employers in a state to receive credit against the Federal tax, that state law provide that “all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund” Section 303(a)(5) SSA provides a similar requirement as a condition for a state to receive administrative grants. Section 3306(h), FUTA, defines compensation as “cash benefits payable to individuals with respect to their unemployment.”

The Secretary of Labor’s decision, published in UIPL No. 787, in the 1964 conformity case involving South Dakota interpreted these sections to mean UC eligibility must be based on the “fact or cause” of unemployment:

[I]t was the intent of Congress to create a social insurance system under which entitlement to benefits was a matter of right on the part of those who became involuntarily unemployed because of lack of work, e.g., laid off from work or otherwise unemployed through no fault of their own, and who are able to work and available for work, but who are unable to find suitable work. In short, what Congress was prescribing was wage insurance for the relief of the unemployed, to compensate for wage loss resulting from unemployment due to lack of work, without regard to any . . . criteria of entitlement having no reasonable relationship to “unemployment.”

Thus, state law must provide that eligibility for UC must only be based on factors related to unemployment. Therefore, while volunteer activities may be beneficial to both the unemployed workers and the community in which they live, states may not condition payment (or non-payment) of UC based on the individual performing volunteer activities, since those activities are unrelated to the fact or cause of the unemployment.

6. Limitations on Use of UC Administrative Funds for Activities Involving Volunteering.

Section 303(a)(8), SSA, requires, as a condition for the receipt of grants for the administration of the state UC law, that all moneys received for the administration of the state law be expended “solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of such State law.” States may use UC administrative grants to inform claimants of their UC rights, including how their UC eligibility may be affected by volunteering. But because activities related to providing detailed information on volunteer opportunities or helping claimants locate volunteer opportunities are not necessary for the proper and efficient administration of the state UC law, UC administrative grants may not be used to pay the costs associated with performing these activities. However, it is important to note that funds made available to states under WIA, could be used to provide information to individuals about volunteer opportunities under WIA Section 134(d)(2)(B).

- 7. Worker Protections Related to Volunteer Activities.** States choosing to promote volunteerism should know that individuals who freely volunteer their services to governmental entities and non-profit organizations are not considered to be employees subject to the minimum wage and overtime requirements of the FLSA if certain conditions are met. The work must be for civic, charitable or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered. A volunteer for a public agency but not a non-profit organization can be paid expenses, reasonable benefits or a nominal fee to perform such services. The services must be offered freely and without pressure or coercion, direct or implied, from an employer or agency. Finally, the person must not be otherwise employed by the same employer to perform the same type of services as those for which the individual proposes to volunteer.

- 8. Volunteering Resources.** The Administration has supported volunteering activities as a way for individuals to participate in our nation’s recovery and renewal by serving their communities. Information about the Administration’s focus on volunteering and community service may found on the United We Serve Web site at www.serve.gov.

9. **Action Requested.** Administrators are requested to do the following:

- Provide this guidance to the appropriate staff;
- Review UC policies and procedures and consider implementing policies that support promoting volunteering as a reemployment strategy;
- Coordinate policies related to volunteerism across UC and appropriate workforce programs such as the Employment Service and WIA.

10. **Inquiries.** Questions should be directed to the appropriate Regional Office.