

Trade Adjustment Assistance and the 8/16 Week Rule: A Pitfall for Dislocated Workers

National Employment Law Project

Background

Trade Adjustment Assistance (TAA) is a dislocated worker program for individuals whose job losses are certified as trade-related by the U.S. Department of Labor. Training, income support, and reemployment services are available to certified workers under the TAA program. TAA is a federally-funded program, but it is operated by cooperating state agencies that act on behalf of the federal Department of Labor in administering TAA in each state. In many states, local one-stop agencies under the Workforce Investment Act are also significantly involved in delivering services to certified workers under TAA.

After gaining certification for TAA, there are specific steps that must be taken for workers to gain eligibility for income support or training. In particular, because participation in training is required for eligibility for income support under TAA, certified workers are going to lose out on retraining opportunities and income support if eligibility deadlines are not satisfied. This fact sheet discusses a common pitfall facing certified workers: the so-called "8/16 week rule" (the box to the right gives a summary of the rule).

What Is the 8/16 Week Rule?

The 8/16 week rule requires TAA certified workers to enroll in training by the end of the 16th week after his/her layoff from trade-affected employment OR the end of the 8th week after the week of the TAA certification decision covering his/her workplace, WHICHEVER IS LATER. This usually means that workers must complete training enrollment, OR have a training waiver, while still drawing state unemployment benefits.

Note: A single 45-day waiver of the 8/16 week rule is permitted in "extenuating circumstances."

Overview of 8/16 Week Rule

Once certified for TAA, workers must apply for income support (Trade Readjustment Allowances, or TRA) and decide whether or not to participate in retraining. TRA is paid after each individual's state unemployment insurance claim runs out (normally up to 26 weeks). TRA usually provides the same weekly benefit amount as unemployment benefits. However, simply applying for state unemployment benefits and satisfying rules for those benefits will not protect certified workers' rights to retraining with TRA income support under TAA.

The 8/16 week rule (sometimes referred to as the 8/16 week deadline) limits eligibility for TRA benefits. The importance of the 8/16 week rules stems from the connection between training and TRA benefits under program rules. During weeks of "basic TRA," an individual must have a training waiver OR participate in approved training OR have completed training. Basic TRA is paid for up to 26 weeks after state unemployment benefits are exhausted. In contrast, participation in approved training is required for receipt of "additional TRA." Additional TRA is paid for up to 52 weeks following the end of basic TRA. A third option, remedial TRA, provides an additional 26 weeks of benefits for certified workers that require ESL or basic skills training in order to engage in other job training.

Under the 8/16 week rule, to get any weeks of TRA, a certified worker must enroll in training within the cut-off dates set by the 8/16 week deadline, or have a training waiver before the end of the 8/16 week period ends. In summary, there are two actions required of certified workers that will satisfy the 8/16 week rule: (1) enrollment in training, or (2) getting training waivers.

To satisfy the 8/16 week rule through enrollment in training, a TAA certified worker must have enrolled in approved training by no later than the end of the 16th week after the individual's separation from certified employment, or the end of the 8th week after the week of his/her TAA certification decision, whichever date is later. In everyday terms, the 8/16 week rule means that by no later than roughly four months after layoff, or two months after certification, dislocated workers must have identified training programs that fit their needs, enrolled in those programs, and have documentation of this turned in to appropriate state or local officials. This deadline will run out in most cases while the TAA certified worker is still getting state unemployment benefits.

Federal guidelines define "enrollment" as (1) getting approval of a training program from the state agency or local one-stop agency operating the TAA program AND (2) written notification to that cooperating agency by the educational entity or training provider that the worker has been accepted into approved training and that training is scheduled to start within 30 days or less.

A second method of satisfying the 8/16 week rule involves getting a waiver of the training requirement before the time limits set by the rule. A waiver is permitted when TAA training is "not feasible" or "not appropriate." Examples of circumstances in which training waivers are permitted include when approved training will begin more than 30 days in the future or when training funds are not available. Training waivers must be renewed by the state or local agency no more than every 30 days to remain in effect. If a training waiver is provided within the time limits of the 8/16 week rule, then a worker can continue to receive basic TRA benefits for so long as that waiver is effective, or until approved training begins. It is also possible to enroll in TAA training after receiving a training waiver, so long as enrollment takes place prior to the end of basic TRA. For example, if no training is available, a waiver can be provided on that basis within the time limits of the 8/16 week rule. When training later becomes available, the worker can enroll in training at that time and still satisfy the rule. Note: A prior rule—the so-called "210 day rule"—still exists. It requires an application for training within 210 days (basically 7 months) of a certified worker's most recent separation from employment, or within 210 days after the date TAA certification was granted.

To summarize, while a training waiver can permit a certified worker to get basic TRA, no weeks of additional TRA can be paid under a training waiver. Because the consequence of missing its deadline is so serious, complying with the 8/16 week rule by enrolling for training or obtaining a training waiver is key for workers that want to take TAA training while receiving TRA benefits.

Some Pointers on Dealing with the 8/16 Week Rule

Cases involving 8/16 week rule violations arise in many circumstances. Here are some pointers based upon past experiences:

1. **Attend Orientation and Review Agency Materials.** Knowledge of certified workers' rights and responsibilities under TAA is central in helping dislocated individuals reach good decisions about their training and reemployment options. Typically, local one-stop office or state dislocated worker agency staff will orient workers following certification regarding TAA program rules, including

training programs and reemployment options. These TAA orientations, whether in group sessions or in one-on-one meetings, are important in terms of providing certified workers with information regarding TAA rules. Dislocated workers should read and review all agency materials and complete and return all forms in a timely manner.

2. **One 45-Day Waiver for “Extenuating Circumstances Is Permitted.** The 8/16 week rule provides that certified workers can get one waiver of the rule for up to 45 days, if extenuating circumstances exist. The federal law states that state agencies can grant waivers when it “determines that there are extenuating circumstances that justify an extension in the enrollment period.” U.S. Department of Labor guidelines state that “‘Extenuating circumstances’ are situations that could arise when training programs are abruptly cancelled or where the first available enrollment date is past the end of the 60-day period, as well as in cases where a worker suffers injury or illness that adversely affects the worker’s ability to enroll in training.” In our view, extenuating circumstances includes those situations in which cooperating agencies have not properly advised certified workers of filing deadlines. U.S. Department of Labor strongly disagrees, holding that even workers without knowledge of the 8/16 rule, or workers that had a good faith belief that they had done everything required of them, are still ineligible for TRA if they 8/16 week deadline is missed. In these cases, file an appeal.
3. **Count Correctly.** The language of the 8/16 week rule states that enrollment or a waiver must be granted by the “last day of the 8th week after the week” in which certification took place. So, by its terms, the 8/16 week rule starts counting with the week after TAA certification or the week in which separation from certified work took place. In effect, this means the deadline is the end of the 9th week after a TAA certification was issued, or the 16th week after separation from work occurred.
4. **8/16 Week Rule Applies Only to TRA Benefits.** The time limits imposed by the 8/16 week rule apply only to receipt of TRA benefits, not to TAA training or other dislocated worker services. If a worker is able to complete TAA training without TRA income support, he or she can still receive TAA training even if the 8/16 week rule is missed. Some agencies are not aware of this option, or may automatically conclude that workers without TRA income support cannot complete training. There is no legal requirement that a worker receive TRA in order to get training paid for by TAA.
5. **Appeal Unfavorable Decisions.** It is the firm position of U.S. Department of Labor that any worker missing the 8/16 week deadline is simply out of luck. However, not all state appellate decisions have agreed with this position. In cases where 8/16 week rule violations are not due to negligence or fault on the part of TAA certified workers, an appeal under each state’s unemployment law is recommended. The same deadlines and procedures that apply to state unemployment appeals apply to TAA cases.

In our experience, most 8/16 week rule violations happen because of paperwork errors, agency negligence or mistakes, or simple human error. Unfortunately, the rule seems grounded in a viewpoint that affected workers are responsible in every case for missed deadlines, even when the facts clearly show that is not the case. U.S. Department of Labor requires that states strictly enforce 8/16 week rule deadlines, despite the fact that innocent workers are denied TRA as a result. In this enforcement environment, every effort must be taken to ensure that the 8/16 rule is satisfied to the greatest extent possible.