

the individual has a job, the individual would have to report for jury duty.

- *Approved training.* Approved training is limited to situations where the state, not the individual, determines that short-term training will improve an individual's job prospects and is appropriate and necessary. In other words, the state has determined that the training enhances the individual's availability for work by making him/her qualified for a wider range of jobs. The Committee Report explaining this provision noted that Congress considered "training in occupational skills * * * so important to the employability of the individual" because "training is frequently necessary for obtaining new employment." S. Rep. 91-752 U.S.C.A.N. 3606, 3625 (1970). Attendance at such training is accepted as evidence of availability for work. Indeed, if the individual refuses training, or fails to attend training, the states must evaluate eligibility under their A&A provisions.

- *Temporary lay-offs.* An individual on temporary lay-off must be available to work for the employer who laid-off the individual as soon as the employer again has work for the individual. While this requires an individual's availability for work with only one employer, it is nonetheless a test of whether the unemployment is due to lack of suitable work.

As we noted above, unlike BAA-UC, none of these situations permit a voluntary withdrawal from the workforce. Unlike BAA-UC, all of these situations contain some link to involuntary unemployment caused by a lack of suitable work.

Also, as the Department noted in the NPRM, none of these situations apply to BAA-UC. Under BAA-UC, unlike the illness exception, an offer of suitable work could be refused with no effect on eligibility. Unlike the illness and jury duty exceptions, no initial establishment of A&A was required to determine if the unemployment was linked to a lack of suitable work despite the individual's availability for work. Unlike approved training, BAA-UC did not address a situation where an individual is attempting to remedy his or her continuing unemployment; indeed, BAA-UC addressed a situation where a job is already available to the parent. Also, for approved training, the state must approve the training as increasing the individual's job prospects; no similar requirement existed for BAA-UC, with the result that increased attachment to the workforce for any one individual is highly speculative. Finally, unlike temporary

lay-offs, BAA-UC did not require that the individual be available for at least one job; an offer of suitable work could be refused with no effect on eligibility. (One commenter noted a provision of a state's law that "waived" availability for individuals on temporary lay-off. In response, we note that, even under this provision, individuals must remain available for the job from which they were laid off.) These precedents differ from BAA-UC in that they do not permit an individual to *voluntarily remove* him/herself from being available for suitable work for a given week. BAA-UC, on the other hand, allowed payment to parents who have initiated their separation from the workforce and whose personal situation, rather than the lack of available suitable work, makes them unavailable for employment.

One commenter noted that individuals on temporary lay-off are "not 'involuntarily [unemployed] due to lack of work' since they voluntarily work in an industry that 'only provides work part of the year' and that they are required to 'accept work from a single employer, regardless of what opportunities may otherwise exist for them in the job market.'" Similarly, the commenter noted work remains available for those on jury duty.

In response, we note that, as these situations indicate, the Department has been liberal and flexible in construing A&A. Concerning temporary lay-offs, it is sufficient that the individual be available for a single job opportunity. (Indeed, payment of UC to individuals on temporary lay-off allows employers to preserve their skilled workforces, which has been cited as one of the purposes of the UC program.) For jury duty, the Department believes it is unreasonable to deny UC to an individual, who has initially met the A&A requirement, because of a governmental compulsion to serve on a jury. If suitable work was available prior to the individual being called to serve on a jury, the individual would have been required to accept such work to meet the A&A requirement. Indeed, serving on a jury indicates an individual was otherwise available for work; even individuals who are employed must by law serve on juries and employers must permit them to serve.

We also note that, as a practical matter, it makes little sense to require individuals on temporary lay-off who intend to return to work with their former employers to be available for work that they will leave when their old job again becomes available. This creates unreasonable expectations for both the individual and the firms

looking for new workers; indeed, most employers will not hire individuals on temporary lay-offs.

It does not follow that these situations support an argument that BAA-UC-eligible individuals are A&A. In all of the above situations an individual could be denied for failing to be A&A. Failure to attend jury duty or approved training will result in a denial for failure to be A&A; failure by an ill individual to accept suitable employment or failure to accept recall from a temporary lay-off will, at a minimum, result in a denial due to failure to be A&A. (We note that states also impose a disqualification for failure to accept suitable employment.)

Conversely, under BAA-UC, an individual could refuse work without any effect on current eligibility. As one commenter supporting removal noted, the BAA-UC rule was "premised on the extraordinary assertion that 'able and available' somehow can be interpreted to mean 'unavailable now but perhaps available in 3 months or later.' * * * This interpretation * * * contradicts the plain meaning of the word 'available' by covering employed workers who take leave from employment *when the employer has work available* but the worker cannot, or does not wish to work." (Emphasis in original.)

(5) Voluntary Leaving and Other Situations

(a) Voluntary Leaving

Some commenters opposing removal of the rule argued that the Department had approved other exceptions to the A&A requirement. These commenters noted provisions of state UC laws that address voluntarily leaving a job to escape domestic violence, to escape sexual harassment, to follow a spouse, due to loss of child care, due to pregnancy or pregnancy-related disability, and due to the individual's illness. Others used these provisions as proof that there is no "involuntariness" requirement in federal law. Conversely, some commenters favoring removal of the rule argued that there is a specific "involuntariness" requirement.

The examples addressing voluntary leaving are distinct from the A&A requirement. The A&A requirement, a test of whether an individual is unemployed due to lack of suitable work, "looks only to whether the unemployment is due to lack of work for each given week of benefits claimed. That is, it does not require that states hold an individual ineligible based on the reason for separation from employment, except to the extent that the individual may have not been A&A