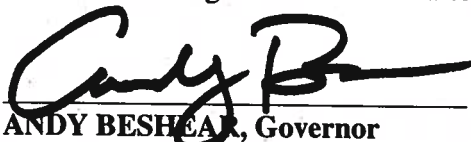


FILED WITH LRC TIME: <u>1:10 pm</u>
DEC 22 2022 <i>Emily B Caudill</i> REGULATIONS COMPILER

STATEMENT OF EMERGENCY

787 KAR 1:090E

This emergency amended administrative regulation is being promulgated in order to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. KRS 341.350(11), effective January 1, 2023, requires the secretary of the Education and Labor Cabinet to promulgate administrative regulations related to the verification of unemployment insurance claimants' work search activities that are required for benefit eligibility. 787 KAR 1:090 establishes the registration and reporting requirements that an unemployed worker is required to meet to draw unemployment insurance benefits and includes a requirement for random audits. This amendment to 787 KAR 1:090 is being filed on an emergency basis so that the regulation timely addresses verified work search activities as part of the reporting requirements for unemployment insurance claimants. This emergency amended administrative regulation will be replaced by an ordinary amended administrative regulation, which is being filed contemporaneously herewith, in order to conform with KRS 341.350(11), effective January 1, 2023. The companion ordinary amended administrative regulation is identical to this emergency administrative regulation.



ANDY BESHEAR, Governor  
Commonwealth of Kentucky



JAMES W. LINK, Secretary  
Education and Labor Cabinet



BUDDY HOSKINSON, Executive Director  
Office of Unemployment Insurance

1 EDUCATION AND LABOR CABINET

2 Office of Unemployment Insurance

3 (Emergency Amendment)

4 787 KAR 1:090E. Unemployed worker's reporting requirements.

5 RELATES TO: KRS 341.350, 341.360, 341.370, 341.380

6 STATUTORY AUTHORITY: KRS 336.015, 336.050, 341.115(1), 341.350(11)

7 [~~2021 Ky Acts ch. 169 Part 1(I)(7)~~]

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1)

9 authorizes the secretary to promulgate administrative regulations necessary or suitable for  
10 the proper administration of KRS Chapter 341. KRS 341.350(11) requires the secretary to  
11 promulgate administrative regulations related to work search activities required for benefit  
12 eligibility. This administrative regulation establishes the registration and reporting  
13 requirements that an unemployed worker is required to meet to draw benefits, the date  
14 when a claim shall be valid, the length of time a claim may be backdated, the procedures  
15 for electronic, telephone, and mail claims, and the requirement for random audits.

16 Section 1. Registration for Work.

17 (1) An unemployed worker shall be registered for work with a state employment  
18 service before he or she is eligible to receive benefits. A registration shall be considered  
19 filed if the unemployed worker completes the registration process.

20 (2) When an unemployed worker completes an initial application for benefits or  
21 reopens a claim, he or she shall be assigned a group classification code A or B based upon  
22 his or her reemployment prospects. The classification codes described below are solely  
23 related to reemployment prospects and not to any classification codes used to identify a

1 claimant's duration of benefits, as detailed in KRS 341.385.

2 (a) Group A shall consist of any worker who is unemployed and is not subject to  
3 definite recall within a period of sixteen (16) [~~twelve (12)~~] weeks from the date of filing of  
4 the initial or reopened claim.

5 (b) Group B shall include any worker who is:

6 1. Unemployed and has definite return prospects with his or her last employer  
7 within a period of sixteen (16) [~~twelve (12)~~] weeks from the date of filing of the initial or  
8 reopened claim;

9 2. Unemployed because of a labor dispute in the establishment where he or she has  
10 been employed; or

11 3. A member of a union which shall be responsible for securing future employment.

12 (3) During any benefit year, an unemployed worker shall be assigned a different  
13 group classification code if review of his or her reemployment prospects reveals that a  
14 different classification is appropriate.

15 (4) The completion of an initial application for benefits shall serve as work  
16 registration for any group "B" unemployed worker.

17 Section 2. Initial or Reopened Claims for Benefits.

18 (1) In order for an unemployed worker to file an initial or reopened claim for  
19 benefits, he or she shall complete the Initial Claim process by using:

20 (a) An internet claim registration through the Web site provided by the agency for  
21 that purpose at [uiclaimsportal.ky.gov](http://uiclaimsportal.ky.gov);

22 (b) A telephone claim registration through the call center provided by the agency  
23 for that purpose; or

24 (c) An in person claim registration by reporting to a state employment service office  
25 that provides unemployment insurance assistance.

26 (2) If any issues regarding the unemployed worker's eligibility as provided by

1 KRS 341.350 or a potentially disqualifying circumstance as provided by KRS 341.360 or  
2 341.370 are detected, a fact finding investigation shall be conducted during which the  
3 unemployed worker shall:

4 (a) Provide picture identification and valid proof of the worker's Social Security  
5 number from the Social Security Administration; and

6 (b) Present all facts in support of the application.

7 (3) The initial or reopened claim shall be dated as of the first day of the week in  
8 which the unemployed worker completes the procedure established in subsection (1) of  
9 this section.

10 (4) Upon the presentation by the unemployed worker of reasons found to constitute  
11 good cause for failure to file at an earlier date, the secretary shall backdate the initial or  
12 reopened claim to the first day of the week in which the worker became unemployed, or  
13 the second calendar week preceding the date the worker filed, whichever is later. Examples  
14 of good cause may include illness, availability issues beyond the claimant's control, or lack  
15 of access to internet or phone necessary for claim filing.

16 (5) An unemployed worker whose unemployment insurance benefit check has been  
17 lost or stolen shall notify the office in writing.

18 Section 3. Claiming Weeks of Benefits.

19 (1) Once an unemployed worker has filed an initial claim and established a benefit  
20 year, the unemployed worker shall claim his or her benefits on a biweekly basis by one (1)  
21 of the methods and within the time frames established in subsection (2) of this section.

22 (a) The unemployed worker shall claim either one (1) or both of the weeks of  
23 benefits.

24 (b) Except as provided in paragraph (e) [(e)] of this subsection, for every two (2)  
25 week period of benefits being claimed following the effective date of the initial or  
26 reopened claim, the unemployed worker shall claim his or her benefits during the

1 calendar week following the second week of the period.

2 (c) For each week an unemployed worker claims benefits, the worker shall certify  
3 under penalty of perjury that he or she engaged in at least five (5) work search activities,  
4 at least three (3) of which shall consist of submitting an application for employment, or  
5 interviewing for employment. "Work search activities" include any of the following:

6 1. Formally submitting an application for employment online or in person;

7 2. Interviewing for employment virtually, in person, or online;

8 3. Job shadowing;

9 4. Attending a job fair or networking event hosted by state or local government or  
10 a business organization;

11 5. Participating in a job search skills workshop or seminar; and

12 6. Participating in official Kentucky Career Center or partner programs related to  
13 employment or the search for employment.

14 (d) For each claimed work search activity, the unemployed worker must have  
15 documentation verifying he or she engaged in the work search activity and shall preserve  
16 that documentation for one (1) full year after each weekly claim for benefits was  
17 submitted for auditing purposes. All claimed work search activities are subject to random  
18 audit by the Office of Unemployment Insurance.

19 (e) An otherwise eligible worker shall not be denied benefits under KRS  
20 341.350(5), or because of a failure to actively seek work under subsection (1)(c) of this  
21 Section, or disqualified under KRS 341.370(1)(a) under the following circumstances:

22 1. For any week a claimant provides verifiable enrollment in an approved job  
23 training or certification program listed on the current eligible training provider list, which  
24 can be found on the Kentucky Career Center website under the "Training – Providers" tab,  
25 and certifies making satisfactory progress in the program; or,

26 2. If a claimant provides verifiable definite return-to-work or recall-to-work

1 prospects from his or her employer, either by an employer filed mass electronic claim or  
2 by submitting a written notice from the employer within a period of sixteen (16) weeks  
3 from the date of filing of the initial or reopened claim.

4 (f)[(e)] Upon the presentation by the unemployed worker of reasons the secretary  
5 finds to be good cause for the failure of the worker to claim his or her benefits during the  
6 prescribed week, the secretary shall allow the worker to claim benefits for the two (2)  
7 calendar weeks preceding the date on which the worker claimed his or her benefits. In  
8 this case the worker shall next be eligible to claim benefits for the two (2) calendar weeks  
9 following the weeks of benefits claimed late. Examples of good cause may include  
10 illness, availability issues beyond the claimant's control, lack of access to internet or  
11 phone necessary for claim filing, or unemployment insurance system outages.

12 (2) Except as provided in subsection (3) of this section, the unemployed worker  
13 shall complete a claim for benefits:

14 (a) Through the Web site provided by the agency for that purpose at  
15 [uiclaimsportal.ky.gov](http://uiclaimsportal.ky.gov), with the claim completed before 7 p.m. Eastern Time on the Friday  
16 of the calendar week following the second week of the period claimed; or

17 (b) By telephone through the interactive voice response system provided by the  
18 agency for that purpose, with the claim completed between the hours of 10 a.m. and 9 p.m.  
19 Eastern Time on the Sunday, or between the hours of 7 a.m. and 7 p.m. Eastern Time on  
20 the Monday through the Friday of the calendar week following the second week of the  
21 period claimed.

22 (3)

23 (a) The secretary shall direct an unemployed worker to claim benefits by mail if it  
24 is not possible for the worker to claim by either option provided in subsection (2) of this  
25 section due to:

26 1. Unavailability of those options for the type of benefits claimed;

1           2. Unavailability of those options due to technical problems; or

2           3. A physical or mental condition preventing the worker from using those options.

3           (b) A continued claim shall cover the week or weeks indicated on the Continued  
4 Claim Form.

5           (c) Any claim filed by mail shall be considered filed on the day it is deposited in  
6 the mail and postmarked as established in 787 KAR 1:230, Section 1(2).

7           (d) The provisions of this administrative regulation governing the dating and  
8 backdating of a continued claim shall also apply to a claim filed by mail, and unless the  
9 claim is filed within the prescribed time, it shall not be allowed.

10           Section 4. Employer Filed Claims.

11           (1) An employer may file a claim on behalf of an unemployed worker if:

12           (a) The worker has definite recall rights within four (4) calendar weeks;

13           (b) The employer has a workforce of at least 100 workers at the time of the layoff;

14           (c) The employer submits the claim information in the required electronic format  
15 using the Directions for Submitting an Employer Mass Electronic Claim (E-claim) File and  
16 the E-claim – Template; and

17           (d) Prior to the first time an employer files a claim on behalf of a worker, the  
18 employer submits a test sample of claim information and receives confirmation from the  
19 Office of Unemployment Insurance that the information is in the required format prior to  
20 the date the period of unemployment will begin.

21           (2) The effective date of an employer filed claim shall be the first day of the week  
22 in which the period of unemployment began.

23           (3) An unemployed worker who does not file a continued claim for benefits  
24 established under an employer filed claim may file a new initial claim within the period of  
25 one (1) year from the effective date of the employer filed claim.

26           Section 5. Eligibility Review. The secretary may require an unemployed worker

1 claiming benefits to report for the purpose of continued benefit eligibility review as a  
2 condition for payment of benefits. The requirement and interval for eligibility review shall  
3 be determined by:

4 (1) The worker's classification as established in Section 1(2) of this  
5 administrative regulation;

6 (2) The worker's individual employment and earning history; and

7 (3) The local labor market.

8 Section 6.

9 (1) The secretary shall notify an unemployed worker if the secretary determines  
10 that the unemployed worker failed to file a claim for benefits or register for work within the  
11 specified time due to:

12 (a) The employer's failure to comply with 787 KAR Chapter 1;

13 (b) Coercion or intimidation exercised by the employer to prevent the prompt  
14 filing of a claim; or

15 (c) Failure by the Office of Unemployment Insurance personnel to discharge  
16 necessary responsibilities.

17 (2)

18 (a) Except as provided in paragraph (b) of this subsection, an unemployed worker  
19 shall have fourteen (14) days after receipt of the notification required by subsection (1) of  
20 this section from the secretary within which to file a claim.

21 (b) A claim shall not be filed later than thirteen (13) weeks subsequent to the end of  
22 the actual or potential benefit year involved.

23 Section 7. The secretary shall conduct random audits of claims. Each random audit  
24 shall include one (1) or more of the eligibility requirements provided by KRS 341.350.

25 Section 8. Incorporation by Reference.

26 (1) The following material is incorporated by reference:



1 (a) Directions for Submitting an Employer Mass Electronic Claim (E-claim)  
2 File, 03/20;

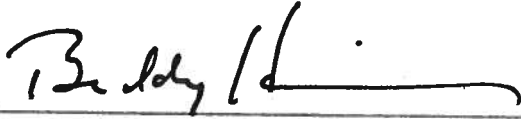
3 (b) E-Claim – Template, 03/20; and

4 (c) "Continued Claim Form", Rev. 2021.

5 (2) This material may be inspected, copied, or obtained, subject to applicable  
6 copyright law, at the Office of the Director of the Office of Unemployment Insurance,  
7 Mayo- Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601, Monday  
8 through Friday, 8 a.m. to 4:30 p.m. and is available on the office's Web site at  
9 <https://kcc.ky.gov/Pages/Reports-and-forms.aspx>.

787 KAR 1:090E

READ AND APPROVED:



12/22/22

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Buddy Hoskinson  
Executive Director  
Office of Unemployment Insurance  
Education and Labor Cabinet

Date

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this emergency amended administrative regulation shall be held on February 28, 2023, at 1:00 p.m. Eastern Time at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on February 28, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

Contact Person: Matthew P. Lynch, Staff Attorney, 500 Mero Street, 3rd Floor, Frankfort, Kentucky, 40601, Phone: 502-564-2776, Email: [matt.lynch@ky.gov](mailto:matt.lynch@ky.gov)

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

787 KAR 1:090E

Contact person: Matthew P. Lynch, Staff Attorney, Phone: 502-564-2776, Email: matt.lynch@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation provides updates to reporting requirements of unemployment claimants seeking unemployment insurance benefits.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to carry out KRS 341.350(11).

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of KRS Chapter 341. KRS 341.350(11) requires the secretary to promulgate regulations related to work search activity reporting and verification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation provides procedures for unemployment claimants to report and certify work search activities in compliance with KRS 341.350(11).

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

In compliance with KRS 341.350(11), the amendment includes the requirement that unemployment claimants must report work search activities each week for which a claim for benefits has been made, specifies the type of activities that qualify as work search activities, and requires the unemployment claimant to certify his or her work search activities under the penalty of perjury as verification.

(b) The necessity of the amendment to this administrative regulation:

The amendment is needed to comply with KRS 341.350(11).

(c) How the amendment conforms to the content of the authorizing statutes:

The amendment specifies the requirement for reporting work search activities as part of making a claim for benefits, specifies the type of work search activities that qualify under KRS 341.350, and requires certification of work search activities as the verification required

under KRS 341.350.

(d) How the amendment will assist in the effective administration of the statutes:

The amendment provides the secretary, Office of Unemployment Insurance staff, and unemployment claimants seeking benefits with the necessary information and procedures for reporting and certifying verifiable work search activities in accordance with KRS 341.350(11).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This administrative regulation affects unemployment insurance benefit recipients in the Commonwealth.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment:

Unemployment claimants seeking benefits will have to report and certify to conducting no less than five (5) work search activities per week of claimed benefits as part of the weekly claims process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There is no additional cost to the unemployment insurance benefit recipients to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Unemployment claimants seeking benefits that comply with the work search requirements of KRS 341.350 and this regulation will not be deemed ineligible for benefits for failure to report work search activities.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: \$200,000.

(b) On a continuing basis: \$300,000 annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Current federal funding will be used for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

An increase in fees or funding will not be necessary to implement this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

There are no fees associated with this administrative regulation.

(9) TIERING: Is tiering applied? Explain why or why not.

Tiering is not applied. All unemployment insurance benefit overpayment recipients are treated equally.

FISCAL NOTE

787 KAR 1:090E

Contact person: Matthew P. Lynch, Staff Attorney, Phone: 502-564-2776, Email: matt.lynch@ky.gov

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

This administrative regulation impacts the Office of Unemployment Insurance within the Kentucky Education and Labor Cabinet.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 341.350(11).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

No revenue will be generated for the state for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

No revenue will be generated for the state for subsequent years.

(c) How much will it cost to administer this program for the first year?

Estimate: \$300,000.

(d) How much will it cost to administer this program for subsequent years?

Estimate: \$300,000.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None.

Expenditures (+/-): See above.

Other Explanation: This amendment will require additional workforce verification tasks to be completed by Office of Unemployment Insurance staff. It is estimated that it will take one staff person 1-hour per week to verify one claimant that has five (5) work search contacts or activities for any given claimed week.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

There is no additional cost to the unemployment insurance benefit recipients to comply with this administrative regulation. This amendment does not impose any additional expenditures on employers.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

There is no additional cost savings to the unemployment insurance benefit recipients to comply with this administrative regulation. This amendment does not confer cost savings to employers.

(c) How much will it cost the regulated entities for the first year?

There is no additional cost to the unemployment insurance benefit recipients to comply with this administrative regulation, and this amendment does not impose any additional expenditures to employers.

(d) How much will it cost the regulated entities for subsequent years?

There is no additional cost to the unemployment insurance benefit recipients to comply with this administrative regulation, and this amendment does not impose any additional expenditures to employers.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings(+/-): See above.

Expenditures (+/-): No increase.

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]

It is not anticipated that this amendment will have an overall negative or adverse economic impact.