

Terry E. Branstad, Governor

Kim Reynolds, Lt. Governor

Teresa Wahlert, Director

To: All Unemployment Insurance Division Staff

All Unemployment Insurance Appeals Bureau Staff

From: Teresa Wahlert, Director

Subject: Policy for Part-time Quits

It is the policy of the Department to thoroughly investigate the reason for any employment separation and adjudicate accordingly. This includes part-time and supplemental employment. If it is determined through an investigation that the part-time worker quit their job without good cause, then IAC 871-24.27 will be applied. If it is determined through an investigation that the claimant was employed full time, IAC 871-24.27 does not apply regardless of the duration of that full time employment. Allowance or denial of benefits will be based on the facts surrounding the reasons for separation.

This policy is effective July 16, 2013.

Message: Fwd: Policy for Part Time quits**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:04 PM
 Item ID: 40861135
 Policy Action: Not Specified

Mark History:





No reviewing has been done

Policies:

No Policies attached

✉ Fwd: Policy for Part Time quits

From Wahlert, Teresa [IWD] **Date** Tuesday, July 16, 2013 3:50 PM
To Hillary, Teresa [IWD]
Cc

 [image001.jpg](#) (3 Kb HTML)  [ATT00001.htm](#) (2 Kb HTML)  [Part time quit.docx](#) (71 Kb HTML)
 [ATT00002.htm](#) (1 Kb HTML)

- Teresa Wahlert

Begin forwarded message:

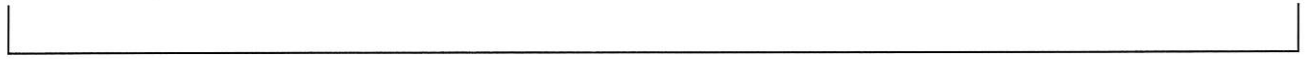
From: "Wilkinson, Michael [IWD]" <Michael.Wilkinson@iwd.iowa.gov>
Date: July 16, 2013, 3:10:10 PM CDT
To: "West, Ryan [IWD]" <Ryan.West@iwd.iowa.gov>
Cc: "Eklund, David [IWD]" <David.Eklund@iwd.iowa.gov>, "Olivencia, Nicholas [IWD]" <Nicholas.Olivencia@iwd.iowa.gov>, "Wahlert, Teresa [IWD]" <Teresa.Wahlert@iwd.iowa.gov>
Subject: RE: Policy for Part Time quits

Sorry about that.....

From: West, Ryan [IWD]
Sent: Tuesday, July 16, 2013 3:08 PM
To: Wilkinson, Michael [IWD]
Subject: RE: Policy for Part Time quits

Mike did you have the attachment?

Ryan West
 Regional Operations Manager
 Iowa Workforce Development
 (515) 242-0413 P
 (515) 281-9321 F



[Preview is not available (conversion excluded for this file type).]

From: Wilkinson, Michael [IWD]
Sent: Tuesday, July 16, 2013 2:19 PM
To: Eklund, David [IWD]; West, Ryan [IWD]
Cc: Wahlert, Teresa [IWD]; Olivencia, Nicholas [IWD]
Subject: Policy for Part Time quits

Please share with staff immediately. I will have JoAnn distribute it to UI Division and Appeals Bureau staff.

Message: 319 PT Q Questions for FF

Case Information:

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:01 PM
Item ID: 40860996
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **319 PT Q Questions for FF**

From Lewis, Devon [IWD]

Date
Saturday,
June 08, 2013
7:39 AM

To Hillary, Teresa [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, Bonny [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Walsh, Joseph [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]

Cc

 [319 FF Questions.doc](#) (30 Kb HTML)

These are off the top of my head. I will rearrange these in order of basic to more complex inquiry.

Any other suggestions/comments are appreciated.

Devon

319 “part-time quit” Iowa Admin. Code r. 871-24.27 notes

Part-time vs. short-term employment.

Note the differences between short-term or temporary employment, long-term or permanent employment and part-time hours or full-time hours of employment. Full-time work in short-term employment is ***not*** considered part-time employment.

Questions to distinguish between full- and part-time employment (if the parties disagree):

- Is this similar to claimant’s past full-time or regular employment in the base period history?
 - Was the claimant searching for full-time employment when this job was found?
 - Did the claimant have other employment during the same period or overlapping?
 - Was the job advertised as full- or part-time?
 - Was the claimant told during the interview process that the job would be full- or part-time?
 - How many hours per week (or pay period, or average over a month) was the claimant scheduled to work? What were the shift hours or work hours expectations/agreement?
 - Did the claimant receive benefits (paid vacation, sick days, health and/or life insurance, retirement contributions, etc.)?
 - Was this job intended to be of short duration?
 - Was there a probationary period or trial period of employment? Did the claimant work full- or part-time hours during that period?
 - Do others in this job work full- or part-time?
 - Did the previous job-holder work full- or part-time?
 -
-

Message: RE: Steve Wise's input on PT quits - full-time hours of short-term duration

Case Information:

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:01 PM
Item ID: 40861007
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ RE: Steve Wise's input on PT quits - full-time hours of short-term duration

From Lewis, Devon [IWD] **Date** Tuesday, June 11, 2013 3:13 PM
To Olivencia, Nicholas [IWD]
Cc Walsh, Joseph [IWD]; Hillary, Teresa [IWD]; Wise, Steve [IWD]

Steve's out-of-town for the week. Joe W., Tere and I are available this week by phone.

From: Olivencia, Nicholas [IWD]
Sent: Tuesday, June 11, 2013 2:50 PM
To: Lewis, Devon [IWD]; Wise, Steve [IWD]
Subject: RE: Steve Wise's input on PT quits - full-time hours of short-term duration

Are you two available to chat sometime on this?

From: Lewis, Devon [IWD]
Sent: Friday, June 07, 2013 9:46 AM
To: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]; Bervid, Joseph [IWD]; Wahlert, Teresa [IWD]
Subject: Steve Wise's input on PT quits - full-time hours of short-term duration

Joe and the ALJs have this but thought you'd like to see Steve's perspective, which is consistent with the rest of us.

From: Wise, Steve [IWD]

Sent: Friday, June 07, 2013 8:08 AM

To: Lewis, Devon [IWD]; Walsh, Joseph [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, Bonny [IWD]; Hillary, Teresa [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]

Subject: RE: Tomorrow's Agenda

I won't be at the meeting this afternoon but my 2 cents on the issue of using the part-time quit rule on a job that is clearly full time.

McCarthy involved a claimant working a full-time job and part-time job simultaneously. He quit the part-time job two months before being laid off his full-time job. He hadn't earned enough wages after the part-time quit to requalify when he filed for UI benefits. Supreme Court ruled the layoff from the full-time job was the cause of his unemployment when he applied for UI and allowed the claimant to draw benefits from his full-time employer and removed the wages from the part-time employer from the claim.

Welch involved a claimant who filed for benefits after he was separated from his regular full-time job. After receiving benefits for 5 months, he took a part-time job to supplement his benefits and received partial unemployment benefits. He later quit the part-time job to move out of state. He filed for a second benefit year with both his full time and his part-time employers as base-period employers. Court of Appeals extended the ruling of McCarthy to a voluntarily quit of the part-time job accepted after a separation from a full-time job and allows benefits based wages from the full-time employer and removed the wages from the part-time employer from the claim.

Taylor involved a claimant who filed a claim for benefits after a his separation from full-time work as an asbestos worker. After drawing UI benefits for a period of time, he took a full-time job with an excavating company but quit after 6 days alleging illness, change in contract, and unsafe working conditions and reapplied for UI benefits. The claimant's primary argument was that he should've been allowed to quit the job after working a short trial period without disqualification if he determined the job was unsuitable. As Devon emphasizes in her memo, the Supreme Court rejects this argument and says it's up to the legislature to carve out such an exception. Ultimately, the Court remanded on the good cause issue. But unquestionably, the Iowa Supreme Court held a claimant can't try out a full-time job for a short period of time and then quit without being disqualified (assuming no good cause for the quit)—even when the claimant was drawing benefits from other employers and even though he takes the initiative to get off unemployment to accept job. Every argument found in attached "Part time Quit 319.doc" for not disqualifying a claimant who quits a full-time job lasting less than 4 weeks were explicitly rejected in Taylor v. Iowa Dept. of Job Service.

Message: RE: Steve Wise's input on PT quits - full-time hours of short-term duration

Case Information:

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:01 PM
 Item ID: 40861008
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **RE: Steve Wise's input on PT quits - full-time hours of short-term duration**

From Lewis, Devon [IWD] **Date** Tuesday, June 11, 2013 3:20 PM
To Olivencia, Nicholas [IWD]
Cc Hillary, Teresa [IWD]; Walsh, Joseph [IWD]; Wise, Steve [IWD]

I have hearings in the morning and am off work in the afternoon. I've got an opening at 11 on Friday. I'm not sure about the others.

From: Olivencia, Nicholas [IWD]
Sent: Tuesday, June 11, 2013 3:14 PM
To: Lewis, Devon [IWD]
Subject: RE: Steve Wise's input on PT quits - full-time hours of short-term duration

Great, is there a good time tomorrow?

From: Lewis, Devon [IWD]
Sent: Tuesday, June 11, 2013 3:13 PM
To: Olivencia, Nicholas [IWD]
Cc: Walsh, Joseph [IWD]; Hillary, Teresa [IWD]; Wise, Steve [IWD]
Subject: RE: Steve Wise's input on PT quits - full-time hours of short-term duration

Steve's out-of-town for the week. Joe W., Tere and I are available this week by phone.

From: Olivencia, Nicholas [IWD]

Sent: Tuesday, June 11, 2013 2:50 PM
To: Lewis, Devon [IWD]; Wise, Steve [IWD]
Subject: RE: Steve Wise's input on PT quits - full-time hours of short-term duration

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From: Lewis, Devon [IWD]
Sent: Friday, June 07, 2013 9:46 AM
To: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]; Bervid, Joseph [IWD]; Wahlert, Teresa [IWD]
Subject: Steve Wise's input on PT quits - full-time hours of short-term duration

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From: Wise, Steve [IWD]
Sent: Friday, June 07, 2013 8:08 AM
To: Lewis, Devon [IWD]; Walsh, Joseph [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, Bonny [IWD]; Hillary, Teresa [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]
Subject: RE: Tomorrow's Agenda

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McCarthy involved a claimant working a full-time job and part-time job simultaneously. He quit the part-time job two months before being laid off his full-time job. He hadn't earned enough wages after the part-time quit to requalify when he filed for UI benefits. Supreme Court ruled the layoff from the full-time job was the cause of his unemployment when he applied for UI and allowed the claimant to draw benefits from his full-time employer and removed the wages from the part-time employer from the claim.

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for the quit)—even when the claimant was drawing benefits from other employers and even though he takes the initiative to get off unemployment to accept job. Every argument found in attached “Part time Quit 319.doc” for not disqualifying a claimant who quits a full-time job lasting less than 4 weeks were explicitly rejected in Taylor v. Iowa Dept. of Job Service.

Message: RE: 319 PT Q Questions for FF**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:01 PM
 Item ID: 40861009
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ RE: 319 PT Q Questions for FF

From Lewis, Devon [IWD]

Date
 Tuesday,
 June 11, 2013
 3:37 PM

To Hillary, Teresa [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, Bonny [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Walsh, Joseph [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]

Cc

 **319 FF Questions.doc** (31 Kb HTML)

Some additions and edits. Any other suggestions?

From: Lewis, Devon [IWD]

Sent: Saturday, June 08, 2013 7:39 AM

To: Hillary, Teresa [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, Bonny [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Walsh, Joseph [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]

Subject: 319 PT Q Questions for FF

These are off the top of my head. I will rearrange these in order of basic to more complex inquiry.

Any other suggestions/comments are appreciated.

Dévon



ANDS 319/"part-time quit"/Iowa Admin. Code r. 871-24.27 Notes & Questions

Part-time vs. short-term employment: Note the differences between short-term or temporary employment, long-term or permanent employment and part-time hours or full-time hours of employment. *Full-time work in short-term employment is **not** considered part-time employment.*

Questions to distinguish between full- and part-time employment (if the parties disagree):

- Was the claimant searching for full-time employment when this job was found?
- Was the job advertised as full- or part-time?
- Was the claimant told during the interview/hiring process that the job would be full- or part-time?
- How many hours per week (or pay period, or average over a month) was the claimant scheduled to work? What were the shift hours or work hours expectations/agreement? Did those hours change during the employment?
- Was this job intended to be of short duration? Was there a probationary period or trial period of employment? Did the claimant work full- or part-time hours during that period?
- Did the claimant receive benefits (paid vacation, sick days, health and/or life insurance, retirement contributions, etc.)? Do other employees in this job get the same benefits?
- Do others in this job work full- or part-time? Did the previous job-holder work full- or part-time?
- Did the claimant have other employment during the same or overlapping period? Was that full- or part-time work?
- Is this job similar to claimant's past full-time or regular employment history in the base period?

The Iowa Supreme Court rejected the idea that a person who is receiving unemployment insurance benefits can try out a job and then quit if the person considers the job unsuitable. *Taylor v. Iowa Dep't of Job Serv.*, 362 N.W.2d 534 (Iowa 1985). Taylor, having existing health issues, accepted a full-time job as a jackhammer operator and quit after six days. The Court said the leaving of the full-time, short-term employment as a trial period of employment was without good cause attributable to the employer but the agency should inquire about all other reasons for quitting to determine if any would qualify him.

Message: RE: Tomorrow's Agenda**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:00 PM
 Item ID: 40860989
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ RE: Tomorrow's Agenda

From Wise, Steve [IWD]

Date
 Friday, June
 07, 2013 8:08
 AM

To Lewis, Devon [IWD]; Walsh, Joseph [IWD]; Ackerman, Susan [IWD];
 Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, Bonny
 [IWD]; Hillary, Teresa [IWD]; Mormann, Marlon [IWD]; Nice, Terence
 [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall
 [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]

Cc

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even when the claimant was drawing benefits from other employers and even though he takes the initiative to get off unemployment to accept job. Every argument found in attached "Part time Quit 319.doc" for not disqualifying a claimant who quits a full-time job lasting less than 4 weeks were explicitly rejected in Taylor v. Iowa Dept. of Job Service.

From: Lewis, Devon [IWD]

Sent: Thursday, June 06, 2013 9:55 AM

To: Walsh, Joseph [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, Bonny [IWD]; Hillary, Teresa [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]

Subject: RE: Tomorrow's Agenda

The 319 is from Claims' info. The other info I've compiled. Joe also raised a caution about illegal rulemaking yesterday cautioning against an informal agency policy. The Director agrees and seems to want a 'question of fact' approach. With that in mind, the 319 doc and the following seem to create that informal agency policy.

From: Bervid, Joseph [IWD]

Sent: Tuesday, October 26, 2010 9:55 AM

To: Eklund, David [IWD]; Andre, Michele [IWD]; Oleson, Brice [IWD]; Borgeson, Jill [IWD]; Pearce, Frank [IWD]; Prettyman, Laura [IWD]

Cc: Wilkinson, Michael [IWD]

Subject: Part-time Temporary Quits

It has come to my attention some staff are incorrectly applying the law and policy of this agency with regard to part-time/temporary quits. The case law and policy are that employment for four weeks or less is part-time/temporary in nature and the wages are deleted from the base period claim if requ. wages are not present. For employment in the lag quarter and benefit year we flag to adjudicate the separation when it becomes base period wages. This applies to all voluntary quits for whatever reason and not just to those who quit because the work is not suitable. Part-time temporary is defined as any number of hours including 40 hours or less which is 4 weeks or less in duration.

Please amend the decision in the decision for Marilyn Lloyd of Des Moines, Iowa who was disqualified on a part-time quit to an allowance for voluntary quit of 4 weeks or less, ANDS #319 based upon new evidence.

From: Walsh, Joseph [IWD]

Sent: Thursday, June 06, 2013 9:36 AM

To: Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, Bonny [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]

Subject: Tomorrow's Agenda

Tomorrow's staff meeting is going to be primarily about discussing the *Welch* and *McCarthy* cases and having a dialogue about attempting to more uniformly administer quit provisions. The focus is on the effect of *Welch* in full-time cases. The policy of the agency – going back to Director Eisenhower – has been to apply *Welch* to cases of temporary employment as well, even if that employment may have been full-time. I assume the scope of our discussion will go beyond that issue because I think it would be a short discussion if that is it. It is my impression that the ALJs would unanimously not apply *Welch* to a true full-time quit (the more interesting debate will be about the definition of full-time vs. part-time). The Director has made it clear that there will be no new rules or legislation. She has assured me as well, during the course of yesterday's meeting, that there will be no informal policy directives set which would require an ALJ to decide any case a certain way. She stated in no uncertain terms, "that would be wrong," in yesterday's meeting.

The Director does want to hear our dialogue on this issue. Please review the attached materials. I have attached the "319" Decision and *Welch v. Iowa Department of Employment Services*. It is probably worth reviewing *Taylor* and *McCarthy* as well. Devon has also done some research and she will share her memo to the Director with you directly.

Please also review the following statutes/rules and anything else you feel is appropriate:

Iowa Code § 96.3 (6) defines part-time workers:

- a. As used in this subsection the term "part-time worker" means an individual whose normal work is in an occupation in which the individual's services are not required for the customary scheduled full-time hours prevailing in the establishment in which the individual is employed, or who, owing to personal circumstances, does not customarily work the customary scheduled full-time hours prevailing in the establishment in which the individual is employed.
- b. The director shall prescribe fair and reasonable general rules applicable to part-time workers, for determining their full-time weekly wage, and the total wages in employment by employers required to qualify such workers for benefits. An individual is a part-time worker if a majority of the weeks of work in such individual's base period includes part-time work. Part-time workers are not required to be available for, seek, or accept full-time employment.

Iowa Admin. Code r. 871-24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

We are going to be doing more of this kind of issue discussion in the future. Therefore, I will be asking a couple of you to take the lead in helping me to strategically prioritize which issues which are truly impactful, as well as the "low hanging fruit." If anyone is interested in this assignment, let me know.

There will be a couple of other agenda items as well and I will try to get some type of official looking agenda out to you sometime today (as well as the minutes from last meeting).

Joseph L. Walsh

Chief Administrative Law Judge
Unemployment Insurance Appeals
1000 East Grand Avenue
Des Moines, Iowa 50319
Phone: (515) 281-8119
joseph.walsh@iwd.iowa.gov

Message: RE: Thanks for your leadership in the Welch Quits Discussion**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:02 PM
 Item ID: 40861037
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ RE: Thanks for your leadership in the Welch Quits Discussion

From Wise, Steve [IWD] **Date** Monday, June 24, 2013 9:41 PM
To Lewis, Devon [IWD]; Wise, Debra [IWD]; Mormann, Marlon [IWD]; Donner, Lynette [IWD]
Cc

Not that it makes any difference, but I suggested to Joe that for guidance purposes, a rebuttable presumption could be used. Since it is a rebuttable presumption--a guidance principle not a rule or enforceable policy--it means something that might fall on one side of the line that we establish could be held to be either full time or part time, depending on the facts of the case.

Considering the cases I have heard over the last 26 years, it think that in more cases than not, 32 -33 hours is going to be treated as part-time. So when we establish the number of hours for the presumption, it should be higher than that.

I think that it might be useful to use the Department of Labor Bureau of Labor Statistics as a guidepost.

<http://www.bls.gov/cps/lfcharacteristics.htm#fullpart>

In the DOL view, 1-34 hours is treated as full time and 35 and above is full-time. So we could say that 35 hours and above is presumed to be full time and under 35 is presumed to be part-time, with a recognition that there is play in the joints depending on the circumstances of the case.

From: Lewis, Devon [IWD]
Sent: Monday, June 24, 2013 1:59 PM
To: Wise, Debra [IWD]; Mormann, Marlon [IWD]; Wise, Steve [IWD]; Donner, Lynette [IWD]
Subject: RE: Thanks for your leadership in the Welch Quits Discussion

Or maybe Wednesday – I know what chaos it is after some time off ;-)

From: Wise, Debra [IWD]
Sent: Monday, June 24, 2013 1:56 PM
To: Lewis, Devon [IWD]; Mormann, Marlon [IWD]; Wise, Steve [IWD]; Donner, Lynette [IWD]
Subject: RE: Thanks for your leadership in the Welch Quits Discussion

Ditto – she should be back late tonight and hopefully we can come to a consensus tomorrow.

From: Lewis, Devon [IWD]
Sent: Monday, June 24, 2013 1:46 PM
To: Wise, Debra [IWD]; Mormann, Marlon [IWD]; Wise, Steve [IWD]; Donner, Lynette [IWD]
Subject: RE: Thanks for your leadership in the Welch Quits Discussion

I agree, as I've said from day one of this issue, that the party should not be allowed benefits based on 871-24.27 if the work was intended to be FT even if the C worked less than a FT week before quitting. I also agree that if the agency or legislature wants a trial period of employment, then it should make a rule or amend the statute. When Lynette gets back and chimes in we can see where we are on a consensus.
DML

From: Wise, Debra [IWD]
Sent: Monday, June 24, 2013 8:56 AM
To: Mormann, Marlon [IWD]; Lewis, Devon [IWD]; Wise, Steve [IWD]; Donner, Lynette [IWD]
Subject: RE: Thanks for your leadership in the Welch Quits Discussion

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From: Mormann, Marlon [IWD]
Sent: Monday, June 24, 2013 6:57 AM
To: Lewis, Devon [IWD]; Walsh, Joseph [IWD]; Wise, Steve [IWD]; Wise, Debra [IWD]; Donner, Lynette [IWD]
Cc: Wilkinson, Michael [IWD]; Olivencia, Nicholas [IWD]
Subject: RE: Thanks for your leadership in the Welch Quits Discussion

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Marlon Mormann, Administrative Law Judge
515-265-3512

From: Lewis, Devon [IWD]
Sent: Friday, June 21, 2013 3:01 PM
To: Walsh, Joseph [IWD]; Mormann, Marlon [IWD]; Wise, Steve [IWD]; Wise, Debra [IWD]; Donner, Lynette [IWD]

Cc: Wilkinson, Michael [IWD]; Olivencia, Nicholas [IWD]
Subject: RE: Thanks for your leadership in the Welch Quits Discussion

I stand by my earlier statement that a range of 28 to 32 hours per week triggers additional questions from the list I've shared.

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Sent: Friday, June 21, 2013 2:00 PM
To: Lewis, Devon [IWD]; Mormann, Marlon [IWD]; Wise, Steve [IWD]; Wise, Debra [IWD]; Donner, Lynette [IWD]
Cc: Wilkinson, Michael [IWD]; Olivencia, Nicholas [IWD]
Subject: Thanks for your leadership in the Welch Quits Discussion

Devon, Marlon, Steve, Deb and Lynette

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Message: RE: Thanks for your leadership in the Welch Quits Discussion**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:02 PM
 Item ID: 40861053
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ RE: Thanks for your leadership in the Welch Quits Discussion

From Wise, Steve [IWD] **Date** Wednesday, June 26, 2013 9:07 AM
To Lewis, Devon [IWD]
Cc

I understand you disagree with the outcome on the determination of full time vs. part time, but I think we've accomplished a great deal by getting rid of nonsensical policy of allowing people who quit what they know and understand is a full-time job without good cause to receive benefits under the fiction that the job is part time because it did not last very long. Even Marlon is on board with that now.

From: Mormann, Marlon [IWD]
Sent: Tuesday, June 25, 2013 2:00 PM
To: Lewis, Devon [IWD]; Wise, Steve [IWD]; Wise, Debra [IWD]; Donner, Lynette [IWD]
Subject: RE: Thanks for your leadership in the Welch Quits Discussion

Gosh, Devon, this is not a rule it is a starting point for analysis. I don't understand why you extrapolate this into a rule? Your article indicates if guidance is treated like a rule then it is a rule. We don't control how it is treated. We don't treat such as a rule. Under your analysis we can't provide anything useful. I think we need to be a lot more aggressive. That is an opinion, not a rule.

Marlon Mormann, Administrative Law Judge
515-265-3512

From: Lewis, Devon [IWD]
Sent: Tuesday, June 25, 2013 1:49 PM
To: Mormann, Marlon [IWD]; Wise, Steve [IWD]; Wise, Debra [IWD]; Donner, Lynette [IWD]
Subject: RE: Thanks for your leadership in the Welch Quits Discussion

How is setting out a specific number as a rebuttable presumption of PT employment under the collective directive or guidance of ALJs any different than what Joe Bervid did improperly years ago saying that the rule should be interpreted so that PT is equivalent to four or fewer weeks of FT hours? I don't want our

input to be considered improper because it expands the underlying rule without complying with formal rulemaking procedures. This applies to any guidance on other issues we give to claims or fact-finders. If the Legislature or the Agency wanted a specific rule about what number of hours constitutes PT employment, they would have done so years ago when the Court suggested it. Until then, my position remains that the best we can do is tell FFs to ask pertinent questions if the parties dispute the status. The number of hours the C works may be a factor that prompts further inquiry but is not a definitive marker of FT/PT status. Let's not underestimate FFs when given adequate training and information. In the end, without a rule, it is a judgment call for them as it is for us.

See, <http://www.wateronline.com/Doc/Court-Voids-EPA-Guidance-as-Illegal-Rulemaking-0001>

Devon

From: Mormann, Marlon [IWD]
Sent: Tuesday, June 25, 2013 12:58 PM
To: Lewis, Devon [IWD]; Wise, Steve [IWD]; Wise, Debra [IWD]; Donner, Lynette [IWD]
Subject: RE: Thanks for your leadership in the Welch Quits Discussion

I see both points. But the end user is not that sophisticated. We need a hard number. If DOL uses 34 hours a week for their statistics at least we have a hook to hang our hat. I say that "generally the part time analysis begins at 34 hours with other factors pushing that number up or down". It is a reasonable starting point. I do like 32 hours better as that is one lost day for 95%+ of our workforce. Still, I am willing to concede two hours for the sake of resolution. Please advise.

Marlon Mormann, Administrative Law Judge
515-265-3512

From: Lewis, Devon [IWD]
Sent: Tuesday, June 25, 2013 11:01 AM
To: Wise, Steve [IWD]; Wise, Debra [IWD]; Mormann, Marlon [IWD]; Donner, Lynette [IWD]
Subject: RE: Thanks for your leadership in the Welch Quits Discussion

The DOL uses 34 hours for statistical purposes, not for allowance or denial issues. My concern about the rebuttable presumption approach is that it enters or approaches the realm of informal rulemaking by establishing a bright line number. From what I have seen so far, when agencies use a specific number to define FT or PT employment for eligibility reasons, it is by rule. If we are going to avoid rulemaking, I still suggest we use a range of numbers (28-30 to 32-34?) to trigger further inquiry.

ACA info on this topic:

"As of January 1, 2014, employers will need to know the full-time or parttime status of every employee. As of that date, the employer mandate of the Affordable Care Act (ACA) takes effect."

"The ACA defines a full-time employee as one 'who is employed on average at least 30 hours of service per week.'"

"Internal Revenue Service Notice 2012-58 was initially issued to try to answer that question. It includes a safe-harbor method for determining fulltime

status. If new employees are not reasonably expected to satisfy the fulltime eligibility requirement when they are hired, employers may use a lookback period of 3–12 months to determine each employee’s eligibility. Whichever determination is made, the employees retain their status during a stability period of 6–12 months. Employees who are determined not to be full-time-based on their initial look-back period must be retested. At the end of 2012, the Internal Revenue Service (IRS) issued proposed regulations incorporating Notice 2012-58 and several other notices. Notably, for purposes of determining who is an employee and employer, the IRS adopted the common law standard rather than the definition of employer used in the Fair Labor Standards Act. It also will measure a full-time employee’s service by “hours of service” rather than “hours worked.” The proposed regulation will remain in effect until the IRS issues final regulations or other applicable guidance.”

<http://onlinelibrary.wiley.com/doi/10.1002/ert.21390/pdf>

Devon

From: Wise, Steve [IWD]
Sent: Monday, June 24, 2013 9:41 PM
To: Lewis, Devon [IWD]; Wise, Debra [IWD]; Mormann, Marlon [IWD]; Donner, Lynette [IWD]
Subject: RE: Thanks for your leadership in the Welch Quits Discussion

Not that it makes any difference, but I suggested to Joe that for guidance purposes, a rebuttable presumption could be used. Since it is a rebuttable presumption—a guidance principle not a rule or enforceable policy—it means something that might fall on one side of the line that we establish could be held to be either full time or part time, depending on the facts of the case.

Considering the cases I have heard over the last 26 years, it think that in more cases than not, 32 -33 hours is going to be treated as part-time. So when we establish the number of hours for the presumption, it should be higher than that.

I think that it might be useful to use the Department of Labor Bureau of Labor Statistics as a guidepost.

<http://www.bls.gov/cps/lfcharacteristics.htm#fullpart>

In the DOL view, 1-34 hours is treated as full time and 35 and above is full-time. So we could say that 35 hours and above is presumed to be full time and under 35 is presumed to be part-time, with a recognition that there is play in the joints depending on the circumstances of the case.

From: Lewis, Devon [IWD]
Sent: Monday, June 24, 2013 1:59 PM
To: Wise, Debra [IWD]; Mormann, Marlon [IWD]; Wise, Steve [IWD]; Donner, Lynette [IWD]
Subject: RE: Thanks for your leadership in the Welch Quits Discussion

Or maybe Wednesday – I know what chaos it is after some time off ;-)

From: Wise, Debra [IWD]
Sent: Monday, June 24, 2013 1:56 PM
To: Lewis, Devon [IWD]; Mormann, Marlon [IWD]; Wise, Steve [IWD]; Donner, Lynette [IWD]
Subject: RE: Thanks for your leadership in the Welch Quits Discussion

Ditto – she should be back late tonight and hopefully we can come to a consensus tomorrow.

From: Lewis, Devon [IWD]
Sent: Monday, June 24, 2013 1:46 PM
To: Wise, Debra [IWD]; Mormann, Marlon [IWD]; Wise, Steve [IWD]; Donner, Lynette [IWD]
Subject: RE: Thanks for your leadership in the Welch Quits Discussion

I agree, as I've said from day one of this issue, that the party should not be allowed benefits based on 871-24.27 if the work was intended to be FT even if the C worked less than a FT week before quitting. I also agree that if the agency or legislature wants a trial period of employment, then it should make a rule or amend the statute. When Lynette gets back and chimes in we can see where we are on a consensus.
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Sent: Monday, June 24, 2013 6:57 AM
To: Lewis, Devon [IWD]; Walsh, Joseph [IWD]; Wise, Steve [IWD]; Wise, Debra [IWD]; Donner, Lynette [IWD]
Cc: Wilkinson, Michael [IWD]; Olivencia, Nicholas [IWD]
Subject: RE: Thanks for your leadership in the Welch Quits Discussion

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To: Walsh, Joseph [IWD]; Mormann, Marlon [IWD]; Wise, Steve [IWD]; Wise, Debra [IWD]; Donner, Lynette [IWD]
Cc: Wilkinson, Michael [IWD]; Olivencia, Nicholas [IWD]
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Cc: Wilkinson, Michael [IWD]; Olivencia, Nicholas [IWD]
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Phone: (515) 281-8119
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Message: RE: Discussion or Consensus concerning a consensus as to how many hours equals part time or full tme

Case Information:

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:02 PM
 Item ID: 40861032
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ RE: Discussion or Consensus concerning a consensus as to how many hours equals part time or full tme

From Lewis, Devon [IWD] **Date** Sunday, June 23, 2013 5:57 PM
To Wise, Debra [IWD]; Donner, Lynette [IWD]; Mormann, Marlon [IWD]; Wise, Steve [IWD]
Cc

I'm not hung up on the 28 to 32. That's just been the question starter I've used in the past. There are companies that consider 32 hours FT and use that as a benefit threshold, so I would encourage that to be included. We do need to be careful about establishing thresholds, policies or presumptions so as to avoid improper or de facto rulemaking. That's why I've suggested a range to trigger questions rather than a bright line number. How about 32 to 35 hours per week?

DML

From: Wise, Debra [IWD]
Sent: Saturday, June 22, 2013 9:51 PM
To: Donner, Lynette [IWD]; Lewis, Devon [IWD]; Mormann, Marlon [IWD]; Wise, Steve [IWD]
Cc: Wise, Debra [IWD]
Subject: Discussion or Consensus concerning a consensus as to how many hours equals part time or full tme

First, I don't know if Lynette has access to her email until she returns to Iowa late Monday night, so we may have to wait for her input. Since Joe has asked if we can come to consensus on what number should be used to CREATE a presumption of full time or part time employment, I think our initial discussions should be between the five of us. That way we can freely agree or disagree with one

another.

Recognizing that different businesses have varying definitions of how many hours constitutes full time or part time employment, I believe there really is no concrete number that define ft vs pt. But, I do believe we may be able to agree on a number of hours of work a week that could create a presumption or trigger FF to ask other questions in making a determination of whether a claimant is working full or part time for a specific employer.

While I understand your position Devon, I believe it would be better for the parties if we start with a higher number to define part time. I propose that we state full time amounts to working 36 or more hours a week and part time amounts to working less than 35 hours a week. This higher number of hours per work would trigger FF to ask questions and then based on the employment situation, a determination would be made as to whether a claimant worked full time or part time.

Message: RE: Thanks for your leadership in the Welch Quits Discussion**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:02 PM
 Item ID: 40861034
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

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From Lewis, Devon [IWD] **Date** Monday, June 24, 2013 1:46 PM
To Wise, Debra [IWD]; Mormann, Marlon [IWD];
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Cc

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To: Lewis, Devon [IWD]; Walsh, Joseph [IWD]; Wise, Steve [IWD]; Wise, Debra [IWD]; Donner, Lynette [IWD]

Cc: Wilkinson, Michael [IWD]; Olivencia, Nicholas [IWD]

Subject: RE: Thanks for your leadership in the Welch Quits Discussion

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Message: FW: Thanks for your leadership in the Welch Quits Discussion**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:02 PM
 Item ID: 40861033
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ FW: Thanks for your leadership in the Welch Quits Discussion

From Lewis, Devon [IWD] **Date** Monday, June 24, 2013 1:47 PM
To Hillary, Teresa [IWD]
Cc

This issue will just not die a graceful death!

From: Lewis, Devon [IWD]
Sent: Monday, June 24, 2013 1:46 PM
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Phone: (515) 281-8119
joseph.walsh@iwd.iowa.gov

Message: FW: Discussion or Consensus concerning a consensus as to how many hours equals part time or full tme

Case Information:


Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:02 PM
 Item ID: 40861035
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **FW: Discussion or Consensus concerning a consensus as to how many hours equals part time or full tme**

From Lewis, Devon [IWD] **Date** Monday, June 24, 2013 1:51 PM
To Hillary, Teresa [IWD]
Cc

fyi

From: Lewis, Devon [IWD]
Sent: Sunday, June 23, 2013 5:57 PM
To: Wise, Debra [IWD]; Donner, Lynette [IWD]; Mormann, Marlon [IWD]; Wise, Steve [IWD]
Subject: RE: Discussion or Consensus concerning a consensus as to how many hours equals part time or full tme

I'm not hung up on the 28 to 32. That's just been the question starter I've used in the past. There are companies that consider 32 hours FT and use that as a benefit threshold, so I would encourage that to be included. We do need to be careful about establishing thresholds, policies or presumptions so as to avoid improper or de facto rulemaking. That's why I've suggested a range to trigger questions rather than a bright line number. How about 32 to 35 hours per week?

DML

From: Wise, Debra [IWD]
Sent: Saturday, June 22, 2013 9:51 PM
To: Donner, Lynette [IWD]; Lewis, Devon [IWD]; Mormann, Marlon [IWD]; Wise, Steve [IWD]
Cc: Wise, Debra [IWD]
Subject: Discussion or Consensus concerning a consensus as to how many hours equals part time or

full tme

First, I don't know if Lynette has access to her email until she returns to Iowa late Monday night, so we may have to wait for her input. Since Joe has asked if we can come to consensus on what number should be used to CREATE a presumption of full time or part time employment, I think our initial discussions should be between the five of us. That way we can freely agree or disagree with one another.

Recognizing that different businesses have varying definitions of how many hours constitutes full time or part time employment, I believe there really is no concrete number that define ft vs pt. But, I do believe we may be able to agree on a number of hours of work a week that could create a presumption or trigger FF to ask other questions in making a determination of whether a claimant is working full or part time for a specific employer.

While I understand your position Devon, I believe it would be better for the parties if we start with a higher number to define part time. I propose that we state full time amounts to working 36 or more hours a week and part time amounts to working less than 35 hours a week. This higher number of hours per work would trigger FF to ask questions and then based on the employment situation, a determination would be made as to whether a claimant worked full time or part time.

Message: RE: Thanks for your leadership in the Welch Quits Discussion**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:02 PM
 Item ID: 40861036
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ RE: Thanks for your leadership in the Welch Quits Discussion

From Lewis, Devon [IWD] **Date** Monday, June 24, 2013 1:59 PM
To Wise, Debra [IWD]; Mormann, Marlon [IWD];
 Wise, Steve [IWD]; Donner, Lynette [IWD]
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To: Wise, Debra [IWD]; Mormann, Marlon [IWD]; Wise, Steve [IWD]; Donner, Lynette [IWD]
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Sent: Monday, June 24, 2013 6:57 AM
To: Lewis, Devon [IWD]; Walsh, Joseph [IWD]; Wise, Steve [IWD]; Wise, Debra [IWD]; Donner, Lynette [IWD]
Cc: Wilkinson, Michael [IWD]; Olivencia, Nicholas [IWD]
Subject: RE: Thanks for your leadership in the Welch Quits Discussion

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515-265-3512

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Sent: Friday, June 21, 2013 3:01 PM
To: Walsh, Joseph [IWD]; Mormann, Marlon [IWD]; Wise, Steve [IWD]; Wise, Debra [IWD]; Donner, Lynette [IWD]
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Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:02 PM
 Item ID: 40861038
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **FW: Thanks for your leadership in the Welch Quits Discussion**

From Lewis, Devon [IWD] **Date** Tuesday, June 25, 2013 10:10 AM
To Hillary, Teresa [IWD]
Cc

Doesn't this rebuttable presumption approach get back to informal rulemaking?

From: Wise, Steve [IWD]
Sent: Monday, June 24, 2013 9:41 PM
To: Lewis, Devon [IWD]; Wise, Debra [IWD]; Mormann, Marlon [IWD]; Donner, Lynette [IWD]
Subject: RE: Thanks for your leadership in the Welch Quits Discussion

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Considering the cases I have heard over the last 26 years, it think that in more cases than not, 32 -33 hours is going to be treated as part-time. So when we establish the number of hours for the presumption, it should be higher than that.

I think that it might be useful to use the Department of Labor Bureau of Labor Statistics as a guidepost.

<http://www.bls.gov/cps/lfcharacteristics.htm#fullpart>

In the DOL view, 1-34 hours is treated as full time and 35 and above is full-time. So we could say that 35 hours and above is presumed to be full time and under 35 is presumed to be part-time, with a recognition that there is play in the joints depending on the circumstances of the case.

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Cc: Wilkinson, Michael [IWD]; Olivencia, Nicholas [IWD]
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Case Information:

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:02 PM
Item ID: 40861039
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

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From Lewis, Devon [IWD] **Date** Tuesday, June 25, 2013 11:01 AM
To Wise, Steve [IWD]; Wise, Debra [IWD]; Mormann, Marlon [IWD]; Donner, Lynette [IWD]
Cc

The DOL uses 34 hours for statistical purposes, not for allowance or denial issues. My concern about the rebuttable presumption approach is that it enters or approaches the realm of informal rulemaking by establishing a bright line number. From what I have seen so far, when agencies use a specific number to define FT or PT employment for eligibility reasons, it is by rule. If we are going to avoid rulemaking, I still suggest we use a range of numbers (28-30 to 32-34?) to trigger further inquiry.

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Case Information:

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:02 PM
Item ID: 40861041
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

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Fyi

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Case Information:

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:02 PM
Item ID: 40861044
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

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From Lewis, Devon [IWD] **Date** Tuesday, June 25, 2013 1:05 PM
To Hillary, Teresa [IWD]
Cc

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Case Information:

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:02 PM
Item ID: 40861045
Policy Action: Not Specified

Mark History:

No reviewing has been done

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Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:02 PM
 Item ID: 40861046
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

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Subject: RE: Thanks for your leadership in the Welch Quits Discussion

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Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:02 PM
 Item ID: 40861047
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

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To Hillary, Teresa [IWD]
Cc

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Message: FW: Discussion or Consensus concerning a consensus as to how many hours equals part time or full time

Case Information:

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:02 PM
Item ID: 40861049
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

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Subject: RE: Discussion or Consensus concerning a consensus as to how many hours equals part time or full time

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If I understand correctly that we were to come to a consensus and not necessarily a unanimous agreement, from reading the emails from when I was gone, I believe the above position does articulate the consensus of the group of us.

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32 hours per week triggers part time in my world for a 40 hour per week employee. That is a 20% reduction in earnings per week. That is the point the other considerations factor in. I do not believe that employer's definition of part time carries a lot of weight. It is just another factor.

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hours or less in the first week before quitting may be deemed part time. This is discretionary. Not mandatory, but a judgment call. I personally would lean toward part time in these short term one week employment relationships.

Marlon Mormann, Administrative Law Judge
515-265-3512

From: Lewis, Devon [IWD]
Sent: Friday, June 21, 2013 3:01 PM
To: Walsh, Joseph [IWD]; Mormann, Marlon [IWD]; Wise, Steve [IWD]; Wise, Debra [IWD]; Donner, Lynette [IWD]
Cc: Wilkinson, Michael [IWD]; Olivencia, Nicholas [IWD]
Subject: RE: Thanks for your leadership in the Welch Quits Discussion

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Devon

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Sent: Friday, June 21, 2013 2:00 PM
To: Lewis, Devon [IWD]; Mormann, Marlon [IWD]; Wise, Steve [IWD]; Wise, Debra [IWD]; Donner, Lynette [IWD]
Cc: Wilkinson, Michael [IWD]; Olivencia, Nicholas [IWD]
Subject: Thanks for your leadership in the Welch Quits Discussion

Devon, Marlon, Steve, Deb and Lynette

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Phone: (515) 281-8119
joseph.walsh@iwd.iowa.gov

Message: RE: Thanks for your leadership in the Welch Quits Discussion**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:02 PM
 Item ID: 40861054
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

RE: Thanks for your leadership in the Welch Quits Discussion

From Lewis, Devon [IWD] **Date** Wednesday, June 26, 2013 9:52 AM
To Wise, Steve [IWD]
Cc

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From: Wise, Steve [IWD]
Sent: Wednesday, June 26, 2013 9:07 AM
To: Lewis, Devon [IWD]
Subject: RE: Thanks for your leadership in the Welch Quits Discussion

I understand you disagree with the outcome on the determination of full time vs. part time, but I think we’ve accomplished a great deal by getting rid of nonsensical policy of allowing people who quit what they know and understand is a full-time job without good cause to receive benefits under the fiction that the job is part time because it did not last very long. Even Marlon is on board with that now.

From: Mormann, Marlon [IWD]
Sent: Tuesday, June 25, 2013 2:00 PM
To: Lewis, Devon [IWD]; Wise, Steve [IWD]; Wise, Debra [IWD]; Donner, Lynette [IWD]
Subject: RE: Thanks for your leadership in the Welch Quits Discussion

Gosh, Devon, this is not a rule it is a starting point for analysis. I don’t understand why you extrapolate this into a rule? Your article indicates if guidance is treated like a rule then it is a rule. We don’t control how it is treated. We don’t treat such as a rule. Under your analysis we can’t provide anything useful. I think we need to be a lot more aggressive. That is an opinion, not a rule.

Marlon Mormann, Administrative Law Judge
515-265-3512

From: Lewis, Devon [IWD]
Sent: Tuesday, June 25, 2013 1:49 PM
To: Mormann, Marlon [IWD]; Wise, Steve [IWD]; Wise, Debra [IWD]; Donner, Lynette [IWD]
Subject: RE: Thanks for your leadership in the Welch Quits Discussion

How is setting out a specific number as a rebuttable presumption of PT employment under the collective directive or guidance of ALJs any different than what Joe Bervid did improperly years ago saying that the rule should be interpreted so that PT is equivalent to four or fewer weeks of FT hours? I don’t want our input to be considered improper because it expands the underlying rule without complying with formal rulemaking procedures. This applies to any guidance on other issues we give to claims or fact-finders. If the Legislature or the Agency wanted a specific rule about what number of hours constitutes PT employment, they would have done so years ago when the Court suggested it. Until then, my position remains that the best we can do is tell FFs to ask pertinent questions if the parties dispute the status. The number of hours the C works may be a factor that prompts further inquiry but is not a definitive marker of FT/PT status. Let’s not underestimate FFs when given adequate training and information. In the end, without a rule, it is a judgment call for them as it is for us.

See, <http://www.wateronline.com/Doc/Court-Voids-EPA-Guidance-as-Illegal-Rulemaking-0001>

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From: Mormann, Marlon [IWD]
Sent: Tuesday, June 25, 2013 12:58 PM
To: Lewis, Devon [IWD]; Wise, Steve [IWD]; Wise, Debra [IWD]; Donner, Lynette [IWD]
Subject: RE: Thanks for your leadership in the Welch Quits Discussion

I see both points. But the end user is not that sophisticated. We need a hard number. If DOL uses 34 hours a

week for their statistics at least we have a hook to hang our hat. I say that “generally the part time analysis begins at 34 hours with other factors pushing that number up or down”. It is a reasonable starting point. I do like 32 hours better as that is one lost day for 95%+ of our workforce. Still, I am willing to concede two hours for the sake of resolution. Please advise.

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To: Wise, Steve [IWD]; Wise, Debra [IWD]; Mormann, Marlon [IWD]; Donner, Lynette [IWD]
Subject: RE: Thanks for your leadership in the Welch Quits Discussion

The DOL uses 34 hours for statistical purposes, not for allowance or denial issues. My concern about the rebuttable presumption approach is that it enters or approaches the realm of informal rulemaking by establishing a bright line number. From what I have seen so far, when agencies use a specific number to define FT or PT employment for eligibility reasons, it is by rule. If we are going to avoid rulemaking, I still suggest we use a range of numbers (28-30 to 32-34?) to trigger further inquiry.

ACA info on this topic:

“As of January 1, 2014, employers will need to know the full-time or parttime status of every employee. As of that date, the employer mandate of the Affordable Care Act (ACA) takes effect.”

“The ACA defines a full-time employee as one ‘who is employed on average at least 30 hours of service per week.’”

“Internal Revenue Service Notice 2012-58 was initially issued to try to answer that question. It includes a safe-harbor method for determining fulltime status. If new employees are not reasonably expected to satisfy the fulltime eligibility requirement when they are hired, employers may use a lookback period of 3–12 months to determine each employee’s eligibility. Whichever determination is made, the employees retain their status during a stability period of 6–12 months. Employees who are determined not to be full-time-based on their initial look-back period must be retested. At the end of 2012, the Internal Revenue Service (IRS) issued proposed regulations incorporating Notice 2012-58 and several other notices. Notably, for purposes of determining who is an employee and employer, the IRS adopted the common law standard rather than the definition of employer used in the Fair Labor Standards Act. It also will measure a full-time employee’s service by “hours of service” rather than “hours worked.” The proposed regulation will remain in effect until the IRS issues final regulations or other applicable guidance.”

<http://onlinelibrary.wiley.com/doi/10.1002/ert.21390/pdf>

Devon

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To: Lewis, Devon [IWD]; Wise, Debra [IWD]; Mormann, Marlon [IWD]; Donner, Lynette [IWD]
Subject: RE: Thanks for your leadership in the Welch Quits Discussion

Not that it makes any difference, but I suggested to Joe that for guidance purposes, a rebuttable presumption could be used. Since it is a rebuttable presumption--a guidance principle not a rule or enforceable policy--it means something that might fall on one side of the line that we establish could be held to be either full time or part time, depending on the facts of the case.

Considering the cases I have heard over the last 26 years, I think that in more cases than not, 32 -33 hours is going to be treated as part-time. So when we establish the number of hours for the presumption, it should be higher than that.

I think that it might be useful to use the Department of Labor Bureau of Labor Statistics as a guidepost.

<http://www.bls.gov/cps/lfcharacteristics.htm#fullpart>

In the DOL view, 1-34 hours is treated as full time and 35 and above is full-time. So we could say that 35 hours and above is presumed to be full time and under 35 is presumed to be part-time, with a recognition that there is play in the joints depending on the circumstances of the case.

From: Lewis, Devon [IWD]
Sent: Monday, June 24, 2013 1:59 PM
To: Wise, Debra [IWD]; Mormann, Marlon [IWD]; Wise, Steve [IWD]; Donner, Lynette [IWD]
Subject: RE: Thanks for your leadership in the Welch Quits Discussion

Or maybe Wednesday – I know what chaos it is after some time off ;-)

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To: Lewis, Devon [IWD]; Mormann, Marlon [IWD]; Wise, Steve [IWD]; Donner, Lynette [IWD]
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Ditto – she should be back late tonight and hopefully we can come to a consensus tomorrow.

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Sent: Monday, June 24, 2013 1:46 PM
To: Wise, Debra [IWD]; Mormann, Marlon [IWD]; Wise, Steve [IWD]; Donner, Lynette [IWD]
Subject: RE: Thanks for your leadership in the Welch Quits Discussion

I agree, as I've said from day one of this issue, that the party should not be allowed benefits based on 871-24.27 if the work was intended to be FT even if the C worked less than a FT week before quitting. I also agree that if the agency or legislature wants a trial period of employment, then it should make a rule or amend the statute. When Lynette gets back and chimes in we can see where we are on a consensus.
DML

From: Wise, Debra [IWD]
Sent: Monday, June 24, 2013 8:56 AM
To: Mormann, Marlon [IWD]; Lewis, Devon [IWD]; Wise, Steve [IWD]; Donner, Lynette [IWD]
Subject: RE: Thanks for your leadership in the Welch Quits Discussion

While I do not disagree that 32 hours a week could be the presumption that this is part time employment, I do not agree with your 1-week trial period analysis, which I don't think we were asked to address.

But for the sake of a discussion or clarification of your point – I understand from your perspective that if a person is offered and agrees to work full time, but actually only works 32 hours the first week of employment, you would not disqualify that person. My opinion is that if a person is offered and agrees to work full time and quits because they are not satisfied with the work or for a reason that does not amount to good cause, they are dq even if they work less than 40 hours the first week of work. If the Dept wants a trial period of employment, let them make a rule so everyone knows in advance about any trial period of employment.

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Sent: Monday, June 24, 2013 6:57 AM
To: Lewis, Devon [IWD]; Walsh, Joseph [IWD]; Wise, Steve [IWD]; Wise, Debra [IWD]; Donner, Lynette [IWD]
Cc: Wilkinson, Michael [IWD]; Olivencia, Nicholas [IWD]
Subject: RE: Thanks for your leadership in the Welch Quits Discussion

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Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:02 PM
 Item ID: 40861055
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

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From Lewis, Devon [IWD] **Date** Wednesday, June 26, 2013 9:52 AM
To Hillary, Teresa [IWD]
Cc

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Message: RE: Section 871 IAC 24.10

Case Information:

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:29 PM
 Item ID: 40861792
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **RE: Section 871 IAC 24.10**

From Mormann, Marlon [IWD] **Date** Monday, November 25, 2013 9:19 AM
To Lewis, Devon [IWD]
Cc

 [image001.jpg](#) (3 Kb HTML)  [image002.jpg](#) (3 Kb HTML)  [image003.jpg](#) (2 Kb HTML)
 [image004.png](#) (3 Kb HTML)  [image005.png](#) (3 Kb HTML)  [image006.jpg](#) (2 Kb HTML)
 [image007.jpg](#) (7 Kb HTML)

I would be cautious of referencing the June 25 letter as it indicates the ability to participate by documents without any conditions.

**Marlon Mormann, Administrative Law Judge
515-265-3512**

From: Lewis, Devon [IWD]
Sent: Friday, November 22, 2013 9:08 PM
To: Mormann, Marlon [IWD]
Subject: Fwd: Section 871 IAC 24.10

FYI

Dévon

Begin forwarded message:

From: "Wise, Steve [IWD]" <Steven.Wise@iwd.iowa.gov>

Date: November 22, 2013 at 5:54:16 PM CST
To: "Lewis, Devon [IWD]" <Devon.Lewis@iwd.iowa.gov>
Cc: "Eklund, David [IWD]" <David.Eklund@iwd.iowa.gov>, "Hillary, Teresa [IWD]" <Teresa.Hillary@iwd.iowa.gov>, "Wilkinson, Michael [IWD]" <Michael.Wilkinson@iwd.iowa.gov>, "West, Ryan [IWD]" <Ryan.West@iwd.iowa.gov>, "Boten, Brenda [IWD]" <Brenda.Boten@iwd.iowa.gov>
Subject: RE: Section 871 IAC 24.10

Just noticed that **Participation** is misspelled in the title on the Employer Tip Sheet.

From: Lewis, Devon [IWD]
Sent: Friday, November 22, 2013 5:18 PM
To: [REDACTED]
Cc: Eklund, David [IWD]; Hillary, Teresa [IWD]; Wise, Steve [IWD]; Wilkinson, Michael [IWD]; West, Ryan [IWD]; Boten, Brenda [IWD]
Subject: RE: Section 871 IAC 24.10

[REDACTED],
I apologize for the delay in getting back to you. The answers to your questions are in the order posed.

- No warning letters are issued for lack of fact-finding participation because notice was given to all employers and their representatives on June 25, 2013. I've attached a pdf of that letter for your reference.
- An appeal from any part of an Appeals Bureau ALJ decision would be made to the Employment Appeal Board according to the instructions on the decision.
- IWD does not track how many employers/representatives participate in fact-finding interviews. The issue is addressed on a case-by-case basis if the employer appeals an allowance of benefits from a Claims fact-finding decision.

I'm not certain I understand the next question. The employer's account may be liable for charges if it does not participate in a fact-finding interview. The definition of participation is set out in Iowa Admin. Code r. 871-24.10. See attached copy. The chargeability in this scenario comes after the protest and after the fact-finding decision and arises only upon an ALJ decision reversing a previous allowance of benefits when the employer did not participate in the fact-finding interview. The decision is appealable to the EAB as referenced above.

- This is why it is important for the employer to participate in the fact-finding interview by someone with firsthand knowledge of the reason for the separation. I've attached a "tip sheet" developed for employers on the issue of participation.

If you have any other questions, please contact me.

Devon M. Lewis
Administrative Law Judge
Iowa Workforce Development

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From: Eklund, David [IWD]
Sent: Monday, November 18, 2013 4:17 PM
To: [REDACTED]
Subject: FW: Section 871 IAC 24.10

Good Morning [REDACTED],

I received your inquiry from Connie a week ago. You posed some very good questions. The issue of participation and how it relates to charging of benefits occurs only when a decision that is favorable to the claimant is appealed by the employer and reversed to a denial on appeal.

Based on that fact alone I decided that for you to receive the very best answer to your inquiry, our Appeals bureau should respond to you. I have forwarded your information request to two of IWD's most experienced Administrative Law Judges to formulate a response. They did inform me that due to other commitments they probably would not be able to respond until this week. I should have communicated that back to you. My apologies.

Thank you.
Dave

David Eklund
Regional Operations Manager
UI Benefits Services
Iowa Workforce Development
Ph: 515/281-5792

Cell: 515/229-4482
Fax: 515/281-9033
david.eklund@iwd.iowa.gov



From: [REDACTED]
Sent: Friday, November 15, 2013 12:06 PM
To: Dykstra, Connie [IWD]
Subject: RE: Section 871 IAC 24.10

Hi Connie,

I had emailed you on 11/08/13 and have not heard back from you. I just wanted to take a moment and find out if you were the correct person I should be reaching out to or if you could direct me to someone else on the information requests below?

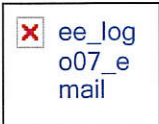
Pursuant to recent legislation relating to Section 252 of the Trade Adjustment Assistance Extension Act, the failure to provide timely or adequate information in our initial response to an unemployment claim may result in loss of appeal rights, penalties and/or a denial of relief of charges.
For more detailed information on Section 252 and its impact, please [CLICK HERE](#).

*******PLEASE NOTE WE WILL BE CLOSED ON THURSDAY 11/28/13 & FRIDAY 11/29/13 FOR THE THANKSGIVING HOLIDAY . ALL CLAIMS DUE ON THESE DAYS WILL BE PROCESSED ON OR BEFORE WEDNESDAY 11/27/13. YOUR IMMEDIATE RESPONSE IS GREATLY APPRECIATED.*******

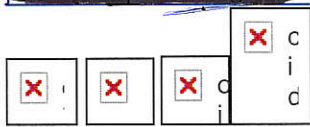
[REDACTED]
[REDACTED]

Business Hours: M-TH 7am-3:00pm (Mountain Time) Friday 7AM-1:00PM

[REDACTED] [REDACTED] [REDACTED]



[REDACTED]



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From: [REDACTED]
Sent: Friday, November 08, 2013 12:21 PM
To: 'connie.dykstra@iwd.iowa.gov'
Subject: Section 871 IAC 24.10

Hi Connie,

I was hoping you could help in assisting us with some questions we have in regards to the newly enforced section 871 IAC 24.10? What we are trying to find out is the following:

When is a warning letter issued and does it go to the vendor or the employer directly? Is a warning letter issued every time we get a decision stating we did not adequately or promptly respond or is after a certain number of occurrences?

If we disagree with only the portion of the Hearing officers (after a hearing has taken place, not just the fact finder) ruling that states we did not adequately or promptly respond, what is the appeal process to appeal that section only?

How many cases to date have we lost due to not participating in the fact finder? We do participate but not by phone, usually written response as we discussed. Is there a way of telling how many tick marks are out there for Employers Edge or our clients?

If we give all the information to the state that has been provided to us by the employer, does the inadequate/untimely response go to the employer or the vendor? How is this determined?

When the employer is charged on an overpayment issue, how do we protest these charges? Is it when the charge statement comes in, when we get the decision, or is there another procedure? Are these overpayment issues protestable? When, how?

In the event the claimant quits, in the fact finder interview the claimant changes the story or brings up something that they did not inform the employer of, how does this affect the employer?

Pursuant to recent legislation relating to Section 252 of the Trade Adjustment Assistance Extension Act, the failure to provide timely or adequate information in our initial response to an unemployment claim may result in loss of appeal rights, penalties and/or a denial of relief of charges.

For more detailed information on Section 252 and its impact, please [CLICK HERE](#).

[REDACTED]
Hearings Coordinator
Business Hours: M-TH 7am-3:00pm (Mountain Time) Friday 7AM-1:00PM
[REDACTED]

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[Redacted]

Westminster, CO 80035

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