Agency Name: Department of Employment and Workforce

Statutory Authority: 41‑29‑110, 41‑29‑230, and 41‑35‑130

Document Number: 5163

Proposed in State Register Volume and Issue: 46/10

House Committee: Regulations and Administrative Procedures Committee

Senate Committee: Labor, Commerce and Industry Committee

120 Day Review Expiration Date for Automatic Approval: 05/10/2023

Final in State Register Volume and Issue: 47/5

Status: Final

Subject: Offers of Work

History: 5163

By Date Action Description Jt. Res. No. Expiration Date

.‑ 10/28/2022 Proposed Reg Published in SR

‑ 01/10/2023 Received President of the Senate & Speaker 05/10/2023

S 01/10/2023 Referred to Committee

H 01/11/2023 Referred to Committee

S 01/31/2023 Resolution Introduced to Approve 469

‑ 05/10/2023 Approved by: Expiration Date

‑ 05/26/2023 Effective Date unless otherwise

provided for in the Regulation

Document No. 5163

**DEPARTMENT OF EMPLOYMENT AND WORKFORCE**

CHAPTER 47

Statutory Authority: 1976 Code Sections 41‑29‑110, 41‑29‑230, and 41‑35‑130

47‑23. Offers of Work.

**Synopsis:**

The Department of Employment and Workforce proposes amendments to R.47‑23, Offers of Work, to clarify that offers of work may be made electronically and to replace a certification requirement with submission of competent evidence that an offer of work was communicated to the claimant by reasonable methods. The Notice of Drafting was published in the *State Register* on August 26, 2022.

**Instructions:**

Replace R. 47‑23, *Offers of Work*, in its entirety with this amendment.

**Text:**

47‑23. Offers of Work.

A. Section 41‑35‑120(5) directs that a claimant may be disqualified from the receipt of benefits should he fail without good cause to apply for available suitable work, when so directed by the employment office or the Department; or should he refuse to accept available suitable work when offered him by the employment office or the employer; or should he decline to return to his customary self‑employment (if any) when so directed by the department.

1. Pursuant to the requirements of Section 41‑35‑120(5)(b), in determining whether work is suitable for an individual, the Department must consider, based on a standard of reasonableness, as it relates to the particular individual concerned, the degree of risk involved to his health, safety, morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

a. In considering the prior earnings of a claimant and the length of unemployment:

i. Available suitable work within the first eight (8) weeks of eligibility for unemployment insurance benefits includes employment that pays ninety percent (90%) of the wage earned from the claimant’s most recent bona fide employer. A claimant who refuses to accept work that pays at least ninety percent (90%) of the wage earned from the claimant’s most recent bona fide employer has refused to accept available suitable work.

ii. Available suitable work once a claimant collects more than eight (8) weeks of unemployment insurance benefits includes employment that pays seventy‑five percent (75%) of the wage earned from the claimant’s most recent bona fide employer. A claimant who refuses to accept work that pays at least seventy‑five percent of the wage earned from the claimant’s most recent bona fide employer after collecting more than eight (8) weeks of unemployment insurance benefits has refused to accept available suitable work.

b. However, a claimant is not required to accept work if the reduction in the wage as described in A.1.a. is less than minimum wage.

2. No provisions of 47‑23 will circumvent the requirements of Section 41‑35‑120(5)(c).

B. A written offer of work made directly by an employer shall set out the nature of the work offered, the probable wages and hours per week, the shift or daily hours of the proposed employment, the expected duration of employment, the time and place the claimant should report, and the name of the person to whom he is to report. No disqualification will be imposed by reason of the failure of a claimant without good cause to accept a direct offer of available suitable work unless the employer submits a copy of such an offer to the Department together with competent evidence that such an offer was either received and refused by the claimant, or that the offer was communicated to the claimant by reasonable methods and no response was made by the claimant. Provided, however, that no direct offer of available suitable work made in accordance with this regulation shall be considered unless a notice of such offer of work is received by the Department.

C. An oral offer of available suitable work may be made directly by an employer, but before a claimant shall be disqualified to receive benefits by reason of his failure to accept, without good cause, available suitable work so offered, a sworn statement shall be submitted by the employer to the Department setting forth that the offer of work was made directly to the claimant, the nature of work offered, the wages and hours per week, the shift or daily hours of the proposed employment, the expected duration of the employment, the time and place the claimant should have reported for duty, and any reason given by the claimant for his refusal to accept the work. Provided, however, that no direct offer of work made in accordance with this regulation shall be considered unless a notice of such offer of work is received by the Department.

D. A claimant who tests positive for drugs after being given a drug test as a condition of employment by a prospective employer shall be deemed disqualified to receive benefits by reason of his failure to accept a suitable offer of work. Also deemed disqualified is:

1. An insured worker who fails to provide a specimen pursuant to a request from the prospective employer, or otherwise fails or refuses to cooperate by providing an adulterated specimen; or

2. An insured worker who provides a blood, hair, or urine specimen during a drug test administered on behalf of the prospective employer, which tests positive for illegal drugs or legal drugs used unlawfully, provided:

a. The sample was collected and labeled by a licensed health care professional or another individual authorized to collect and label test samples by federal or state law, including law enforcement personnel;

b. The test was performed by a laboratory certified by the USDHHS/SAMSHA, the College of American Pathologists or the State Law Enforcement Division; and

c. An initial test was confirmed on the specimen using the gas chromatography/mass spectrometry method, or an equivalent or more accurate scientifically accepted method approved by the USDHHS/SAMSHA;

For purposes of this item, “unlawfully” means without a prescription.

**Fiscal Impact Statement:**

There will be no cost incurred by the State or any of its political subdivisions for these regulations.

**Statement of Rationale:**

Pursuant to R.47‑23 and under authority of S.C. Code Section 41‑35‑120(5), claimants may be disqualified from receiving benefits if the claimant refuses to accept available suitable work offered to them by the Department or an employer. The Department proposes updating this regulation to be consistent with modern operations and practices by clarifying its text to specifically mention offers made electronically. The amendment also seeks to allow the agency to evaluate all relevant, competent evidence that an offer of available suitable work was made to a claimant in place of the current requirement of a certification that may not readily be understood by the employer community.