

Appendix H: GBLS Unemployment Insurance Claim Checklist

PREPARATION FOR UNEMPLOYMENT INSURANCE (UI) HEARING & APPEAL: A Greater Boston Legal Services' Checklist Manifesto

1. Initial client meeting.

- a. Interview client.¹
- b. Client retainer signed.
- c. DUA limited or full release signed. Medical releases signed, if necessary.
- d. Authorization for release of personnel records signed.
- e. Collect documents from client:
 - _____ All notices and decisions from DUA.
 - _____ All letters, statements, and warnings from employer.
 - _____ Medical documents, if relevant.
 - _____ Pay stubs, if relevant.
 - _____ Union contract, if applicable.
 - _____ Employment contract, if applicable.
 - _____ Employer policy manual, rule book, guidebook or handbook, if applicable.
- f. Ask client whether employer provided DUA-approved information on the right to file for UI (if not, or other good cause for delay, can predate claim if necessary – see G.L. c. 151A, §62A (g)).
- g. Inform client of job search requirements (including weekly certification requirement and need to keep a work search log of

¹ We suggest at least 3 client interviews for fact-gathering and hearing preparation. Please be sensitive to potential problems of transportation costs (and reimburse or provide Charlie cards). The first interview serves as an introduction and should include open-ended questions to obtain as much information as possible about the place of work and what happened. It is critical that you build trust at this meeting so that the client understands that he/she should tell you everything --- especially "bad facts," and the client has a chance to vent. The second meeting, occurring after you have developed the theory of the case, can be much more focused with more closed questioning and explaining to client what facts are relevant to the case (often clients need to know that this is not a "trial" over the separation but rather a hearing to get UI benefits – therefore, only certain facts will be relevant). The third meeting allows you to do mock direct and have someone else do a mock cross of your client. Some clients will require yet another meeting to feel prepared and confident.

at least 3 contacts a week) and determine whether or not client is claiming benefits each week.

- h. Inform client of potential availability of extended UI while participating in training under G.L. c. 151A, § 30 (the Training Opportunities Program). Be sure to inform the client that up to 26 weeks of extended UI benefits are **available only if client applies within 1st 20 weeks of a new or approved claim** and the possibility that there may be available funds to pay for a training program. For more information about training programs, refer client to MassHire Career Center. The client must timely apply for the extended UI benefits with DUA, unless the 20 week period can be tolled or waived for good cause. If the client was initially denied UI, and the denial is reversed, the 20 weeks starts to run one week after the decision reversing the denial.
- i. For clients without any source of income, check for eligibility for other programs, such as TAFDC cash assistance (welfare), SNAP (see www.gettingfoodstamps.org), Fuel Assistance, and charitable assistance. This is especially important if the claimant is appealing a UI disqualification. You may wish to speak with a welfare advocate to explore all possibilities of income maximization, including subsidized child care. For advice, use the Legal Resource Finder, www.masslrf.org. The LRF provides contact information for legal aid and other programs that may be able to help for free or at a low cost. It will also provide links to legal information and self-help materials.
- j. Inform client of potential eligibility for earned income credit. (Call 1-800-TAX-1040.)
- k. Scan the client's signed DUA release and fax it to the DUA Hearings Department to request a copy of the DUA appeal folder for the hearing. Call the Hearings Department to confirm their receipt of the faxed request.

2. Review Hearing file.

- a. If DUA is not mailing or faxing the appeal folder to you, bring the client release form to DUA Hearings Department to obtain the DUA appeal folder. You always need a picture ID to get into DUA.
- b. Make a copy of the appeal folder, and review it. Next, review all documents (DUA appeal folder, and, if applicable, personnel and medical records) with client - focusing especially on the claimant and employer statements.

- c. Check for timeliness of employer's response to claim (if beyond 10 days without "good cause" employer loses party status and is a witness only).
- d. For clients who are able to establish access to their UI Online account, ask them to log-in during the interview so that you can ascertain all outstanding issues. Emphasize the importance of keeping UI Online access confidential by advising clients to refrain from sharing their SSN and password.
- e. If client has a telephone hearing, the DUA appeal folder should be accessible via their UI Online account, unless they have chosen U.S. Mail for all notifications, in which case DUA will mail the appeal folder to the client in advance of the hearing.

3. Obtain other documents.

- a. The claimant's personnel records from the employer²
- b. Subpoena documents for hearing, if necessary
- c. Medical records, if relevant.

4. Contact and interview potential witnesses.

- a. Prepare affidavits for witness to sign if witness cannot attend hearing; however, in person testimony carries more credibility and is preferred.
- b. Subpoena witness to compel attendance at hearing, if necessary and strategically wise.

5. Hearing preparation.

- a. Review administrative hearing rules (801 C.M.R. 1.02).
- b. Review relevant area of law (including UI Advocacy Guide, Statute, Regulations, Adjudication Handbook, Unemployment Insurance Policy and Performance memos, and all pertinent Board of Review "key decisions.")

² 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 may 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 and has the right to do so. See G.L. c. 149, § 52C.

- c. Develop the theory of your case, the facts that support your theory, and how to address any facts that may not support the theory. Prepare your client to tell his or her story in as concise a manner as possible, with a laser focus on those facts that are relevant in light of the UI statutory requirements. Simply put, your client's story must explain why she no longer works for the employer and must demonstrate why, under Massachusetts UI law, the separation qualifies your client for UI benefits.
- d. Prepare direct examinations of your witnesses, including your client.³ Advise your witnesses to: 1) answer only the question being asked; 2) refrain from providing unnecessary details; 3) refrain from guessing; 4) refrain from answering a question not understood; 5) attest to what the witness directly observed and heard; and 6) to always tell the truth. Assure your client that you will elicit all of the relevant information favorable to the client's case through your direct questioning of the client and the client's witnesses.
- e. Review hearing procedures with client and witnesses, and role-play direct examination by review examiner and advocate and cross-examination of client and witnesses by employer.
- f. Prepare cross-examination of employer's potential witnesses⁴.
- g. Prepare proposed findings of facts and rulings of law and include, where possible, key decisions of the Board.
- h. Review appeal folder. Organize your proposed exhibits. Bring 3 copies of each proposed exhibit to the hearing – one to submit, one for yourself and one for opposing party.
- i. Prepare brief closing statement - no more than a couple of minutes.

³ Take sufficient time to think through and draft the direct and cross. Your client's direct 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 and Trials, Aspen Publishers, 10th Ed., 2017.

⁴ Do not ask an employer witness a question unless you know what their answer will be. Do not rely on employer witnesses to win your case. Employer witnesses may not recall events with the same clarity or detail as your client and may be compelled to support the employer's view of the case to keep their job.

6. Hearing.

- a. Bring picture identification and remind your client to bring a picture ID to in-person hearings, otherwise you will not be let into the building. Get to hearing at least 30 minutes early due to delay passing through security. If there is a long line, announce to the guards that you are present for a hearing and head to the security desk to check-in. Note: you can be defaulted if you are 10 minutes late! Bring a pad of paper for your client to write notes and request a brief recess if necessary. Review the DUA appeal folder one more time at DUA before the hearing to make sure that nothing has been removed or added.
- b. If this is an interpreter-assisted hearing, be sure and arrive early so that you can review the file with your client and interpreter. This is a good way to assess the interpreter's skills, get your client and the interpreter comfortable with each other, and serves to familiarize the interpreter with the issues at the hearing in a way that does not compromise her impartiality.

7. 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 that the claimant should contact you immediately if notified of an appeal. Remind your client of the availability of extended UI training benefits and the 20 week application deadline for submitting a completed application to DUA. The 20 week clock starts running once the claimant becomes a recipient of UI.

8. 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, or the date of such decision if email notification is chosen. The DUA Review Examiner's decision provides the appeal form needed.

- a. Listen to CD of prior hearing (free for legal services clients), and review Hearing Appeal Results and all hearing exhibits.
- b. Prepare memorandum of law in support of application for review and submit with the appeal request, or within five business days of the request, with prior Board permission. The UI Guide is full of helpful Board decisions and the Board webpage posts the most recent decisions available. Keep the memo short and to the point.
- c. Board of Review will review the hearing CD and all exhibits and analyze the review examiner's decision. The Board rarely grants

a new hearing, but if so repeat steps 6 – 8.

9. Appeal to the District Court.

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 of the mailing date on the Board of Review's decision or the date of the decision where email notification is chosen. 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 complaint for judicial review in the District Court within 30 days (51 days from date of filing the application for review with the Board of 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 is due within 28 days of service, a statutory requirement. DUA files the complete administrative appeal record, including a transcript of the hearing and all hearing exhibits, in lieu of an Answer. Corporate employers must be represented by counsel in court. Most employers depend on DUA to defend BOR decisions favorable to them. Send court a copy of the return receipt proving service with cover letter explaining service under G.L. c. 151A, § 42.
- c. Call opposing DUA counsel, get agreed date and mark up for hearing giving notice to both DUA and employer (or employer's attorney, if attorney participated below or if attorney has noticed appearance), if the court has not earlier set a date for oral argument.
- d. If employer appeals, DUA will usually defend the Board's decision awarding your client UI. However, it is helpful to your client if you enter an appearance as well and work with the DUA Lawyer assigned to the case. Be sure to file your answer within the 28 day period required by statute.
- e. Prepare for court hearing, including a short brief, ideally no more than 10 pages long. Depending on the case, you may want to reach out to the DUA counsel assigned to the case to ascertain the possibility of a favorable settlement that includes a reversal or remand for a new hearing; a remand for a hearing to elicit additional testimony from witnesses; or a remand to the review examiner to make specific additional findings based on the existing record.

10. Let Us Know

Please let Brian Reichart, Mass Law Reform Institute know about the outcome of your case at the Board or in Court. If the decision is a Board decision, send a redacted copy of the decision. Email Brian at breichart@mlri.org.

Thank You!