



**DEPARTMENT OF UNEMPLOYMENT ASSISTANCE
UI POLICY & PERFORMANCE
INTEROFFICE MEMORANDUM**

Date: July 25, 2013

Rescission(s): None

Reference No.: UIPP 2013.06

TO: UITCC & UI Program Integrity Directors, Adjudication Managers,
Compliance Officers and Job Service Representatives; Senior
Executive Staff

FROM: Ken Owens, UI Benefits Director

SUBJECT: Good Cause Policy for Limited English Proficiency (LEP) Claimants

1. PURPOSE.

To provide guidance on the DUA standard for providing equal access to LEP claimants and determining when good cause exists for an LEP claimant to have failed to meet a deadline or requirement.

2. REFERENCES.

- G. L. c. 151A, § 62A
- G. L. c. 151A, § 25(j)
- 430 Code Mass. Regs. § 4.13(4)
- Service Representatives Handbook § 1430, 1460, 1620 & 1640

3. BACKGROUND.

DUA is committed to providing equal access to Unemployment Insurance (UI) claimants with Limited English Proficiency. To achieve this goal, DUA should communicate with LEP claimants in their primary language whenever possible (and always when required by law). To meet the DUA standard for providing equal access to its LEP claimants, the following principles will guide all DUA communication with LEP claimants.

4. IDENTIFICATION OF A CLAIMANT'S PRIMARY LANGUAGE.

Most often, an LEP claimant first contacts DUA when filing a claim for UI benefits. When the initial claim is filed, the claims-taker must (1) determine the claimant's primary language and (2) properly code the claimant's primary language in the UI system. A claims-taker who is unable to identify the claimant's primary language should call staff at the Office of Multilingual Services at the following numbers:

- Andrea Berasaluce - 617-626-5142; aberasaluce@detma.org for Spanish, Arabic (Egyptian), and French
- Lilianna Leung - 617-626-5475; lleung@detma.org for Cantonese, Mandarin, and Vietnamese

The claims-taker must enter in UI Online whatever language the claimant names as primary, even where the claimant may be able to communicate effectively in English.¹ If a DUA staff member later learns that a claimant has been incorrectly coded, whether with English as the claimant's primary language or otherwise, the UI system should be updated.

5. ORAL COMMUNICATION WITH CLAIMANTS.

All oral communication should be in a claimant's primary language unless the claimant has specifically directed otherwise. When a claimant has identified a primary language other than English, DUA staff may not decide on his/her own that the claimant's English speaking ability justifies communicating in English. A DUA employee who speaks the claimant's primary language should be used whenever possible to communicate with the claimant. When such a staff member is not available, DUA staff should utilize the Language Line at 1-888-898-7621. DUA should not allow a claimant's child to interpret for the claimant.²

¹ Under both federal and state guidelines, Limited English Proficiency refers to an individual's limitations in reading, writing, or oral communication in English. The question to be asked is what is the person's primary language, and not whether or not the person has some English skills. [The Secretary of Administration and Finance (ANF) addresses this issue when discussing the ANF Administrative Bulletin #16, a Limited English Proficient person is someone who is not able to speak, read, write, or understand the English language at a level that allows effective interaction with Agency staff.] An individual who is able to communicate effectively in English nevertheless is entitled to self-identify as an LEP person.

² Children generally are not trained interpreters. Also, the issue that the claimant is in contact with the agency about may deal with sensitive and explicit subject matter, such as Domestic Violence, separation from work due to sexual harassment, etc. It is particularly inappropriate to engage in these types of conversations with minors. Moreover, Administrative Bulletin #16, "Language Access Policy and Implementation Guidelines, October 10, 2012," specifically prohibits the use of minor children as interpreters. The relevant section of the Bulletin states that

6. **TRANSLATED MATERIALS AND GOOD CAUSE PROTECTIONS.**

When an LEP claimant's primary language meets the statutory requirements specified by M.G.L. c. 151A, § 62A(d)(iii), DUA must "issue all notices and materials explaining the provisions of this section" in the claimant's primary language.³ Whenever (1) DUA fails to send an LEP claimant a bilingual notice required to be in the claimant's primary language in that language and (2) the claimant credibly represents to DUA that DUA's failure resulted in the claimant failing to meet a deadline or requirement, good cause should be found for the claimant's failure.⁴ Although DUA is not obligated to translate notices into languages not specified in § 62A(d)(iii), DUA will apply this good cause policy to all LEP claimants.

If good cause is denied, the reason for the denial shall be stated in the notice of denial provided to the claimant. A reason for denying good cause must be consistent with LEP claimants' statutory-entitlement to bilingual notice. For example, good cause may *not* be denied on the grounds that the claimant has some ability with English, should have learned to read English, or should have asked a family member, friend, or acquaintance to translate the document. A determination that the claimant has not credibly represented that DUA's failure to comply with G. L. c. 151A, § 62A(d)(iii), resulted in the claimant's failure to meet a deadline or requirement must include a specific reason for not finding the claimant credible; otherwise, good cause shall be deemed to have been found.

7. **"GOOD CAUSE" INCLUDES, BUT IS NOT LIMITED TO, THE FOLLOWING SITUATIONS:**

1) **Allegations of fraud based upon unreported earnings.** All UI recipients, including LEP claimants, are required to report their earnings. Although ignorance of this obligation does not excuse noncompliance, before an "at fault" finding for not reporting earnings may be made, an inquiry is needed to

"Agencies should refrain from using family members or friends to provide interpreter services; and, in no event shall an agency allow a minor to provide interpreter services."

³ The so-called statutory languages are: Spanish, Portuguese, Haitian Creole, Chinese, Vietnamese, Russian, Khmer, Laotian, Italian, Korean, Arabic and French.

⁴ In accordance with 430 Code Mass. Regs. § 4.13(4), an LEP claimant whose preferred language is listed under M.G.L. 151A, § 62A, who did not receive a determination in the claimant's preferred language will be deemed to have made a timely request for a hearing if the request is filed within 60 calendar days from the date the determination is sent to the claimant, no questions asked. If the hearing request is filed after the 60-day period, however, then the standard set forth in this memorandum applies.

determine whether the claimant's inability to understand or communicate in English led to the failure to report earnings. If it did lead to the failure to report earnings, then an "at fault" finding should not be made. In accordance with G. L. c. 151A, §25(j), a compensable week penalty can never be imposed upon a claimant who did not have actual notice of the reporting requirement that complied with G. L. c. 151A, § 62A(d)(iii).

2) **Good cause for pre-dating a UI claim.** Good cause for pre-dating a UI claim shall be found when a claimant credibly states that the late filing resulted from the claimant's limited English proficiency.

8. **QUESTIONS.**

Please contact the UI Policy & Performance Department at (617) 626-6422.