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1200 VOLUNTARY LEAVING

1201 INTRODUCTION TO SEPARATIONS

When the reason for leaving work is at issue you must also determine whether one of the *exceptions* to the voluntary quit disqualification is applicable. The burden is on the employee to show that he or she left work for "good cause" or that the leaving was involuntary so that the claimant is unemployed through no fault of his own. Inability to obtain a statement from an employer does not eliminate the burden of proof which falls on the claimant in cases of voluntary or involuntary leaving. In all cases, a thorough fact-finding statement must be obtained from the claimant.

Generally, employers for whom the claimant worked during the most recent eight weeks of work are interested parties to the claim for UI benefits. These employers may protest the claimant's eligibility for benefits. An interested party employer must be an employer with whom there was an employer-employee relationship. Therefore, self-employment, employment not covered by M. G. L. Chapter 151A such as services performed for a husband or wife in an individual proprietorship or partnership business, jury duty, any type of training but not including on-the-job, volunteer work (including VISTA and the Peace Corps), work-study employment, etc., can not be considered interested party employment nor *can it be considered as new work for the purpose of satisfying a disqualification imposed pursuant to §25 (e)*.

Note: Non-subject employment (e.g., service performed for a religious organization such as the Salvation Army, or service performed for an out-of-state employer) may be considered as an interested party employer and may be used to satisfy a disqualification pursuant to §25(e).

1202 STATUTE

§25(e)(1)

"No waiting period shall be allowed and no benefits shall be paid to an individual pursuant to this chapter....

(e) For the period of unemployment next ensuing and until the individual has had at least eight weeks of work and in each of said weeks has earned an amount equivalent to or in excess of the individual's weekly benefit amount after the individual has left work (1) voluntarily unless the employee establishes by substantial and credible evidence that he had good cause for leaving attributable to the employing unit or its agent...

No disqualification shall be imposed if the individual establishes to the satisfaction of the commissioner that the reason for the individual's discharge was due to circumstances resulting from domestic violence, including the individual's need to address the physical, psychological and legal effects of domestic violence.

No disqualification shall be imposed, if such individual establishes to the satisfaction of the Commissioner that he left his employment in good faith to accept new employment on a permanent full-time basis, and that he became separated from such new employment for good cause attributable to the new employing unit. An individual shall not be disqualified pursuant to the provisions of this subsection from receiving benefits by reason of leaving his work pursuant to the terms of a pension or retirement program requiring retirement from the employment notwithstanding his prior assent, direct or indirect, to the establishment of such program. An individual shall not be disqualified from receiving benefits pursuant to the provisions of this subsection, if such individual establishes to the satisfaction of the Commissioner that his reasons for leaving were for such an urgent, compelling and necessitous nature as to make his separation involuntary.

An individual shall not be disqualified pursuant to the provisions of this subsection from receiving benefits by reason of leaving work to enter training approved pursuant to §236(a)(1) of the Trade Act of 1974, provided the work left is not suitable employment, as defined in this paragraph. For purposes of the this paragraph, the term "suitable employment" means work of a substantially equal or higher skill than the individual's past adversely affected employment and wages for such work at not less than eighty percent of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974.

An individual shall not be disqualified pursuant to the provisions of this subsection, from receiving benefits if it is established to the satisfaction of the Commissioner that the reason for leaving work and that such individual became separated from employment due to sexual, racial, or other unreasonable harassment where the employer, its supervisory personnel or agents knew or should have known of such harassment.

For the purposes of this paragraph, the term "sexual harassment" shall mean sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (a) submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; (b) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance; or (c) such advances, requests or conduct have the purpose or effect of creating an intimidating, hostile, humiliating or sexually offensive work environment. The department shall promulgate regulations necessary to carry out the provisions of this paragraph.

An individual shall not be disqualified from receiving benefits under this clause if the individual establishes to the satisfaction of the commissioner that the reason for the individual's leaving work was due to domestic violence, including:

- (1) the individual's reasonable fear of future domestic violence at or on route to or from the individual's place of employment;
- (2) the individual's need to relocate to another geographic area in order to avoid future domestic violence;
- (3) the individual's need to address the physical, psychological and legal effects of domestic violence;
- (4) the individual's need to leave employment as a condition of receiving services or shelter from an agency which provides support services or shelter to victims of domestic violence;
- (5) any other respect in which domestic violence causes the individual to reasonably believe that termination of employment is necessary for the future safety of the individual or the individual's family.

A temporary employee of a temporary help firm shall be deemed to have voluntarily quit employment if the employee does not contact the temporary help firm for reassignment before filing for benefits and the unemployment benefits may be denied for failure to do so. Failure to contact the temporary help firm shall not be deemed a voluntary quitting unless the claimant has been advised of the obligation in writing to contact the firm upon completion of an assignment.

For the purposes of this paragraph, "temporary help firm" shall mean a firm that hires its own employees and assigns them to clients to support or supplement the client's workforce in work situations such as employee absences, temporary skill shortages, seasonal workloads and special assignments and projects. "Temporary employee" shall mean an employee assigned to work for the clients of a temporary help firm.

An individual in partial unemployment who leaves work from other than the most recent base period employer while receiving benefits pursuant to this chapter shall not be disqualified pursuant to the provisions of this subsection from receiving benefits, if such individual establishes to the satisfaction of the Commissioner that the reason for leaving was to enter training for which the individual has received the Commissioner's approval pursuant to Section 30.

Notwithstanding the provisions of this subsection, no waiting period shall be allowed and no benefits shall be paid to an individual pursuant to this chapter for the period of unemployment next ensuing and until the individual has had at least eight weeks of work and in each of said weeks has earned an amount equivalent to or in excess of the individual's weekly benefit amount after having left work to accompany or join one's spouse or another person at a new locality."

1203 PRINCIPLES

The Law prohibits the payment of unemployment insurance benefits to persons who leave their jobs **voluntarily** unless:

- there is 'good cause' attributable to the employer;
- a mandatory retirement program has been put into effect;
- there is an urgent, compelling and necessitous reason for leaving; or
- in certain circumstances, the claimant has left work to enter §30 or TRA approved training; or
- **the claimant left work in order to protect him/herself of his/her family from domestic violence or abuse.**

In these cases, although it *appears* that an individual left his or her employment willingly, the reality is that other factors contributed to or led to the resignation – usually in spite of the claimant's efforts to continue working. The Law treats these cases as an involuntary separation, and therefore provides for the payment of benefits, assuming the individual meets all other eligibility requirements pursuant to other sections, notably the availability, capability and active work search requirements of §24(b).

In **cases of leaving due to urgent, compelling and necessitous reasons**, the claimant must have made a good-faith effort to **preserve** the employer-employee relationship by either requesting a leave of absence, a job re-assignment, or exploring other alternatives to leaving, unless it is established that such attempts would have been futile.

Even when the reason for leaving is involuntary, failure to make a good-faith effort to maintain employment before quitting means that the claimant left without good cause attributable to the employing unit. If however, the claimant presents a valid reason for failing to, for example, request a leave of absence, then a disqualification for leaving the job may not apply. A valid reason may include a statement from the claimant that he or she did not know that a leave was available, that the employer had a published policy of never granting leaves or that a leave of absence would not have resolved the underlying problem.

For example, if an employer covered by the Family and Medical Leave Act (FMLA) or the Massachusetts Maternity Leave Act (MMLA) fails to comply with its duty to notify employees of their right to family/medical or maternity leave under the law, and the claimant is thus unaware that a leave would have been available, then this breach of duty will constitute a valid reason for an employee's failure to request a leave of absence and may constitute a valid reason for an employee's failure to give notice of a family, medical or maternity condition that would necessitate a leave.

In addition, no disqualification shall be imposed if the claimant establishes that the reason for the claimant's separation from employment was due to circumstances resulting from domestic violence, including the need to address the physical, psychological and legal effects of domestic violence.

1204 DEFINITIONS

(A) Voluntarily

The word "voluntarily" as used in §25(e)(1), is a term that must be read in light of the statutory purpose of providing compensation for those who are unemployed through no fault of their own. To determine whether an employee left work "voluntarily" for purposes of §25(e)(1), the inquiry must focus on whether the individual brought his unemployment on himself. The use of the word "voluntarily" indicates that an individual willingly and with free choice decided to leave his or her employment, and did not have a compelling personal, medical, or work-related reason to justify such leaving. For example, although a claimant might wish to travel, become self-employed, or return to school, leaving work for any of these reasons is voluntary and disqualifying. By contrast, a claimant, who leaves work for any urgent, compelling and necessitous reason such as, for example, those that might have qualified him or her for a leave pursuant to the Family and Medical Leave Act or the Massachusetts Maternity Leave Act (e.g., due to serious medical condition; the need to care for a seriously ill spouse, child or parent; care for a new born, adopted or foster child) will be determined to have left work involuntarily and to be eligible for benefits provided a request for leave was denied, leave was not available or the claimant was not aware that a leave was available and thus did not request a leave or absence.

(B) Without Good Cause Attributable to the Employing Unit

An individual may leave work voluntarily and still qualify for benefits when the reason for leaving involves "good cause attributable to the employing unit or its agent." This means that the *employing unit* **created** a *compelling reason for leaving*. The burden of proof with respect to good cause for leaving work rests with the claimant. Examples include failure to correct hazardous working conditions or equipment, a transfer to unsuitable work, or an unfair and unilateral change in the employment contract (wages, hours, etc.) **In most cases, excluding some situations involving sexual, racial or other unreasonable harassment,** the claimant must make all reasonable and appropriate efforts to have the matter resolved prior to leaving. If a claimant quits, without first giving the employer an opportunity to resolve the situation, he or she has left work voluntarily without good cause attributable to the employing unit and is disqualified from receiving benefits.

(C) Involuntarily

In order to determine if an individual left his or her work "involuntarily" it must be shown that the individual reasonably believed that he had no choice but to do otherwise, or because the leaving was for an urgent, compelling and necessitous reason. The standard used to determine whether a leaving will be considered involuntary is whether or not there is substantial evidence to show that an individual reasonably believed that a sufficiently compelling circumstance or situation existed to render a separation from work involuntary. Some situations may be beyond the control of both the individual and the employer such as declining health, union rules, or in limited circumstances, lack of transportation provided by another. Such situations may also include **those that might have qualified him or her for a leave pursuant to the Family and Medical Leave Act or the Massachusetts Maternity Leave Act** In these cases, the separation should be treated as involuntary if the claimant had no choice but to leave, or reasonably believed he or she had no choice but to leave.

(D) Urgent, Compelling, and Necessitous

This language describes overwhelming reasons for leaving work, such as leaving work to care for an ill family member, to attend to unexpected immediate problems with existing child care arrangements, to move to another area with a spouse or another person due to health reasons, or to recover from an ailment. It is important to remember that even in these cases: (1) the claimant must request a leave of absence when appropriate and attempt to maintain the employment relationship before resigning unless the claimant was unaware that a leave of absence may have been available, was unaware that he or she would have been eligible for a leave of absence or the employer had a history of denying requests for a leave of absence and such a request would have been futile (2) although the claimant may not be subject to disqualification pursuant to §25(e)(1), the urgent, compelling and necessitous circumstances that triggered the separation might also indicate that the claimant is not capable, available or actively seeking work as required by §24(b).

Note that a request for a leave of absence may also be futile because the situation would not be ameliorated with the granting of a leave.

The terms “urgent, compelling and necessitous” includes, but is not limited to, those circumstances that would have qualified the claimant for a leave granted pursuant to the Family and Medical leave Act or the Massachusetts Maternity Leave Act, such as a serious medical condition; the need to care for a seriously ill spouse, child or parent; child birth or the need to care for a new born, adopted or foster child. Because such circumstances are urgent, compelling and necessitous, a claimant who leaves work due to such circumstances shall not be disqualified pursuant to §25(e)(1) unless a leave of absence was available to the claimant, the claimant was aware that a leave was available and failed without good cause to request such a leave.

Note: If you determine that a claimant has left his or her job involuntarily for urgent, compelling, and necessitous reasons, the charges against the employer's account will be removed if the employer has protested the claimant's eligibility on Form 1062 in a timely manner and supplied all requested wage information. Notify the employer by attaching the appropriate portion of §14(d)(3) to the Form 124, Notice to Employer of Approved Claim. Form 1348 may be used for this purpose but should be sent to contributory employers only.

(E) Reasonable Belief

If a claimant reasonably believed that he or she had good cause for leaving work, you must determine the basis for such belief through probative inquiries. For example, even though a claimant may not have been specifically informed of an impending layoff, he or she may have had sufficient objective reason to believe that such layoff was imminent. Such leaving is voluntary with good cause attributable to the employing unit. A claimant may also have had reasonable belief that certain job conditions adversely affected him or her with the result that the leaving is considered involuntary. You must always ascertain the claimant's motivation for leaving work through questioning so that you clearly understand and document the reason for a particular separation.

If you determine that a claimant left his or her job because of a "belief" that good cause for leaving existed, you must then inquire into the "reasonableness" of the belief. As in all voluntary leaving cases, the burden of establishing the reasonableness of the belief rests on the claimant. The claimant must provide substantial and credible evidence of a causal connection between the belief and the resulting separation. The reasonableness of the claimant's belief and the causal connection to the separation from employment should be the focus of fact-finding. It need not be established that the belief was correct.

(F) Substantial and Credible Evidence

Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion. The evidence must be the kind of evidence which reasonable persons are accustomed to rely on in the conduct of serious affairs. *Credible* evidence is that which is worthy of belief when all the relevant factors with respect to a particular person or issue are taken into account. To be credible, evidence should be probable in view of the transaction that it describes or to which it relates, so as to make it easily believable. Examples of such evidence may include written or oral statements by the employer and claimant, medical evidence or copies of workplace rules concerning leaves of absence.

1205 FACT FINDING

You should ask the following questions depending on the circumstances of the case under consideration:

(A) Voluntary or Involuntary?

Why did you leave work?

- Did you have any other choice apart from leaving your employment?
- Did union or retirement rules mandate your leaving?
- Was there a compelling personal reason for leaving? Can you substantiate this?
- Did you leave work due to a compelling family or medical reason?
- What was the nature of the family or medical reason?
- Did the family or medical situation make it impossible for you to continue to satisfy your work duties?
- Can you document the family or medical reason that made you leave work?
- What reason for leaving work did you give to your employer?
- Did you make the nature of the family or medical reason clear to your employer?
- Did you ask your employer for a leave of absence in order to deal with the family or medical situation?
- Did the employer deny your request for a leave of absence?
- At the time you left work, did you know what your employer's family/medical leave policy was?
- Did your employer notify employees of their right to family/medical leave either by means of posters, an employee handbook, or by other means?
- Did you leave work to give birth to a child or adopt a child?
- Did your employer post its maternity leave policy somewhere in the workplace?
- If leave was available, did you request a leave of absence? How long a leave did you request?
- Did the employer deny your request?

(B) With or Without Good Cause?

Why did you leave work?

- What was the sequence of events leading to the separation?
- What did you understand to be the terms of your employment contract?
- What is your regular work?
- What could your employer have done to remedy the matter?
- Did you try to work out a solution to the problem with your employer before leaving?
- Can you substantiate this?
- What did you do to try to work out this problem?
- Who did you talk to about your problem?
- **If you did not talk to your employer before leaving, what was the reason?**
- Did you exhaust union grievance procedures?
- Do you know whether your employer has a policy of granting/refusing leaves of absence?
- What did you tell your employer about your reason for leaving work?

1206 CIRCUMSTANCES AND POLICIES**1207 ATTENDANCE AT SCHOOL OR TRAINING COURSE****(A) Return to School - Work Available**

While work is still available, a claimant leaves his or her job to enter or return to school. This leaving is considered voluntary regardless of whether the claimant had a prior agreement with the employer concerning the termination date.

Form 3720 Explanation:

At the time you left your job to (enter) (return to) school, work was still available to you. Such leaving is voluntary and without good cause attributable to the employing unit and you are disqualified pursuant to the above-cited section of the Law.

(B) Return to School - No Work Available

A claimant agrees to an employer's request, when hired, to work only until a specified date, and then leaves on schedule to return to school. If work was not available to the claimant after the specified date, he or she will not be disqualified pursuant to §25(e)(1) because if there is no work, there is no issue of leaving work. If the claimant accepts employment that, at the time of hire, is available indefinitely, informing the employer at the time of hire that he or she will only be able to work until school resumes, the claimant's subsequent leaving is voluntary even though work might no longer be available because the employer has made arrangements to replace the employee in accordance with the claimant's specified availability. In any cases of leaving to return to school, the claimant may be disqualified pursuant to §24(b) if the claimant is no longer available for work.

Form 124 Explanation:

The claimant was hired to work until (date). Because there was no work available to the claimant after (the date), the leaving was for good cause attributable to the employer and is not subject to disqualification pursuant to the above-cited section of the Law.

(C) Cooperative Students

"Cooperative students" enrolled in cooperative education programs as defined in §6(k) of the Law and who leave work to return to school on an agreed-upon date, do so voluntarily whether or not work was available, and do not qualify for benefits. In effect, the student is a party to the agreement between the school and the employer and has thereby voluntarily limited his or her term of employment.

Form 3720 Explanation:

Your employment ended in accordance with an agreement between (name of school) and your employer. Such separation is considered voluntary and without good cause attributable to your employer. Therefore you do not qualify for benefits pursuant to the above-cited section of the Law.

(D) Section 30 Training

M. G. L. chapter 151A, §25(e) allows for voluntary leaving from other than the most recent base period employer without disqualification for claimants in partial unemployment if the purpose for the departure was to participate in Section 30-approved training. The following policies apply only to those claimants who were enrolled and attending a course of training approved pursuant to Section 30 of the Law. In addition, this section pertains only to those claimants who were employed between academic terms or years.

In addition to the criteria noted above, several other factors must be considered when adjudicating these issues: the suitability of the claimant's employment, the actual circumstances of the separation, the timing of the claimant's leaving, and the potential duration of the employment. Examine these issues as follows:

Was work still available to the claimant? If the claimant is hired between academic terms or years for a definite period and completes the assignment, then there is no separation issue and the claimant is eligible to resume receiving benefits. If work is still available at the time of leaving, then approval or denial of the claim will depend on the suitability of the work on a permanent, full-time basis. This must be considered not only in terms of the various criteria typically used when evaluating the suitability of work [See 1100: Suitable Work] but also *in relation to the training that the claimant is pursuing*.

Was the work suitable in relation to the course of training being pursued by the claimant? If a claimant who is already enrolled in a Section 30-approved training program accepts employment between academic years or terms in an occupation that has no relationship to the training being pursued, he or she is deemed to be employed in work that is unsuitable on a permanent basis. However, work in a training related occupation is deemed to be suitable work and such a leaving should be adjudicated in accordance with policies described elsewhere in the *Voluntary Leaving* section.

Was the claimant's leaving voluntary and for the purpose of returning to training? If a claimant, enrolled in a Section 30 training program, obtains work between academic years and leaves for reasons other than an imminent return to training, or if such a claimant is discharged from work, then the claim will be adjudicated in accordance with policies described elsewhere in the *Voluntary Leaving* or *Misconduct* sections of the Service Representatives Handbook. Leaving more than two weeks prior to the commencement of classes must be for circumstances of an urgent, compelling and necessitous nature beyond the control of the claimant.

A claimant who is determined to be in *unsuitable* work as described above and to have left work not more than two weeks prior to the commencement of classes in order to return to a second academic year or term of Section 30-approved training shall have his or her claim approved.

If, after consideration of all of the criteria noted above, you determine that the claim should be approved, the following explanation shall be used:

Form 124 Explanation:

The claimant accepted employment during a break between (years/terms) of training. Since the claimant is enrolled in a previously approved training course and (his/her) work as a(n) (occupation) has no significant relationship to the training or occupational goals of the claimant, the work is deemed to be unsuitable. Therefore, the claimant's leaving of work in order to complete (his/her) training is not subject to disqualification.

If you determine that the work was suitable, that the claimant should not have left work to return to training, and is therefore subject to disqualification, then use the following explanation:

Form 3720 Explanation:

You were able to obtain employment as a(n) (occupation) during a break between (years/terms) of training. Since such employment was in the same occupation for which you have been approved for training, it was not necessary for you to return to school in order to realize employment in this occupation. Therefore, your leaving of work is determined to be voluntarily, without good cause and subject to disqualification.

1208 DISCHARGE OR LEAVING**(A) Discharge Prior to Effective Date of Resignation**

A claimant gave the employer notice that he or she would be leaving work in the near future. As a result of this notice the claimant was fired prior to the effective date of the resignation.

1. If you establish that *the reason for the resignation would have been considered voluntary and without good cause attributable to the employer*, the claimant should be disqualified for benefits on the date the resignation would have been effective. If otherwise eligible, the claim should be approved for the period prior to the effective date of resignation.

Form 3720 Explanation:

You notified your employer that you were leaving work on (date) because (reason) and as a result you were terminated on (date). Leaving work for this reason is voluntary and without good cause attributable to the employing unit. The disqualification commences on (date).

Note: If the employer protested timely, charges will be removed effective the date of the resignation, and the employer will receive a copy of Form 3720 as well as Form 124.

Form 124 Explanation:

You terminated the claimant's employment prior to the date on which his or her resignation was to take effect. Such leaving is not voluntary. Therefore, he or she is not subject to disqualification pursuant to the above-cited section of the Law for the period during which he or she wanted to continue working.

2. If you establish that the reason for the resignation would have been considered involuntary, **for example, due to family-related responsibilities or a serious medical condition**, or for good cause attributable to the employer, the claimant will not be disqualified pursuant to §25(e)(1).

Form 124 Explanation:

You terminated the claimant's employment after he or she gave notice of his or her intention to resign at a later date because (reason). Since the claimant's reason is one which would constitute (an involuntary leaving) (a voluntary leaving with good cause attributable to the employing unit) he or she is not subject to disqualification pursuant to the above-cited section of the Law.

(B) Separation from Work – Continued Employment

The claimant informs his employer that he intends to leave his employment for a reason that would not entitle him to unemployment benefits. For example, the claimant may wish to retire, seek other work or take time-off for personal reasons that are not urgent, compelling or necessitous in nature. The employer offers the claimant an opportunity to continue employment for a finite period of time beyond the claimant's originally agreed separation date. The claimant agrees to leave at the later date and leaves at the end of the extended period of employment. Such leaving is considered voluntary and without good cause attributable to the employing unit.

Form 3720 Explanation:

You notified your employer that you were leaving work on (date) because (reason). You accepted an offer to continue work for a finite period beyond your specified date of leaving. Your subsequent leaving of work is determined to be voluntary and without good cause attributable to the employing unit.

(C) Failure to Exercise Right to Bump

A claimant is employed under a union contract that gives him or her the right to "bump" another person with less seniority in the event of a layoff. He or she chooses to take a layoff (or remain laid off) rather than exercise this right.

1. If you establish that had the claimant failed to exercise his rights, and the alternative work would not involve either a significant reduction in pay (i.e., 15 percent or more), or unsuitable work you should disqualify the claimant.

Form 3720 Explanation:

You chose to take a layoff rather than exercise your right under union contract. Such leaving is voluntary and without good cause attributable to your employer. Therefore, the claimant is subject to disqualification pursuant to the above-cited section of the Law.

2. If you establish that the alternative work would not be suitable because of working conditions or substantially reduced wages (i.e., 15 percent or more) the claimant would not be subject to disqualification pursuant to §25(e)(1).

Form 124 Explanation:

The claimant refused to accept work that was available to him or her in another department. This work constitutes a substantial change in the employment relationship because (reason). The claimant's leaving is for good cause attributable to the employing unit. Therefore, the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

(D) Failure to Return from Leave

At the end of a leave of absence, a claimant fails to return to work, and is discharged from employment.

1. If you establish that the claimant failed to return to work for a reason that would constitute an involuntary leaving of work or a leaving with good cause attributable to the employing unit *and* the claimant was unable to get an extension of the leave of absence (if appropriate), he or she will not be subject to disqualification pursuant to §25(e)(1), although he or she may not meet the requirements of §24(b).

Form 124 Explanation:

The claimant did not return to work following a leave of absence because (reason). Consequently, his or her employment was terminated. Leaving work under these circumstances is (involuntary) (voluntary with good cause attributable to the employing unit). Therefore, the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

2. If you determine that the claimant's failure to return to work was a voluntary leaving without good cause attributable to the employer, he or she will be disqualified.

Form 3720 Explanation:

You failed to return to work following the expiration of a leave of absence because (reason). Consequently, you lost your employment. It is determined that your reason for leaving was voluntary without good cause attributable to the employing unit and you are disqualified pursuant to the above-cited section of the Law.

(E) Layoff by Choice

When given a choice by management of remaining at work or accepting a layoff due to a general reduction in work force, a claimant who agrees to be laid off is not subject to disqualification. This is because an employer's decision to lay off a certain number of people and acceptance of an employee's offer to leave constitutes the first and last step in the termination process.

Form 124 Explanation:

The claimant chose to accept a layoff when the employer announced a reduction in force due to economic conditions. Since the employer was not compelled to accept the claimant's offer, the claimant is determined to be laid off for lack of work and not subject to disqualification.

(F) Leaving in Anticipation of Discharge

A claimant leaves work believing that his or her discharge or layoff is imminent.

1. If you establish that the claimant's separation was *not* imminent and that his or her belief was not reasonable, then the claimant is subject to disqualification.

Form 3720 Explanation:

You left your job although you had (not been notified) (no reasonable belief) that you were about to be (laid off) (discharged). Under these circumstances, leaving work is voluntary and without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

2. If the claimant *was* notified of his or her imminent separation (not involving misconduct) by a representative of management, or had good reason to believe that work would have been available for only a brief period (usually a week or less), the claimant is not subject to disqualification pursuant to §25(e)(1).

Form 124 Explanation:

The claimant was notified that he or she was to be terminated on (date). Because no work was available to the claimant after this date, his or her leaving is for good cause attributable to the employing unit. Therefore, the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

Form 3720 Explanation:

Because work was still available to you during the period from (date) to (date) you were not in unemployment and are disqualified pursuant to the above-cited section of the Law.

Note: The claimant may be disqualified pursuant to §29(a) and 1(r) for the period during which work was still available. If the employer protested timely, he will receive a copy of Form 3720 as well as Form 124.

(G) Loss of License Required for Work

A claimant's work requires a driving or professional license (motor vehicle, electrician, plumber, real estate, insurance, etc.). He or she is discharged after losing the license due to an alleged violation of the terms or conditions of the license such as those involving traffic laws or other rules and regulations required to retain the license.

1. If you establish that the claimant *is* at fault based on the facts available with respect to the loss of the license, he or she is disqualified because an employee who causes the statutory impediment that bars his employment, has left his employment voluntarily within the meaning of §25(e)(1) for reasons attributable, not to his employer, but to his own actions or failure to act.

Form 3720 Explanation:

Because your job duties require a (type of) license, the loss of the license involving fault on your part resulted in your separation from work. Separation under these circumstances is considered voluntary and without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

2. On the other hand, if the loss of license was *not due to fault on the claimant's part* (e.g., failing eyesight, license suspension pending accident investigation), he or she is not subject to disqualification pursuant to this section.

Form 124 Explanation:

The claimant lost his or her employment because of the loss of a (type of) license required in his or her work. Although the claimant was without fault in the loss, you had no other work for him or her. Separation under these circumstances is considered involuntary and not subject to disqualification pursuant to the above-cited section of the Law.

(H) Loss of License for Failure to Take a Breathalyzer

A claimant's work requires a driver's license. He or she is stopped for a driving violation, equipment defect, or a roadblock and after a field sobriety test, is arrested for driving under the influence of alcohol. During the booking procedures he is asked to take a breathalyzer test which he or she refuses. He or she is advised that such refusal will result in an automatic license suspension for 120 days. The claimant leaves work because the employer has no other work for the claimant.

Separation under these circumstances is deemed to be a voluntary leaving without good cause attributable to the employing unit. Therefore, the claimant is disqualified pursuant to the above-cited section of the Law.

Form 3720 Explanation:

Because your job duties require a driving license, the loss of such license due to your refusal to take a breathalyzer test resulted in your separation from work. Separation under these circumstances is subject to disqualification pursuant to the above-cited section of the Law.

(I) Limitation on Length of Employment - Union Rule

A union rule that limits the length of employment causes a claimant to become unemployed. He or she may be a union member or simply working under a union permit.

If you establish that the claimant had little or no choice in complying with the rule, do not impose a disqualification.

Form 124 Explanation:

The claimant left his or her work when he or she was required to do so in order to comply with a union rule. Separation under these circumstances is involuntary and not subject to disqualification pursuant to the above-cited section of the Law.

(J) No Response to Recall - Union Contract

A claimant employed under a union contract fails to return to work when recalled. The refusal of recall is without good cause attributable to the employer, and the claimant consequently lost his or her employment. The claimant is subject to disqualification, effective on the date of the recall.

Form 3720 Explanation:

You failed to return to work when recalled by your employer because (reason). In accordance with the union contract, such failure resulted in your termination. Separation under these circumstances is voluntary and without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

(K) No Response to Recall - No Union Contract

A non-union member who has been laid off fails to return to work when recalled. If you establish that: (1) at the time of layoff, a definite or approximate date of recall had been given; or (2) the layoff was a seasonal or customary one and the claimant had returned to work following a similar layoff period in the past, then the claimant is disqualified, effective as of the date of the recall.

Form 3720 Explanation:

You failed to return to work after a (seasonal) (customary) layoff because (reason). Such failure resulted in your permanent separation. Under these circumstances, separation is voluntary and without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

Note: If the facts are such that the claimant is not disqualified pursuant to §25(e)(1), he or she may be subject to disqualification pursuant to 25(c) [See 1100: Suitable Work].

(L) No Response to Recall - Notice Not Received

A claimant fails to respond to a recall notice and is discharged. However the claimant alleges that he or she never received the notice. To be considered a legitimate recall pursuant to the terms of this paragraph, the recall must be made in accordance with a union contract or an approximate or definite date of recall must be given to the claimant at the time of layoff or the layoff must be a seasonal or customary one.

1. If the employer sends the notice to the claimant's address of record and the claimant no longer lives there, the claimant is disqualified for not responding to the recall because it is his or her responsibility to keep the employer informed of the proper address.

Form 3720 Explanation:

You failed to keep your employer informed of your proper address. As a result, you did not receive a notice of recall and were discharged. Separation under these circumstances is voluntary and without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

2. When the employer sends the recall notice to the proper address and it is not returned by the Postal Service, there is a presumption that the claimant received it. However, if the claimant can submit satisfactory evidence to the contrary, for example, previous notification to the Postal Service regarding undelivered mail, or a credible detailed statement about the problems with mail delivery, then the presumption is rebutted and you cannot assume delivery.

Form 3720 Explanation:

You failed to respond to a notice of recall by your employer, and such failure resulted in your loss of employment. Under these circumstances, separation is voluntary and without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

3. If the employer gives the notice of recall by telephone or in person, you need to establish that the notice was given *directly* to the claimant. If the information was given to a family member or co-worker and never passed on to the claimant, then the claimant is not subject to disqualification for failure to respond, unless the claimant instructed the employer to leave a message with a member of his or her family and this had been done in the past.

Form 124 Explanation:

The claimant was not directly notified that work was available to him or her. Therefore, the claimant's failure to return to work is not voluntary and he or she is not subject to disqualification pursuant to the above-cited section of the Law.

Note: The employer must notify the local office in accordance with §38(c) when the claimant fails to return to work. However, this notice (via an employer charge protest, letter or telephone) does not constitute a "protest" for adjudication purposes. It is usually necessary to reopen the claim effective the week in which the claimant's status changed due to the recall, and to send the employer either Form 1074 or ES-931A.

1209 LEAVES OF ABSENCES**(A) Leave Requested - Medical or Personal Reasons**

A claimant unable or unwilling to work because of medical or personal reasons, may request a leave of absence or accept a leave offered to him. During the leave, he is not in unemployment within the meaning of §29(a) and 1(r). The status of a claimant on a leave of absence may change. An individual who is on a leave of absence because he or she cannot do his or her regular work but can do other work, may at some point no longer be able to work at all. Also, an individual who is unable to work at all may become able to work and find that there is no work available to him or her at that time. Although the claimant may still be retained on a leave of absence by the employer, his or her status has changed and he or she would be considered to be *separated due to lack of work* at the point when he or she reapplied for work. However, the mere fact that work is no longer available is not sufficient for a change of status to occur unless the employing unit has permanently closed.

For example, a claimant requests a leave of absence from January 1 to August 30, of the same year, and files a claim in July during a temporary plant shut-down. Unless he or she has reapplied for work, he or she would still be considered to be on a leave of absence. Issue a disqualification citing §29(a) and 1(r) of the Law.

Form 3720 Explanation:

You are on a leave of absence granted by your employer. Therefore, you are not in unemployment and are disqualified pursuant to the above-cited sections of the Law.

(B) Leave Imposed - Other Suitable Work Not Available

Although unable to perform his or her regular duties because of health reasons, a claimant is willing and able to do other suitable work for the employing unit. However, the employer cannot or will not offer other work and requires the claimant to take a leave of absence. By virtue of this imposed leave of absence, the claimant is unemployed within the meaning of §29(a) and 1(r). Issue a notice of claim approval citing §29(a) and 1(r).

Form 124 Explanation:

The claimant was required to take a leave of absence. Therefore, he or she is in unemployment and not subject to disqualification pursuant to the above-cited sections of the Law.

Note: You must establish that all individuals who might be determined eligible under these circumstances also meet the provisions of §24(b) concerning capability and availability for work.

(C) No Work Available After Leave

A claimant on a leave of absence reapplies for work, only to find that no work is available. Although the employer extends the leave of absence, the claimant is considered to be separated due to lack of work effective on the date he or she applied for work. However, the mere fact that work is no longer available (unless the employing unit has permanently closed) is not enough to trigger a change in status unless the claimant has actually reapplied for work.

(D) On Leave Only to Protect Benefits or Seniority

A claimant who is separated from work for reasons not involving misconduct and is also placed on a leave of absence to protect insurance benefits, seniority rights, or tenure is unemployed within the meaning of §29(a) and 1(r). Issue a notice of claim approval citing §29(a) and 1(r).

Form 124 Explanation:

Because there was no work available for the claimant after (date) he or she is in unemployment and not subject to disqualification pursuant to the above-cited sections of the Law.

(E) Leave for Domestic Circumstances

A claimant is granted a leave of absence to care for minor children or for a member of the family who is ill. Under these circumstances, no final separation from work has occurred, and the claimant is not eligible pursuant to §29(a) and 1(r) while on leave. Issue a disqualification citing §29(a) and 1(r) of the Law.

Form 3720 Explanation:

You are on a leave of absence granted to you at your request. Therefore, you are not in unemployment and are disqualified pursuant to the above-cited sections of the Law.

(F) Discharged During Implied Leave

A claimant remains away from work due to injury, illness or other reason. He or she gave proper notice of the reason for the absence in accordance with the employer's requirements, and understood that by doing so, he or she was on a leave of absence until physically able to return to work. Subsequently, while the claimant is still unable to work, or upon his or her return to work, the employer notifies the claimant that he or she has been laid off or replaced. Separation under these circumstances is not subject to disqualification.

Form 124 Explanation:

You notified the claimant (while he or she was absent from work) (upon his or her return to work after a period of absence) that he or she had been (laid off) because of (reason for absence). It has been established that the absence was necessary. Therefore, the claimant is not disqualified pursuant to the above-cited section of the Law.

1210 DISCIPLINARY ACTION**(A) Failure to Return to Work After Disciplinary Suspension**

Without good cause, a claimant fails to return to work following a period of suspension for disciplinary reasons and loses his or her job. Separation under these circumstances is voluntary and without good cause attributable to the employing unit pursuant to §25(e)(1) of the Law.

Form 3720 Explanation:

You failed without good cause to return to work following a period of disciplinary suspension, and such failure resulted in your loss of employment. Separation under these circumstances is voluntary and without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

(B) Quit Rather than Accept Disciplinary Suspension

A claimant quits his or her job rather than accept a disciplinary suspension for a violation of an employer's rule within the meaning of §25(f). If the suspension would have been disqualifying pursuant to §25(f) of the Law, his or her leaving is without good cause pursuant to §25(e)(1) of the Law.

Form 3720 Explanation:

You left your work rather than accept a suspension for violation of an employer rule. Under these circumstances, separation is voluntary and without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

(C) Non-Disqualifying Circumstances

If the suspension that causes the claimant to quit does not meet the standards detailed in the section dealing with disciplinary suspensions, then the claimant's leaving is for good cause attributable to the employing unit pursuant to §25(e)(1) of the Law.

Form 124 Explanation:

The claimant left work rather than accept a suspension. The circumstances of the suspension were such that the claimant's leaving is for good cause attributable to the employing unit. Therefore, the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

1211 TRANSPORTATION AND TRAVEL**(A) Beyond Commuting Distance - Claimant Moves**

A claimant leaves his or her job to move to an area beyond commuting distance from his or her former employment. If you establish that the claimant did not have an urgent compelling and necessitous reason for moving out of the area, the leaving is considered voluntary and the claimant is disqualified.

Note: If the claimant moved beyond commuting distance for an urgent, compelling and necessitous reason, treat this as an involuntary leaving.

Form 3720 Explanation:

You left your work to move to an area beyond commuting distance from your job, although you were not compelled to do so. Leaving work under these circumstances is voluntary, therefore, you are disqualified pursuant to the above-cited section of the Law.

(B) Beyond Commuting Distance - Employer Moves

The employing unit moves to a location beyond commuting distance from the claimant's home. Although given the opportunity to remain employed, the claimant leaves his or her job. He or she is not disqualified pursuant to §25(e)(1).

Form 124 Explanation:

The claimant's separation from work was due to the removal of your (plant, offices, etc.) from (old location) to (new location), which is beyond commuting distance from his or her home. Under these circumstances, the claimant's leaving is for good cause attributable to the employing unit. Therefore, the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

(C) Commuting Expenses

A claimant's employing unit moves (or a claimant is transferred) to a location beyond commuting distance. He or she accepts the job or continues to work for a fair and reasonable trial period and subsequently leaves work because he or she spends excessive time or money commuting to the new location. Separation under these circumstances is not subject to disqualification.

Form 124 Explanation:

After a fair and reasonable trial period, the claimant left his or her employment because commuting (time and/or expense) to your new location was excessive. The claimant's leaving is for good cause attributable to the employing unit. Therefore, the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

(D) Beyond Commuting Distance – Urgent Living Difficulties

A claimant takes a job beyond commuting distance from his or her home, and after a reasonable trial period leaves, citing such reasons as excessive living expenses, the inability to obtain suitable living quarters, or urgent, compelling, and necessitous personal or family reasons. Leaving work under these circumstances is considered involuntary and not subject to disqualification.

Form 124 Explanation:

The claimant left his or her work because of (reason). Therefore, the claimant's leaving is considered to be involuntary and not subject to disqualification pursuant to the above-cited section of the Law.

Note: If a contributory employer has protested timely on Form 1062 and provided all requested wage information, notify the employer that charges will be relieved by attaching the appropriate portion of §14(d)(3) (Form 1348) to Form 124.

(E) Within Commuting Distance – Time and Expense Excessive

The employing unit moves to another location within commuting distance of the claimant's home. Although given the opportunity to remain employed, the claimant leaves his or her job.

1. If you establish that the work involves a substantial increase in transportation costs, or traveling difficulties, the leaving is not subject to disqualification.

Form 124 Explanation:

The claimant left his or her work because of increased transportation costs or traveling difficulties resulting from the move of your (type of employing unit) from (old location) to (new location). Under these circumstances, leaving work is for good cause attributable to the employing unit. Therefore, the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

2. If, after considering the expense, time, and difficulty of transportation to the new location, you determine that the claimant did *not* have a valid reason for refusing to continue work, disqualify the claimant.

Form 3720 Explanation:

You left your work when your employer moved to (new location), although work was still available to you and you had suitable transportation to the new location. Leaving work under these circumstances is voluntary and without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

(F) Within Commuting Distance - Time and Expense Known at Time of Hire

A claimant takes a job within commuting distance of his or her home with full knowledge of the travel time and expense involved. After a period of employment, he or she leaves because of dissatisfaction with the amount of time or money spent traveling to and from the job. Because the travel conditions existed at the time of hire, the claimant is disqualified.

Form 3720 Explanation:

You left your work because of dissatisfaction with the (time spent in) (expense of) commuting to work, although you were aware of this when you accepted the work. Since the work is suitable, leaving work under these circumstances is voluntary and without good cause attributable to the employing unit and you are disqualified pursuant to the above-cited section of the Law.

(G) Transportation No Longer Available - Claimant Attempts to Continue Employment Relationship

A claimant left work when her car, which she needed for transportation, broke down and she was unable to have it repaired immediately. Due to claimant's shift of evening hours, public transportation was not available, nor were attempts to secure rides with co-workers successful. Prior to leaving, the claimant informed her employer of her transportation problem but the employer was not able to accommodate her request for a temporary shift change or leave of absence. Since the claimant was unable to continue working without transportation and she exhausted all reasonable means of preserving her employment, her leaving is for compelling reasons and not subject to disqualification pursuant to §25(e)(1) of the Law.

Note: If a contributory employer has protested timely on Form 1062 and provided all requested wage information, notify the employer that charges will be relieved by attaching the appropriate portion of §14(d)(3) (Form 1348) to the Form 0124.

Form 124 Explanation:

The claimant left work due to a transportation problem even though he/she made all reasonable attempts to rectify the situation. Such leaving is for urgent, compelling, and necessitous reasons and therefore the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

(H) Transportation No Longer Available - Claimant Makes No Attempt to Continue Employment Relationship

A claimant left work when his car, which he needed for transportation, became inoperable (e.g., theft, damage, accident, or breakdown). The claimant made no attempt to continue to work by using available public transportation, traveling with co-workers, or in the alternative, informing his employer of a need for a leave of absence to rectify the situation. The claimant's leaving is not involuntary and is therefore subject to disqualification pursuant to §25(e)(1) of the Law.

Form 3720 Explanation:

You left work due to a transportation problem. Since you did not avail yourself of alternative means of transportation, or request a leave to rectify the problem, your leaving is determined to be voluntary and without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

(I) Transportation Dependent on Another Person - Claimant Attempts to Continue Employment Relationship

A claimant relies on another individual to furnish transportation to the job. Subsequently, this transportation becomes unavailable. No other public or private transportation is available. Because the claimant lacks transportation to work and has been unsuccessful in making other arrangements, his or her leaving is considered involuntary and not subject to disqualification.

Form 124 Explanation:

The claimant was required to leave his or her work when the transportation provided by another was no longer available. Because he or she was dependent on this particular means of transportation, and no other transportation was available, his or her leaving is considered involuntary and not subject to disqualification pursuant to the above-cited section of the Law.

Note: If a contributory employer has protested the claimant's eligibility on Form 1062 in a timely manner and provided all requested wage information, notify the employer that charges will be relieved by attaching the appropriate portion of §14(d)(3) (Form 1348) to the Form 124.

Form 3720 Explanation:

You left your work because the car which you used for transportation to work is no longer available. Because you could have made alternative arrangements to prepare for the potential loss of this means of transportation, you left work voluntarily and without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

(J) Transportation Dependent on Another Person

A claimant accepts work knowing that he or she will be dependent on another individual to furnish transportation to the job. Subsequently, this transportation becomes unavailable. No other public or private transportation is available. Because the claimant lacks transportation to work his or her leaving is considered involuntary and not subject to disqualification.

Form 124 Explanation:

The claimant was required to leave his or her work when the transportation provided by another was no longer available. Because he or she was dependent with the employer's knowledge on this particular means of transportation, and no other transportation was available his or her leaving is considered involuntary and not subject to disqualification pursuant to the above-cited section of the Law.

Note: If a contributory employer has protested the claimant's eligibility on Form 1062 in a timely manner, and provided all requested wage information notify the employer that charges will be relieved by attaching the appropriate portion of §14(d)(3) (Form 1348) to the Form 124.

(K) Hours Changed

A claimant's schedule of hours or shift is changed by his or her employer. The claimant makes a good – faith effort to secure alternative transportation but cannot obtain suitable transportation (public or private) for the new hours and he or she leaves the job. The claimant is not subject to disqualification pursuant to §25(e)(1).

Form 124 Explanation:

The claimant left his or her work when you changed his or her schedule of working hours or shift from ___ to ___. Because he or she is now unable to obtain transportation, voluntarily leaving work under these circumstances is for good cause attributable to the employing unit. Therefore, the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

1212 DOMESTIC CIRCUMSTANCES AND OTHER PERSONAL REASONS**(A) No Compelling Reason to Leave Work**

Without requesting a leave of absence (or if denied a leave of absence), a claimant leaves work because of some non-compelling reason such as a desire to travel, or take an extended vacation. Leaving work under these circumstances is voluntary and subject to disqualification.

Form 3720 Explanation:

You left your work (without requesting a leave of absence) (when a leave of absence was denied) for non-compelling personal reasons. Under these circumstances, your leaving is voluntary and without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

(B) Compelling Reason - No Request for Leave of Absence

A claimant leaves work for urgent, compelling and necessitous domestic circumstances, such as childcare or care of an ill family member. Prior to leaving, the claimant did not request a leave of absence and has failed to provide good cause for not requesting the leave. The leaving is considered voluntary, because the claimant had an obligation to attempt to preserve his or her job by requesting a leave of absence.

If the claimant presents a valid reason for failing to request a leave of absence, then a disqualification for leaving the job may not apply. A valid reason could include a statement from the claimant that he or she did not know that a leave was available or that the employer had a published policy of never granting leaves or knew that attempts to request a leave would be futile.

Form 3720 Explanation:

You left your work without requesting a leave of absence to (take care of your children) (care for your ___ who is ill) (other reason). You have not given a valid reason for failing to request a leave of absence in order to preserve your employment. Under such circumstances, your leaving is voluntary and without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

(C) Compelling Reason - Leave of Absence Denied

After a leave was requested and subsequently denied, a claimant leaves work to care for children or for an ill member of the family. You establish that the reason is truly urgent, compelling, and necessitous, and that the claimant took the appropriate steps to secure a leave of absence from his or her employer. The denied leave of absence amounts to a final termination of employment. Do not disqualify the claimant pursuant to §25(e)(1) because the leaving was for an urgent, compelling and necessitous reason.

Form 124 Explanation:

The claimant left work due to _____ when a request for a leave of absence was denied. Leaving under these circumstances is for urgent compelling and necessitous reason(s). Therefore, the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

(D) Moving with Spouse or Another Person

A claimant who leaves his or her job to accompany or join a spouse or other person to a new location for non-health related reasons, must be denied unemployment benefits. Any claimant who leaves his or her job to accompany or join a spouse or another person at a new locality for career or job related reasons, economic reasons, maintenance of the family unit, or due to personal preference, will be determined to have left his or her job voluntarily without good cause attributable to the employing unit and will be subject to disqualification pursuant to §25(e)(1).

A claimant may not establish that leaving to accompany or join a spouse or another person to a new location, in and of itself, constitutes a leaving of such urgent, compelling and necessitous reason as to make the leaving involuntary.

Form 3720 Explanation:

You left work to relocate with or join (your spouse) (another person) to/in (location) for reasons relating to a new job. Leaving work under these circumstances is voluntary without good cause attributable to the employing unit and is subject to disqualification pursuant to the above-cited section of the Law.

(E) Moving with Spouse or Another Person for Health or Other Reasons

Statutory language is relevant and reads, in part... "An individual shall not be disqualified from receiving benefits pursuant to the provisions of this subsection, if such individual establishes to the satisfaction of the Commissioner that his reasons for leaving were for such an urgent, compelling and necessitous nature as to make his leaving involuntary...."

There are instances where the reason for the relocation may be urgent, compelling, and necessitous. This situation might involve leaving work because a move is necessary for the health of a claimant's spouse or another person, it may be necessary for the claimant to move with a family member to escape the threat of domestic or gang violence or to avoid homelessness.

In situations involving health issues, you must carefully question claimants who leave work to move with a spouse or another person to ascertain the existence of a health issue and the reason why the particular location was chosen. If the relocation was in fact due to a career move, economic reasons, or personal preference, the relocation will be considered a voluntary leave without good cause attributable to the employing unit.

All fact finding should be conducted in accordance with the following guidelines and definitions.

To establish a separation caused by the health of a spouse or another person, the claimant must have complied with all of the following conditions:

The claimant substantiated the cause of leaving work due to a health condition concerning his or her spouse, non-marital partner, dependent child, or blood relative for whom the claimant is principally responsible, with a written medical statement issued by a licensed practicing physician if so requested by the employer, prior to the date of separation from employment or within a reasonable period thereafter;

The claimant provided DUA with a copy of a written medical statement issued by a licensed practicing physician, if so requested. If you obtain confirmation from an employer of the submission of such a medical statement, a copy to DUA will not be required. If no medical statement was requested by or provided to the employer the claimant must submit such medical statement to DUA in order to establish that the leaving was for urgent and compelling reasons.

As in all voluntary leaving cases, the claimant must have made an attempt to preserve the employer/employee relationship prior to leaving. You must explore the feasibility and availability of a leave of absence. If such a leave could have satisfied the claimant's need to accompany or care for a spouse or other person, the claimant must have requested such a leave unless it is clearly established that such a request would have been futile.

Definition of spouse or other person: The statute refers to a leaving to accompany "a spouse" or "other person". An "other person" for these purposes is defined as an imminent spouse, non-marital partner (significant other), dependent child, or blood relative for whom a claimant is principally responsible.

Spouse - The individual's wife or husband through a marriage legally recognized by the state of Massachusetts.

Imminent Spouse - One to whom the claimant has definite plans to marry within the very near future, usually within the four weeks following the separation;

Nonmarital Partner - An individual with whom the claimant shares a household and is considered to be claimant's 'partner'. To determine the status of a nonmarital partner, you must determine if an emotional and financial commitment exists between them. Among the factors to be considered, are the longevity of the relationship; whether the individuals regard each other and are regarded by others as partners; whether they share income; whether they maintain joint checking and/or savings accounts; whether they have executed powers of attorneys in order for one partner to make decisions during the illness of the other; whether they are named as beneficiaries of each other's life insurance policies; or whether they are the legatees or executors of each other's estates.

Dependent Child - A natural child, adopted child, step-child, legal ward of the claimant found to be dependent pursuant to Massachusetts Law.

Blood Relative - A blood relative is a parent, child, sibling, grandparent or other person to whom a claimant is related by blood, rather than by marriage. In addition, the claimant must be principally responsible for the care or well-being of such individual.

If the claimant can establish that the relocation is necessary for the health of the spouse or other person then the leaving is involuntary and not subject to disqualification pursuant to §25(e)(1).

Form 124 Explanation:

The claimant left work to move with (spouse)(imminent spouse)(non-marital partner) (dependent child) (blood relation), in (city/town) due to a health reasons which requires such move. Leaving work under these circumstances is of such an urgent, compelling and necessitous nature so as to make the leaving involuntary. Therefore, the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

Note: If a contributory employer has protested timely on Form 1062 notify the employer by attaching the appropriate portion of §14(d)(3) (Form 1348) to the Form 124 for contributory employers only. Mail Form 1348 with Form 124.

(F) Moving with a Spouse Who Is a Serving Members of the Armed Forces

Serving members in the armed forces are most often transferred to a new duty station involuntarily for the convenience of the service branch. Unlike comparable circumstances occurring in more typical employment situations such individuals do not have an option to resign their employment. A similar transfer occurring in other employment would carry with it the opportunity to resign from employment to avoid relocating a family or separating from family.

When adjudicating eligibility in these cases claim adjudicators should first establish that the transfer of the spouse was involuntary and for the convenience of the service branch. Cases in which the spouse requested a transfer, retired voluntarily, or opted not to re-enlist and were transferred for discharge will be considered voluntary transfers. Provided the claimant's statement establishes the involuntary nature of the spouse's transfer, benefits may be approved in cases in which the transfer presented other urgent, compelling and necessitous causes for the claimant's leaving of work.

In some cases, the financial burden to the claimant of maintaining his or her current housing along with providing housing for the service member at the new location will justify the claimant in moving with his or her spouse. The fact-finding statement obtained from the claimant should clearly establish the inability of the claimant and spouse to bear the expense of maintaining the claimant's current housing along with the housing of the service member at his or her new location. Separation under these circumstances will not be subject to disqualification.

Form 124 Explanation:

The claimant left work to relocate with (his / her) spouse when the spouse, a serving member in the armed forces was transferred to a new duty station and the claimant was financially unable to bear the expense of maintaining (his / her) current housing along with that of the service member. Leaving work under these circumstances is for an urgent, compelling and necessitous reason such as to make the leaving involuntary. Therefore, the claimant is not subject to disqualification under the above-cited section of the law.

In some cases the claimant may reside in housing furnished by the branch of the military service. Such housing is typically available for a limited time only, usually 90 days, once the service member is transferred. Securing alternative housing so that the claimant might remain in the area and preserve employment along with potential costs of providing housing for the service member at the new location would likely be financially burdensome. The fact-finding statement obtained from the claimant should clearly establish the inability of the claimant and spouse to bear the expense of obtaining housing at the current location and the location to which the service member is transferred. Separation under these circumstances will not be subject to disqualification.

Form 124 Explanation:

The claimant left work to relocate with (his / her) spouse when the spouse, a serving member in the armed forces was transferred to a new duty station and the claimant was unable to secure alternative housing which would have permitted (him / her) to remain in the area. Leaving work under these circumstances is for an urgent, compelling and necessitous reason such as to make the leaving involuntary. Therefore, the claimant is not subject to disqualification under the above-cited section of the Law.

In other cases the claimant's rights to continued employment at the military facility may be contingent on the spouse's assignment at the current duty station. Typically the claimant's employment would terminate within a specified period, usually 90 days, following the service member's reassignment to another location. Leaving employment under these circumstances will not be subject to disqualification.

Form 124 Explanation:

The claimant left work to relocate with (his / her) spouse when the spouse, a serving member in the armed forces, was transferred to a new duty station and the claimant's rights to continued employment were curtailed. Leaving work under these circumstances is for an urgent, compelling and necessitous reason such as to make the leaving involuntary. Therefore, the claimant is not subject to disqualification under the above-cited section of the Law.

(G) Minor Moving with Parents

A claimant under the age of 18 (an "unemancipated minor") leaves work to move with his or her parents to a new residence beyond commuting distance from his former place of employment. Consider this leaving as involuntary, because the claimant had no choice but to comply with the wishes of his or her parent(s).

Note: Reference §25(e) of the Law with respect to "other person", has no effect on the issue of minors moving with parents.

Form 124 Explanation:

The claimant left work to move with his or her parents to (location). Leaving work under these circumstances is of such an urgent, compelling and necessitous nature as to make the leaving involuntary. Therefore, the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

Note: If the employer protested timely on Form 1062, notify the employer by attaching the appropriate portion of §14(d)(3) (Form 1348) to the Form 124.

1213 RETIREMENT**(A) Not Required - No Compelling Reason**

Although not required by the employer's policy, a claimant retires from work without an urgent, compelling and necessitous reason. Such leaving is voluntary and is subject to disqualification.

Form 3720 Explanation:

Although not required to do so, you retired from your job. Under these circumstances, leaving work is voluntary and without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

(B) Expected Layoff and Early Retirement Incentive

A claimant, believing that he or she would soon be laid off due to lack of work, chooses to take advantage of an early retirement incentive. This claimant may still be eligible for benefits, if the claimant "reasonably believed" that his or her employment would soon be terminated if he or she chose not to retire. Question the claimant concerning the reasons for believing he or she would be laid off, which may include the following:

How do the lay-off criteria apply to you?

On what basis would lay-offs be made? (By seniority, job title, department etc?)

Why did you believe that your lay-off was imminent? (See "reasonable belief" as discussed earlier in this section)

Form 124 Explanation:

The claimant accepted an offer of an early retirement because he or she had a reasonable belief he or she would soon be laid off. Leaving work under these circumstances is voluntary, with good cause attributable to the employing unit. He or she is not subject to disqualification pursuant to the above-cited section of the Law.

Form 3720 Explanation:

You chose to accept an early retirement because (reason). You have not established a reasonable belief that you would have been terminated if you had not chosen to retire. Leaving work under these circumstances is voluntary without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

(C) Compulsory Retirement

A claimant has no choice but to retire from work to comply with:

- the employer's compulsory retirement policy;
- the terms of a union agreement; or
- a pension program requiring retirement from work.

Such leaving is not subject to disqualification pursuant to §25(e)(1).

Form 124 Explanation:

The claimant was required to retire from his or her work because (reason). Under these circumstances, leaving work is voluntary but with good cause attributable to the employing unit.

(D) During Indefinite Layoff

During an indefinite layoff, a claimant decides to retire, apply for a pension or Social Security benefits, withdraw pension funds, etc. There is no separation issue pursuant to §25(e)(1) due to the lack of work but you should investigate his or her eligibility for benefits pursuant to §24(b), as well as §29(d) pension deductions.

Note: If the claimant is later recalled to work and fails to return, a separation issue or a refusal of suitable work issue may exist.

1214 CONDITION OF EQUIPMENT**(A) Hazard Caused by Faulty Equipment or Lack of Safeguards**

After taking all reasonable steps to have the matter resolved, a claimant leaves work because of hazardous working conditions resulting from faulty equipment or lack of required safeguards. This separation from employment is with good cause attributable to the employing unit pursuant to §25(e)(1).

Form 124 Explanation:

The claimant, after making all reasonable efforts to have the matter resolved, left his or her work because of hazardous working conditions caused by (reason). Although voluntary, leaving under these circumstances is with good cause attributable to the employing unit. Therefore the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

(B) Lower Earnings Due to Poor Equipment Maintenance

After making all reasonable efforts to have the matter resolved, a claimant leaves work after suffering a continuing and substantial reduction in earnings caused by the failure of the employer to provide and properly maintain the equipment necessary for the job. Under these conditions, leaving work is with good cause attributable to the employing unit pursuant to §25(e)(1).

Form 124 Explanation:

The claimant, after an attempt to have the matter resolved, left his or her work when there was a continued, substantial reduction in earnings caused by your failure to (provide) (properly maintain) the equipment necessary to perform the job. Although voluntary, leaving work under these circumstances is with good cause attributable to the employing unit. Therefore, the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

1215 EXPERIENCE OR TRAINING**(A) Change in Duties - Permanent Transfer**

After an unsuccessful attempt to have the matter resolved, a claimant leaves his or her job because he or she is permanently transferred to new duties which:

- are outside the scope of his or her general work classification; or
- will not permit continued use of his or her highest skill.

Separation from employment under these circumstances is with good cause attributable to the employing unit, provided the change in job duties makes the work unsuitable.

Form 124 Explanation:

The claimant had been regularly employed in (job). He or she left the job because of a permanent transfer to work as (job) which would not permit continued use of his or her highest skill. Although voluntary, leaving work under these circumstances is with good cause attributable to the employing unit. Therefore, the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

1216 HEALTH OR PHYSICAL CONDITION

Note: For cases involving health or physical condition complete the Physician's Statement of Capability - Form 268, may be used. Alternatively, a letter from a physician, if sufficiently detailed may be acceptable.

(A) Permanent Inability to Perform Duties

A claimant who is no longer physically able to perform his or her regular job on a permanent basis leaves work. No other suitable work is available from the employing unit. Leaving under these circumstances is not subject to disqualification, pursuant to §25(e)(1) as the claimant had no choice but to discontinue work.

Form 124 Explanation:

The claimant left his work because he or she was not physically able to perform his or her regularly assigned duties and no other suitable work was available to him or her. Separation under these circumstances is involuntary and not subject to disqualification pursuant to the above-cited section of the Law.

Note: If the employer has protested timely on Form 1062, notify the employer by attaching the appropriate portion of §14(d)(3) (Form 1348) to the Form 124 for contributory employers ONLY.

(B) Illness - Temporary Leave Denied

A claimant requests and is denied a leave of absence for an injury, operation, or other personal illness. The reason is verified with medical or other credible evidence. Consequently, he or she temporarily remains away from work. Leaving in this situation does not subject the claimant to disqualification pursuant to §25(e)(1) but may be disqualifying pursuant to §24(b). [See 1000: Able and Available.] If an employer has a leave policy then the leaving is voluntary with good cause, if the employer does not grant leaves then the leave is involuntary pursuant to §25(e)(1).

Employers covered by the Family and Medical Leave Act (FMLA), which are generally those employing 50 or more workers, are obligated to grant up to 12 weeks of unpaid medical leave for certain reasons relating to birth, adoption, personal or family medical circumstances. Generally, employees are eligible for a leave pursuant to the provisions of the FMLA if they have worked for the employer for either 1,250 hours or 12 months or more. If an eligible employee requests a leave of a covered employer, the request is denied and the claimant leaves work, the claimant will not be subject to disqualification. Neither will a similar request result in disqualification because the employee, not having been employed for the requisite hours or duration, is ineligible for a leave pursuant to the FMLA, nor because the employer, having fewer than 50 employees, is not subject to the provisions of the FMLA.

In all cases, when a separation occurs because a claimant with a legitimate need for time off requests a leave of absence and the request is denied, the claimant will not be subject to disqualification.

Form 124 Explanation:

Your denial of the claimant's request for a reasonable leave of absence because of () gave him or her no choice but to leave his or her work. Such leaving is voluntary but with good cause attributable to the employing unit. Therefore, the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

Form 124 Explanation:

Your denial of the claimant's request for a leave of absence because of () forced the claimant to leave work. Such leaving is involuntary and is not subject to disqualification pursuant to the above-cited section of the Law.

(C) Illness or Accident - No Leave Requested

A claimant leaves work because of an illness or accident, but does not request a leave of absence, nor does he or she notify the employer of his or her inability to work. There was no good reason for failing to request a leave in this instance. This leaving is voluntary without good cause attributable to the employer pursuant to §25(e)(1). However, if the claimant can show good cause for not requesting a leave of absence or indicates that such a request would have been futile, for example, because the employer had a clear policy denying leaves of absence, then the leaving is for good cause attributable to the employer and the claimant is not subject to disqualification pursuant to §25(e)(1).

Form 3720 Explanation:

You left your work because of (illness) (injury). You failed without adequate reason (to inform your employer of your inability to work) (to request a leave) and thus your separation became final. Leaving work under these circumstances is voluntary without good cause attributable to the employing unit, and you are disqualified pursuant to the above-cited section of the Law.

(D) Ailment Related to Work

Due to the nature of the work or working conditions, a claimant develops a physical ailment that threatens his or her health. As the employer has no other suitable work, the claimant *permanently* leaves the job. You are satisfied through medical evidence or the existence of compelling circumstances, that continuing in the job would be harmful to the claimant's health. Such leaving is involuntary pursuant to §25(e)(1).

Note: If the employer has protested timely on Form 1062, notify the employer by attaching the appropriate portion of §14(d)(3) (Form 1348) to the form 124 for contributory employers only.

Form 124 Explanation:

The claimant left his or her work because of (ailment) which resulted from (reason) and it has been established by medical evidence that to continue on the job would be detrimental to his or her health. Leaving work under these circumstances is involuntary and not subject to disqualification pursuant to the above-cited section of the Law.

(E) Alleged Ailment - No Evidence for Reasonable Belief

A claimant leaves employment because he or she believes that the job was causing a physical or emotional ailment, and does not take steps to resolve the problem. The claimant is not able to establish that such belief was reasonable under the circumstances. His or her leaving is considered voluntary pursuant to §25(e)(1) of the Law.

The question is not whether the claimant can prove that the job definitely caused the ailment. The question is whether it was reasonable for the claimant to believe that the work environment caused the ailment. If the claimant's belief was reasonable, then his or her leaving is considered to be involuntary, and the claimant is eligible.

Form 3720 Explanation:

You left your job because you believed your work was the cause of your illness. It has not been established that your belief was reasonable. Your separation is considered voluntary and without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

(F) Inability to Return to Regular Duties

After a period of *excused* absence due to an accident or illness, a claimant reports back to work but requests a transfer to work other job duties because he or she is no longer able to perform his or her regular job. (Medical evidence may be required). Although his or her previous work is still available, the employer is unable to supply other suitable work, and the claimant resigns. Leaving under these circumstances is not subject to disqualification pursuant to §25(e)(1) of the Law.

Form 124 Explanation:

The claimant left work because he or she was physically unable to resume his or her regular duties, and no other suitable work was available. Separation under these circumstances is not subject to disqualification pursuant to the above-cited section of the Law.

(G) Alcohol Related Leavings

A claimant is separated from employment due to an alcohol-related incident, either on the job or causing an absence from work. If the claimant admits that he or she is an alcoholic, or presents a physician's statement or other evidence that he or she has been treated for alcoholism, and is making a sincere effort to overcome the alcoholism, then separation from work will not be subject to disqualification pursuant to §25(e)(1) of the Law. Such leaving will be considered an involuntary separation.

Form 124 Explanation:

The claimant's separation is due to alcoholism which is considered to be an illness and the leaving is considered urgent, compelling and necessitous so as to make the separation involuntary and not subject to disqualification pursuant to the above-cited section of the Law.

Note: If the employer has protested timely on Form 1062, notify the employer by attaching the appropriate portion of §14(d)(3) (Form 1348) to Form 124 for contributory employers only.

(H) Leaving Work to Seek Treatment for Drug or Alcohol Addiction - No Leave Granted

Drug or alcohol related voluntary separations may occur when employees who have recognized their dependency and their personal inability to effectively deal with such dependency, leave their employment to obtain medical care designed to treat such illnesses.

Under these circumstances, claimants must have attempted to preserve the employment relationship prior to leaving work. Employees are required to take reasonable steps to correct those situations that they claim justify leaving. For example, employees should request a leave of absence to address their dependency problem before leaving employment. If the employer does *not* grant a leave of absence, or if the employee can show that taking such steps would have been futile, the employee will be considered to have left for a non-disqualifying urgent, compelling and necessitous reason pursuant to §25(e) of the Law.

Form 124 Explanation:

The claimant's request for a leave of absence to seek treatment for alcohol/drug dependency and the employer's refusal to grant the leave gave the claimant no choice but to leave work. Such leaving is involuntary for urgent, compelling and necessitous reasons and not subject to disqualification pursuant to the above-cited section of the Law.

(I) Leave of Absence Granted to Claimant for Drug or Alcohol Treatment

Refer to example (H) above. If leave is granted, the worker is considered to be not in unemployment and not eligible for benefits during the period of leave, pursuant to §29(a) and 1(r) of the Law.

Form 3720 Explanation: §29(a) and 1(r)

You are not in unemployment while on a leave of absence from your employer granted to you at your request, and you are therefore subject to disqualification pursuant to the above-cited section of the Law.

Note: If work is *not* available at the end of the leave, the claimant would become eligible at that point pursuant to §25(e)(1) of the Law.

(J) Leaving Work Rather than Submit to a Random Drug Test

A claimant leaves work rather than submit to an employer's *random* drug test. If the claimant did not work in a safety or security-related job, and was not subject to the employer's written rule regarding testing, such leaving is for good cause pursuant to §25(e)(1) of the Law.

Form 124 Explanation:

The claimant left work for good cause because he/she was not required to submit to a random drug test. The claimant is not subject to disqualification pursuant to the above-cited section of the Law.

(K) Injury on the Job - Regular Work Not Available

After an absence due to an injury on the job, a claimant reports back to work. Despite medical evidence that he or she is now physically able to perform his or her regular duties. The employer is unwilling to return the claimant to his or her regular job because of the previous injury, and is unable to furnish him or her with other suitable work. Separation under these circumstances is not subject to disqualification pursuant to §25(e)(1).

Form 124 Explanation:

The claimant was not permitted to return to work after a period of absence due to an industrial accident. He or she has furnished medical evidence that he or she is physically able to resume his or her regular work. Separation under these circumstances is with good cause attributable to the employing unit. Therefore, the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

(L) Injury on the Job - Worker's Compensation Lump Sum

A claimant while receiving worker's compensation payments agrees to a lump sum settlement of his or her worker's compensation claim. Often, a settlement based on the payment of a lump sum is initiated by the employer's insurer. Under the Worker's Compensation Law, if an individual agrees to receive a worker's compensation lump sum settlement, then there is a presumption that the individual will not return to work for the same employer for a specified period of time. However, because the employer or his/her insurer must agree to a settlement, the claimant is not disqualified pursuant to §25(e)(1).

Note: The presumption that the employee cannot return to the same employer shall continue for a period of one month for each \$1,500 amount of settlement.

Form 124 Explanation:

By accepting a lump sum settlement of his/her worker's compensation claim, the claimant precluded returning to work with his/her employer. Since the employer was not compelled to either offer or accept the lump sum settlement, the claimant is determined to be laid off due to lack of work and not subject to disqualification.

(M) Shift-Related

A claimant who is employed in a plant that operates on different shifts quits or is fired because he or she is unable to accept or continue work on a second or third shift. The reason for leaving is the harmful effect to his or her health, and this harmful effect can be supported with medical or other credible evidence.

1. If seniority rights bar the employer from placing the claimant on shifts other than those which pose a health risk, the claimant's leaving is considered involuntary. If the employer protested timely on Form 1062 the charges shall be removed by attaching Form 1348 §14(d)(3) to the Form 124. (Contributory Employers only.)

2. If however, seniority rights do *not* bar the employer from placing the claimant on a shift which does not pose a health risk, the claimant's separation is considered voluntary, but with good cause attributable to the employing unit. In this case investigate the claimant's availability for work pursuant to §24(b).

Form 124 Explanation:

The claimant left his or her work because he or she was not physically able to work on the (number) shift due to health reasons. Leaving under these circumstances is (involuntary and not subject to disqualification) (voluntary but with good cause attributable to the employing unit). Therefore, the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

1217 MILITARY SERVICE**(A) Claim Filed after Discharge from Armed Services**

After receiving official notice of acceptance for the armed services with a definite date to report for duty, a claimant leaves work. Upon reporting, he or she is assigned to duty and after a period of active service, is separated. The claimant then files for unemployment insurance benefits. The "armed services" is the last employing unit for the purpose of this claim; do not consider any separation from work that occurred prior to his or her period of active service. For all UCX claims, the military will identify the reason for separation and eligibility will be determined in accordance with procedures outlined in 1570: Nonmonetary Determinations - -UCX.

(B) Deferment of Assignment to Duty

After receiving official notice of acceptance for the armed services with a definite date to report for duty, a claimant leaves work. Upon reporting, he or she is *not* assigned to duty, for a reason attributable solely to the armed services. Thereafter, he or she files a claim for benefits. In this case, the claimant's separation from the prior employing unit would not disqualify him or her and the armed services is the last employing unit for the purpose of such a claim.

Form 124 Explanation:

The claimant left work to report for duty with the armed services. Therefore this separation from a previous employer does not disqualify the claimant pursuant to the above-cited section of the Law.

(C) Leave of Absence for Active Duty

After taking a leave of absence from the employing unit for a brief period of active duty with the National Guard, Reserves, etc., a claimant fails to return to his or her former job and is consequently separated from employment. This constitutes a voluntary separation without good cause attributable to the employing unit and is subject to disqualification pursuant to §25(e)(1). Note that the separation did not take place until after the active duty and expiration of the leave of absence.

Form 3720 Explanation:

You failed to return to work following a leave of absence which had been granted for a period of active duty with (name of unit) because (reason). Such failure resulted in your loss of employment. Separation under these circumstances is voluntary and without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

(D) Notice of Leaving Without Definite Date to Report

A claimant gives the employer notice that he or she is leaving to enter the armed services. You establish that at the time of giving notice, he or she had not enlisted, or, having enlisted, had not received official notice of a definite date to report for duty. Leaving under these circumstances is without good cause and subject to disqualification pursuant to §25(e)(1).

Form 3720 Explanation:

You left your work to enter the armed services, although at the time of leaving you (had not been accepted) (had not received official notice of a definite date to report for duty). Leaving under these circumstances is voluntary and without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

1218 NEW WORK OR PROSPECT OF OTHER WORK**(A) Seeking New Work**

A claimant leaves his job without a date of hire for new work. Such leaving is without good cause attributable to the employing unit and subject to disqualification.

Note: The "date of hire" is when an individual learns that he or she is being hired for a job and is told when to report to work. The "starting date" is the date on which the individual actually begins to work. The two dates are generally *not* the same.

Form 3720 Explanation:

You left your job to seek new employment. Leaving work under these circumstances is voluntary and without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

(B) Multiple Jobs – Leaving Part-Time Work after Separation from Full-Time Work

A claimant who was employed at the same time by two employing units (one full-time and one part-time) is separated from full-time employment under non-disqualifying circumstances. Subsequently, the claimant voluntarily leaves part-time employment. Under these circumstances, the claimant would be subject to a constructive deduction for leaving part-time work. Procedures relating to the imposition of a constructive deduction can be found in 1400: Other Pay and Benefits and *CMR 430 4.71 – 4.87*. Use an explanation on Form 3720-J that is appropriate to the specific circumstances based on the claimant's reason for leaving of work.

(C) Multiple Jobs – Leaving Part-Time Work Prior to Separation from Full-Time Work

A claimant who was employed at the same time by two employing units leaves a part-time job to remain with the other job on a permanent, full-time basis. Subsequently, he or she is separated under non-disqualifying circumstances from the full-time job and files for benefits. In making your determination treat the most recent employing unit, the full-time job as the only interested-party employer and if the separation was non-disqualifying, the claimant is eligible for benefits.

(D) Multiple Jobs – Leaving Work with One Employer after Notice of Imminent Separation from Work with Another

A claimant was employed at the same time by two employing units. The claimant leaves employment with employer "A" to continue employment with employer "B". At the time the claimant left work with employer "A" he had been notified by employer "B" that his employment would end in one month's time. Since employment with employer "A" occurred during the last eight weeks of employment prior to the filing of the claim, employer "A" is an interested party.

If employment with employer "A" was a full-time position, the claimant would be subject to disqualification with an eight week re-qualifying wage provision. If the earnings from employer "B" equal or exceed the weekly benefit rate, then the claimant will have satisfied part of the eight-week re-qualifying wage provision.

If employment with employer "A" was on a part-time subsidiary basis, the claimant would be subject to disqualification in the form of a constructive deduction. Procedures relating to the imposition of a constructive deduction can be found in 1400: Other Pay and Benefits and *CMR 430 4.71 – 4.87*.

Once again, if the earnings from employment with employer "B" equal or exceed the weekly benefit rate, then the claimant will have satisfied part of the eight-week re-qualifying wage requirement.

Form 3720 Explanation:

You left your job to remain with your (primary) (employer of choice). However at the time you left your job you were on notice that you were to be laid off from your primary employer. Such leaving is voluntary without good cause attributable to the employing unit and you are subject to disqualification.

(E) Failure to Pass Physical Exam

A claimant leaves work for a new job, but subsequently fails a physical examination required by the new employing unit.

1. If the claimant knew that he or she would be required to pass a physical examination as a condition of hire, the separation from the prior employer is voluntary and the claimant is subject to disqualification. At the time of leaving, the claimant had no contract of employment with the new employing unit.

Form 3720 Explanation:

You left your job with (prior employer) to accept work with (prospective employer), knowing that the offer of a job depended on passing a physical examination, which you subsequently failed. Leaving (prior employer) under these circumstances is voluntary and without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

2. You determine that, at the time of hire, the claimant had *not* been informed of the physical examination requirement. Under these circumstances, the prospective employing unit is considered the most recent employing unit.

Form 124 Explanation:

The claimant left his or her former job to accept your offer of new work without knowing that it was necessary to pass a physical examination. The claimant's failure to pass the examination resulted in his or her unemployment. Separation under these circumstances is not subject to disqualification pursuant to the above-cited section of the Law.

(F) Leaving Work to Become Self-Employed

A claimant leaves work to become self-employed. This includes leaving to enter a one-person proprietorship or a multi-person partnership. When the self-employment ends, he or she files a claim. Leaving under these circumstances is without good cause attributable to the employing unit and is subject to disqualification.

Form 3720 Explanation:

You left your work to become self-employed. Such leaving is voluntary and without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

(G) New Work Not Available - Reasons Attributable to Employer

In order to accept new permanent full-time employment, a claimant leaves his or her current work. He or she is then prevented from performing any work, for reasons attributable to the new employing unit. Although no work was performed, an employer- employee relationship was established, and you should treat the new employer as the claimant's most recent employing unit. Send Form 1062 or 1074 to this new employing unit. Form L-0122 with block number 3 checked should be sent to the employer that the claimant left.

1219 SUITABILITY OF WORK**(A) New Work on a Trial Basis**

A claimant has the burden of showing that employment offered was unsuitable. A job's suitability depends on many factors, among those to be considered are; health, safety, morals, prior pay, education, **travel expenses** and travel time to work.

Unable to obtain his or her regular work, a claimant accepts an offer of new work on a trial basis. After a reasonable trial period, he or she leaves the new work, because it is unsuitable. You establish that the work is unsuitable. Under these circumstances, the separation is not subject to disqualification pursuant to §25(e)(1) because continuing employment was contingent on the work being suitable.

Form 124 Explanation:

The claimant left his or her employment when, after reasonable trial period, he or she discovered that the new work proved to be unsuitable. Therefore, the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

(B) Transfer to Unsuitable Work

A claimant either refuses to accept a transfer to another type of work or, having accepted the transfer, leaves after a reasonable trial because he or she considers the new work to be unsuitable. You establish that the work is unsuitable. Separation under these circumstances is considered to be voluntary but for good cause attributable to the employer.

Form 124 Explanation:

The claimant left his or her job when you gave him or her no choice but to accept a transfer to another type of work which was not suitable because (brief reason). Leaving under these circumstances is for good cause attributable to the employing unit. Therefore, the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

1220 TIME AND HOURS**(A) Offer of Full-Time Work to Part-Time Worker**

A claimant works part-time at a job that, if full time, would be considered suitable. If full-time work of the same type becomes available, and the claimant refuses to accept such work because he or she is not available full-time, separation under these circumstances is voluntary and subject to disqualification pursuant to §25(e)(1) unless the claimant's restriction to part-time hours is for good cause pursuant to 430 CMR 4.42 – 4.45.

Form 3720 Explanation:

You refused your employer's offer of full-time work of the same type that you had been performing on a part-time basis. Such refusal resulted in your separation. Under these circumstances, separation is voluntary and without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

Note: If instead of being separated, the claimant continues to work on a part-time basis and is still receiving partial UI, he or she may be subject to disqualification pursuant to §29(b) and 1(r) because suitable full-time work is available.

(B) Unsuitable Offer of Full-Time Work to Part-Time Worker

A claimant works part-time in a subsidiary job or in a part-time job in the benefit year which would be considered unsuitable on a full-time basis. Later, when full-time work of the same type is available, the claimant refuses to accept it because he or she does not consider it suitable on a full-time basis and is separated from work. Separation under these circumstances is not subject to disqualification.

Form 124 Explanation:

The claimant declined to work on a full-time basis as a (job). Because the claimant's part-time job was subsidiary to his or her regular occupation as a (job), the offer of full-time work is considered unsuitable and the claimant is, therefore, not subject to disqualification pursuant to the above-cited section of the Law.

Note: If the claimant continues to work part-time after refusing the full-time work, i.e., he or she was not separated from work, use the following language and cite §29(b) and 1(r):

Form 124 Explanation:

You employ the claimant as a (job), which is subsidiary to his or her regular work as a (job). The offer of full-time work as a (job) is not considered suitable on a full-time basis. Therefore, the claimant is not subject to disqualification pursuant to the above-cited sections of the Law.

Note: In a case like this a copy of 430 CMR 5.05: (1) should be attached to the Form 124 (for Contributory employers ONLY.) This form informs the subsidiary employer of the relief of charges to its account. 430 CMR 5.05(1) Benefits for partial unemployment shall be charged in the same manner as for benefits in total unemployment, except that no charge shall remain against the account of any subsidiary employer who shows to the satisfaction of the Commissioner that it has continued to employ a claimant during the weeks of his claim to the same extent that it had previously employed him. In the event that the subsidiary employer is liable for payments in lieu of contributions, then the principal employer will be charged to the extent possible as provided by §14(d)(3) of MGL Chapter 151A, prior to any later charges to the account of the subsidiary employer.

(C) Overtime – Reasonable

A claimant leaves work rather than perform a reasonable amount of occasional or emergency overtime work. You determine that the claimant's unwillingness to work on these occasions is unreasonable. Leaving under these circumstances is without good cause attributable to the employing unit.

Form 3720 Explanation:

You chose to leave your job rather than perform a reasonable amount of (occasional) (emergency) overtime work. Leaving under these circumstances is voluntary and without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

(D) Overtime – Excessive

Because the amount of overtime required by the employer was excessive, a claimant left his or her work. You establish that the required overtime was, excessive, and that the claimant had unsuccessfully attempted to preserve his employment by reducing the overtime prior to leaving. Under these circumstances, leaving is with good cause attributable to the employing unit.

Form 124 Explanation:

After an attempt to resolve the matter, the claimant left his or her job because he or she was required to work an excessive amount of overtime. Leaving work under these circumstances is with good cause attributable to the employing unit, therefore, the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

Note: Questions that should be asked of the claimant:

- What effect did the overtime hours have on you?
- How long had you worked this overtime?
- How much longer was the overtime expected to continue?
- What was the reason for the overtime?

(E) Reduced Hours - Partial Benefits

Because the employing unit is unable to furnish a full-time schedule of work for a temporary period (not to exceed three months), a claimant leaves work. He or she quits solely for this reason. The Law compensates for partial unemployment by providing for the payment of partial benefits to supplement reduced earnings. Such leaving is voluntary and without good cause attributable to the employer, and is subject to disqualification.

Form 3720 Explanation:

You left your job because your employer was unable to furnish you with full-time work for a temporary period of time. Leaving under these circumstances is voluntary and without good cause attributable to the employing unit. The Law provides for the payment of partial benefits to supplement reduced earnings. Therefore you are disqualified pursuant to the above-cited section of the Law.

Note: If you can establish that the employing unit subjected the claimant to unreasonable requirements or required the claimant to incur travel expenses disproportionate to his or her earnings, and this has continued or will continue for a considerable period, the leaving may be considered to be with good cause and not subject to disqualification.

(F) Reduced Hours

Because the employing unit is unable to furnish a full-time schedule of work for a temporary period (not to exceed three months), a claimant leaves work. The claimant's work schedule is reduced one or two days per week and his or her earnings exceed the benefit rate after application of the earnings disregard pursuant to §29(b) of the Law. He or she quits solely for this reason. Leaving work under these circumstances is voluntary without good cause attributable to the employing unit.

Form 3720 Explanation:

You left your work because your employer was unable to furnish you with full-time work for a temporary period. Since the work you left was suitable, your leaving is voluntary without good cause attributable to the employing unit with the meaning of the above-cited section of the Law.

(G) Employer Reduction in Worker's Hours

Because the employing unit has permanently or indefinitely reduced the claimant's hours of work to a part-time schedule of work, the claimant leaves his or her work. Often such reduction is accompanied with a loss of fringe benefits. This is considered a unilateral change in the employment contract, and leaving of work under these circumstances is voluntary but with good cause attributable to the employing unit pursuant to §25(e)(1).

Note that if an employer reduces the employee's schedule of working hours and the reduction is such that the claimant would neither qualify for the payment of partial benefits pursuant to §29(b) nor be able to earn a living wage, this may constitute an urgent, compelling and necessitous reason for leaving work.

Form 124 Explanation:

The claimant left his or her work when the employing unit (permanently) (for an indefinite period) reduced his or her schedule of hours of work to a part-time schedule. Such reduction was accompanied by a loss of fringe benefits (if applicable). Leaving work under these circumstances is voluntary but with good cause attributable to the employing unit pursuant to the above-cited section of the Law.

(H) Employee Requests a Reduction in Hours

Because the employing unit denied a claimant's request for a change in working hours, he or she leaves work. You determine that the claimant had no compelling reason for this request. Leaving under these circumstances is voluntary and without good cause attributable to the employing unit and is subject to disqualification pursuant to §25(e)(1).

Form 3720 Explanation:

You left your job because your request for a change in your schedule of working hours was denied. Such leaving is voluntary and without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

(I) On-Call Employment

"On-call" employment is established by the contract of hire between the employee and the employer. This means that the contract may stipulate that an employee will work on an "as needed basis". For example, an employee may work 40 hours or more (full-time) in some weeks, less than full-time in other weeks, and may even work no hours at all in some weeks. This "on call" arrangement does not necessarily mean the same thing as a variable schedule of work such as when an employer changes the hours or shifts worked by an employee on a week-to-week basis. To determine whether an employee was "on call" rather than on a varied schedule of hours, investigate the following issues:

- What was the contract of hire? Verbal? Written?
- Did the contract specify a fixed number of hours per week? Did the number vary in any weeks worked? If so why?
- How did the claimant get work assignments or schedules for the week? Was it posted? Did the employer call?
- Was the claimant given an advance schedule?

(J) On-Call Employment History During Base Period

After you determine the nature of the contract of hire, review the claimant's work history during the base period. If there was an employment history of "on-call" work, then:

For any week in which there is no work available the claimant is considered to be in total unemployment pursuant to §29(a) and 1(r).

Form 124 Explanation:

The claimant received no hours of work in the week ending _____, and is therefore in total unemployment and is not subject to disqualification pursuant to the above-cited section of the Law.

For any week in which there is any work the claimant is subject to disqualification pursuant to §29(b) and 1(r).

Form 3720 Explanation:

You agreed to accept a contract of employment to work variable part-time hours as needed. Until there is a permanent severance of the employment relationship, you are not in partial unemployment for any week in which you worked fewer than regular full-time hours. Therefore you are subject to disqualification pursuant to the above-cited sections of the Law.

(K) On-Call Employment History During Benefit Year

If after a claim is filed the claimant establishes an "on call" employment relationship, and agrees to accept all available hours of work, then the claimant is not subject to disqualification pursuant to Sections 29(b) and 1(r).

Form 124 Explanation:

The claimant's unemployment is based upon prior base period employment. Since the claimant has agreed to accept all available work, he/she is in unemployment for any weeks when no work is offered, pursuant to the above-cited sections of the Law.

Note: Report any earnings from the "on-call" employment that was established in the benefit year as partial earnings and apply the earnings disregard pursuant to §29(b). If the claimant had not been called and had not refused any "on-call" work during a continuous four-week period the leaving is with good cause.

(L) On-Call Subsidiary Employment

This is all employment that is worked at the same time as primary employment and is subsidiary to the primary employment. Subsidiary in this sense means any or all of the following: fewer hours, lower wages, shorter employment history or work in other than the claimant's primary occupation.

In order for employment to be subsidiary it must have fallen in the base period alongside the claimant's primary employment for at least one week.

Once employment has been determined to be on-call subsidiary, it will always be considered such. However, the designation of on-call subsidiary employment ends when the employment relationship changes (i.e., the claimant becomes a regular full time or part-time employee).

A claimant who is separated from his primary work under qualifying circumstances and who is working all available hours from on-call subsidiary employment will be eligible for benefits. The remuneration from the on-call subsidiary employment is reported as partial earnings, applying the earnings disregard in §29(b). Notify the on-call subsidiary employing unit of claim approval by issuing a form 124 citing §29(b) and 1(r):

Form 124 Explanation:

The claimant accepted on-call subsidiary employment and is accepting all work available. Therefore the claimant is entitled to partial benefits for any week in which he or she works less than a full time schedule of hours.

Note: For as long as a contributory on-call subsidiary employer continues to employ the claimant during the weeks of his claim to the same extent that it had previously employed him, charges will be removed from its account. Notify the employing unit of this fact by attaching 430 CMR 5.05(1) to the Form 124 provided the employers response on Form 1062 or 1074 was timely (or with good cause) and complete including all wage information.

A claimant separated under disqualifying circumstances from contemporaneous on-call subsidiary or newly obtained part-time work in the eight weeks prior to the filing of the claim or in the benefit year will be subject to a constructive deduction.

(M) Contemporaneous Full-Time and Subsidiary Part-Time Employment

An individual has a full-time and a part-time job (i.e., a regular schedule of part-time hours.) The individual is separated from his full time job but continues his subsidiary part-time job after filing a claim. The claimant, if otherwise eligible, is not subject to disqualification because the part-time job is subsidiary to the full time work. Apply the earnings disregard to the reported partial earnings. Remove charges to the subsidiary part-time employer's account for the period during which the part-time subsidiary employer continues to employ the claimant in the same or similar capacity.

(N) Contemporaneous Part-Time and Subsidiary On-Call Base Period Employment

An individual has a part-time job and an on call position, which began in the base period. The two positions were worked contemporaneously. The earnings from the part-time job are greater than the earnings from the on call job, which means that the on call job is subsidiary. The individual is separated from the part-time job but continues his subsidiary on call job after filing a claim. The claimant, if otherwise eligible, is not subject to disqualification because the on call job is subsidiary to the part-time work. Apply the earnings disregard to the reported partial earnings. Remove charges to the subsidiary employer's account for the period the subsidiary employer continues to employ the claimant in the same or similar capacity.

1221 UNION RELATIONS**(A) Delinquent Dues Payments**

A claimant becomes delinquent in the payment of union dues even though he or she knew that such payments were required for continued employment. As a result of this nonpayment and in accordance with the union contract, the claimant loses his or her job. Under these circumstances, separation is without good cause pursuant to §25(e)(1) because the loss of work was attributable to the claimant's failure to comply with the terms of the contract.

Form 3720 Explanation:

You became separated from work because of your failure to continue required payment of your union dues. Separation under these circumstances is voluntary and without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

(B) Union Membership Required

A claimant accepts work with the understanding that, after a certain period, he or she would be required to join a union with which the employing unit has a contract. The claimant later decides that he or she does not wish to become affiliated with the union. In accordance with the contract, the claimant loses his or her job. Under these circumstances, separation is without good cause attributable to the employing unit pursuant to §25(e)(1) because the claimant's unemployment was due to his or her own failure to comply with the terms of the contract of hire.

Form 3720 Explanation:

You accepted work knowing that after (date) you would be required to join a union. You failed to do so within the required time and you were separated from employment. Separation under these circumstances is voluntary and without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

1222 WAGES - GENERAL

There is generally a good cause for leaving work issue when an employer unilaterally changes the terms of an employment contract to the detriment of a claimant. As always, the claimant must attempt to preserve the employment.

(A) Employer Delinquent in Wage Payment

A claimant leaves work because the employer does not make prompt payment of wages, or there is difficulty cashing paychecks due to insufficient funds in the employing unit's account. Under these circumstances, separation is with good cause attributable to the employing unit pursuant to §25(e)(1).

Form 124 Explanation:

The claimant left his or her work because of (your failure to pay wages when due) (difficulty in cashing paycheck due to lack of funds in your account). Leaving under these circumstances is for good cause attributable to the employing unit. Therefore, the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

(B) Employer Fails to Grant Promised Wage Increase

After attempting to resolve the matter, a claimant leaves work because his or her employer failed to increase wages in accordance with a prior unconditional agreement. Such leaving is with good cause attributable to the employing unit pursuant to §25(e)(1).

Form 124 Explanation:

The claimant left his or her work because of your failure to increase his or her wages in accordance with a prior unconditional agreement. Leaving under these circumstances is for good cause attributable to the employing unit. Therefore, the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

(C) Employer Increases Hours - Not Wages

A claimant leaves work after the employing unit increases his or her working hours without a corresponding increase in wage or salary. The increased hours exceed occasional overtime customarily performed in the business. Such leaving is with good cause attributable to the employing unit pursuant to §25(e)(1).

Form 124 Explanation:

The claimant left his or her work when you increased his or her weekly schedule of hours from (number) to (number) without a corresponding increase in (wage) (salary). Leaving under these circumstances is for good cause attributable to the employing unit. Therefore, the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

(D) Employee Asks for Wage Increase

Due to the employer's refusal to grant a requested increase in wages or salary, a claimant leaves work. You determine that no increase had been promised and that the wage the claimant receives is above state and federal minimum wage levels. Under these circumstances, leaving is voluntary and without good cause and the claimant is subject to disqualification pursuant to §25(e)(1).

Form 3720 Explanation:

You left your job because your employer refused to grant you an increase in (wage) (salary). However, no increase had been promised. Under these circumstances, your leaving is voluntary and without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

(E) Employer Does Not Pay Agreed Upon or Minimum Wage

A claimant leaves work, after attempting to have the matter resolved, because he or she is paid less than the salary agreed upon at the time of hire, or less than minimum wage levels. Such leaving is voluntary, but with good cause attributable to the employing unit pursuant to §25(e)(1).

Form 124 Explanation:

The claimant accepted work under an agreement that he or she would receive (promised wage) and left his or her job when he or she received only (actual wage). Prior to leaving, the claimant attempted to have the matter resolved. Leaving work under these circumstances is for good cause attributable to the employing unit. Therefore, the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

(F) Transfer to Higher Skilled Work Without Wage Increase

A claimant is transferred indefinitely -- not for an emergency period, to new work which requires a higher level of skill, but he or she receives no increase in wages. Prior to leaving, the claimant attempted to have the matter resolved. Such leaving is for good cause attributable to the employing unit pursuant to §25(e)(1).

Form 124 Explanation:

The claimant left his or her work because you transferred him or her for an indefinite period from work as a (job title) to higher-skilled work as a (job title) without a corresponding increase in wages. Prior to leaving, the claimant attempted to have the matter resolved. Leaving work under these circumstances is for good cause attributable to the employing unit. Therefore, the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

(G) Employer Reduces Wages Not Hours or Duties

A claimant leaves work after the employing unit reduced wages or salary without a corresponding reduction in hours or change in job duties. Such leaving is with good cause attributable to the employing unit pursuant to §25(e)(1).

Form 124 Explanation:

The claimant left his or her work because you reduced his or her (wages) (salary) from \$(amt.) to \$(amt.), although he or she was required to work the same number of hours and there was no change in his or her job duties. Leaving work under these circumstances is for good cause attributable to the employing unit. Therefore, the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

1223 WAGES - SALESPERSONS**(A) Change from Salary to Commission**

A claimant who accepted work on a salary or salary-plus-commission basis with no conditional agreement leaves work after he or she is transferred to a straight commission basis. You determine that the change was not caused by any failure on the claimant's part to comply with the contract of hire. Such leaving is voluntary but with good cause attributable to the employing unit pursuant to §25(e)(1).

Form 124 Explanation:

The claimant accepted work with an unconditional agreement that he or she would be paid on a (salary) (salary-plus-commission) basis, and left the job when he or she was transferred to a straight commission basis. Leaving work under these circumstances is for good cause attributable to the employing unit. Therefore, the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

(B) Change in Territory with Reduction in Earnings

A claimant who works as a commission salesperson or route person leaves work when a new-territory assignment results in a substantial reduction in earnings. The employing unit initiated the change in territory, and the claimant attempted to adjust the matter through proper channels before leaving. Such leaving is with good cause attributable to the employing unit pursuant to §25(e)(1).

Form 124 Explanation:

The claimant left his or her work because an employer initiated change in his/her territory, which resulted in a substantial reduction in earnings. Prior to leaving, he or she attempted to have the matter adjusted. Leaving work under these circumstances is for good cause attributable to the employing unit. Therefore, the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

(C) Drawing Account Discontinued

A claimant accepts work under an agreement involving payment by commission with a drawing account chargeable against future commissions. He or she leaves work when the drawing account is discontinued and he or she is expected to earn a straight commission. You establish that the inability to earn commissions equal to the drawing account is not through lack of effort on the claimant's part, and that he or she would earn substantially less on a straight commission basis. Leaving under these circumstances is not subject to disqualification pursuant to §25(e)(1).

Form 124 Explanation:

The claimant left work when you discontinued his or her drawing account. Because he or she would earn substantially less on a straight commission basis, the work is no longer suitable. Leaving work under these circumstances is for good cause attributable to the employing unit. Therefore, the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

(D) Leaving at End of Training Period

A claimant accepts work as a salesperson under an agreement where he or she earns a salary during the training period but is shifted to straight commission once the training ends and actual sales work begins. At the end of the training period, the claimant leaves his or her job without giving the sales work an actual trial. Leaving under these circumstances is subject to disqualification pursuant to §25(e)(1) because failure to engage in actual sales work violated the contract of hire.

Form 3720 Explanation:

You left your job when your employer transferred you from a salary to a straight commission basis, although at the time of hire you knew that the salary payment would be discontinued at the end of your training period. Leaving work under these circumstances is voluntary and without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

(E) Inability to Earn a Living Wage

A claimant accepts work as a commission salesperson and later leaves because of his or her inability to earn a living wage. You establish that he or she gave the job a fair and reasonable trial, and that even though he or she may have had profitable periods of employment in the past there is little likelihood that conditions will improve substantially in the near future. Leaving under these circumstances is not subject to disqualification pursuant to §25(e)(1).

Form 124 Explanation:

The claimant left his or her commission sales job because of an inability to earn a living wage. Leaving under these circumstances is with good cause and not subject to disqualification pursuant to the above-cited section of the Law.

1224 WORKING CONDITIONS**(A) Duties Outside Regular Work**

Because a claimant is occasionally or temporarily required to perform work outside the scope of his or her regular duties, the claimant leaves work. You determine that the requirement was not unreasonable and would not involve a reduction in earnings. Such leaving is without good cause and subject to disqualification pursuant to §25(e)(1).

Form 3720 Explanation:

You left your job because your employer (temporarily) (occasionally) assigned you to work other than your regular duties, although such assignment (would) (did) not involve any reduction in earnings. Leaving work under these circumstances is voluntary and without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

(B) Inadequate Working Conditions

A claimant leaves work due to inadequate heating, lighting, ventilation, or sanitation at the workplace. You establish that prior to leaving, the claimant (or other similarly affected employees) made a proper complaint with the employer, but that no remedial action was taken. Such leaving is with good cause attributable to the employing unit pursuant to §25(e)(1).

Form 124 Explanation:

The claimant left his or her job because of (condition). Prior to leaving, a proper complaint had not resulted in any constructive action taken by you to remedy the situation. Leaving work under these circumstances is for good cause attributable to the employing unit. Therefore, the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

(C) Risk of Injury or Danger to Health

A claimant left work because the required working conditions exposed him or her to a risk of injury or danger to health beyond the normal hazards of the job. You establish that, despite a proper complaint, the employer had failed to take remedial action. Such leaving is with good cause attributable to the employing unit pursuant to §25(e)(1).

Form 124 Explanation:

The claimant left his or her job because (reason). Prior to leaving, a proper complaint had not resulted in any action taken by you to remedy the situation. Leaving work under these circumstances is for good cause attributable to the employing unit. Therefore, the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

(D) General Job Dissatisfaction

A claimant left his or her work because of general dissatisfaction with the job and working conditions. For example, he or she believes that:

- little opportunity exists for advancement, or he or she has been denied a promotion;
- wages are too low (although he or she accepted those wages when hired);
- his or her co-workers are uncongenial; the supervisor does not like him or her (although he or she does not allege harassment);
- he or she has too little (or too much) responsibility;
- the job is not challenging enough, or he or she is overqualified for the job (although he or she accepted the job knowing the duties it entailed)

General dissatisfaction is not usually considered good cause to leave employment pursuant to §25(e)(1), absent an employer initiated-change in conditions to the detriment of the claimant.

Form 3720 Explanation:

You left your work because you were dissatisfied with (reason). Leaving under these circumstances is voluntary and without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

(E) Reprimand or Criticism

After a reprimand or criticism of his or her work by the supervisor, a claimant leaves work. You determine that the supervisor's action was not unreasonable, and that the nature of the reprimand or criticism was neither offensive nor unwarranted. Leaving under these circumstances is without good cause and is subject to disqualification pursuant to §25(e)(1).

Form 3720 Explanation:

You left work because of a reasonable (reprimand) (criticism of your work) by your supervisor. Leaving work under these circumstances is voluntary and without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

(F) Disagreement with Policies or Methods of Operation

A claimant left work because of a disagreement with the employing unit's policies or methods of operation and an unwillingness to follow them. You establish that the policies or methods in dispute do not violate any statute, regulation, or public policy. Such leaving is subject to disqualification pursuant to §25(e)(1).

Form 3720 Explanation:

You left your work because you disagreed with the employer's work policies. Leaving work under these circumstances is voluntary and without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

(G) Production Requirement

A claimant left work because he was unable to meet the production requirements of the employing unit.

If you determine that the employer had never expressed unreasonable criticism of the claimant's performance and that no compelling reason caused the claimant to leave work, then leaving work is without good cause attributable to the employer and subject to disqualification pursuant to §25(e)(1).

Form 3720 Explanation:

You left your job stating that you were unable to meet the production requirements of your employer, although your employer had not expressed any unreasonable criticism of your work. Leaving work under these circumstances is voluntary and without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

If you determine that the claimant experienced unreasonable criticism and pressure for failure to meet the production standards that were beyond his or her capacity, such leaving is with good cause attributable to the employing unit pursuant to §25(e)(1).

Form 124 Explanation:

The claimant left his or her work because of unreasonable criticism for failing to meet production standards that were beyond his or her capacity. Leaving work under these circumstances is for good cause attributable to the employing unit. Therefore, the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

(H) Personality Conflict

A claimant leaves his or her work because of a personality conflict with the employer, a supervisor or co-worker. Unless you can establish that an irreconcilable conflict that interfered with the work process existed, and that the claimant tried to resolve the matter, treat the separation as voluntary and without good cause attributable to the employing unit pursuant to §25(e)(1).

Form 3720 Explanation:

You left your job because of a personality conflict with your (supervisor) (co-worker) (other). Because you made no attempt to resolve the matter prior to leaving, your separation is voluntary and without good cause attributable to the employing unit. Therefore, you are disqualified pursuant to the above-cited section of the Law.

1225 HARASSMENT AND DISCRIMINATION

(A) General Harassment

A claimant leaves work because of alleged harassment other than sexual, racial or other unreasonable harassment as described in elsewhere in this section. General harassment includes verbal abuse, unfavorable or uneven distribution of the workload, unreasonable demands, threats and so forth. You must determine: (1) whether the alleged harassment occurred; (2) who committed the alleged harassment; (3) whether the employer, its agents, or supervisory employees knew or should have known of the harassment; (4) whether the claimant took reasonable steps to correct the situation prior to leaving unless circumstances indicate that such efforts would have been futile or result in retaliation; and (5) whether the employer failed to take immediate and appropriate corrective action. If each criterion is met, the leaving is with good cause attributable to the employing unit pursuant to §25(e)(1).

A claimant who leaves work due to sexual harassment by the employer, a manager or supervisor is not required to take reasonable steps to preserve employment. Therefore, failure of the claimant to take reasonable steps to preserve employment will not disqualify the claimant.

Form 124 Explanation:

The claimant left his or her work because of harassment. Prior to leaving, a proper complaint did not result in the employer taking any constructive action to remedy the situation. Leaving work under these circumstances is for good cause attributable to the employing unit. Therefore, the claimant is not subject to disqualification pursuant to the above-cited section of the Law.

(B) Sexual Harassment

A claimant leaves work because of sexual harassment. MGL Chapter 151A, §25(e) defines sexual harassment as follows:

The term "sexual harassment" shall mean sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- (a) submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions;
- (b) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance; or
- (c) such advances, requests or conduct have the purpose or effect of creating an intimidating, hostile, humiliating or sexually offensive work environment.

You must consider the following three issues when making determinations in sexual harassment cases:

An employer may not base a term or condition of employment on an implicit or explicit submission to sexual harassment. In determining whether the claimant left work because of sexual harassment as defined in elsewhere in this section, the nature of the work environment is not relevant to a determination of an incident of harassment. Similarly, while it may be important to examine a history of alleged harassment in a case, the victim's toleration of prior harassment is not relevant to a determination on a particular incident of subsequent harassment.

Sexual harassment may result from conduct by the employer, its agents, supervisory employees, co-employees or non-employees.

Sexual harassment may occur either on or off the worksite and on or off company time.

There are two distinct categories of eligible sexual harassment claims-- employer harassment and co-employee/non-employee harassment. The criteria for eligibility depend on who commits the harassment.

In the case of alleged sexual harassment by the employer, its supervisory employees or agents, an employer is considered to be liable for sexual harassment committed by its supervisory employees or agents. Thus, you must simply determine that the sexual harassment occurred for a claimant to be eligible. This is regardless of whether the employer authorized the specific act(s) of harassment or had actual knowledge of the particular act(s).

A claimant who leaves work due to sexual harassment by the employer, a manager or supervisor is not required to take reasonable steps to preserve employment. Therefore, failure of the claimant to take reasonable steps to preserve employment will not disqualify the claimant.

In the case of sexual harassment by a fellow employee or non-employee, you must determine whether:

1. The incident occurred in connection with a claimant's employment. The incident may have occurred either on or off company time, or on or off the worksite. However, if the incident occurred off the worksite, the claimant must ordinarily interact with the harasser in the workplace (i.e., the harasser is either a fellow employee, customer, or client, etc.).
2. Whether or not the employer is to be charged for benefits in cases of harassment by a non-employee depends on the employer's control over the non-employee's conduct. If you determine that the incident qualifies under the first three criteria listed above, thus making the claimant eligible for benefits, you must then determine whether to charge the benefits to the employer or to the solvency account. This distinction is made because employers are responsible for providing a harassment-free environment. They may be limited, however, in their ability to control non-employees in such situations. An example of a precautionary action an employer could take is using bouncers in a bar to control unruly patrons. If the harassment arose under circumstances that were within the employer's control and the employer did not exercise such control, the leaving is with good cause attributable to the employer. Therefore, benefits are to be charged to the employer. If not, then the benefits should be charged to the solvency fund.

Form 124 Explanation:

The claimant left his or her work because of sexual harassment. Leaving work under these circumstances although voluntary, is with good cause attributable to the employing unit and not subject to disqualification pursuant to the above cited section of Law.

or

The claimant left his or her work because of sexual harassment. Leaving work under these circumstances was for an urgent, compelling and necessitous reason and not subject to disqualification pursuant to the above cited section of the Law.

(C) Racial and Other Unreasonable Harassment

A claimant leaves work because of racial or other unreasonable harassment. Racial and other unreasonable harassment is defined as follows:

...Incidents of harassment related to race, age, religious creed, national origin, handicap, ancestry, or sexual orientation but shall not include persons whose sexual orientation involves minor children as the sex object, or any individual when the purpose or effect is to unreasonably interfere with the individual's work performance, or the effect of creating an intimidating, hostile or offensive working environment.

You must keep three things in mind when making determinations of racial or other unreasonable harassment cases:

An employer may not base a term or condition of employment on an implicit or explicit submission to racial or other unreasonable harassment. In determining whether the claimant left work because of harassment as defined in 1239(C), neither the nature of the work environment nor the victim's toleration of prior harassment is relevant to a determination of a particular incident of subsequent harassment.

Racial or other unreasonable harassment may result from conduct by: the employer, its agents, supervisory employees, co-employees or non-employees.

Racial or other unreasonable harassment may occur either on or off the work premises and on or off company time.

If the incident satisfies each of the above criteria, the claimant will not be disqualified for benefits.

There are two categories of eligible racial harassment or other unreasonable harassment claims: employer harassment, and co-employee/non-employee harassment. The criteria for eligibility depend on who commits the harassment.

In the case of alleged racial harassment or other unreasonable harassment by the employer, its supervisory employees or agents, you can presume that the employer, its supervisory employees or agents knew or should have known of the racial harassment since they committed the specific act. Thus, you must simply determine that the harassment occurred for the claimant to be eligible. This is regardless of whether the specific act(s) of harassment were authorized by the employer or the employer had actual knowledge of the act(s).

A claimant who leaves work due to racial harassment by the employer, a manager or supervisor is not required to take reasonable steps to preserve employment. Therefore, failure of the claimant to take reasonable steps to preserve employment will not disqualify the claimant.

In the case of racial or other unreasonable harassment by a co-employee or non-employee, you must determine whether:

1. The alleged racial harassment or other unreasonable harassment occurred.
2. The employer, supervisory employees or agents knew or should have known of the alleged harassment (for example, through knowledge of past reports of harassment involving other workers).
3. The employer failed to correct the situation. The employer must respond promptly and effectively as necessitated by the specifics of the incident.
4. The incident occurred in connection with a claimant's employment. The incident may have occurred either on or off company time, or on or off the worksite. However, if the incident occurred off the worksite, the claimant must ordinarily interact with the harasser in the workplace (i.e., the harasser is either a co-employee, customer, or client, etc.).
5. Whether or not the employer is to be charged for the benefits in cases of harassment by a non-employee depends on the employer's control over the non-employee's conduct. If you determine that the incident qualifies under the first three criteria listed above, thus making the claimant eligible for benefits, you must then determine whether to charge the benefits to the employer or to the solvency account. This distinction is made because employers are responsible for providing a harassment-free environment. They may be limited, however, in their ability to control non-employees in such situations.

If the harassment arose under circumstances that were within the employer's control and the employer did not exercise such control, the leaving is with good cause attributable to the employer. Therefore, benefits are to be charged to the employer. If not, then the benefits should be charged to the solvency fund.

If the incident satisfies each of the above criteria, the claimant will not be disqualified for benefits.

Form 124 Explanation:

The claimant left his or her work because of (racial) (unreasonable) harassment. Leaving work under these circumstances, although voluntary, is with good cause attributable to the employing unit and not subject to disqualification pursuant to the above cited section of the Law.

or

The claimant left his or her work because of (racial)(unreasonable) harassment. Leaving work under these circumstances was for an urgent, compelling and necessitous reason and not subject to disqualification pursuant to the above cited section of the Law.

1226 TEMPORARY EMPLOYMENT

MGL Chapter 151A §25(e) was amended by §8 of Chapter 142 of the Acts of 2003 to introduce new requirements for temporary help firms and their employees. These provisions came into effect on January 1, 2004.

1227 STATUTE

§25(e)(1)

The pertinent section of statute reads as follows:

"A temporary employee of a temporary help firm shall be deemed to have voluntarily quit employment if the employee does not contact the temporary help firm for reassignment before filing for benefits and the unemployment benefits may be denied for failure to do so. Failure to contact the temporary help firm shall not be deemed a voluntary quitting unless the claimant has been advised of the obligation in writing to contact the firm upon completion of an assignment.

For the purposes of this paragraph, "temporary help firm" shall mean a firm that hires its own employees and assigns them to clients to support or supplement the client's workforce in work situations such as employee absences, temporary skill shortages, seasonal workloads and special assignments and projects. "Temporary employee" shall mean an employee assigned to work for the clients of a temporary help firm."

Additional guidance for implementing these provisions has been provided in 430 CMR 4.04 (8).

1228 DEFINITIONS

(A) Temporary Help Firm

To determine whether the requirements of the statute apply in a particular case it must first be determined whether the employer is a temporary help firm as defined in the statute. A temporary help firm is one that *primarily* hires its own employees and assigns them to clients to support or supplement a client company's workforce in work situations such as employee absences, temporary skill shortages, seasonal workloads and special assignments and projects. Employers self-identify their primary business at the time they register with the DUA as a new employer and periodically after that. Companies who have identified themselves as providing primarily temporary help services will be designated as a temporary help firm and assigned NAICS code 561320. The NAICS code is displayed on each employment history detail (QEH) display.

In those cases in which the employer's NAICS code does not appear to identify the employer's primary business as that of a temporary help firm and the employer maintains that this is its primary business, a determination must be made as to whether the employer is, in fact, a temporary help firm. The adjudicator should obtain a statement from the employer describing the employer's business activities.

Other than providing temporary help to clients, in what other types of business does the employer engage? What is the total number of employees working for the company? How many work as temporary employees? How many are employed in other lines of work? What portion of company revenues are derived from the provision of temporary help services and from other types of business? The statement should be forwarded to the Status Unit along with a completed Request for Status Determination, Form 586.

Once the Status Unit determines whether the employer is a temporary help firm, issue a determination based on applicable policy as outlined in this and other sections of the handbook. If the employer is a temporary help firm, adjudicate the claim in accordance with policy outlined in this section. If the employer is not a temporary help firm, but the claimant was employed as a temporary employee, refer to Temporary Employees at (B). If the employee was employed by a temporary help firm but not as a temporary employee, other sections of the handbook should be applied as appropriate to the circumstances of the case.

(B) Temporary Employee

The provisions of the statute apply only when adjudicating claims filed by temporary employees who are assigned to work for the clients of a temporary help firm in work situations such as employee absences, temporary skill shortages, seasonal workloads and special assignments and projects. They do not apply to other employees of the temporary help firm who might be employed in the business office of the temporary help firm engaged in administrative activities for the firm as regular full or part-time employees.

1229 FACT FINDING**(A) Employer Requirements**

If the claimant worked as a temporary employee for a temporary help firm then the requirements of the statute apply. The employer must have notified the employee of the obligation to contact the company upon completion of an assignment to determine whether additional work is available before filing for benefits.

Notification must be provided to the employee in writing. While some employees will be notified at the time of hire, others may receive notification from the employer at some later time. There is no requirement that notice be given at the time of hire, however, notification must be given prior to completion of the employee's current assignment so that the employee is aware of the requirement that the employer be contacted upon completion of the assignment and before filing for benefits. The notification must indicate the method and manner by which the employer should be contacted and the method and manner of contact must be consistent with the normal method and manner of communication between the employee and employer.

This means that if the customary means by which the employee contacts the employer is by telephone, the employer may not require the employee to report in person to determine whether a new work assignment is available. The notice must also indicate that failure to contact the employer for reassignment prior to filing for benefits may affect eligibility for Unemployment Insurance benefits.

(B) Employee Requirements

The temporary employee, once notified of the requirement that the temporary help firm be contacted for possible reassignment as indicated above, will be determined to have left work voluntarily in the event that the employee fails to contact the employer as required, unless the employee had good cause for failing to request another assignment.

The employee must contact the employer "upon completion of their current assignment" and *before* filing for benefits. This means that the employee must contact the employer on the last day of scheduled work on the current assignment or after completion of the assignment provided that the contact is made before a claim for benefits is filed.

1230 CIRCUMSTANCES AND POLICIES**(A) Temporary Help Firm Notification Requirements Not Met**

If the employer has not provided the required notification to the employee, or has not provided the notification in writing, then the claim may be approved provided the employee completed the last assignment. Use the following explanation on Form 124 citing §25(e)(1).

Form 124 Explanation:

It has not been established that you notified the employee (in writing) of the requirement that he/she contact you for reassignment before filing for benefits. The claimant completed the last assignment and any loss of employment through failure to accept a new assignment is not subject to disqualification pursuant to the above-cited section of the Law.

(B) Temporary Help Firm Requirement of Documenting Employee's Failure Not Met

If the claimant maintains that he contacted the temporary help firm to request another assignment upon completion of the last assignment and the employer maintains that he did not, the employer should be asked to provide contemporaneous documentation prepared in the ordinary course of business to support contention. If such documentation was requested and the employer has not submitted such documentation, then the claim may be approved provided that the claimant completed the last assignment. Use the following explanation on Form 124 citing §25(e)(1).

Form 124 Explanation:

The claimant maintains that he/she contacted you for a new assignment upon completion of the last assignment. While you have maintained that the claimant did not do so, you have not substantiated your claim with the submission of requested contemporaneous documentation prepared in the ordinary course of business that would support your claim. The claimant is not subject to disqualification under the above-cited section of the Law.

If the claimant contacts the employer and no work is available, then the claimant's separation is attributable to a lack of work.

If the claimant contacts the employer and work is available but the claimant declines the assignment, determine whether the claimant left work voluntarily with or without good cause attributable to the employer based on the reason(s) that the claimant declined the assignment and in accordance with policies outlined elsewhere in this handbook including whether the work was suitable pursuant to §25(c) [Reference 1100: Suitable Work].

(C) Temporary Employee - Failure to Contact Temporary Help Firm – No Good Cause

If the employee did not contact the employer or did not contact the employer as required (for example, contacting the employer prior to the last scheduled day of work or contacting the employer after filing a claim for benefits), determine whether the claimant had good cause for failing to contact the employer. If the employee did not contact the employer or did not contact the employer as required and did not have good cause for failing to contact the employer, then the claimant will be disqualified. Use the following explanation on Form 3720 citing §25(e)(1).

Form 3720 Explanation:

Although notified by your employer of the requirement to do so, you failed to contact your employer for reassignment as required by the above cited section of the Law. You did not have good cause for failing to contact your employer for reassignment. Your leaving of work is determined to be voluntary, without good cause attributable to your employer and subject to disqualification.

(D) Temporary Employee - Failure to Contact Temporary Help Firm – Good Cause

If the employee did not contact the employer or did not contact the employer as required (for example, contacting the employer prior to the last scheduled day of work or contacting the employer after filing a claim for benefits), and you determine that the claimant did have good cause for failing to contact the employer, the claim may be approved. Use the following explanation on Form 124 citing §25(e)(1).

Form 124 Explanation:

Although the claimant failed to contact you for reassignment after having been notified to do so, it has been established that the claimant had good cause for failing to do. The claimant completed the last assignment and any loss of employment through failure to request a new assignment is not subject to disqualification pursuant to the above-cited section of the Law.

(E) Temporary Employee Contacts Temporary Help Firm

If the claimant contacts the employer and no work is available, then the claimant's separation is attributable to a lack of work.

If the claimant contacts the employer and work is available, but the claimant declines the assignment, determine whether the claimant left work voluntarily with or without good cause attributable to the employer based on the reason(s) that the claimant declined the assignment and in accordance with policies outlined elsewhere in the Handbook, including whether the work was suitable as specified in §25(c). [Reference 1100: Suitable Work.]

(F) Temporary Employee - Not a Temporary Help Firm

When a claimant obtains work from other than a temporary help firm and is sent to work for clients of the employer on assignments of varying lengths, each new assignment constitutes a separate contract of hire because duties, travel, hours, and working conditions are subject to change.

If the claimant completes his or her last assignment, he or she is not subject to disqualification pursuant to §25(e)(1) for *failing to accept a new assignment*. This is because completion of each assignment ends that particular contract, and there is no longer an employment relationship. However, there may be a disqualification pursuant to either §25(c) or §29(a) and 1(r), depending on the number of weeks of work refused. [Reference 1100 Suitable Work.]

Form 124 Explanation:

The claimant completed his or her last assignment of (specify the no. of days or weeks). Because there is no continuing employer-employee relationship, any loss of employment through failure to accept a new assignment is not subject to disqualification pursuant to the above-cited section of the Law.

If the claimant *fails to complete an assignment*, you should investigate his or her eligibility pursuant to §25(e) of the Law. If the claimant is not subject to disqualification pursuant to this section, you must resolve the issue of availability for work pursuant to §24(b).

(G) Casual Workers - Daily Reporting

Employers who provide casual day-labor services to clients are temporary help firms for purposes of adjudicating claimant eligibility. Typically, the temporary employee obtains his or her work by reporting daily to the employing unit's employment office.

Provided the employer has given the employee the required written notice, the employee is required to contact the employer for additional work upon completion of each assignment in a method and manner to be consistent with the normal method and manner of communication between the temporary employee and the temporary employment firm for which he/she works.

If the claimant maintains that she reported to the employers' employment office for new work yet the employer contends otherwise, then documentation should be requested from the employer.

If the employer has submitted information, supported by contemporaneous documentation prepared in the ordinary course of business, that the claimant did not request another work assignment upon completion of the most recent assignment, and the claimant does not have good cause for failing to do so, then the claimant will be subject to disqualification pursuant to §25(e)(1).

Form 3720 Explanation:

Although notified by your employer of the requirement to do so, you failed to contact your employer for reassignment as required by the above cited section of the Law. Your leaving of work is determined to be voluntary, without good cause attributable to your employer and subject to disqualification.

1231 DOMESTIC VIOLENCE**1232 STATUTES**

Chapter 69 of the Acts of 2001, An Act Relative To The Eligibility For Unemployment Benefits For Victims Of Domestic Violence was signed into law on August 11, 2001. The act amended several sections of MGL Chapter 151A to provide for UI eligibility for victims of domestic violence effective November 9, 2001.

§1(g^{1/2})

“Domestic violence”, abuse committed against an employee or the employee's dependent child by: (1) a current or former spouse of the employee; (2) a person with whom the employee shares a child in common; (3) a person who is cohabitating with or has cohabitated with the employee; (4) a person who is related by blood or marriage; or (5) a person with whom the employee has or had a dating or engagement relationship.

For the purposes of this chapter, abuse shall include (1) attempting to cause or causing physical harm; (2) placing another in fear of imminent serious physical harm; (3) causing another to engage involuntarily in sexual relations by force, threat or duress or engaging or threatening to engage in sexual activity with a dependent child; (4) engaging in mental abuse, which includes threats, intimidation or acts designed to induce terror; (5) depriving another of medical care, housing, food or other necessities of life; and (6) restraining the liberty of another.

For the purposes of this chapter, an individual may demonstrate the existence of domestic violence by providing 1 of the following: (1) a restraining order or other documentation of equitable relief issued by a court of competent jurisdiction; (2) a police record documenting the abuse; (3) documentation that the perpetrator of the abuse has been convicted of 1 or more of the offenses enumerated in Chapter 265 where the victim was a family or household member; (4) medical documentation of the abuse; (5) a statement provided by a counselor, social worker, health worker, member of the clergy, shelter worker, legal advocate or other professional who has assisted the individual in addressing the effects of the abuse on the individual or the individual's family; or (6) a sworn statement from the individual attesting to the abuse. All evidence of domestic violence experienced by an individual, including the individual's statement and corroborating evidence, shall not be disclosed by the department unless consent for disclosure is given by the individual.

§14(d)(3)

"Benefits which, in accordance with the provisions of this paragraph, would be charged to an employer's account shall not be so charged but shall be charged to the solvency account in any case where no disqualification is imposed pursuant to the provisions of clause (1) of subsection (e) of §25 because the individual's leaving of work with such employer, although without good cause attributable to the employer, was not voluntary, or was due to domestic violence."

§25

"No waiting period shall be allowed and no benefits shall be paid to an individual pursuant to this chapter.....(e) For the period of unemployment next ensuing and until the individual has had at least eight weeks of work and in each of said weeks has earned an amount equivalent to or in excess of the individual's weekly benefit amount after the individual has left work (1) voluntarily unless the employee establishes by substantial and credible evidence that he had good cause for leaving attributable to the employing unit or its agent, (2) by discharge shown to the satisfaction of the Commissioner by substantial and credible evidence to be attributable to deliberate misconduct in willful disregard of the employing unit's interest, or to a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, provided that such violation is not shown to be as a result of the employee's incompetence, or (3) because of conviction of a felony or misdemeanor.

...No disqualification shall be imposed if the individual establishes to the satisfaction of the Commissioner that the reason for the individual's discharge was due to circumstances resulting from domestic violence, including the individual's need to address the physical, psychological and legal effects of domestic violence.

...An individual shall not be disqualified from receiving benefits pursuant to this clause if the individual establishes to the satisfaction of the Commissioner that the reason for the individual's leaving work was due to domestic violence, including: (1) the individual's reasonable fear of future domestic violence at or on route to or from the individual's place of employment; (2) the individual's need to relocate to another geographic area in order to avoid future domestic violence; (3) the individual's need to address the physical, psychological and legal effects of domestic violence; (4) the individual's need to leave employment as a condition of receiving services or shelter from an agency which provides support services or shelter to victims of domestic violence; (5) any other respect in which domestic violence causes the individual to reasonably believe that termination of employment is necessary for the future safety of the individual or the individual's family.

1233 PRINCIPLES

The Unemployment Insurance Law provides for the payment of benefits to individuals whose separation from work is attributable to domestic violence or the need to deal with the effects of domestic violence.

(A) Domestic Violence – Defined by Statute

The key to distinguishing “domestic violence” from “assault” lies in the relationship between the perpetrator and the victim. Domestic violence is defined in §1 as abuse committed against an employee or the employee's dependent child by:

- a current or former spouse of the employee;
- a person with whom the employee shares a child in common;
- a person who is cohabitating with or has cohabitated with the employee;
- a person who is related by blood or marriage; or
- a person with whom the employee has or had a dating or engagement relationship.

In cases involving domestic violence the claimant may become separated from employment due to circumstances in which he or she is the *direct* victim of domestic violence and is experiencing the physical, psychological and legal effects of domestic violence and must leave work to deal with these effects, or due to circumstances in which a dependent child is the victim of domestic violence and the claimant must leave work to deal with the effects of violence perpetrated upon the child-victim.

Fact finding to be conducted in these cases will include the gathering of information as to the nature and duration of the relationship between the claimant and the perpetrator of domestic violence. The claimant's statement must indicate that a relationship, as characterized by one or more of the criteria noted above, existed between the claimant and the abuser. However, the extent or duration of the claimant's "cohabitation" or "dating relationship" with the abuser is not a determining factor in these cases. Such relationships may be minimal in some cases. A "dating relationship," for example, may be established with a single date.

(B) Abuse – Defined by Statute

The abuse or effects of the abuse experienced by claimant, or dependent child, can be physical or psychological and is further defined by Law as:

- attempting to cause or causing physical harm;
- placing another in fear of imminent serious physical harm;
- causing another to engage involuntarily in sexual relations by force, threat or duress or engaging or threatening to engage in sexual activity with a dependent child;
- engaging in mental abuse, which includes threats, intimidation or acts designed to induce terror;
- depriving another of medical care, housing, food or other necessities of life; and
- restraining the liberty of another.

Claims adjudicators must be aware of the various forms which domestic violence can take and question the claimant accordingly. In some cases, claimants themselves will not necessarily recognize that they are victims of "domestic violence" or may be reluctant to so characterize their situation. Whether the claimant's separation from work is attributable to domestic violence must be determined based on an examination of the facts surrounding the separation.

(C) Claimant Fact Finding

Claimants should be questioned with sensitivity regarding incidents of abuse relating to the claimant's leaving or discharge from work. Inform the claimant that information provided during the fact finding process will be treated with utmost confidentiality and that, although the former employer will be contacted for a statement regarding the circumstances of separation, information obtained from the claimant relating to incidents of abuse will not be shared with the employer.

The claimant's statement must be sufficiently detailed to establish that abuse occurred and that one or more incidents of abuse or the physical, psychological or legal effects of the abuse caused the claimant to leave work or to be discharged from work. Once facts have been obtained that are sufficient to meet these requirements, further information is not necessary.

Adjudicators should be aware that abuse takes many forms. Factors to be considered when obtaining the claimant's statement of facts:

The claimant may have been subjected to physical abuse or threats of physical abuse. Others (e.g., children, friends, relatives or even pets) may have been subjected to physical abuse or threats of abuse as a means of intimidating the claimant. Note that in some cases the abuse may be sufficient to cause injury but in others may involve pushing, shoving, restraining, dousing with liquids or other actions that, while not necessarily causing injury, nevertheless are physically abusive.

The claimant may have been the subject of intimidating or threatening behavior. Such behavior can involve a wide variety of actions by the abuser, for example:

- threatening looks or gestures
- destruction of property
- the display of a gun or other weapon
- placing the claimant in danger (e.g., reckless driving, abandonment in dangerous or unfamiliar surroundings, etc.)
- threats by the abuser to do harm to himself/herself

The claimant may have been subjected to emotional abuse. This can involve humiliating or embarrassing treatment by the abuser, name-calling or the denigration of friends or relatives.

The abuser may have attempted to exercise physical or economic control over the claimant by confining the claimant to the home, controlling financial assets or prohibiting the claimant from going to work.

The abuser may have used the claimant's children to control the claimant's behavior by threatening harm to the children or damage to the claimant's relationship with the children.

(D) Documentation Not Required

MGL Chapter 151A, §1(g^{1/2}) provides that Individuals may demonstrate the existence of domestic violence by providing:

- a restraining order or other documentation of equitable relief issued by a court of competent jurisdiction;
- a police record documenting the abuse;
- documentation that the perpetrator of the abuse has been convicted of 1 or more of the offenses enumerated in MGL Chapter 265 where the victim was a family or household member;
- medical documentation of the abuse;
- a statement provided by a counselor, social worker, health worker, member of the clergy, shelter worker, legal advocate or other professional who has assisted the individual in addressing the effects of the abuse on the individual or the individual's family; or
- a sworn statement from the individual attesting to the abuse.

Although such documentation may be presented by the claimant or in rare cases the employer, it is not required to establish the existence of domestic violence and should be requested only when necessary to rebut other statements or seemingly contradictory facts. Victims of domestic violence will often not have such documentation, or may find it difficult or dangerous to obtain. Claimants who do not possess such documents should not be asked to obtain them. If readily available, they may be included, along with the claimant's statement, and may help to support the claimant's contention that separation was attributable to domestic violence.

(E) Claimant Privacy and Confidentiality

MGL Chapter 151A, §1(g^{1/2}) provides as follows: "All evidence of domestic violence experienced by an individual, including the individual's statement and corroborating evidence, shall not be disclosed by the department unless consent for disclosure is given by the individual."

This provision introduces particular difficulties into the adjudication process. Information obtained from the claimant regarding the circumstances surrounding the separation from work is typically presented to the employer for rebuttal or confirmation. Given the requirements of the Law, information obtained from the claimant regarding domestic violence may not be shared with the employer. Whether the employer is aware of some or all of the circumstances will have no bearing on the release of information relating to domestic violence obtained from the claimant.

In order to ensure maximum claimant privacy, confidentiality, and safety, DUA procedure requires that cases involving domestic violence, once identified, will be referred to the Determinations Department after a complete statement of facts has been obtained from the claimant.

The Determinations Department will contact the claimant's former employer to obtain the employer's statement of facts and will issue a determination to the interested parties.

In some cases, claims adjudicators may initiate contact with the employer before becoming aware that the separation may involve domestic violence. This will most typically occur in cases in which available information (as obtained from the claimant during the claimstaking interview or on Forms 1062/1074) indicates that separation was attributable to discharge by the employer. This information is often minimal and will not necessarily identify domestic violence as a factor contributing to the separation.

If the employer has been contacted for a statement of facts, and the employer's statement indicates that domestic violence may have been a factor contributing to the claimant's discharge, the claims adjudicator should complete the fact finding interview with the employer. Inform the employer that a representative of the Determinations Department may contact him or her for additional information and refer the case material to the Determinations Department for further fact finding and issuance of the determination.

(F) Leaving Work

Domestic violence may present non-disqualifying circumstances for leaving work. The circumstances referenced here are illustrative. Claim adjudicators may encounter a variety of situations not described here.

- The claimant may leave work as a direct consequence of abuse occurring at the workplace or occurring while traveling to or from work. In such situations continued employment will place the claimant in fear of further abuse.
- The claimant may be threatened with abuse for continuing to work. Abusers will often seek to deprive victims of financial resources as a means of establishing control over the victim.
- The claimant may need to leave home to escape abuse and seek housing with an organization that provides shelter for victims of domestic violence. Such shelters may require, as a condition of receiving assistance, that residents leave work to avoid placing themselves or other shelter residents in jeopardy should the abuser find the claimant at work or follow them from the workplace to the shelter.

- The claimant may need to leave work to seek medical treatment for injuries resulting from abuse, to pursue psychological counseling, legal support or to care for injured children.

(G) Attempts to Maintain Employment

The potential for maintaining the employer-employee relationship by requesting a leave of absence, a transfer to another location, or a change in the schedule of working hours is a factor typically considered when adjudicating cases involving the claimant's leaving of work. This may be true in some cases involving domestic violence. However, a leave of absence, transfer to another location or a change in the schedule of working hours will probably not provide a suitable remedy in cases involving domestic violence. It may never be safe for the claimant to return to the workplace, for example, if there continues to be a reasonable fear that an abuser may seek out the claimant at the place of employment. It may not be possible to determine when a claimant would be able to return to work, and the employer may be reluctant to consider an indefinite leave of absence.

If the statement of the employer (or claimant) indicates that a leave of absence or transfer was available, and the claimant knew of the option to request a leave or transfer, it must then be determined whether such an option would have provided a real remedy to the circumstances that caused the claimant's separation from work. Additionally, the claimant's statement should indicate why it was, or was not, reasonable to expect the claimant to have considered these options in the circumstances during which the leaving of work occurred.

Claimants who leave work due to domestic violence will most often become separated from work at a time when they are confronted with physical or emotional abuse or threats of abuse made against themselves dependent children or others. The claimant may act in panic or otherwise not be able to consider such options as other individuals leaving work under other circumstances might be expected to consider them. These issues should be addressed in the statements of fact as appropriate to the specifics of each case.

(H) Benefit Charging

MGL Chapter 151A, §14(d)(3) provides that benefits otherwise chargeable to a contributing employer's account will be charged to the solvency account in any case in which no disqualification is imposed pursuant to the provisions of §25(e)(1) because the claimant's leaving of work, although voluntary, was due to domestic violence. Similar charge relief does not apply in cases adjudicated pursuant to §25(e)(2) involving discharge from work and regardless of whether the discharge resulted from domestic violence or its effects.

Claims adjudicators should be mindful of this distinction when obtaining the claimant's statement of facts. In some cases, the claimant and employer may have differing perceptions as to the circumstances of the separation from work. The claimant, for example, may attribute the separation to a discharge by the employer while the employer maintains that the claimant left work. This is frequently the case when an absence from work has triggered the separation from employment.

Since charges to the former employer's account may be removed only in cases in which it is determined that the claimant left work under non-disqualifying circumstances, claims adjudicators should question both claimant and employer carefully to determine whether the claimant left work or was discharged.

The claimant's statement should be clear as to whether any absence from work was intended to be temporary or permanent, whether it was the claimant's intention to return to work or not, and whether the claimant believed that employment had been terminated by the employer. The employer's statement of facts should also be clear as to whether or not the claimant's absence was perceived to be a permanent leaving of work and why.