

Appendix H: Unemployment Claim Checklist

Employment Unit
Greater Boston Legal Services

UNEMPLOYMENT CLAIM CHECKLIST (Massachusetts General Laws, c. 151A, §1, et. seq.)

1. Complete intake.

- a. Interview client.
- b. Client retainer and authorization form (including student) signed.
- c. General release for DUA and medical releases signed, if necessary.
- d. Authorization for release of personnel records signed.
- e. Collect documents from client:
 - Any notices or decisions from DUA.
 - Any letters, statements, or warnings from employer.
 - Medical documents, if relevant.
 - Pay stubs, if relevant.
 - Union contract, if applicable.
 - Employment contract, if applicable.
 - Employer rule book or handbook, if applicable.
- f. Ask client whether employer provided DUA-approved information on the right to file for unemployment benefits (if not, can predate if necessary - see G.L. c. 151A, § 62A)
- g. Inform client of job search requirements and worker profiling issues (including certification card requirements).
- h. Inform client of potential availability of Medical Security Plan (call 1-800-908-8801 for application). For maximum coverage, client should apply as soon as possible after receiving notice of eligibility for benefits. Client is also eligible for out-of-pocket expenses if denial of UI is reversed.
- i. Inform client of potential availability of Section 30 training. You should make sure the client is informed of the extended benefits available under Section 30 and the possibility that there *may* be

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available funds to pay for a training program. For more information, refer client to One-Stop Career Center - see www.mass.gov/dua.

- _____ j. Check for eligibility for other programs (e.g., TAFDC (welfare), Foodstamps (see www.gettingfoodstamps.org), Fuel Assistance, etc.). This is especially important if this is the claimant's appeal and she is not receiving UI. If the client has little or no other income, s/he may be eligible for a variety of programs. You may want to speak to a welfare advocate to explore all possibilities of income maximization, including subsidized child care. Contact LARC at 617/371-1234.
- _____ k. Inform client of potential eligibility for earned income credit. (Call 1-800-TAX-1040.)

2. Go to DUA office to review file.

- _____ a. Bring client release form and client's Social Security #.
- _____ b. Get copies and review all documents from DUA file.
- _____ c. Check Form 1062 for timeliness of employer's response.

3. Obtain other documents.

- _____ a. The claimant's personnel records from the employer*
- _____ b. Subpoena documents for hearing, if necessary *
- _____ c. Medical records, if relevant.

* It is a strategic decision whether to seek a copy of the claimant's employment record or subpoena documents to a hearing. On the plus side, this information will provide you with information that may be relevant to the claimant's case. The downside is that such a request tips off the employer that the claimant is likely to be represented at the hearing and the employer may come to the hearing better prepared than s/he may otherwise. Of course, your client may obtain the personnel file.

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- 4. Prepare opening file memorandum.**
- 5. Prepare legal research memorandum.**
- 6. Contact and interview potential witnesses.**
 - ___ a. Prepare affidavits for witness to sign if witness cannot attend hearing.
 - ___ b. Subpoena witness to compel attendance at hearing, if necessary and strategically wise.
- 7. Hearing preparation.**
 - ___ a. Review administrative hearing rules (801 C.M.R. § 1.02).
 - b. Review relevant area of law (including UI Advocacy Guide & updates, Statute, Regs, and Service Rep. Handbook)
 - ___ b. Prepare direct examinations of client and witnesses.¹ The claimant, and claimant's witnesses, should be told that when answering questions by hearing examiner and when under cross-examination, s/he should only answer the question being asked, not to add unnecessary detail, not to guess or answer a question that she/he doesn't understand, and of course, to always tell the truth which is what she/he saw, heard etc. Tell your client that you will make sure that you will get ask him or her questions to get all of the relevant information favorable to her or his case into the record.
 - ___ c. Review hearing procedures with client and witnesses, and role-play direct examination by review examiner and advocate and cross-examination of client by employer.

¹ Please draft and review the direct and cross with your supervisor. This is the heart of the case and requires careful attention. For an excellent resource on developing the theory of your case as well as the direct and cross-examination, see Thomas Mauet, *Trial Techniques*, Aspen Publishers, 7th Ed., 2007.

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- ___ d. Prepare cross examination of employer's potential witnesses.
- ___ e. Prepare proposed findings of facts and rulings of law.
- ___ f. Organize exhibits for offering into evidence (extra copies for opposing party).
- ___ g. Prepare brief closing statement.

8. Hearing.

- ___ a. Bring identification and remind your client to bring identification. Get to hearing early due to delay passing through security. Bring a pad of paper for your client to write notes and request a brief recess if necessary. Be sure and review file one more time to make sure that nothing has been added.
- ___ b. If this is an interpreter-assisted hearing, be sure and come early so that you can review the file with your client and interpreter. You will no doubt already done so in your office, but this is a good way to assess the interpreter's skills, get your client and the interpreter used to each other, and serves to familiarize the interpreter with the issues at the hearing in a way that does not compromise his/her impartiality.

9. Favorable Hearing Decision from DUA. If hearing decision is favorable to claimant, inform the claimant that the employer has 30 days to file an appeal and s/he should contact you immediately if s/he is notified of an appeal. This is also a good time to remind your client of the availability of the Medical Security Plan and Section 30 extended benefits and Section 30 training benefits.

10. Unfavorable Hearing Decision. If the hearing decision is unfavorable file an application for review with the DUA Board of Review within 30 days after the mailing date of an adverse hearing decision.

- ___ a. Review tape of prior hearing.
- ___ b. Prepare memorandum in support of application for review.

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- ___ c. Board of Review rarely grants a new hearing, if so repeat steps 6-8

NOTE: If client was pro se at hearing and comes for assistance with Board review, file appeal on a timely basis and if absolutely necessary see if you will be granted an additional week to send in memorandum in support of review. Best practice is to file memo with the appeal.

11. If the Board of Review denies the application for review within 21 days, you must file a complaint for judicial review in District Court within 30 days after the mailing date of the Board of Review's decision. If the Board of Review does not take action within 21 days of filing, the application for review is deemed denied, and you must file a petition for judicial review within 30 days (51 days from date of filing application for review).

- ___ a. Serve complaint on DUA and employer within 7 days of filing in court by certified mail, return receipt requested. Some courts require the enclosure of a subpoena as well.
- ___ b. Answer due within 28 days of service (Note: DUA will usually be late in filing the hearing transcript – call DUA Legal Department to expedite production of transcript). Send court a copy of the return receipt proving notice with cover letter explaining service under G.L. c. 151A, § 42.
- ___ c. call opposing counsel, get agreed date and mark up for hearing
- ___ d. Prepare for court hearing, including a short brief (aim for 10 pages).
- ___ e. Let Employment Rights Coalition know about your victory. Email Margaret Monsell, mmonsell@mlri.org.