

SECTION 5 SUITABLE WORK AND AVAILABILITY

An unemployed worker may be disqualified from benefits if he or she refuses an offer of “suitable” work or is otherwise found not to be “available” for full-time work. Factors that determine whether a job is *suitable* include

- risks of the work to the worker’s health, safety, or morals;
- the worker’s physical fitness and prior experience/training;
- how long the worker has been out of work, the possibility of recall, and what the likelihood is of finding a job in his or her usual occupation;
- how much of a reduction in wages & benefits is at stake – the law provides that if the wage offered is at least 70% of the worker’s gross pay rate immediately before the worker became unemployed, the wage is suitable;
- the distance of the job from the worker’s home (relevant factors include commute/traffic and availability of reliable transportation).

In refusal of suitable work cases, the employer has the initial **burden of proof** to show:

1. that the employer **communicated an offer of work** to the claimant in a clear and unambiguous way;
2. that the offer was **specific**;
3. that the **claimant refused** the offered work; and
4. that the work offered was **suitable** (see factors above).

The burden of proof then shifts to the worker to show that when considering the suitability factors above, he/she had **good cause** for refusing the offer of suitable work.

Good cause is **not** found when the worker merely does not *prefer* the type of work being offered or where an indication of an *unwillingness* to work is found. Also, if the offered job has less *prestige*, *status* or gives you less *authority*, these are not likely to be considered legitimate reasons for refusing employment.

If your employer argues that you’ve turned down suitable work, you will want to identify specific factors to show that there was not a clear offer of employment, that you did not refuse the offer or that the work was actually not suitable, and thereby show that your refusal doesn’t disqualify you from UI benefits. One strong argument would be if the job offered would result in **substantial financial loss** for you. For example, a ruling that the job is not suitable will be more likely if you can show that it would cost you more to go to the new job due to distance or transit options, or that the job’s demands would interfere with your parenting so that you’d have to pay more for child care. In addition to financial burdens, a job can be considered unsuitable if it is available as the result of a **labor dispute** and/or requires a worker to join/resign/refrain from joining any labor union. A job that jeopardizes the worker’s **health or safety** may also be ruled unsuitable.

A counselor in a psychiatric hospital took a medical leave of absence due to stress brought on by incidents with violent patients. She also felt that staff shortages put her safety at risk. When her doctor released her to return to work, the hospital offered her the same position in the same facility. Out of fear for her health and safety, she refused it, and her doctor submitted a statement that she could work in the same capacity but not in the same environment. The court found that the worker’s decision, based on reasonable concerns and a doctor’s advice, did not disqualify her from UI benefits.

For a job opening and offer of employment to count as “available,” it must be made clear to the worker individually, orally or in writing. Posting on a bulletin board somewhere in the workplace doesn’t count as a job offer. Also, the job must be actually available at the time it’s offered.