



STATE OF VERMONT
OFFICE OF LEGISLATIVE COUNCIL

MEMORANDUM

To: House Committee on Commerce and Economic Development
From: Damien Leonard
Date: May 12, 2020
Subject: Application of Penalty Weeks for Unemployment Insurance and Pandemic Unemployment Assistance

This memorandum is in response to the Committee's question regarding whether the Commissioner of Labor may waive penalty weeks imposed under provision of Vermont's Unemployment Insurance Law as well as its request for an overview of the penalty parameters for Unemployment Insurance (UI) and Pandemic Unemployment Assistance (PUA) under federal law.

Vermont Law Related to Penalty Weeks

Vermont's statutes contain nine provisions that impose a period of disqualification from UI benefits for various causes. Those provision are as follows:

Provision	Penalty Period	Reason
21 V.S.A. § 1340(b)	Total benefit amount reduced by approximately 3 weeks.	Discharge by last employer for misconduct.
21 V.S.A. 1344(a)(1)	6–15 weeks, as Commissioner determines based on circumstances of case.	Discharge for: <ul style="list-style-type: none">• Work-related misconduct; or• Unable to perform all or essential part of job because of:<ul style="list-style-type: none">○ Conviction for felony or misdemeanor; or○ Court order in criminal or civil matter.
21 V.S.A. § 1344(a)(2)	Disqualified until earned 6 times weekly benefit amount.	<ul style="list-style-type: none">• Quit without good cause;• Discharge for gross misconduct; or• Failure to apply for or accept suitable employment.

21 V.S.A. § 1344(a)(3)	1–6 weeks.	<ul style="list-style-type: none"> • Quit job “because of a health condition . . . which precludes the discharge of duties inherent in such employment.” • Does not apply to Covid-19 related risk.
21 V.S.A. § 1344(a)(4)	Any week an individual is out on strike.	
21 V.S.A. § 1344(a)(5)	Disqualified ¹ for any week in which individual receives: <ul style="list-style-type: none"> • Wages in lieu of notice; • Vacation pay; • Severance or back pay; • Workers’ compensation; or • Pension contributed to by base period employer (under certain circumstances). 	
21 V.S.A. 1344(a)(6)	Any week individual is receiving UI benefits from another state.	
21 V.S.A. 1347(e)	<ul style="list-style-type: none"> • 1–26 weeks, as Commissioner deems just. <ul style="list-style-type: none"> ○ Employment Security Board Rule 28 provides that penalty period is: <ul style="list-style-type: none"> ▪ One week for every week the fraud was committed if the individual has not committed fraud in last three years; and ▪ Two weeks for every week the fraud was committed if the individual has committed fraud in last three years. 	Individual is determined to have intentionally misrepresented or failed to disclose a material fact with respect to his or her claim for benefits and was not prosecuted pursuant to provision allowing DOL to seek a penalty of up to \$5,000.

¹ Disqualifying payments are deducted from the amount of an individual’s UI benefits for a certain week. If the UI benefit is reduced to zero, then the individual is ineligible to receive UI benefits that week.

<p>21 V.S.A. § 1423</p>	<ul style="list-style-type: none"> • Disqualified from Extended Benefits for any week in which individual fails to seek work or accept suitable employment. • Disqualification lasts until individual is employed for 4 weeks and earns at least 6 times weekly benefit amount. 	
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Once a disqualification is imposed and the determination becomes final, I am not aware of any provision of Vermont law that allows the Commissioner to reduce or waive that penalty. However, under 21 V.S.A. § 1348, an individual is entitled to prompt written notice of a determination that they are not eligible for benefits and the reasons for that determination. Upon receiving notice of an adverse determination, an individual has 30 days to file an appeal with an administrative law judge. Under 21 V.S.A. § 1349, if the individual disagrees with the administrative law judge’s decision, the individual may pursue subsequent appeals to the Employment Security Board and then the Vermont Supreme Court.

Federal Law Related to Penalty Weeks

I am not aware of any provision of federal law that requires states to impose penalty weeks, however 26 U.S.C. § 3304(10) permits a state to deny unemployment compensation to an individual on the basis of “discharge for misconduct connected with his work, fraud in connection with a claim for compensation, or receipt of disqualifying income.” Every state imposes some form of penalty weeks for discharges for work-related misconduct and fraud in connection with a claim for unemployment compensation.²

Application of Penalty Weeks to PUA

PUA incorporates many of the provisions of the existing regulations governing disaster unemployment assistance (DUA).³ Under the federal regulations for DUA, an individual is disqualified from receiving benefits after refusing to accept an offer of employment for a suitable position⁴ or committing fraud in order to obtain benefits.⁵ In addition, similar to the UI program, states are required to recover prior overpayments of disaster unemployment assistance through the intercept of current benefits.⁶

With respect to an individual who is disqualified from UI benefits, 20 C.F.R. § 625.4(i) indicates that such an individual may potentially be eligible for DUA or PUA. However, the federal guidance related to PUA states that “[c]onsistent with 20 C.F.R. § 625.11, the terms and conditions of the state law of the applicable state for an individual

² A thorough summary of the various disqualification provisions for discharges for work-related misconduct, fraud, and various other factors is available at: <https://oui.doleta.gov/unemploy/pdf/uilawcompar/2019/nonmonetary.pdf>.

³ See Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116–136, § 2102(h).

⁴ 20 C.F.R. § 625.13(b)(2).

⁵ 20 C.F.R. § 625.14(i).

⁶ 20 C.F.R. § 625.14(a)(g).

which apply to claims for, and the payment of regular compensation apply to the payment of PUA to individuals” including provisions related to disqualifications.⁷ A second guidance document provides that “[s]tate law will determine whether the weeks of filing for PUA may be used to satisfy penalty weeks for a disqualification [for regular UI benefits].”⁸ Thus, if an individual is disqualified from UI for a certain number of weeks, the individual will also be subject to a disqualification from PUA unless the state law specifically provides otherwise. As stated above, Vermont does not have such a provision.

Action is Necessary to Permit the Commissioner to Reduce or Waive Penalty Weeks

In addition to providing penalty weeks in relation to fraud or discharge for misconduct, some states also provide for future modification or lapse of such a penalty after it is imposed. For example, Oregon’s UI fraud statute provides that “[t]he director may cancel the disqualification wholly or in part as the director deems proper and equitable.”⁹ California’s UI fraud statute provides that any disqualification imposed will lapse at the conclusion of “the three-year period next succeeding the date” on which the determination is mailed to or served on the individual.¹⁰

Vermont, however, lacks a similar provision. Therefore, the General Assembly would need to take action to provide the Commissioner with the authority to waive or reduce penalties during the current crisis.

⁷ Attachment I to UIPL No. 16-20: Pandemic Unemployment Assistance (PUA) Implementation and Operating Instructions, at p. I-9; *available at*: https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20.pdf.

⁸ Attachment I to UIPL No. 16-20; Change I; Questions and Answers: Pandemic Unemployment Assistance (PUA) Program, Question 37; *available at*: https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Change_1.pdf.

⁹ O.R.S.A. § 657.215.

¹⁰ Cal. Unemp. Ins. Code § 1260(d).