

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION UI
	CORRESPONDENCE SYMBOL OUI/DL
	DATE May 17, 2017

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 1-15, Change 2

TO: STATE WORKFORCE AGENCIES

FROM: BYRON ZUIDEMA /s/
Deputy Assistant Secretary

SUBJECT: Removal of 20 CFR Part 620 – Occupations that Regularly Conduct Drug Testing for State Unemployment Compensation Eligibility Determination Purposes

1. **Purpose.** To inform states of the removal of 20 CFR Part 620 – Occupations that Regularly Conduct Drug Testing for State Unemployment Compensation Eligibility Determination Purposes and the effect on state unemployment compensation (UC) programs. This guidance rescinds Unemployment Insurance Letter (UIPL) No. 01-15, Change 1, issued on December 6, 2016.

2. **References.**

- Section 303(l) of the Social Security Act (SSA);
- Congressional Review Act, 5 U.S.C. 801 *et seq.*;
- Section 2105 of Public Law (Pub. L.) No. 112-96, the Middle Class Tax Relief and Job Creation Act of 2012 (Act);
- Pub. L. No. 115-17, H.J. Res. 42 - Disapproving the rule submitted by the Department of Labor relating to drug testing of unemployment compensation applicants;
- 20 CFR Part 620 - Occupations that Regularly Conduct Drug Testing for State Unemployment Compensation Eligibility Determination Purposes
- Final Rule; Congressional Review Act Revocation – Federal State Unemployment Compensation Program; Middle Class Tax Relief and Job Creation Act of 2012 Provision on Establishing Appropriate Occupations for Drug Testing of Unemployment Compensation Applicants, 82 Fed. Reg. 21916 (May 11, 2017);
- UIPL No. 1-15, *Permissible Drug Testing of Certain Unemployment Compensation Applicants Provided for in Title II, Subtitle A of the Middle Class Tax Relief and Job Creation Act of 2012* (October 9, 2014)
- UIPL No. 1-15, Change 1, *Permissible Drug Testing of Certain Unemployment Compensation (UC) Applicants Provided for in Title II, Subtitle A of the Middle Class Tax Relief and Job Creation Act of 2012: Questions and Answers* (December 6, 2016)

RESCISSIONS UIPL No. 01-15, Change 1	EXPIRATION DATE Continuing
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3. **Background.** Section 2105 of the Act added subsection (l) to section 303, SSA, to permit states to enact legislation to test a UC applicant for the unlawful use of controlled substances (drugs) as a condition of UC eligibility if the applicant:
- a. Was terminated from employment with his/her most recent employer (as defined under state law) because of the unlawful use of controlled substances; or
 - b. Is an individual for whom suitable work (as defined under state law) is only available in an occupation that regularly conducts drug testing as determined under regulations issued by the Secretary of Labor (Secretary).

On August 1, 2016, the Secretary published the final rule to identify occupations that regularly conduct drug testing at 20 CFR Part 620. The rule became effective on September 30, 2016. On February 15, 2017, the United States House of Representatives passed a resolution of disapproval (H.J. Res. 42) of the rule under the Congressional Review Act (5 U.S.C. 801 *et seq.*). The United States Senate passed the resolution on March 14, 2017. President Trump signed the resolution into law as Public Law No. 115-17 on March 31, 2017.

Consistent with the resolution of disapproval, on May 11, 2017, the Department published a Final Rule removing 20 CFR Part 620 in the *Federal Register*. As a result of the removal of 20 CFR Part 620, states no longer have authority to drug test applicants for UC for whom suitable work is only available in occupations that regularly conduct drug testing for unlawful use of controlled substances.

4. **Interim Impact of the Removal of 20 CFR Part 620.** As a result of the removal of 20 CFR Part 620, Section 303(l)(1)(A)(ii), SSA, will not authorize states to conduct drug testing of applicants for unemployment compensation for whom suitable work is only available in occupations that regularly conduct drug testing until the Secretary issues new regulations to identify occupations that regularly conduct drug testing. As such, state UC agencies are permitted to conduct drug testing only pursuant to Section 303(l)(1)(A)(i), SSA (testing of an applicant who was terminated from employment with the applicant's most recent employer, as defined under state law, because of the unlawful use of a controlled substance).

As a result of the removal of 20 CFR Part 620, the drug testing guidance in UIPL No. 01-15, Change 1, which addressed questions regarding drug testing permitted under that regulation, is rescinded. UIPL No. 01-15, *Permissible Drug Testing of Certain Unemployment Compensation Applicants Provided for in Title II, Subtitle A of the Middle Class Tax Relief and Job Creation Act of 2012*, remains in effect as it provides general guidance about the drug testing provisions and specific guidance about the testing permitted by Section 303(l)(1)(A)(i), SSA. The guidance in UIPL No. 01-15 that is applicable to drug testing under Section 303(l)(1)(A)(ii), SSA, will be revised in the future.

The statute requires that the Secretary issue regulations to identify occupations that regularly conduct drug testing in order for states to have the authority to drug test unemployment compensation applicants for whom suitable work is only available in an occupation that

regularly conducts drug testing. Accordingly, the Department will be exploring options for implementing this provision of the SSA, including, promulgating a new regulation which would include notice and the opportunity for public comment.

5. **Action Requested.** States are requested to review this UIPL and assure their laws and practices conform to and comply with its guidance.
6. **Inquiries.** Inquiries should be directed to the appropriate Regional Office.
7. **Attachment.**

Pub. L. No. 115-17, H.J. Res. 42 - Disapproving the rule submitted by the Department of Labor relating to drug testing of unemployment compensation applicants