ALABAMA DEPARTMENT OF WORKFORCE
ADMINISTRATIVE CODE

CHAPTER 480-4-3
BENEFITS

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480-4-3-.02 Repealed.
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480-4-3-.06 Repealed.
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480-4-3-.07 Social Security Number Required For Processing A Claim.

(1) In order for a claim for unemployment benefits to be processed the law requires the claimant to furnish the Unemployment Compensation Agency his/her correct social security number. The social security number provided by the claimant shall be verified using a cross-match system with the Social Security Administration.

(2) Should there be a discrepancy between the social security number or related information provided by the claimant and the information on file with the Social Security Administration, the individual's social security number should be verified from the individual's social security card and a government issued photo identification.

(3) If, upon request by Agency representative, the individual cannot produce any document verifying his/her social security number, the Unemployment Compensation Agency data files may be used to verify the claimant's base period employment and wages. If this means of verification is used, the claimant shall provide some form of positive personal identification acceptable to the Agency.

(4) If the individual fails to abide by this rule, the individual's claim for unemployment benefits cannot be processed.
Author: Hoyt Russell, Director Unemployment Compensation Division
Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.
History: Amended: Filed January 2, 2014; effective February 6, 2014.

480-4-3-.08 Claims And Registration For Benefits For Total And Part-Total Unemployment.

(1) Claims and Registration.

(a) Any individual desiring to file an application for unemployment compensation benefits may do so by visiting www.labor.alabama.gov, calling 866-234-5382 or visiting a local Alabama Career Center Office. The claim for benefits shall be effective as of the first day of the calendar week in which the claimant filed a claim.

(b) In order to establish eligibility for benefits or for waiting period credit for weeks of unemployment, the claimant must file weekly certifications for each week they wish to

make a claim for benefits. Certifications may be completed by telephone at 334-954-4094, 205-458-2282, or 800-752-7389. Certifications may also be completed on-line at www.labor.alabama.gov. Such weekly certifications for benefits must be completed immediately (but not later than (6) six calendar days) after the end of the week for which such benefits are being claimed. However, when a weekly claim has been submitted but requires the agency to obtain additional information, the claimant will be notified to contact the agency within 4 calendar days. Failure to contact the agency during this additional 4 calendar days shall be grounds for a finding that the claimant has not timely filed a claim for benefits for the week in question, and a decision denying benefits for the week claimed in question shall be issued. In order to ensure accurate and timely processing of the claim, the following procedures must be followed:

1. Claimants must submit all necessary forms when requested. If additional material is needed, such as Form W-2 or SF-50, the claimant will be sent a request in writing and the request will include any applicable deadlines. Doctor's certificates, when required, may be mailed or faxed to the central office as outlined on the doctor’s certificate form.

2. Employment Service registration must be accomplished, if applicable. Claimants who are Alabama residents, will be automatically registered for work with the Alabama Career Center System. This auto-registration will remain active for 90 days, however, all claimants are required to maintain an active Career Center application for the duration of his/her unemployment claim. Claimants must visit one of the Alabama Career Centers or log-in at www.alabamaworks.gov and update his/her online resumé to keep his/her registration active beyond the initial 90 days. Claimants who are residing and seeking work in another state must register for work and maintain an active registration with the Employment Service or American Job Center office in his or her local area.

3. Nothing in this rule shall be interpreted to relieve such a claimant from the requirement that an active search for suitable work be conducted in accordance with provisions of Ala. Code Sections 25-4-77(a)(5) and Alabama Department of Labor Administrative Rule 480-4-3-. 15.

4. Claimant shall be provided with the Alabama Unemployment Compensation Benefits Rights and Responsibilities Handbook by mail or online at www.labor.alabama.gov. The claimant shall be advised of his/her responsibility to respond to a call-in from the claim’s office.

5. When a new or additional claim is filed for unemployment compensation, the Unemployment Compensation Agency notifies the last bona fide employer and requests information regarding the reason the claimant was terminated. The employer returns (or fails to return) the form containing the reason for separation as described in Rule 480-4-2-.19(2). If the information provided by the employer conflicts with that provided by the claimant, the claimant must be given the opportunity to rebut the employer's reason.

(i) Once a claim is filed, the last separating employer is furnished a Notice of Claim and Request for Separation Information, (Form Ben-241). Base period employers other than the last separating employer are notified of the claim by a Notice of Payment and Charge to Your Tax Rating Account (Form Ben-8A). Information furnished by the respective employers in response to these will be considered timely notice to the Secretary as required by Section 25-4-78(3)(a), and acted upon accordingly, including monetary redetermination of the claim, provided such response is furnished to the Agency within the time specified on either form. (The required return date and local office address is printed on each Ben 241. Form Ben 8A must be returned to the Alabama Department of Labor, Unemployment Compensation Agency, Montgomery, Alabama 36130, within 15 days following the mailing date shown on the form).

6. Change of claimant's address is the responsibility of the claimant. The claimant must personally contact UI Inquiry at 800-361-4524 to update his/her residence or mailing address. The exceptions to this procedure are:

(i) When a claim for partial benefits indicates a change of address and is signed by the claimant.

(ii) When the address is updated as part of the regular claims filing process for an initial or additional claim.

(iii) When the change is necessary due to an obvious error.

7. Claims for lost or stolen debit cards shall be made in accordance with Alabama Department of Labor Administrative Rule 480-4-3-.18.

8. Claimant must provide proof of work search efforts with at least three (3) prospective employers for each week of unemployment claimed. Full work search

requirements are listed in Alabama Department of Labor Administrative Rule 480-4-3-.15(3)(a).
Author: John B. Benton, Joseph S. Ammons
Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-77, 25-4-111.
History: **Amended:** December 10, 1984. **Amended:** April 1, 1983. **Amended:** Published October 31, 2022; effective December 15, 2022.

480-4-3-.09 Claims And Registration For Individuals Located In Isolated Areas (Repealed 10/24/13).
Author: John B. Benton, James H. Armstrong
Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.
History: **Repealed:** Filed September 19, 2013; effective October 24, 2013.

480-4-3-.10 Mass Separation.

The employer shall notify the Unemployment Compensation Call Center Operations as soon as the date of the mass separation and the number of workers involved is determined, and in no event later than the date of the actual separation.
Author: Hoyt Russell, Director, Unemployment Compensation Div.
Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.
History: Effective: September 30, 1982. **Amended:** Filed January 2, 2014; effective February 6, 2014.

480-4-3-.11 Claims For Partial Unemployment.

(1) Employer Responsibility in the Initiation of a Claim for Partial Benefits.

(a) On the normal or customary payday for the pay period in which occurs the first week a worker has earnings less than approximately seventy percent of his/her usual weekly earnings and less than the highest allowable weekly benefit for total unemployment, an employer shall give such worker a "Worker's Claim for Partial Benefits," setting forth the information required of the employer thereon. If the worker completes and returns the form to his/her employer, the employer with five (5) or more employees shall promptly file the claim for partial unemployment benefits electronically through the internet; or by any filing method approved by the Alabama Department of Labor unless a waiver is granted by the Unemployment Compensation Director or his designee.

(b) When an employer first files a claim for partial benefits for a worker, the Alabama Department of Labor shall promptly notify the worker named therein of his/her potential right to benefits and shall notify the employer of the worker's weekly benefit amount for total unemployment (which shall be the partial earnings limit) and benefit year beginning date. Upon receipt thereof, each employer shall record upon the payroll records the weekly benefit amount and benefit year beginning date.

(c) Employers with five (5) or more employees may electronically file a partial claim for his workers for as many as three (3) consecutive weeks during which the employee has no earnings but the employer does not wish to terminate them. If the employer desires to continue filing partial claims with no earnings beyond the three weeks, authority must be requested by e-mail, letter or memorandum addressed to the Unemployment Compensation Director. The request should contain complete justification for continuing to file partial claims.

(d) A waiver request must be submitted in writing and include the business name and address, state unemployment account number, Federal Identification Number, number of employees and state the reason(s) why a method other than the prescribed method is necessary. No waiver may be granted for a period longer than 1 year. Employers with less than 5 employees do not need to request a waiver as they may report by non-electronic means but are encouraged to file electronically.

(2) Registration and Filing of Claims for Partial Unemployment.

(a) A claim for partial benefits for an individual filed electronically or by telephone by him/her, or his/her employer on his/her behalf, shall constitute such individual's notice of unemployment, and claim for benefits or waiting period credit, with respect to each such week of partial unemployment covered by the claim provided that such claim is filed and received by the Alabama Department of Labor within 14 days following the ending date of the week of unemployment covered by such claim; except, that where the employer's payroll is on a biweekly basis or an employer's administrative offices are closed for a period of two weeks, the 14 day limitation with respect to the first week of such pay period or closure is extended to 18 days. The Unemployment Compensation Director shall have the prerogative to accept or reject any partial claim received after 18 days.

(b) Where an employer fails to electronically file a claim for partial benefits, the worker can directly file his/her unemployment compensation claim during the week in which he/she does not work. The worker may directly file his/her unemployment compensation claim by telephone or online at DOL's website: www.labor.alabama.gov. If the worker expects

the employer to have filed a claim for him/her and the employer fails to do so, the Alabama Department of Labor, Unemployment Compensation Division shall allow backdating the claim which ended more than 14 days prior to the date on which such worker filed his/her claim by telephone or online at DOL's website: www.labor.alabama.gov.

(3) Extended Period for Registration and the Filing of Claims for Good Cause.

(a) Notwithstanding the provisions of this Rule, if the Unemployment Compensation Director finds that the failure of any individual to register and file a claim for partial unemployment benefits within the time set forth in paragraph 2 was due to failure on the part of the employer to comply with any of the provisions of this Rule, or to coercion or intimidation exercised by the employer to prevent the prompt filing of such claim, or to failure by the Alabama Department of Labor, Unemployment Compensation Division to discharge their responsibilities in connection with such partial unemployment claim, the Unemployment Compensation Director may extend the period during which such claim may be filed to a date which shall be not more than one year from the ending date of any week of partial unemployment for which the individual did so fail to file. Failure to comply with this rule or statute may result in a civil penalty of $25.00 per violation as provided for in the Code of Ala. 1975, §25-11-17, supra.

(4) Employer Records in Connection with Partial Unemployment.

(a) In addition to the requirements set forth above, each employer shall keep his/her payroll records in such form that it will be possible from an inspection thereof to determine, with respect to each worker in his/her employ, who may be eligible for partial benefits. The records shall include, but not be limited to:

1. Wages earned, by weeks, as described in Paragraph (1) (a) of this rule.

2. Whether any week was in fact a week of less than the amount of hours regularly scheduled for the individual employee per week.

3. Time lost, if any, by such worker, due to his/her non-availability for work.

Author: Hoyt Russell, Director, Unemployment Compensation Div.
Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.
History: **Amended:** Filed November 24, 2008, effective December 29, 2008. **Amended:** Filed January 2, 2014; effective February 6, 2014.

480-4-3-.12 Weeks Of Unemployment And Weeks Of Disqualification.

(1) An individual's week of total or part-total unemployment shall consist of the calendar week period for which he/she first files a claim for benefits and thereafter each calendar week for which he/she files claim certifications, all in accordance with Rule 480-4-3-.08.

(2) Week of Disqualification.

(a) With respect to acts and periods of disqualification under Code of Ala. 1975, §25-4-4, Alabama Unemployment Compensation Law, which occur or commence before any week of unemployment has commenced, "week" means the calendar week in which the disqualifying act or event occurs.

(b) If the act on which the disqualification is based occurs during a continuous period of unemployment with respect to which or a part of which a claim has been previously filed, a "week" means the seven consecutive day period beginning with the same day of the week as the weekly period established by such claim.

Author: John B. Benton; Thomas Daniel, Director Unemployment Compensation Director
Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.
History: **Amended:** Filed March 5, 2015; effective April 9, 2015.

480-4-3-.13 Predetermination Fact-Finding Interview.

(1) The Unemployment Compensation Agency shall at the request of either the employer or the claimant, conduct a predetermination fact-finding interview. Where an employer replies timely to a Request for Separation Information and raises a disqualifying issue as set forth in Code of Ala. 1975, §25-4-78, the Agency may at its own discretion conduct a predetermination fact-finding interview after providing reasonable notice to both the claimant and the employer at the last known address of each.

(2) Such predetermination interview shall afford each party an opportunity to present relevant information and shall be conducted informally and shall not be restricted to the taking of evidence in the traditional judicial sense. Neither attendance nor non-attendance at said proceeding shall adversely affect any party's appeal rights under the law.

(3) Due to the requirement that benefits be paid promptly when due, postponement will be granted only in exceptional circumstances. Claimant's request for postponement or continuance will be granted only whenever it appears that such action is necessary in order for him/her to establish his/her claims for benefits.
Author: John B. Benton
Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.
History:

480-4-3-.14 Payment Of Benefits To Interstate Claimants.

(1) This rule shall govern the Alabama Department of Labor in its administrative cooperation with other States adopting a similar regulation for the payment of benefits to interstate claimants. For more detailed instructions, see ETA Handbook 392.

(a) Registration for Work.

1. An interstate claimant will be considered as registered for work if the claimant is registered for work in the Agent State in the same way and to the same extent as the Agent State's intrastate claimants.

2. The detailed instructions regarding work search requirements are found in the ETA Handbook 392, Section I, Subsection 12 and 13, and are not repeated here for brevity.

(b) Benefit Rights of Interstate Claimants.

1. If a claimant files a claim against any state, and it is determined by that state that the claimant has available benefit wage credits in that state, the claim shall be filed only against such state as long as benefit wage credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit wage credits.

For the purpose of this rule, benefit wage credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction.

(c) Claims for Benefits.

1. Initial, Traditional, Additional, and Reopen Claims for benefits or waiting period shall be filed by

interstate claimants via telephone or internet in the Liable State. The Agent State will file IB-1's for the Virgin Islands and the state of Delaware for the above claim types (see ETA Handbook 392, Section II).

2. Continued claims shall be filed in accordance with Liable State's regulations for intrastate claims.

(d) Interstate Appeals

1. All interstate appeals will be processed for hearings to be conducted from the Liable State.

2. For more detailed information and exceptions, see ETA Handbook 392, Section VIII, subsection 1 and 3.

Author: Hoyt Russell, Director Unemployment Compensation Division
Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.
History: Effective: September 30, 1982. This rule is intended to implement Code of Ala. 1975, §25-4-120. **Amended:** Filed January 2, 2014; effective February 6, 2014.

480-4-3-.15 Availability For Work.

(1) This rule does not attempt to set hard and fast specifics as to what constitutes availability that could apply to each conceivable circumstance that might arise, but rather, to provide a standard of interpretation in certain specific areas as set out below.

In all cases under this rule the individual circumstances must be carefully investigated, and the judgment made on the basis of those circumstances. The relevant facts and the reason for any decision should be documented and placed in the claimant's file. The burden of proof of availability rests with the claimant.

(2) Availability for work contemplates on the part of the claimant a voluntary, full, and conscientious exposure to possible job opportunities either at a locality where wages on which a claim is based were earned or at a locality where it may reasonably be expected that work for which the claimant is qualified by previous training or experience may be available. The claimant must show a good faith effort to find such work as could reasonably be expected of an individual who desires work. Registration at an employment office alone does not establish that a claimant is available for suitable work. A thorough coverage of suitable employment possibilities is contemplated. This will vary widely among groups of claimants, being influenced by such factors as local hiring practices, labor market conditions (commute distance and cost, wage rates, prospects of employment in the local labor market, etc.) and types of work for which claimants are qualified.

(a) If a claimant is on a temporary layoff, the duration of which is not expected to exceed eight (8) weeks, or a customary or seasonal layoff from his regular employer, such layoff not expected to exceed eight (8) weeks, no work search is required during such temporary, customary, or seasonal layoff as a condition of eligibility. This work search exemption shall not apply unless such layoff is from an employer who normally provides work of a permanent and continuing nature to the claimant.

(b) When a claimant willfully follows a course of action designed to discourage prospective employers from hiring such claimant, the claimant shall be determined unavailable for work and ineligible for benefits.

(3) The claimant must be actively seeking, available for and willing to accept work during the full-time hours and full work week and for the shifts normally worked in the trade or industry for which qualified by experience or training. Except as allowed by paragraph (e) below, the requirements cannot be met by being available for part-time work only.

(a) Actively seeking work generally means a good faith and reasonable search as would be expected of an individual who desires work. Reasonable and active effort shall mean engaging in systematic and sustained efforts to find work, including contacting at least three (3) prospective employers for each week of unemployment claimed. The Department shall require the claimant to provide proof of work search efforts when filing his or her weekly certification. A claimant’s subsequent proof of work search efforts may not include the same prospective employer unless the employer has indicated since the time of the initial contact that the employer is hiring. The Department shall conduct random reviews of at least five (5%) percent of the work search proof provided by claimant’s each week. The Governor by executive order may suspend the work search requirement during a state of emergency to the extent permissible by federal law.

(b) Available for work generally means that the claimant is in the vicinity, physically able and free to accept work as described above. Vicinity does not necessarily require a physical presence; it only requires that a person be available for contact by telephone or other electronic means.

(c) Disqualification should not normally be assessed if the claimant is available during the majority of the normal and customary work week for his occupation provided that no work was available during the portion of the week that the claimant was not available, and that the claimant made a reasonable work search. Majority of the work week is defined as equal to or greater than fifty percent (50%). In determining what constitutes a “normal customary work week”, one must take into

consideration the hours and days that the occupation requires rather than what the claimant worked on their last job. Provided, however, a determination of ineligibility for a week of unemployment shall not result simply and solely because the worker had to be absent from work for not more than four hours due to illness or compelling personal circumstances.

(d) Willing to accept work generally means that the claimant demonstrates a willingness to accept any work for which he/she is qualified by previous training or experience and that is suitable in accordance with Code of Ala. 1975, 25-4-78(5).

(e) Persons with disabilities applying for unemployment compensation benefits must establish a reasonable and active effort to secure work in an amount which they have shown to be qualified to perform by past history, experience, and training and which is supported by medical documentation reflecting the applicant's inability to maintain full-time employment by reason of his or her disability.

(4) An active search for work is evidence of availability for work. Registration with the Employment Service is required as a further condition of eligibility, unless otherwise exempted.

(a) Various methods of work search may be employed by claimants in their efforts to find work. While any means of seeking work may result in a job, some methods may not be acceptable to remain eligible for benefits. The following are examples of suitable methods which may be used. This list is not intended to be limiting or prohibitive, but is to offer guidance.

1. In-Person Contacts. Almost always the most appropriate method whether or not combined with other means. (The contact should be with the hiring authority where possible.)

2. Telephone Contacts. An acceptable method when combined with in-person contacts. (Telephone contacts should be made with the hiring authority where possible.)

3. Employment Agency. An acceptable method, but registration with the agency does not relieve the claimant of other types of contacts which may be deemed appropriate or required by Code of Ala. 1975, §25-4-77.

4. The Resumé. An acceptable method for individuals in certain skills or professions where this is the standard job-seeking practice.

5. Claimants who identify themselves as a member of a union where work is secured exclusively through a union hiring hall will not be required to register with the

employment service and may limit their work search to registration with their hiring hall. Such claimants must be able to show that they are a member in good standing of their union and that they are currently registered with their hiring hall. The law makes no distinction between those who are and those who are not members of a labor union, but requires of both that they demonstrate a constant availability for work.

6. Electronic methods including E-mail and the Internet are acceptable methods of work search where this method of seeking employment is usual and customary.

7. An Employment Service exclusive hiring agreement with an employer is a recognized job search with that employer. In an area where job opportunities in that occupation are only available through this method, the claimant would be required to follow the instructions from the Employment Service on keeping these applications active.

(b) All claimants must use reasonable and realistic job-seeking methods to establish availability and remain eligible for unemployment benefits. In addition, claimants using any of the methods except (5) above must also register for work with the State Employment Service.

(c) While in-person contacts are not required for each week, in order that claimants meet minimal availability requirements, they must make some in-person contacts where work is usually obtained in this manner in order to demonstrate a willingness to work during a claim series.

(d) Code of Ala. 1975, 25-4-78(5) requires that certain factors be considered in determining the suitability of work for which the individual must be available. Pertinent among these are (1) experience and prior earnings and (2) the length of unemployment and prospects for securing work in his/her customary occupation. Unless it is obvious that an individual, other than a member of a labor union in good standing and registered at his union hiring hall, cannot reasonably expect to find work in the locality in line with prior earnings, a reasonable period shall be allowed in which to seek work somewhat comparable. As the period of unemployment lengthens and prospects for locating such work diminish, the individual must be willing to accept work which would have been deemed unsuitable earlier in the period of unemployment. (See State of Alabama Department of Industrial Relations vs. James M. Harbin 365 So.2d 313 (Ala. Civ. App. 1978). The totality of work search must be considered, not just isolated weeks. He must be able, available, and seeking work for each week claimed.

(5) A claimant incarcerated or legally detained (to include work release) is considered unavailable for work. If incarcerated or detained for only a short time, not equal to or greater than 50% of the normal and customary work week, he would not be considered unavailable because of such incarceration.

(6) Generally, students attending school will not be considered available for work unless it can be shown that they are available during the normal hours for work for which qualified by experience and training. If a student is attending school outside of normal customary work hours for his occupation, no issue exists. If school hours overlap normal work hours, such claimants must show, not only that they are prepared to quit school if work is found but also that school will not interfere with a reasonable and active effort to secure work. Generally, availability for students must include consideration of the amount of money invested in schooling, what type of work they are seeking (are they seeking work commensurate with their current skill level?), whether school hours allow time for an adequate work search, time remaining until studies are completed, wage demand, and, if willing to change hours of classes, would the school allow this change anytime during the term. These factors are critical to the determination of the claimant's attachment to the labor market. Students not available during school terms are not considered in the labor market between school terms, or during summer recess, and will be presumed not available for work for these periods.

Only students attending high school on a **regular**, **full-time basis** are considered unavailable (not in the labor market), either during or between terms or academic years. Such students are not questioned regarding their willingness to quit school to obtain employment; their attendance demonstrates that education is their primary pursuit.

(7) Jury Duty. The claimant is considered available for work while serving on jury duty since time spent in jury service is not a personal service performed under a contract of hire in an employment situation but is a public duty required by law. Jury duty does not render the individual as employed and ineligible for benefits even though it may involve the individuals full-time. Witness and jury fees will be considered as reimbursement for expenses and not as wages.

(8) Notwithstanding any other provision of this rule, all availability for work requirements, including search for work requirements, are waived for any individual who is enrolled in a course of training with approval of the Secretary as, provided in §25-4-77(a)(7)(b). Approved training is not limited to, but includes:

(a) Dislocated workers and other government sponsored training programs for unemployed workers.

(b) Training to which the individual is referred by the Alabama State Employment Service in conjunction with an employment development plan or to guidelines established by Section 4 of Public Law 103-152, or as amended or by its successor. (9) Disabled Accessibility to Job. A job offer shall not be suitable for an individual with a disability if he cannot gain access to a building or its facility.

Author: Hoyt Russell, Director Unemployment Compensation Division, Joseph S. Ammons, General Counsel
Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.
History: **Amended:** Effective September 30, 1992, effective March 17, 1993. **Amended:** Filed November 17, 1994; effective December 22, 1994. **Amended:** Filed August 9, 1995 effective September 13, 1995. **Repealed and New Rule:** Filed January 12, 2001; effective February 16, 2001. **Amended:** Filed September 19, 2013; effective October 24, 2013. **Amended:** Filed July 12, 2019; effective August 26, 2019. **Amended:** Published October 31, 2022; effective December 15, 2022.

480-4-3-.16 Job Abandonment.

(1) If an employee is absent from work without notice, unless it is shown that notice is not reasonably practicable, to his or her employer for a period of three consecutive regularly scheduled working days, and is terminated because of such absence, the employee shall be determined to have abandoned his employment.

(2) If an employee is absent from work due to incarceration, for a period of three consecutive regularly scheduled working days, attributable to the fault of said employee and is terminated because of such incarceration the employee shall be determined to have abandoned his employment, without regard as to whether or when notice was given to the employer by such employee.

(3) A determination of job abandonment shall be subject to disqualification for unemployment benefits under Code of Ala. 1975, §25-4-78(2), VOLUNTARY QUITTING WORK.
Author: Hoyt Russell, Director, Unemployment Compensation Div
Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.
History: **Amended:** December 10, 1984. Emergency Rule: October 23, 1984. **Amended:** Filed April 8, 1999; effective May 13, 1999. **Amended:** Filed January 2, 2014; effective February 6, 2014.

480-4-3-.17 Appeals.

(1) Code of Ala. 1975, §25-4-92(d), provides that notification be provided promptly to the claimant and the claimant's last

employing unit of any determination or decision upon an initial claim. This notice may be delivered in person or mailed, first class postage prepaid to the last known address of any parties involved.

(a) Notice of payment shall be provided to base period employers in accordance with Code of Ala. 1975, §25-4-91(d)(2).

(2) Any party to whom notice of determination or decision is required to be given shall have the right to appeal from such determination or decision.

(3) A notice of appeal from a decision of a claims examiner shall be filed directly to the Department of Labor, Hearings and Appeals Division, 649 Monroe Street Montgomery, Alabama 36131. This notice shall be in writing, and shall include the claimant's or employer's name, address, the claimant's social security number, and shall state the grounds upon which review is sought.

(a) The notice of appeal must be filed within seven (7) calendar days after personal delivery of the notice of determination or decision or fifteen (15) calendar days after such notice was mailed in accordance with paragraph (1) of this rule. Receipt of the appeal by the Agency within the above prescribed times shall constitute filing.

(4) The proceedings shall be scheduled, conducted and heard in accordance with rules 480-1-4-.05 through 480-1-4-.13.
Author: Hoyt Russell, Director, Unemployment Compensation Div
Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.
History: **Amended:** Filed January 2, 2014; effective February 6, 2014.

480-4-3-.18 Replacement Of Benefit Checks.

(1) Benefit checks are void 180 days after date of issuance and may not be negotiated without written permission from the Commissioner.

(2) Benefit checks or inactivated debit cards outstanding 6 months after date of issuance will be cancelled.

(3) Benefit checks which cannot be delivered will be cancelled 60 days after date of issuance.

(4) Electronic payments may be reversed within (5) days of issuance.

(5) Replacement of payments.

(a) Checks cancelled for non-delivery may be replaced within four (4) years from date of issuance.

(b) Lost checks or inactivated debit cards that have been cancelled as outstanding may be replaced within four (4) years from date of issuance.

(c) Electronic direct deposit payments that have cleared banking channels and payment made thereon may be replaced provided the claimant notifies the Department of Labor Treasurer's office within forty-five (45) days of issuance that the payment was made to an incorrect Financial Institution due to administrative error by the Agency.

(d) Stolen and/or forged checks that have cleared banking channels and payment made thereon may be replaced within four (4) years from date of issuance provided the claimant has filed an "Affidavit of Lost or Stolen Check," within 180 days after date of issuance. Exceptions to the 180-day limit may be granted by the Commissioner if extenuating circumstances merit such consideration.

(e) Requests for replacement of a lost or stolen benefit check shall be filed on Affidavit of Lost or Stolen Check available from the Unemployment Claims Office. The Affidavit must be completed by the claimant and all required information furnished.

(f) Lost and/or stolen debit cards, which have not been cancelled by the Department of Labor, must be reported to the issuing debit card company by the claimant. The issuing company will be responsible for reissuing the last and/or stolen debit card in accordance with its rules and regulations.

Author: Hoyt Russell, Director, Unemployment Compensation Div
Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.
History: **New Rule:** Filed February 14, 2000; effective March 20, 2000. **Amended:** Filed January 2, 2014; effective February 6, 2014.

480-4-3-.19 Reserved.
Author:
Statutory Authority:
History:

480-4-3-.20 Reserved.
Author:
Statutory Authority:
History:

480-4-3-.21 Extended Benefits.

(1) When a period of extended benefits (EB) is declared in accordance with Code of Ala. 1975, §25-4-75 of the Unemployment Compensation Law, the following conditions shall apply:

(a) During the first week an individual's EB claim is effective the local unemployment claims office shall:

1. review the eligibility for EB and schedule the claimant for an eligibility interview during the first week of EB to include the benefit rights under the EB law and these rules,

2. assess the individual's prospects of obtaining work within a "reasonably short period of time" (normally defined as four weeks) and classify as "good" or "not good,"

3. ensure that all individuals whose prospects for obtaining work are "not good" are registered with the employment service for referral to suitable work as defined in paragraph (1)(c) of this Rule.

(i) The job prospect classification of "good" does not eliminate the requirement to actively seek work. It only applies to the determination of what is suitable work.

(b) Work Search Requirements.

1. The EB claimant is expected to make a more diligent and active search for work than would be required of an individual receiving regular unemployment compensation. The search for work under EB conditions must be sustained and systematic. Registration with a referral union will be considered as only partially meeting the work search requirement and additional individual effort will be required to demonstrate an active search for work.

2. Tangible evidence of an active work search must be provided. This does not require verification of "proof" by the potential employer, but does require a listing by the claimant on the back of the EB pay order card listing each week the contacts made during the week. Insufficient contacts will be grounds for an immediate fact-finding interview and possible disqualification.

(i) An EB claimant in a Director-approved training program is exempt from the work search requirement as

long as a good standing is maintained in the training program.

(c) Suitable Work.

1. For purposes of EB, any work which is within an individual's capability is considered suitable work, unless the individual provides satisfactory evidence that his/her prospects for obtaining work in a reasonably short period of time are good. The following conditions for suitable work shall also apply:

(i) The gross average weekly pay for the potential work must exceed the individual's average weekly benefit amount, plus any supplemental unemployment benefits (SUB) payable.

(ii) A job must be offered by the employer to the individual in writing or the job must be listed with the Alabama State Employment Service.

(iii) The pay must equal or exceed the minimum wage.

(iv) The work must be suitable under all regular benefit provisions which do not conflict with the special EB provisions, e.g., jobs that are available because of labor dispute, or that are against Federal requirements, etc., would not be suitable.

2. Failure to Apply for or Accept Suitable Work.

(i) The eligibility of a claimant with "good" prospects of obtaining work within a reasonably short period who fails to apply for or accept suitable work shall be determined in accordance with the standards and criteria applied under the state law for recipients of regular benefits.

(ii) If the individual's prospects are "not good" and that individual has refused to apply for or accept suitable work as defined in this rule, then the EB disqualification shall be imposed in accordance with Code of Ala. 1975, §25-4-75 of the Alabama Unemployment Compensation Law.

(d) Interstate Benefit Program.

1. Starting April 1, 1981, or upon enactment of State law in the liable State, agent State local offices must conduct eligibility reviews and assess claimant's prospects of obtaining employment in his/her customary occupation and transmit the necessary information to the liable State using Form IB-10. No action will be taken on

agent State claims until notified by the liable State (See (i) and (ii) below).

(i) Liable State Responsibilities.

Form EB-15 should be mailed to each potentially affected claimant approximately three to four weeks prior to the time he/she files an EB claim. A copy of this notification should be sent to the agent State local office prior to the beginning of the claimant's eligibility period.

This notice to the Agent State will serve as a request for an EB-BRI and an assessment of the claimant's prospects of obtaining employment.

(ii) Agent-State Responsibilities EB-Benefit Rights Interview - Assessment of Claimant's Prospects of Reemployment.

Upon receipt of notification from the liable State that an individual is a potentially affected claimant, the Agent State should schedule the claimant for an EB-BRI. The claimant should be mailed an Interstate Eligibility Review Form, along with the call-in notice. The review form should be completed and returned at the time of the interview. During this interview, in addition to advising the claimant of his/her rights and obligations, the claimant's prospects of obtaining employment in his/her customary occupation should be assessed. This information should be recorded on the IB-10 and transmitted to the liable State together with the EB-Initial Interstate Claim, Form IB-1, or the Continued Interstate Claim, Form IB-2, for the first affected week of extended benefits claimed after such interview.

(2) If a claim is filed in an agent state which is not in an extended benefit period, the liable state may only pay two weeks of extended benefits.

Author: John B. Benton, Elmer Adkins
Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.
History:

480-4-3-.22 Between Terms Denials.

(1) If an individual has been denied benefits by reason of Section 25-4-70(b)(2) or Section 25-4-70(b)(5) of the Unemployment Compensation Law and such individual is given notice that the

opportunity to return to work was not given or was withdrawn by the educational institution, governmental entity, or non-profit organization in connection with which such disqualification was assessed, such individual may be eligible for retroactive payment of previously denied benefits provided such individual notifies the Commissioner of the withdrawal of reasonable assurance of reemployment or failure to reemploy in the following manner:

(a) Such notice may be by mail, fax, or other acceptable means approved by the Commissioner.

(b) Such notice must be substantiated by a written notice from the educational institution, governmental entity, or non-profit organization.

(c) Such notice to the Commissioner must be made within 5 calendar days of the date the individual received such notice.

(2) In extenuating circumstances, the Commissioner, at his discretion, may extend the time for accepting such notice from the claimant.

(3) Nothing in this rule shall be interpreted to relieve a claimant of making an active search for work and meeting all other eligibility requirements for the period for which such payments are claimed.
Author: John B. Benton; Thomas Daniel, Director Unemployment Compensation Director
Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.
History: **Amended:** December 10, 1984. **New Rule:** August 10, 1983. **Emergency Amendment:** Effective: October 23, 1984. **Amended:** Filed March 5, 2015; effective April 9, 2015.

480-4-3-.23 Repealed.
Author:
Statutory Authority:
History:

480-4-3-.24 Benefit Eligibility As Affected By Self-Employment.

(1) Self-employment is disqualifying under Section 25-4-78(11) of Alabama Unemployment Compensation Law. While the law itself does not provide a definition as to what constitutes "self-employment", its dictionary definition is: "a remunerative activity of a personal, self-directed nature". Determination policy is that an individual is not automatically disqualified because he engages in such an activity, but is deemed to be self-employed only if he

devotes a "substantial and considerable amount of time all is construed to mean an amount exceeding fifty percent of a normal work week. The amount or absence of income from the activity is totally immaterial. Disqualification, if imposed, is based upon the amount of time devoted to the activity.

(2) Self-employment may consist of many, widely divergent activities, all of which come within two broads, but generally distinguishable categories. One category consists of the performance of services for another in the capacity of an independent contractor. The other category consists of business ventures such as the production of crops, the manufacture and sale of a product, buying and reselling merchandise, etc.

(a) Performance of Services as an Independent Contractor. A distinction between the performance of "services" as an independent contractor and the performance of "personal services" must be made, since remuneration for personal services constitutes "wages" for disqualification under Section 25-4-71 of unemployment compensation law, wherein a claimant is deemed "not unemployed".

1. Independent Contractor. Payments made for services rendered by an independent contractor are not "wages". Income from this category of self-employment is not remuneration for the performance of personal services and therefore does not come within the definition of "wages". If the individual is not disqualified as being self-employed, such income has no effect upon eligibility.

Services performed by an independent contractor are under the control of the contractor. Usually an agreement is made to perform specific work for a price agreed upon in advance, and related expenses are the responsibility of the contractor. He controls how, when, where, and whom the services are performed. He may hire, direct and pay assistants. He may have an office, maintain supplies and equipment, hold a license, and advertise his services.

To be an independent contractor, a worker must be in a position to suffer a loss or realize a profit as a result of his services. This differs considerably from the position of an employee whose sole function is to provide personal services in return for wages.

2. Performance of Personal Services. "Personal Services" is defined as "the expenditure of human effort in the performance of an act or task". The performance of personal services indicates an employer- employee relationship--the employee providing personal services, the employer providing direction and control. Under the common-law test, a worker is an employee if the person for whom he works has the right to direct and control him

in the way he works, both as to final results and as to the details of when, where, and how the work is to be done. The employer need not actually exercise control; it is sufficient that he have the right to do so.

(b) Business Ventures. Business ventures such as farming, manufacturing, and retail trade are deemed to be self-employment if the individual engaged in the activity devotes a "substantial and considerable" amount of time to the activity. The amount or absence of profit or income from the business venture is immaterial. Consequently, any such individual so engages would be disqualified under Section 25-4-78(11) as being self-employed.

In a typical self-employment situation consisting of buying and re-selling goods, title to and ownership of the goods at some point pass to the claimant who in turn re-sells the goods and transfers ownership to a third party. In such cases the claimant has bought and either paid for or incurred a liability for payment of the purchase price.

(3) Each case must be evaluated on an individual basis, considering all the facts and circumstances. Special attention should be given to whether or not substantial change in a sideline business has occurred after separation from work, and to whether the activity becomes the individual's primary source of livelihood. Availability for work should be considered in every instance.

(4) Determination on a Weekly Basis. Self-employment, like ability to work and availability for work, is determined on a week-to-week basis.

Author: Joan Hinson, Chief of Benefits
Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111, 25-4-78.
History: Effective March 18, 1993.

480-4-3-.25 Benefit Eligibility As Affected By Commission Work.

(1) Commission work is disqualifying under Section 25-4-71, which reads in relevant part, "wages are deemed to be payable to an individual working on a commission basis with respect to each week in which he works". This sentence is interpreted to mean that an individual who is working on a commission basis and performs any services during a week is not, according to this section of the law, unemployed during that week, notwithstanding the fact that he may have worked less than full time and regardless of the amount of commissions earned.

(2) Commission is work usually associated with the sale of goods or services. In a typical commission sales situation, title to and ownership of the goods never pass to the commission agent. Ownership of the goods always remains with the principal until sold even though the claimant may be in actual possession of the goods. The claimant is, in such cases, acting as an agent on behalf of his principal in negotiating an agreement between his principal and the purchaser.

(3) In some situations, a commission rather than an hourly or weekly wage rate is the method used for computing the amount of remuneration for the performance of personal services in accordance with an otherwise ordinary contract of employment which establishes the hours of work. In other situations a minimum payment is guaranteed by the contract for commission sales. The commission work basis for disqualification does not apply in such cases. It applies only where a commission is the sole method of payment and the individual is more or less free to establish his own hours of work and therefore presumably can work as much or as little as he desires.

(4) Commission work, like ability to work and availability for work, is determined on a week-to-week basis.
Author: Joan Hinson, Chief of Benefits
Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111, 25-4-78.
History: Effective March 18, 1993.

480-4-3-.26 Receipt Of Payments From An Employer Pension Fund (Repealed 4/12/01).

Author: Joan Hinson, Chief of Benefits
Statutory Authority: Code of Ala. 1975, §§25-2-8, 25-4-111.
History: Effective March 18, 1993. **Repealed:** Filed March 8, 2001; effective April 12, 2001.

480-4-3-.27 Requalifying Provisions For 25-4-78(2)b.1., 25-4-78(3)a.1., And 25-4-78(3)b..

(1) A claimant that has been disqualified under Section 25-4-78(2), (3)a, or (3)b must, in order to requalify for benefits, as provided under sections 25-44-78(2)b.1., (3)a.1., and (3)b:

(a) Re-enter insured or acceptable employment; and,

(b) For which employment, earn wages equal to ten times his weekly benefit amount for the benefit year in which such disqualification is assessed; and

(c) Be separated from such employment under non-disqualifying conditions.

(2) The requirement defined in items (1) (c) of this rule is to be effective only for a period of two years from the week in which such disqualifying separation occurred, or the effective date of the disqualification, whichever is later. Any such two-year period will extend through the end of the calendar week in which the last day of the two-year period occurs.

(3) The purpose of this rule is to extend to such disqualified claimants the same right to liberal construction and the beneficent purposes of the Unemployment Compensation Law as is enjoyed in interpretation of other sections thereof.
Author: Joan Evans, Chief of Benefits
Statutory Authority: ode of Ala. 1975, §§25-2-7, 25-2-8, 25-4-78(2), 25-4-111.
History: Effective March 18, 1993.

480-4-3-.28 Disqualification For Testing Positive For Illegal Drugs.

(1) An employer will be considered to have met the burden of proving the drug policy satisfies the "otherwise reliable" requirement of Code of Ala. 1975, §25-4-78(3)a.(i) if:

(a) The drug policy is delivered to each employee in writing and warns the employee that a positive test result for any illegal drug as listed in the policy could result in dismissal, and the warning contains a statement that either, 1) testing positive; 2) refusal to submit or cooperate with a drug test; or 3) knowingly altering or adulterating the blood, urine or hair sample will result in possible dismissal; and

(b) The drug policy provides for an independent confirmatory test from the same specimen at the request of and at the expense of the employee; and

(c) The drug policy applies to all employees regardless of position or classification, and clearly states the basis on which testing will be conducted, i.e., pre-employment; random; post-accident; by a qualified independent laboratory; and further, if additional testing is imposed on some but not all employees, the employer must show a rational basis for such additional testing; and either

1. It is voluntarily conducted and evaluated in accordance with U.S. Department of Transportation in 49 CFR, Part 40 and a copy of the report of the medical review officer is submitted to the Department of Industrial Relations Unemployment Compensation Division

with each claim for unemployment compensation filed where separation from employment is alleged to be on account of a drug related separation subject to Section 25-4-78(3)a.(i); or

2. Provides for the review of laboratory findings by a qualified independent medical review officer, and the submittal of such medical review officer's report to the Unemployment Compensation Division for each claim for unemployment compensation filed where separation from employment is alleged to be on account of a drug related separation subject to Section 25-4-78(3)a.(i), which shall be prima facie evidence that the laboratory tests are reliable.

(2) The term "Medical Review Officer" (MRO) as used in this rule is defined as a licensed physician who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive drug test results including evaluation of his or her medical history and any other biomedical information. Such MRO must not be an employee of a drug testing laboratory unless there is clear separation of functions preventing any conflict of interest and the MRO has no responsibility for a laboratory drug testing or quality control operation.

(3) The following criteria at a minimum must be reviewed by the MRO for the report of a positive test to satisfy the "otherwise reliable" provision of Alabama Code Section 25-4-78(3)a 1978:

(a) Confidentially of medical information and identify of donor.

(b) Maintenance of temperature of specimen within acceptable range. Use of temperature monitored cup that shows consistency of the specimen with the donor's body temperature.

(c) Specific gravity test of specimen.

(d) Maintenance of documented chain of custody (COC) of specimen with certified copy of original COC form to be provided to MRO.

(e) Retention by the laboratory of the original urine specimen and split specimen of the sample for one full year on all positive test.

(f) The use of another individual's prescription drugs whether intentional or not is not a valid explanation for a positive test result.

(g) The facility at which the specimen is collected is recommended to provide the following:

1. have an enclosure for private urination.

2. have a toilet containing colored water for completion of urination.

3. have running water or sink, and

4. a means outside the enclosure for hand washing.

(h) Sealing of the specimen by the collection site person immediately in the presence of the donor.

(i) Integrity of specimen maintained by immediately mailing or maintaining the specimen in secure storage in direct control of the collection site person until it is mailed.

(4) Provisions of Sections (1)(a), (1)(b)1, and (1)(b)2 of this rule notwithstanding, no otherwise reliable drug policy established to cover existing employees shall be applicable to existing employees until a period of thirty calendar days has elapsed from the date the drug policy was made known to such existing employees in writing and acknowledgment in writing received from the employee.

(5) A qualified laboratory for the purposes of this rule is a National Institute on Drug Abuse (NIDA) certified laboratory or if not so certified utilizes gas chromatography and mass spectrometry (GC/MS) testing technique.

(6) Hair Testing

(a) The drug policy provides each employee at his or her expense to obtain for any position test a follow up reconfirming test by a certified laboratory designated by the Medical Review Officer that utilizes the same or equivalent testing methods and standards at the laboratory that performed the initial and confirming tests.

(b) The drug policy applies to all similarly-situated applicants or employees regardless of position or classification; clearly states the basis on which drug hair testing will be conducted, i.e., pre-employment, random, monitoring under a rehabilitation agreement or "last change" agreement; by a certified laboratory; if additional testing is conducted on some but not all similarly-situated employees, the employer has rational basis for excluding some but not other similarly-situated employees; provides for review by a qualified independent medical review officer (i.e., a medical review officer not employed by the testing laboratory), and the submittal of such medical review officer's report to the Unemployment Compensation Division for each claim for unemployment compensation filed when separation from employment is alleged to be on account of a drug-related

separation subject to §25-4-78(3)a.(i), which shall be prima facie evidence that the laboratory tests are reliable.
Author: Byron Abrams, Unemployment Compensation Director
Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.
History: Emergency Rule: Effective November 23, 1994. **New Rule:** Filed February 16, 1995; effective March 23, 1995. **Amended:** Filed February 20, 2002; effective March 27, 2002.

480-4-3-.29 Payment Of Benefits For Back Weeks.

(1) When payment of prior weeks claimed is determined appropriate by local office personnel:

(a) A claims taker who has determined a claimant to be entitled to one or two prior weeks may authorize the payment of same;

(b) A local office manager may authorize payment of up to four prior weeks;

(c) If the number of prior weeks exceeds four, and the local office manager either is of the opinion that payments should be allowed or is uncertain as to whether they should be paid, all prior weeks shall be submitted to the central office for determination of payment.

(2) If local office personnel determines that prior weeks should not be paid, regardless of the number, benefits shall be denied. If the claimant insists on being paid for the prior weeks, he may sign for them, but shall then be disqualified.
Author: James C. Hollon, Unemployment Compensation Director.
Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.
History: **New Rule:** Filed August 6, 1995, effective September 13, 1995.

480-4-3-.30 Claimant Right To Rebuttal.

(1) All potentially disqualifying information received from a source other than the claimant shall be discussed with the claimant. Until the claimant is given an opportunity for rebuttal, any determination on the issue cannot be considered a valid nonmonetary determination.

(2) The language of the 1971 decision in California Department of Human Resources Development v. Java provides that states must pay unemployment compensation in full when due. "When due" meant at the earliest stage of unemployment that such payments were

administratively feasible after giving worker and employer an opportunity to be heard. Although the case spoke specifically to appeals, the Department uses the language as the basis for handling any issue arising while a claimant is in pay status.

(3) Information provided directly or indirectly by the claimant during the claim series will warrant an interruption in benefits if the information is potentially disqualifying (claim certification errors, for example). When potentially disqualifying information is given by a claimant to an unemployment compensation representative, the unemployment compensation representative shall enter an appropriate issue code into the computer data base until the investigation is complete and a determination issued. If the determination can be completed the day the information is obtained, the issue and resolution may be entered in the same transaction. A Notice of Determination shall be provided to the claimant in all cases when benefits are disallowed or reduced.

(4) If the source of the potentially disqualifying information is a third party, however, no interruption shall be made in the payments until the claimant has been offered a rebuttal opportunity. Immediate efforts shall be made to obtain claimant rebuttal by phone, or by mail. If by mail, a form giving complete details about the report, and how long the claimant has to respond, shall be mailed to the claimant the day the report is received. This notice shall also contain a statement that failure to respond could results in disqualification, and it shall give the claimant adequate space and instruction to respond.

(5) If the claimant fails to respond in the allotted time (usually seven days), the issue shall be adjudicated with information on hand.

Author: James C. Hollon, Unemployment Compensation Director; Thomas Daniel, Unemployment Compensation Director.
Statutory Authority: Code of Ala. 1975, §§25-5-7, 25-2-8, 25-4-111.
History: New Rule: Filed August 9, 1995, effective: September 13, 1995. **Amended:** Filed March 5, 2015; effective April 9, 2015.

480-4-3-.31 Profiling System.

(1) Section 25-4-77(a) provides, as a requirement of eligibility, that a claimant selected and referred to reemployment services pursuant to Section 4 of Public Law 103-152 must participate in such services unless it is determined by the Director that the claimant has completed such service or there is justifiable cause for such claimant's failure to participate in such service.

(2) "Failure to participate" may occur if a claimant selected for referral to services under a profiling system established pursuant to Section 4 of Public Law 103-152 if such claimant:

(a) Refuses such referral to reemployment service;

(b) Accepts referral but fails to report to and participate in such service;

(c) Fails to participate satisfactorily in such services to which referred; or

(d) Fails to complete such referred service.

(3) "Justifiable cause" is defined as a reason that is shown to be just, right or reasonable. To determine justifiable cause as it relates to this section the "reasonable person" test must be applied i.e., is the reason(s) offered by the claimant for failure to participate such that a reasonable person would not have participated. Therefore, the reason given by a claimant for failure to participate in services to which referred in conjunction with having been selected for receipt of such services pursuant to Section 4 of Public Law 103-152 must meet this test in order for such claimant to continue to receive unemployment compensation benefits.

(4) Such justifiable cause may be established under circumstances which include but is not necessarily limited to the following:

(a) The location at which such service is offered is outside the normal and customary commuting area of the individual;

(b) The educational level of the individual would preclude the individual from being able to participate in the referred service;

(c) The individual has accepted an offer of bona fide employment;

(d) Unforeseen personal reasons over which the individual has no control, such as death in the immediate family, sickness or injury, or unforeseen unavailability of transportation; provided the individual makes a good faith effort to timely notify; the service provider and make themselves available for rescheduling of missed service;

(e) The location at which service is to be provided cannot provide a reasonable and satisfactory accommodation for the disability of the individual;

(f) The individual moved from the service delivery area.

(5) Failure to participate in such services as outlined above absent the claimant's meeting the burden of establishing justifiable cause will result in a denial of benefits. Any disqualification arising out of an adjudication under this paragraph shall be effective on the Sunday of the week during

which such disqualifying event occurred. The establishment of justifiable cause by the claimant under paragraph (7) of Section 25-4-77(a); however, does not preclude a denial of benefits under other paragraphs in that Section.
Author: James C. Hollon, Unemployment Compensation Director
Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.
History: **New Rule:** Filed August 9, 1995, effective September 13, 1995.

480-4-3-.32 Claim Filing And Reporting Requirements.

(1) A claim for a week of benefits must be filed in accordance with such regulations as the director may prescribe (25-4-77(a)(1)). This rule, adopted pursuant to this eligibility condition applies to all new claims and additional claims for total or part total unemployment, reopened claims and continued claims.

(2) A claimant is required to report to a state employment office in accordance with such regulations as the director may prescribe (25-4-77(a)(2)). For the purposes of this rule a "state employment office" includes an unemployment compensation claims office where physically separate.

(a) Filing New, Additional and Reopened Claims.

1. With the following exceptions, such claims are effective the Sunday preceding the date on which the claimant first reports to file such a claim. **(Backdating is allowed under the following conditions:)**

(i) Where the claim is filed at an itinerant point and the last day worked was on or after the last date on which the itinerant point was last served. Back-dating may also be allowed if a failure to file was caused by rescheduling itinerant service as would be caused by a holiday or other events.

(ii) Where inclement weather or disaster conditions necessitate the unscheduled closure of a claims office or itinerant point or renders travel to the office or itinerant point either impossible or hazardous.

(iii) Where there is prior agreement between the claimant(s) or his representative and the agency and/or at the agency's initiative to accommodate a mass lay off.

(iv) Where the claimant has filed an ineligible interstate claim or combined wage claim and then elects to file an intrastate claim.

(v) Where the claimant was prevented from filing a claim because of an office closure or holiday that falls on the agency's last business day of the week.

(vi) Where the benefit year has ended and the agency failed to take a second benefit year claim through the agency's error or omission.

(vii) Where the employer fails to file a partial claim which the claimant expected. See also Administrative Rule 480-4-3-.11.

(viii) Where the claimant cannot immediately furnish a verifiable social security number or positive identification required by rule 480-4-3-.07 but does ultimately furnish such information, the claim will be back-dated to the Sunday preceding the first report.

2. Backdating will not be allowed unless the claimant reports as soon as reasonably practicable following the period during which conditions allowing backdating no longer exists or the date such individual was scheduled by the local claims office representative to report to file such backdated claim.

3. Where a claimant insists on backdating such a new or additional claim or a claim that is being reopened following a period of inactive status but the reason for backdating is not for one of the reasons listed above, the claim will be processed with an effective date that is the Sunday of the week the claimant reports in person to file. The claimant will be allowed to sign for weeks prior to the effective date and a written determination will be issued denying benefits for the intervening weeks pursuant to Section 25-4-77(a)(1). The claimant may appeal this determination.

4. In cases where more than one individual has used or is using the same social security number and the correct number cannot be ascertained the agency will process the claim and pay benefits due using a dummy number.

5. Where a claimant filing an initial claim is unable to provide the name and/or address of his most recent bona fide employer, benefits will be denied under Section 25-4-77(a)(1). The claimant will be instructed to file weekly claims and upon receipt of the necessary

information the determination will be revoked retroactively as of its effective date.

(b) Filing Continued Claims. All claimants are entitled to due process in the administration of the Unemployment Compensation law. For this purpose due process means a reasonable notice and reasonable opportunity to be heard. All claimants are also entitled to a liberal interpretation and application of the Unemployment Compensation law. The following requirements are established subject to these principles.

1. Continued claims must be filed weekly and except for good cause within 7 calendar days after the end of the week for which such benefits are being claimed or within 7 calendar days after the date the most recent payment was mailed or the date on which the weekly claim card was mailed by the agency to the claimant whichever is later.

(i) If a mail claim is not received timely, a notice shall be mailed the claimant giving 7 calendar days to report in person to enable the local office to determine whether good cause exists for late filing.

(I) If the claimant reports within the 7-day period, information will be obtained to determine the question of good cause and a written determination will be issued either allowing or denying benefits under Section 25-4-77(a)(1). Regardless of whether good cause for late filing did or did not exist, intervening weeks may be claimed, and if denied, such denial will be included and reflected in the written determination.

(II) If the claimant fails without good cause to report within the 7-day period a determination will be issued reflecting ineligibility under Section 25-4-77(a)(1) for an indefinite period which continues until the claim is reopened by an in-person report. If the failure to report within the 7-day period was for good cause the week in question and intervening weeks may be claimed, but if any weeks are denied a written determination must be issued reflecting such denial.

(ii) If a weekly claim card has been submitted timely but is incomplete or is incorrectly completed, a notice will be mailed to the claimant giving 7 calendar days from the date the notice is mailed in which to report in person in order that the necessary information might be obtained.

(I) If the claimant reports in person within the 7-day period, details of the reason that the card was rejected will be recorded. If a bona fide issue exists a written determination will be issued either allowing or denying benefits for the week in question under the appropriate section of the law. Regardless of whether benefits for the week is allowed or denied intervening weeks may be claimed and if intervening weeks are denied such denial will be reflected in written determination. If the card was unacceptable because of an error, no issued existed; therefore no determination has to be made.

(II) If the claimant fails without good cause to report within the 7-day period a determination will be issued reflecting denial under Section 25-4-77(a)(1) for the week in question. When the claimant does report intervening weeks may, be claimed and if denied, the denial will be reflected in a written determination.

(c) If the claimant delivers or mails the weekly claim card as required in this rule but does not receive a check or notice of disposition within 10 days it becomes the claimant's responsibility to contact the local office to inquire about the status of his claim. Failure without good cause to make a prompt inquiry may constitute grounds for a denial of benefits for the week in question under Section 25-4-77(a)(1). When the claimant does report intervening weeks may be claimed and if denied, such denial will be reflected in a written determination.

1. Where a claimant has chosen to file weekly claims by telephone, such claims must, except for good cause be filed by telephone within the assigned five-day period following the week for which benefits are being claimed, regardless of whether or when payment is made on prior weeks claimed.

(d) A claimant who attempts to file late is instructed to report to the local office.

1. If the appearance is made within 4 days, unless good cause is shown, information will be developed to determine whether good cause existed for late filing. A written determination will then be made under Section 25-4-77(a)(1) either allowing or denying benefits for the week claimed late. Regardless of whether the week is allowed or denied intervening weeks may be claimed and if intervening weeks are denied such denial will be reflected in the written determination.

2. Failure without good cause to make a reasonably prompt appearance constitutes grounds for denial of benefits for the week in question, and for succeeding weeks until the beginning of the week in which the claimant actually reports.

3. A claimant attempting to file by telephone for succeeding weeks following a late filing or a period of non-filing is instructed to report to the local office. If a report is made within a reasonable prompt period the claim will be reopened as of the Sunday preceding the attempt to file by telephone. If the claimant's report is not reasonably prompt, the claim will be reopened as of the Sunday preceding the day on which the report is made.

4. If the claimant filing by telephone provides an unacceptable response, the response(s) in question are repeated and the claimant is given the opportunity to correct the response(s). If the potentially disqualifying answer is correct, the claimant is instructed to report to the local office in person within four (4) calendar days to address the issue.

(i) If the claimant reports as instructed, information will be developed to determine eligibility for the week in question. A written determination, under the appropriate section of the law, will be issued whether allowing or denying benefits. Intervening weeks may be claimed regardless of whether benefits for the week in question are allowed or denied.

(ii) If the claimant fails without good cause to respond within the allowed period benefits will be denied under Section 25-4-77(a)(1) until the Sunday preceding the week in which a personal appearance is made.

(c) When claimant fails to file a week by telephone and calls in his claim the following week and is given a message, there has been a break in his claim series, he is instructed to report within four (4) calendar days. Should the claimant report within the four (4) calendar day period in response to the break in claim message he will only be disqualified for week of failure and allowed to claim the intervening weeks.

5. Should a claimant timely file a weekly claim by telephone and fail to receive a check within 10 days it becomes the claimant's responsibility to contact the local office to inquire as to the status of the claim. Failure without good cause to make a reasonably prompt

inquiry may constitute grounds for a denial of benefits for the week in question under Section 25-4-77(a)(1). When the claimant does report intervening weeks may be claimed, and if denied, such denial will be reflected in a written determination.

(e) Reporting Requirements

1. Claimant who fails to report for a scheduled eligibility review interview will be mailed a notice giving four (4) business days to report for the purpose of obtaining information from which to determine whether good cause existed for such failure.

2. If the claimant reports within this period a determination of good cause will be made and benefits allowed or denied under the appropriate section of the law. If benefits are allowed intervening weeks may be claimed. If benefits are denied, the denial will continue until the Sunday preceding the date on which the claimant reports. If the claimant fails to report within this period, a determination will be issued reflecting ineligibility under Section 25-4-77(a)(2) and continuing until the Sunday preceding the date on which the claimant does report.

3. Claimants required to register with the Employment Service will be allowed seven (7) calendar days within which to report for registration. Failure without good cause to report within this period constitute grounds for denial of benefits under the appropriate section of the law.

(f) Appeals

1. Any and all determinations denying benefits under this rule must be in writing and may be appealed by the claimant.

2. In contested cases where the requirements of this rule are in issue evidence showing that the agency discharged its responsibilities creates a prima facie case for an ineligible decision. The burden of showing good cause rests upon the claimant.

(g) Extension of Time

1. Should the last calendar day for filing, reporting, registering, or filing an appeal fall on a Saturday, Sunday, or state holiday or other office closing the period is extended to the next following business day.

Author: Byron Abrams, Unemployment Compensation Chief

Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.
History: New Rule: Filed March 1, 1996; effective April 5, 1996.
Repealed and New Rule: Filed October 14, 1999; effective November 18, 1999.

480-4-3-.33 Types Of Income Effecting Eligibility.

(1) Only those types of income specifically set forth in the law can possibly affect eligibility. These are:

(a) Wages

(b) Wages in lieu of notice, a dismissal or separation allowance.

(c) Pensions

(d) Receipt of or application for Unemployment Compensation from another state.

(e) Workers' Compensation for a temporary disability.

(f) Training allowance.

(2) Wages

(a) Statutory Provisions.

1. Wages means every form of remuneration paid or received for personal services (¡±25-4-16).

2. Either total or partial unemployment is required as a condition of eligibility (¡±25-4-77(4).

3. If wages are payable with respect to a week equal to or exceeding the weekly benefit amount the individual is deemed to be employed for such week (¡±25-4-71). An employed individual is not eligible for any benefits.

4. If wages are payable with respect to a week less than the weekly benefit amount he is deemed to be partially unemployed for such week (¡±25-4-71).

5. The weekly benefit payment to a partially unemployed individual is reduced by any amount of wages payable with respect to a week which is in excess of $15. The weekly benefit is rounded to the nearest multiple of $1.00 (¡±25-4-73). Note: This $15 exclusion applies only to wages. It does not apply to other types of income.

(b) Vacation Pay. Vacation pay is wages and is deductible or disqualifying for the week with respect to which is payable. The time of payment is not the controlling factor. A determination must be made as to the period with respect to which it is paid.

1. In many instances the worker is, at the time of separation, paid for accrued vacation but not taken.

(i) No previously established vacation period. If a vacation period has not been previously established by agreement, assignment, custom or tradition, the vacation pay is deemed payable with respect to the period immediately following separation, and the number of days of vacation are allocated to weeks based upon the claimants customary work week. This provision only applies to individuals who remain job attached. Individuals who are permanently separated will not have their benefits affected by accrued vacation or sick pay. Note: If a week of partial unemployment results, the $15 exclusion applies.

(ii) Previously established vacation period. If a vacation period was, prior to termination, established by agreement, assignment, custom or tradition, and if it is paid at the time of separation, it is deemed to be payable with respect to the previously established vacation period. Vacation days are allocated to weeks within the previously established period based upon the claimant’s customary work week. Note: It a week of partial unemployment results, the $15 exclusion applies.

(c) Holiday Pay. Holiday pay is wages and is deemed paid with respect to the week in which the holiday falls. The $15 exclusion applies to a week of partial unemployment.

(d) Bereavement Pay. Bereavement pay is wages and is deemed paid with respect to the week in which the event occurs that give rise to the entitlement. The $15 exclusion applies to any week of partial unemployment.

(e) Bonus Pay. Bonus pay comes within the definition of wages and is deemed paid with respect to the period during which the claimant worked.

(f) Sick Pay. Sick pay is wages. If an individual is, upon termination, paid for unused sick days, the payment is deemed payable with respect to the period immediately following termination, allocating the number of sick days to weeks of unemployment based upon the claimants normal and customary work week. This provision only applies to individuals who

remain job attached. Individuals who are permanently separated will not have their benefits affected by accrued vacation or sick pay. Note: The $15 exclusion applies to any week of partial unemployment.

(g) Income from self-employment as wages. See Rule 480-4-3-.24

(h) Commission income as wages. See Rule 480-4-3-.25

(3) Wages in lieu of notice, a dismissal or separation allowance. This type of income affects eligibility only if all of the following factual circumstances exists:

(a) The payment is made pursuant to a legal obligation. It must arise out of a contract or agreement that would be enforceable in an action at law.

(b) The agreement that causes the payments to arise must specify the period after termination with respect to which the payments are applied.

(c) The agreement that causes the payment to arise must contain specific language that would evidence some continuation of the employer-employee relationship after termination. For example, the agreement could provide that the payments would cease or be reduced if the employee is subsequently employed. If the severance payments are made without regard to the employee's status after termination, the payment does not affect eligibility.

(4) Pensions

(a) Statutory Provisions.

1. Any pension, retirement or retired pay, annuity or other similar periodic payment under the Social Security Act or Railroad Retirement Act are neither deductible nor disqualifying (¡±25-4-78(8).

2. Other payments are neither deductible nor disqualifying unless all of the following three requirements exist:

(i) The payment is based upon the previous work of the individual (¡±25-4-78(8).

(ii) The payment is made under a plan maintained (or contributed to) by a base period employer (¡±25-4-78(8).

(iii) The claimant has been determined eligible to receive a periodic payment (¡±25-4-78(8). This is interpreted to mean that the claimant has satisfied

all requirements of the plan including age, length of service or other conditions.

3. Pension payments that are deductible or disqualifying reduce the weekly benefit by the amount of the pension (but not below zero) (¡±25-4-78(8).

(b) Lump Sum Payment. If the retiring worker has the choice of receiving periodic payments or a lump sum retirement payment and elects to receive a lump sum in lieu of periodic payments the lump sum is deemed payable with respect to weeks as though he had opted for periodic payments. If the amount of the periodic payment which he could have chosen cannot be ascertained with certainty the amount will be determined by reference to the most recently updated longevity chart available.

(c) Rollovers

1. Rollovers by an individual not eligible under the plan for periodic payments do not represent a payment to the individual for purposes of retirement. Instead it merely effectuates a change with respect to the retirement plan under which the accounts are maintained. Such rollovers have no effect upon eligibility.

2. An employer may discontinue maintaining a plan, particularly where a plant is being closed. The claimant may have no choice but to make some disposition of the funds.

(i) If the claimant satisfies all requirements under the plan to be eligible for periodic payments the entire amount of that rolled over and any amount received in a single payment is treated as any other lump sum pension payment as outlined in paragraph (b) above.

(ii) If the claimant does not meet all requirements of the plan to be eligible for periodic payments any amount received in a lump sum or rolled over have no effect upon eligibility.

3. Receipt of or application for unemployment compensation from another state. A claimant seeking unemployment compensation under the law of any other state or of the United States is disqualified. If the appropriate agency of such other state or the United States finally determines that he is not entitled to such unemployment benefits this disqualification does not apply (¡±25-4-48(7). "State includes in addition to the states of the United States, the District of Columbia, the Virgin Islands, Puerto Rico, and Canada (¡±25-4-14).

4. Workers' Compensation for a Temporary Disability. A claimant is disqualified for any week with respect to which or a part of which he has received or is seeking compensation for a temporary disability under any workers' compensation law. If it is finally determined that he is not entitled to such compensation the disqualification does not apply. If he is entitled and the amount is less that the benefits payable on his unemployment compensation claim, he is entitled to receive the difference, if otherwise eligible (¡±25-4-78(9).

5. Training Allowances. An individual enrolled in a course of training approved by the director is disqualified for any week with respect to which or a part of which he has applied for or is entitled to receive any wage or subsistence or training allowance or any other form of remuneration other than reimbursement for travel expenses under any public or private training program. If it is finally determined that he is not entitled to such remuneration, the disqualification does not apply. If the remuneration, the receipt of which is disqualifying, is less than the weekly benefit on his unemployment compensation claim he is entitled to receive the difference, if otherwise eligible. Receipt of training allowances under the Trade Programs are neither deductible nor disqualifying (¡±25-4-78(12). Note: A course of training approved by the director waives all availability requirements and makes the remuneration disqualifying or deductible. A course of training not approved by the director does not waive the availability requirements and the remuneration has no effect upon eligibility.

Author: Byron Abrams, Director, Unemployment Compensation Division
Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.
History: **New Rule:** Filed August 9, 1995; effective September 13, 1995. **Repealed and New Rule:** Filed January 12, 2001; effective February 16, 2001. **Amended:** Filed August 13, 2012; effective September 17, 2012.

480-4-3-.34 Optional Lay Off.

(1) **Temporary layoff** - an individual who has the option of continuing to work or be included in a temporary layoff and who opts to be included is not deemed to have left the employment voluntarily. A temporary layoff is defined as a period of time not to exceed six (6) months. Such individuals are not required to seek work outside of their local union.

(2) **Permanent lay off** - An individual who has the option to continue working or be included in a permanent lay off and who opts to be included is deemed to have left the employment voluntarily. As in all cases of voluntary leaving, it must be determined from all the relevant facts whether the voluntary departure was for good cause connected with the work. Good cause may exist particularly in those cases where there would be significant change in job duties, rate of pay or other conditions of employment. All the attendant circumstances must be examined and considered.
Author: Byron Abrams, Unemployment Compensation Director
Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.
History: **New Rule:** Filed August 9, 1995, effective September 13, 1995. **Repealed and New Rule:** Filed January 12, 2001; effective February 16, 2001.

480-4-3-.35 Deduction Of Severance Pay (Repealed 4/12/01).
Author: James Hollon, Unemployment Compensation Director
Statutory Authority: Code of Ala. 1975, §25-4-78(6).
History: **New Rule:** Filed August 9, 1995; effective September 13, 1995. **Repealed:** Filed March 8, 2001; effective April 12, 2001.

480-4-3-.36 Full Time Employment.

This rule sets forth for purposes of Unemployment Compensation and related benefit programs that full time work will be defined as forty hours per week or the customary normal hours worked in the industry or trade. When applying the customary normal hour's provision, documentation will be required.
Author: Joan Hinson, Assistant Unemployment Compensation Director
Statutory Authority: Code of Ala. 1975, §§25-2-28, 25-4-111, 25-27.
History: **New Rule:** Filed June 11, 2004; effective July 16, 2004.

480-4-3-.37 Alternative Staffing (Repealed 4/6/18).
Author: Brent Langley, UC Section Supervisor, Unemployment Compensation Division
Statutory Authority: Code of Ala. 1975, §§25-4-78; 25-4-138.
History: **New Rule:** Filed August 25, 2005; effective September 29, 2005. **Repealed:** Filed February 20, 2018; effective April 7, 2018.

480-4-3-.38 Temporary Employment Within Educational Institutions.

(1) Definitions – the following definitions will be used in applying the provisions of the Administrative Rule.

(a) Employer Primarily Engaged. An employer will be considered primarily engaged if seventy-five percent (75%) or more of the company's employees are performing work for an educational institution.

(b) Reasonable Assurance. A written, verbal, or implied agreement that the employee will perform services during the ensuing academic year or term and the term "contract" is intended to include tenure status.

(2) Benefits based on service in employment for a temporary employer contracting with an educational institution may not be paid during the period between two successive academic years or terms, or during any vacation or holiday period provided the employee will have reasonable assurance that he/she will perform services for the educational institution in the second of such academic years or terms. The employer must be either primarily (see (1)(a) above) or exclusively engaged in providing temporary employees work within education institutions on a contract basis to be eligible for designation under Section 25-4-70(d), Code of Ala. 1975.

(3) Employer Certification

(a) All employers must certify by written affidavit that the entity is primarily or exclusively engaged in supplying employees for educational institutions within the State of Alabama.

(b) The employer must provide documentation upon request for any issue concerning employment of a temporary employee (claimant) at an educational institution. The employer must provide: claimant's name, social security number, dates of employment with the employer, and the educational institution where the temporary employee (claimant) is working. The employer must also provide a name and contact information for the educational institution.

(c) An employer must notify the Alabama Department of Labor immediately if less than seventy-five percent (75%) of their temporary employees within the state of Alabama are engaged in employment with educational institutions. The revocation would remain in place until such time that the employer resumes activities in which the entity is primarily engaged in

supplying temporary employees to educational institutions. There will be no relief given for claims filed during the temporary revocation period.

(4) Temporary Employee/Client Listings

(a) The Alabama Department of Labor may request the temporary employer to provide a list of all educational/non-educational employees indicating each employee's place of employment and type of employment with the educational institution.

(b) Failure to submit a response within 15 days of the written request will result in temporary revocation of the employer's educational relief status for all employees. The revocation will remain in effect until all information is submitted to the Alabama Department of Labor. There will be no relief given for claims filed during the temporary revocation period.

(5) Employees who are employed as a temporary educational employee under this rule will not be held as a temporary employee under the terms of Administrative Rule 480-4-3-.37, Alternative Staffing.
Author: Thomas Daniel, Director Unemployment Compensation Director
Statutory Authority: Code of Ala. 1975, §§25-4-70(d).
History: **New Rule:** April 12, 2016; effective May 27, 2016.