Memorandum

To: All Income Support Managers and Staff

CC: UI Administrative Staff

From: Kathy Catanzaro, Interim Assistant Director, Income Support

Date: April 13, 2020

Subject: Unemployment Insurance Eligibility – Fraud Deterrence COVID-19

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1. Purpose

This Memorandum sets out the Division of Income Support's procedures for conducting a deterrence audit associated with the benefits provided under the Pandemic Unemployment Assistance program. Because of the sweeping nature of the Pandemic Unemployment Assistance program, it may have the unintended consequence of motivating behavior that has the potential to pose a risk to the public; for example, if employees who perform tasks essential to the well-being and protection of the citizens of Rhode Island abuse its provisions. The guidance set forth in this chapter is intended to ensure compliance with the United States Department of Labor (USDOL) requirement that states implementing the Pandemic Unemployment Assistance program ensure the continued integrity of the unemployment insurance system as a whole. Likewise, this Memorandum's provisions seek to proactively protect workers from moral and legal hazard of fraud, and its penalties, that they might commit unwittingly because of anxieties generated by the COVID-19 pandemic, or because of the understandable confusion caused by the rapid evolution of the orders, rules and laws that benefit and protect the public during this public health emergency as declared by the Governor.

2. Definitions

A. As used in this regulation, the following terms shall be defined as follows:

1. A "Closed" business or workplace means a business, workplace, or employing unit that has been ordered to close or cease operations by the Governor or is situated within an industry ordered by the Governor to close or cease operations pursuant to the declaration of a state of emergency contained in Executive Order No, 20-02 related to COVID-19 and subsequent orders.

2. “Department” means the Department of Labor and Training.

3. “Department of Health” means the Rhode Island Department of Health, as established per R.I. Gen. Laws § 42-18-1.

4. An “Open” business or workplace means a business, workplace, or employing unit that has not been ordered to close or cease operations by the Governor pursuant to the declaration of a state of emergency contained in Executive Order No, 20-02 related to COVID-19 and subsequent orders.

5. “Layoff” or “Laid off” means an involuntary separation from employment when that separation was the result of an action taken by an employer.

6. “Voluntary quit” means separation from employment when that separation was the result of a decision made by the employee to leave their job.

7. “Audit” means a review of the circumstances of separation from employment, and the possible means of documentation of those circumstances, to ensure compliance with the Rhode Island Unemployment Insurance Law and regulations.

8. A “deterrence audit” is an audit performed before a worker receives benefits, because that worker has been placed in both a moral and legal hazard by the Pandemic Unemployment Assistance program.

8. “Good cause” means a reason that does not impact the ability of Rhode Island employers to serve the general public, their customers and the State, when doing so is in accordance with the safe social distancing practices and general safety precautions as offered by the Department of Health and the individual has not been impacted by COVID-19.

   Good cause does not mean voluntarily quitting a job or otherwise leaving an employment position to collect Unemployment Insurance when:

   a. suitable work is available; and

   b. the worker has not been diagnosed with COVID-19; or

   c. the worker is not in a high-risk category as articulated by the Department of Health; or

   d. the worker is not the primary caregiver for a child or individual whose school or childcare center or typical site of care during the day has been closed by order of the government; or

   e. the worker is not the primary caregiver for a person that has been diagnosed with COVID.

3. Deterrence Audit Procedures

3.1 Procedures

A. Targeted Audits

1. All auditing assignments will be prioritized to achieve maximal deterrence with limited resources. Means by which audit targets are chosen include but are not limited to

(a) Referrals from other agencies of government;

(b) Complaints from employers, co-workers or members of the public

(c) Analysis of data available to the Department.

B. Assignment of Deterrence Audits

1. Audits of workers' claims for benefits under the Pandemic Unemployment Assistance program shall be assigned to field auditors as a deterrence audit when:

(a) The worker's business or place of employment is open during the COVID-19 crisis; or

(b) The department has reason to believe that a worker may not meet one of the following reasons for their voluntary quit:

i. Is diagnosed with COVID-19; or

ii. Is determined by a doctor or doctor's designee to be in a high-risk category as articulated by the Department of Health; or

iii. Is the primary caregiver for a child or other individual whose school or childcare center or regular place of care during the day has been closed by order of the government; or

iv. Is the primary caregiver for a person that has been diagnosed with COVID-19.

2. Upon receipt of a deterrence audit assignment, a field auditor shall:

(a) Place a temporary hold on the worker's claim for benefits under the Pandemic Unemployment Assistance program, and;

i. On the same day of receipt, send an audit notice email or letter to the worker advising that the worker is the subject of a deterrence audit by the field investigator and audit to determine whether the voluntary quit cited in the worker's request for benefits under the Pandemic Unemployment Assistance program is, or is not, of good cause.

ii. The email or letter shall:

(1) State the authority for conducting the deterrence audit;

(2) Contain a list of records that the auditor will review in order to conduct the deterrence audit; and

(3) Request that the worker contact the auditor to arrange for communication with the auditor so that a deterrence audit can be conducted as soon as is practical.

3. Illustrations when a deterrence audit assignment will be prioritized.

(a) The illustrations in this regulation provide guidance under the Pandemic Unemployment Assistance program only and do not apply to any other State or federal law.

(b) The illustrations in §§(c) and (d) of this regulation provide guidance for those whose COVID-19 related Voluntary Quit has made them unavailable and unable to work under Rhode Island's Employment Protection statute.

(c) Illustrations where a Voluntary Quit has been made not for Good Cause under this regulation:

i. Milton Black works for XYZ Grocery store, which is open during the COVID-19 emergency. Like everyone in RI, Milton is concerned for his health, but he is also very concerned for the health of a sibling with a severely compromised immune system. Milton does not live with this sibling. Even though XYZ Groceries keeps to RI Department of Heath social distancing guidelines, Milton quits his job with XYZ in an abundance of caution to protect his sibling's heath the next time he visits her.

ii. Sarah Green works for JB Incorporated (JB), a company that provides outsourced call center capacity for other companies around the world. JB has outfitted its workers with equipment that would enable them to work full time from home. However, after Sarah has compared the benefits for which should would be eligible under the Pandemic Unemployment Assistance program with what she would make by working full time at home, she voluntarily chooses to not to work at home because the Pandemic Unemployment Assistance benefits pay her more.

iii. Frank Gold works for Easton Manufacturing Company, which is open and operating in accordance with social distancing guidelines. Frank and his spouse have a 7-year-old son, who is attending school at home because his school has been ordered to distance learn because of the COVID-19 crisis. Frank's spouse can work from home and is doing so because of the COVID-

19 crisis but wants uninterrupted time to focus on work. Frank stays home to attend to his son's schooling.

(d) Illustrations where a Voluntary Quit has been made for Good Cause:

i. Milton Black works as a cashier for XYZ Grocery store, which is open during the COVID-19 emergency. A recent round of chemotherapy has left Milton with a weakened immune system. Even though XYZ Groceries keeps to the RI Department of Heath social distancing guidelines, Milton's doctor tells him that contracting COVID-19 would be extremely dangerous for him and orders him not to work outside of his home. Milton quits his job with XYZ, because he cannot check groceries from anywhere but XYZ.

ii. Sarah Green works for JB Incorporated (JB), a company that provides outsourced call center capacity for other companies around the world that remain open during the COVID-19 crisis. JB has tried to outfit its workers with equipment that would enable them to work full time from home but cannot. Instead they adopt the appropriate social distancing guidelines and give their workers a normal schedule. However, Sarah and her spouse have 4-year-old whose day care center has been order closed. Sarah's spouse is the person in the family whose employer provides healthcare benefits, and since neither can work from home, Sarah makes the decision to quit.

iii. Frank Gold works for Easton Manufacturing Company, which is open and operating in accordance with social districting guidelines. Frank lives at home with his mother, who has early onset Alzheimer's but receives care during the day at a local senior center. However, that center is closed by order. Frank tried to find a few other options but was turned down, and so had to stay home with his mother, at least until the COVID-19 crisis subsides.

C. Failure to Respond.

1. If a worker fails to respond to the initial deterrence audit notice, the auditor shall keep the hold on the worker's claim to Pandemic Unemployment Assistance benefits.

D. Auditor protocol after audit scheduling.

1. The auditor may:

(a) Require a phone meeting, or other means of communication consistent with the principles of social distancing with the worker or the worker's designated representative;

(b) Interview the employer in question; or

(c) Request additional information or documentation from the worker or employer.

E. Good cause is established.

1. Upon completion of the deterrence audit, if the auditor determines the reason of separation was of good cause, the field auditor will lift the hold placed on the worker's benefits in the same day the deterrence audit was determined, and shall send a letter or email confirming that the worker is eligible for benefits under the Pandemic Unemployment Assistance program.

F. Good cause is not established.

1. If, upon completion of the deterrence audit, the auditor determines the reason of separation was of not of good cause, then the field auditor will keep the hold placed on the worker's benefits under the Pandemic Unemployment Assistance program, and, on the basis of a preliminary deterrence audit finding, shall advise the Director or designee to disallow the worker's benefits under the Pandemic Unemployment Assistance program.

2. The preliminary deterrence audit findings shall be sent by email or letter to the worker, and shall state the basis for the audit findings, based on information the auditor has received.

3.2 Appeal of Preliminary Deterrence Audit Findings

A. If an auditor determines the worker's request for benefits under the Pandemic Unemployment Assistance program based on a voluntary quit is not of good cause, the auditor shall issue preliminary audit findings.

B. If the worker disagrees with the preliminary audit findings, the worker may request a review determination as soon as is practical, but within 30 days of the date of the preliminary audit letter.

C. Upon receipt of a request for a review determination, a reviewer designated by the Director shall be assigned to conduct the review determination.

D. The designated reviewer may:

1. Review the audit work papers;

2. Speak to the worker and/or designated representative; and

3. Request any additional information the reviewer deems necessary.

E. In addition, the worker may provide any documentation to the reviewer that the worker believes supports its position.

F. If the worker fails to provide the additional information requested by the reviewer within the timeframe established by the reviewer, the reviewer shall make a determination based on the available information.

G. Upon completion of the review determination, the reviewer shall prepare a detailed written decision affirming or reversing the findings of the field auditor.

H. The review determination shall:

1. State the facts upon which the reviewer relied in order to affirm or adjust the audit findings; and

2. Advise the worker that if the worker disagrees with the review determination, the worker may file an appeal with the Board of Review in accordance with procedure and time periods set forth in Rhode Island Employment Security Law.

I. If a worker does not request a review determination within the 30-day period for requesting a review determination:

1. The preliminary audit findings shall become final; and

2. The worker shall be sent a notice of determination advising the worker that worker may file an appeal with the Board of Review in accordance with procedure and time periods set forth in Rhode Island Employment Security Law.