

Example 2:

The claimant left work to move to another state to live with her elderly parents. The claimant’s parents were not ill or disabled; they were just getting older and the claimant wanted to be near them. Her brothers and sisters lived in the same town as her parents. The claimant asked for, and was granted, a leave of absence for a year. The employer did not have a facility in the state the claimant was moving to so a transfer was not available.

Although the claimant took steps to preserve her employment, she would be disqualified under CUIC Section 1256 because leaving work to live with or be near elderly parents is understandable but personal and not compelling. The claimant did not show that it was necessary for her to care for her parents because they were ill or disabled.

Example 3:

The claimant’s parents were in a serious car accident and the claimant left work to be with his parents while they were in the hospital and to help care for his parents once they were released from the hospital. The claimant’s brother was also there to help during the parents’ recovery. The claimant’s parents would require someone to stay with them for at least two months during their recovery period. The claimant and the brother agreed that they would both stay with the parents during their entire recovery. The claimant requested a leave of absence from the employer. The employer stated they would not be able to hold the claimant’s job open but could rehire him later if work was available.

Even though the claimant’s brother was also available to care for the claimant’s parents, the claimant would be found eligible under CUIC Section 1256 because he left work to care for his disabled parents, he demonstrated a compelling reason to take care of his parents, and he made a reasonable attempt to preserve his job by asking for a leave of absence.

III. CLAIM FILING PROCEDURES

None.

IV. INFORMATION CALL PROCEDURES

None.

V. DETERMINATION/RULING PROCEDURES

Effective immediately, determination staff should follow the determination guidelines contained within this UIPN when adjudicating eligibility for separation issues involving claimants who leave work to care for an ill or disabled family member. In addition, staff should adjudicate any AA and ESW issues that may arise from claimants leaving work to care for an ill or disabled family member.

PAYMENT PROCEDURES

None.

VI. APPEAL PROCEDURES

None.

VII. OVERPAYMENT PROCEDURES

None.

VIII. OTHER DIVISION PROCEDURES

None.

IX. REFERENCES

Title 22 Section 1256-9 and 1256-10.

Benefit Determination Guide (BDG) VQ 155.

The Assistance for Unemployed Workers and Struggling Families Act, Title II of Division B of *The American Recovery and Reinvestment Act (ARRA)*, Public Law No. 111-5 (Section 2003), enacted February 17, 2009.

X. LINKS

None.

XI. ATTACHMENTS

None

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Title 22, California Code of Regulations, Section 1256-9 (b) provides that a separation due to a compelling reason is for good cause. The Title 22, California Code of Regulations, Section 1256-9 (b) states:

"(b) A claimant voluntarily leaves work with good cause based on domestic circumstances if the claimant's obligation is of a real, substantial, and compelling nature such as would cause a reasonable person genuinely desirous of retaining employment to take similar action, and the claimant's reason for leaving work is due to a legal or moral obligation relating to any of the following:

- (1) The health, care, or welfare of the claimant's family.
- (2) The exercise of parental control over the claimant who is an unemancipated minor.
- (3) The existing or prospective marital status of the claimant. "

The Title 22, California Code of Regulations, Section 1256-9(c) defines "family" as:

"the spouse or registered domestic partner of the claimant, any parent, child, brother, sister, grandparent, grandchild, son-in-law, or daughter-in-law, or the claimant or of the claimant's spouse or registered domestic partner, including step, foster, and adoptive relationships, or any guardian or person with whom the claimant has assumed reciprocal rights, duties, and liabilities or a parent-child, or grandparent-grandchild relationship.

The Title 22, California Code of Regulations, Section 1256-9 (c) COMMENTS, addresses factors to be taken into consideration before the leaving may be determined to be with good cause. The Title 22, California Code of Regulations, Section 1256-9 (c) COMMENTS states:

"This section states general principles establishing "good cause" for voluntarily leaving work due to domestic reasons. It requires: (1) the existence of an obligation due to domestic circumstances; and (2) a "compelling reason" for leaving work.

However, while the claimant's particular domestic circumstance is the basis for voluntarily leaving his or her job, the claimant must also demonstrate that his or her decision to leave work was reasonable in view of all the facts. Important considerations are that an obligation exists, that is substantial, that no reasonable alternative exists* for meeting that obligation short of leaving work, and that the claimant's actions are in good faith and consistent with a genuine desire of retaining employment."

**NOTE: Pending Regulation changes to remove the reference to “no reasonable alternative exists”, the Department released Unemployment Insurance Program Notice 11-022, to ensure that claimants will not be ineligible for UI benefits if a separation occurs because the claimants’ presence was required to care for the ill or disabled family member, regardless if a reasonable alternative existed for the care of the family member.*

The Title 22, California Code of Regulations, Section 1256-10 defines “good cause”, and provides leaving work to take care of an ill or disabled family member as compelling. The Title 22, California Code of Regulations, Section 1256-10 states in part:

“(b) Good Cause. A claimant leaves the most recent work with good cause if the claimant left work due to circumstances relating to the health, care, or welfare of the claimant's family of such a compelling nature as to require the claimant's presence, and the claimant has taken reasonable steps to preserve the employment relationship.

(c) Compelling circumstances requiring the claimant's leaving of work and presence as described in subdivision (b) include, but are not limited to, the following:

(1) The claimant knows or reasonably believes that a member of the claimant's family is seriously ill, physically or mentally, and there is no reasonable alternative* to the claimant's presence, or a family member is in danger of death.

(2) The claimant knows or reasonably believes that a member of the claimant's family is seriously ill so as to require the claimant to make a change of residence for that person's care or welfare and making it impossible or impractical for the claimant to commute to work (see Section 1256-8 of these regulations for discussion of commuting problems).

(3) A member of the claimant's family has died and the claimant wishes to attend the funeral or is required to make the final arrangements or otherwise attend to the final affairs of the decedent.

(4) A member of the claimant's family is elderly and unable to care for himself or herself and there is no reasonable alternative*.”

**NOTE: Pending Regulation changes to remove the reference to “no reasonable alternative exists”, the Department released Unemployment Insurance Program Notice 11-022, to ensure that claimants will not be ineligible for UI benefits if a separation occurs because the claimants’ presence was required to care for the ill or disabled family member, regardless if a reasonable alternative existed for the care of the family member.*

For the sake of easy reference, the following is the Benefit Determination Guide, VQ 155, Section C, verbatim that provides the policy, interpretation of state laws, and case law (Precedent Board Decisions [P-B]) pertaining to separations due to taking care of ill or disabled family members.

Benefit Determination Guide, VQ 155, Section C, currently states:

C. Illness or Death in the Family

Title 22, Section 1256-10, Example 1 - Comments, provides:
"Generally, the claimant's presence must be necessary in order to care for the ill family member. The claimant may need to personally provide nursing care for the ill person, or the claimant's presence may be necessary in order to care for minor children belonging to the ill family member. For example, the claimant's mother may be critically ill and no one else is available to care for the claimant's younger brothers and sisters, or the normal household duties, such as cooking and cleaning, require the claimant's attention."

1. Seriousness of Illness

The seriousness of the illness must be determined as of the time the claimant quit work. If, at the time the claimant had a reasonable basis for believing the illness was critical, good cause may be established for the leaving even though later events show that the illness was not critical.

Title 22, Section 1256-10, provides:

"(c) Compelling circumstances requiring the claimant's leaving of work and presence . . . include, but are not limited to, the following:

(1) The claimant knows or reasonably believes that a member of the claimant's family is seriously ill, physically or mentally, and there is no reasonable alternative to the claimant's presence, or a family member is in danger of death."

In P-B-238, the claimant left her employment for a family emergency. She had received a telegram asking her to come home to Texas because her mother had suffered a heart attack and was not expected to live. The claimant telephoned her employer, explained the situation, and said she would be back as soon as possible. The employer said nothing. When the claimant returned a week later, the employer had filled her position. In holding the claimant eligible, the Board stated:

"Since the claimant herein left her work because of the emergency nature of her mother's illness, we hold that she was not subject to disqualification"

In P-B-239, the claimant and her husband were employed as managers of an apartment house. The husband, aged 69, was an invalid and had been advised not to work. Because the claimant had been unable to find work for herself, they jointly accepted the employment that was only available to them as a couple. Initially, the apartment house was being renovated and the heavy work was done by assistants whom the owners employed, but the claimant and her husband were expected to take over the normal duties of their job after the remodeling was completed. The husband was physically unable to do even the light work, and became increasingly nervous so that he was unable to meet the public. The claimant quit her employment to move the husband to a place where he would not be disturbed by the public. In holding the claimant eligible for benefits, the Board stated:

"The evidence established that this claimant's husband was suffering from a serious illness which rendered him unable to perform services required of him and which necessitated his removal from a place where he must meet the public. The claimant left her work because she could not perform the services expected of both her husband and herself. Under the circumstances, it is our opinion that a compelling reason for leaving such work has been established by the claimant"

2. Relocation to Provide Care

A quit to be near, to live with, or to care for aged parents will be without good cause unless the parents are unable to care for themselves and the presence of the claimant is necessary*.

**NOTE: Pending changes to the Benefit Determination Guide to remove the reference to "no reasonable alternative exists", the Department released Unemployment Insurance Program Notice 11-022, to ensure that claimants will not be ineligible for UI benefits if a separation occurs because the claimants' presence was required to care for the ill or disabled family member, regardless if a reasonable alternative existed for the care of the family member.*

In P-B-299, the claimant quit his employment to move to New York to live with his mother, who was ill. A father, sister and another brother were living with his mother and the claimant's presence was not necessary for the mother's care. The claimant later advanced other reasons for the move; a younger brother's anticipated draft into the

military and he felt he had better prospects for employment at that time of the year. In denying benefits, the Board stated:

"In the instant case, the claimant was not removing himself from the labor market but was merely transferring from one labor market to another In our opinion, the claimant did this because of a personal preference to return to his former home We have previously held that a leaving of work to return to a former residence and labor market is not with good cause"

As previously stated, the Department is in the process of finalizing the regulatory changes and changes to the Benefit Determination Guides to remove the reference that states "no reasonable alternative existed" to ensure that claimants will not be ineligible for UI benefits if this situation occurs. In the interim, the EDD issued the Unemployment Insurance Program Notice 11-022, on April 6, 2011, providing staff with policy direction to ensure that claimants will not be ineligible for UI benefits if a separation occurs because the claimants' presence was required to care for the ill or disabled family member, regardless if a reasonable alternative existed for the care of the family member.

Quit to Follow a Spouse

The current law providing Unemployment Insurance benefits to claimants who quit work to follow a spouse where the commute was impractical has been in effect since the early 1980s. If a claimant leaves work to follow the spouse, the separation is considered "good cause" if the commute was impractical and does not require that the spouse have work at the new location. California's law is a broader interpretation of quitting to accompany a spouse than is prescribed in UIPL 14-09.

Section 1256 of the California Unemployment Insurance Code, states in part:

"An individual may be deemed to have left his or her most recent work with good cause if he or she leaves employment to accompany his or her spouse or domestic partner to a place or to join him or her at a place from which it is impractical to commute to the employment. For purposes of this section "spouse" includes a person to whom marriage is imminent, and "domestic partner" includes a person to whom a domestic partnership, as described in Section 297 of the Family Code, is imminent."

Section 297 of the California Family Code provides who is considered a domestic partner. Section 297 states:

"297. (a) Domestic partners are two adults who have chosen to share one another's lives in an intimate and committed relationship of

mutual caring.

(b) A domestic partnership shall be established in California when both persons file a Declaration of Domestic Partnership with the Secretary of State pursuant to this division, and, at the time of filing, all of the following requirements are met:

(1) Both persons have a common residence.

(2) Neither person is married to someone else or is a member of another domestic partnership with someone else that has not been terminated, dissolved, or adjudged a nullity.

(3) The two persons are not related by blood in a way that would prevent them from being married to each other in this state.

(4) Both persons are at least 18 years of age.

(5) Either of the following:

(A) Both persons are members of the same sex.

(B) One or both of the persons meet the eligibility criteria under Title II of the Social Security Act as defined in 42 U.S.C. Section 402(a) for old-age insurance benefits or Title XVI of the Social Security Act as defined in 42 U.S.C. Section 1381 for aged individuals. Notwithstanding any other provision of this section, persons of opposite sexes may not constitute a domestic partnership unless one or both of the persons are over the age of 62.

(6) Both persons are capable of consenting to the domestic partnership.

(c) "Have a common residence" means that both domestic partners share the same residence. It is not necessary that the legal right to possess the common residence be in both of their names. Two people have a common residence even if one or both have additional residences. Domestic partners do not cease to have a common residence if one leaves the common residence but intends to return."

Title 22, California Code of Regulations, Section 1256-12 provides further guidance on what is considered "good cause" when a claimant is separated to move with his or her spouse. The Title 22, California Code of Regulations, Section 1256-12 states:

"(b) Good Cause. A claimant leaves the most recent work with good cause if the claimant has taken reasonable steps to preserve the employment relationship and the claimant left work due to circumstances relating to the claimant's prospective or existing marital status of such a compelling nature as to require the claimant's presence, including any of the following:

(1) The claimant's prospective marriage is imminent and involves a relocation to another area because the claimant's future spouse has established or intends to establish his or her home there, and it is impossible or impractical for the claimant to commute to work from the other area.

(2) The claimant is required to leave his or her work to accompany his or her spouse to, or join his or her spouse at, another location because it is impossible or impractical for the claimant to commute to his or her work from the new location, due to any of the following:

(A) The desire of the claimant and his or her spouse to accomplish a marital reconciliation.

(B) The claimant's spouse is seriously ill and a change of residence is necessary for his or her care or welfare (see Section 1256-10 of these regulations).

(C) The need to preserve family unity (see Section 1256-10 of these regulations).

COMMENTS. This section considers compelling circumstances relating to a claimant's prospective or existing marital status where difficulties of commuting exist because the claimant's spouse or prospective spouse is located in an area substantially removed from the locality where the claimant was employed. Subdivision (b) refers to various situations in which good cause for leaving work exists. The section reflects this state's policy in favor of the establishment and maintenance of the marital relationship. However, leaving work solely to go on a honeymoon is a leaving without good cause.

Regarding the requirement of imminent marriage, there may be additional considerations depending on the facts. If a claimant stops working substantially prior to the marriage, good cause will depend on the nature and extent of the advance preparations such as packing, moving, and transportation necessary, and whether such preparations could have been made without the claimant's leaving work. If the marriage is delayed, good cause is not negated if at the time the claimant stopped working a marriage was imminent, the claimant could not have foreseen a delay, and the delay was beyond the control of the claimant.

Under the second provision of subdivision (b)(1), relocation must be necessary because the claimant's future spouse either could not or would not forego his or her established or intended place of residence. The future spouse's position on residential location is not material since the issue is what reasonable alternatives were available to the claimant. In assessing the impossibility or impracticality of the commute due to relocation, Section 1256-8 of these regulations is applicable.

Subdivision (b)(2) of this section concerns itself with problems of commuting relating to the claimant's existing marital status. The first provision is that a person who leaves his or her work to accomplish a marital reconciliation leaves with good cause. The reason is the state's policy to encourage parties to a marriage to live together and to prevent separation. As a matter of good faith, the claimant and the spouse must intend to reunite and conduct their affairs in such a manner as to reflect that intent. Further, the fact that the claimant and his or her spouse are legally separated or within the interlocutory stage of dissolution

proceedings is immaterial since neither situation is a final severance of the marital relationship. Hence, reconciliation is still a possible alternative.”

California Unemployment Insurance Code Section 1256, Title 22, California Code of Regulations, Sections 1256-9, 1256-10, 1256-12, and 1256-31, Benefit Determination Guide MC 15, Section A, Benefit Determination Guide VQ 155, Unemployment Insurance Program Notice 10-091, Unemployment Insurance Program Notice 11-022, and California’s Family Code Section 297, contain all of the pertinent provisions relating to the issue of unemployment compensation payable to individuals separating from employment due to compelling family reasons. California’s provisions are consistent with the requirements provided in Public Law No. 111-5, Section 2003(a), as explained in UIPL 14-09.

Part-Time Work Provision

Relevant California state law and policy regarding the part-time option are located in:

- California Unemployment Insurance Code Section 1253.8
(<http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=8215182565+0+0+0&WALSaction=retrieve>)
- Benefit Determination Guide AA 5
(http://www.edd.ca.gov/UIBDG/Able_and_Available_AA_5.htm#Restricting%20to%20Part-Time%20Work)

Summary of Part-Time Work Provision

Since January 1, 2002, California state law and policy provide that a claimant cannot be disqualified under any provision relating to availability for work, active search for work, or refusal to accept work, solely because the claimant is looking for part-time work. If the majority of the claimant's base period is based on part-time work, the claimant is looking for work and willing to accept work under the same part-time conditions, the claimant imposes no other restrictions, and the claimant is in a labor market where a reasonable demand exists for part-time services, the claimant would be considered able and available for work.

California Unemployment Insurance Code Section 1253.8 currently states:

“An unemployed individual shall not be disqualified for eligibility for unemployment compensation benefits solely on the basis that he or she is only available for part-time work. If an individual restricts his or her availability to part-time work, he or she may be considered to be able to work and available for work pursuant to subdivision (c) of Section 1253 if it is determined that all of following conditions exist:

- (a) The claim is based on the part-time employment.
- (b) The claimant is actively seeking and is willing to accept work under essentially the same conditions as existed while the wage credits were accrued.
- (c) The claimant imposes no other restrictions and is in a labor market in which a reasonable demand exists for the part-time services he or she offers.

Subdivision (c) of the California Unemployment Insurance Code Section 1253 currently states:

“(c) He or she was able to work and available for work for that week.”

For the sake of easy reference, the following is the Benefit Determination Guide, AA 5, Sections C and D, verbatim that provides the policy, interpretation of state laws, and case law (Precedent Board Decisions [P-B]) pertaining to claimant's

who restrict themselves to part-time work. The Benefit Determination Guide AA5, Sections C and D currently state:

C. Restricting To Part-Time Work

Effective January 1, 2002, the California Unemployment Insurance Code Section 1253.8 allows claimants to be available for only part-time work (regardless of the reason why he/she is restricting to part-time) as long as he/she meets the following criteria:

- (a) The claim is based on the part-time employment.
- (b) The claimant is actively seeking and is willing to accept work under essentially the same conditions as existed while the wage credits were accrued.
- (c) The claimant imposes no other restrictions and is in a labor market in which a reasonable demand exists for the part-time services he or she offers.

If a claimant is restricting only to part-time work and **does not meet all** of the provisions under Section 1253.8, his/her eligibility for benefits must be determined under Section 1253(c), refer to the appropriate AA BDG for discussion on individual reasons for restrictions.

NOTE: If the part-time able and available issue involves weeks **prior to December 30, 2001**, the provisions of this **Section 1253.8 would not apply**. In these cases the claimant would have to meet the requirements of availability under Section 1253 (c) (unless the claimant is restricting to part-time work due to school attendance, if so, refer to AA 40 for further information). The following guidelines will assist in interpreting Section 1253.8:

1. Part-time Work

Part-time work is defined as: working less than 40 hours per week.

NOTE: If the claimant worked for multiple employers in the same week(s), the total hours worked for all employers must be less than 40 hours per week in order to be defined as part-time work.

2. Based on

1253.8(a) states: "The claim is **based on** part-time employment".

Based on is defined as: more than 50 percent of the **total weeks** worked, during the base period of the claim, was worked in part-time employment.

This allows for individuals having some full time employment in the base period to qualify under this section.

Example:

A claimant whose occupation is a sales clerk and works 20 to 25 hours per week but works full time during the holiday season may still qualify under Section 1253.8, as long as the full-time work is 50 percent or less of the total time worked during the base period of the claim.

3. Essentially The Same Conditions

1253.8(b) states: "The claimant is actively seeking and is willing to accept work under **essentially the same conditions** as existed while the wage credits were accrued."

Essentially the same conditions is defined as: the same **number** of part-time hours per week, or range of hours per week, that the claimant worked during the base period of the claim.

Example:

The claimant worked between 15 and 30 hours per week during the base period of the claim. If the claimant is not willing to work between 15 and 30 hours per week, the claimant would not meet the provisions under 1253.8 and the claimant's eligibility would be adjudicated under Section 1253(c).

4a. Other Restrictions

1253.8(c) states: "The claimant imposes no other restrictions and is in a labor market in which a reasonable demand exists for the part-time services he or she offers."

Other restrictions is defined as: any restriction(s), other than the days and times used to establish the claimant's part-time eligibility, that further reduce the claimant's labor market (e.g., wage restrictions, travel distance, restricting to a specific employer, etc.)

4b. Reasonable Demand:

Reasonable demand is defined as: a substantial field of employment as defined in Title 22, Section 1253(c)-1(c). See E (2) below for further explanation of substantial field of employment.

Even if the claimant is willing to accept the same number of part-time hours per week, or range of hours per week that the claimant worked during the base period of the claim, if there is no labor market available for the claimant's services, the claimant would not meet the eligibility criteria under 1253.8 and the claimant's eligibility would **be adjudicated under 1253(c)**.

D. Verification

The claimant's statement that more than 50% of the total time worked in the base period was in part-time employment and his/her willingness to

work under essentially the same conditions should be accepted unless other information indicates further fact finding is necessary.

Example:

Based on the information provided by the claimant at the new claim filing point the Department found that the claimant met the eligibility criteria under 1253.8 to restrict to part-time work. The claimant had only one employer in the base period. That employer responds to the DE 1101CZ stating that the claimant worked full-time during the base period. This information would warrant further investigation into whether the claimant actually meets the eligibility criteria under section 1253.8.

California Unemployment Insurance Code Section 1253.8, and California's Benefit Determination Guide AA 5, Sections C and D contain all of the pertinent provisions relating to the issue of unemployment compensation payable to individuals seeking only part-time work. California's provisions are consistent with the requirements provided in Public Law No. 111-5, Section 2003(a), as explained in UIPL 14-09.