

## Chapter 2: Filing requirements and considerations

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## Section 1: Filing and reporting

### A. Statute

#### G. L. c. 151A, § 25(a)

No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter for—

(a) Any week in which he fails without good cause to comply with the registration and filing requirements of the [director].

### B. Principles

To receive credit for a waiting period or a weekly benefit payment, claimants must comply with DUA's filing and reporting requirements,<sup>1</sup> which mainly concern the filing of initial and continued claims. (For issues regarding claimants who file from outside the United States, see Chapter 4.) The requirements also cover claimants' obligations to comply with requests for information, such as identification and work search reviews, and to participate in other activities, such as Career Center Seminars, deemed necessary to achieve reemployment.

### C. Claimant identification and initial claims

In some cases, for example, involving duplicate claims or data discrepancies, a claimant should be asked to document his or her identity and Social Security number. An identity verification issue is created and a notice requesting the verifying documentation will be issued, informing the claimant that a failure to submit the documentation by the deadline specified will result in a denial of benefits.

If it is established that the claimant did not submit identifying documentation, a disqualification should be issued citing § 25(a). The disqualification will be for the effective week of the claim and indefinitely until eligibility is redetermined based on verifying documentation.



<sup>1</sup> See G. L. c. 151A, § 25(a).

## **D. Continued claims and late requests for benefits**

After an initial claim is filed, claimants must request benefits for each week. Each weekly request is referred to as a “continued claim.”

The claimant has 21 days to request benefits, beginning the Friday of the week for which benefits are requested. For any week for which the claimant requests benefits after this 21-day period, a reporting requirements/late certification issue is created, and a questionnaire is sent to the claimant so that the adjudicator can determine whether the claimant had good cause for failing to request benefits timely. Good cause reasons include circumstances beyond the claimant’s control. (See the discussion of good cause, below.) For any week as to which the claimant did not have good cause for requesting benefits late, a disqualification notice will be issued citing § 25(a).

## **E. Failure to document work search activities**

Claimants must actively search for work in each week for which they claim benefits. To meet this requirement, a claimant must:

- Complete at least three work search activities during the week;
- Keep detailed, written work search logs; and
- When asked, provide the work search logs and any other requested information.

When a claimant’s weekly certification for benefits shows non-compliance with the minimum work search requirements, UI Online creates an actively seeking/failure to meet work search requirements issue.<sup>2</sup> (See Chapter 4 – Able, available, and actively seeking work.)

## **F. Reemployment services; RESEA Career Center Seminar: Failure to report for RESEA review**

RESEA, the Reemployment Services and Eligibility Assessment, is a federal program that addresses the reemployment needs of permanently separated UI claimants as well as the detection and prevention of erroneous UI payments. Claimants are notified of their mandatory participation in RESEA the Saturday

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<sup>2</sup> DUA may review a claimant’s work search activities as part of a random review. As this is done outside the regular adjudication process, it is not addressed further in this Handbook. DUA also must review work search activities in connection with a Reemployment Services and Eligibility Assessment (RESEA), which is discussed in the next section.

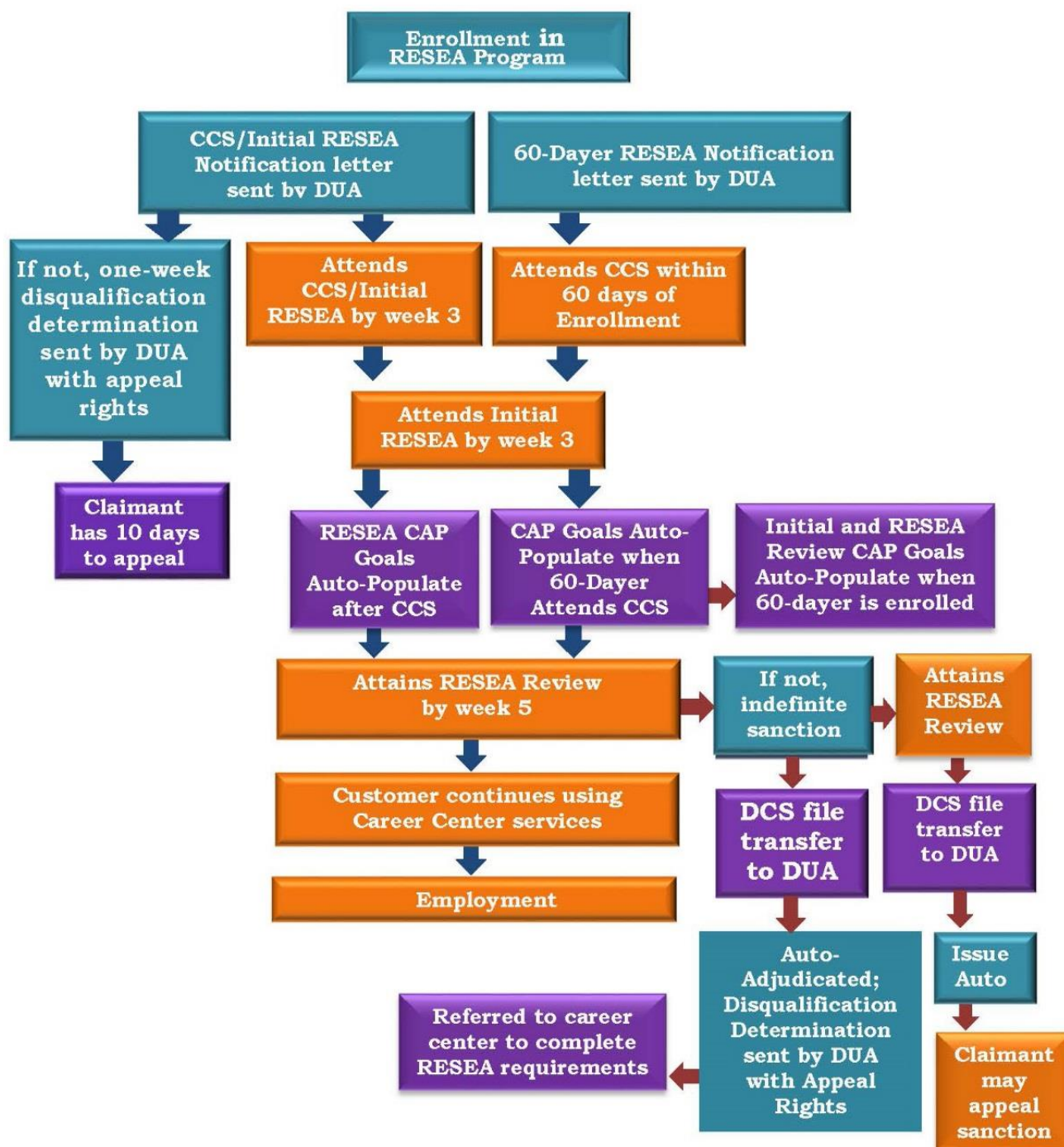
after their first payment of UI benefits. The notice is sent by U.S. mail, even if the claimant requested email correspondence; it also is available in the claimant's UI Online inbox. The notice outlines the program's requirements and the possible penalties for failing to comply. When applicable, the claimant also is sent a translated version of the notice in the claimant's preferred language. DUA also uses robocalls to inform claimants of their obligation to participate in RESEA.

The initial RESEA requirement is to attend a Career Center Seminar (CCS) by the third paid week of the claim. (With good cause, the CCS may be rescheduled for no later than the fourth week, provided the request is made before the original due date. See good cause, below.) At the time of the CCS, the claimant also must attend an initial RESEA. If the claimant fails to attend by the due date, DUA automatically issues a one-week disqualification (Issue type/subtype: RESEA/Failure to Report to Career Center Seminar/Initial RESEA).

By the end of the fifth paid week of the claim, a claimant must attend a RESEA review and comply with required activities, which are explained to the claimant at the initial RESEA. If the claimant fails to attend the RESEA review, or fails to comply with the required activities by the fifth paid week of the claim, DUA automatically disqualifies the claimant indefinitely (Issue type/subtype: RESEA/Failure to Report for RESEA Review). If an indefinitely disqualified claimant later satisfies the RESEA requirements, UI Online automatically will end the disqualification.

Any claimant disqualified through this auto-adjudication may appeal to the Hearings Department. Fact-finding should include the activity the claimant was scheduled to attend, the date the claimant was scheduled to attend, the claimant's understanding of the responsibility to attend, and the reason(s) given by the claimant for failing to attend.

## RESEA Program Overview – Flowchart



## **G. Good cause**

Generally, good cause refers to circumstances beyond the claimant's control that prevented the claimant from meeting a requirement. The claimant, who is the only party involved in filing and reporting requirements issues, must establish good cause by a preponderance of the evidence. Factors for establishing good cause for each type of issue are discussed below. Special statutory and regulatory provisions apply to Limited English Proficiency (LEP) claimants. (For a more detailed discussion of LEP claimants, see Chapter 1-Adjudicator responsibilities.)

If a good cause issue arises in connection with a federal program extending benefits, adjudicators should refer to the applicable memorandum from the UI Policy and Performance Department. If none exists, adjudicators should consult the UI Policy and Performance Department or their manager.

Good cause does not apply when a claimant fails to submit documentation verifying the claimant's identity; that issue is limited to whether the claimant has submitted appropriate identifying documentation. If a claimant later supplies the necessary documentation, the issue will be redetermined.

A claimant's good cause reason for failing to meet the filing and reporting requirements may provide a basis for an adjudicator/review examiner to create a new issue under another section of the law, for example, § 24(b), Able and Available.

### **1. Good cause for late requests for benefits**

Circumstances beyond the claimant's control include, for example:

- claimant illness;
- illness of a household or family member who requires care by the claimant;
- death of a household member or immediate family member.

A return to full employment or absence from the area during the filing period is not a good cause reason for failure to request benefits on time.

### **2. Good cause for failure to report to a work search activity review or RESEA**

Although DUA regulations do not currently address good cause in the context of a review of work search activity or compliance with RESEA requirements, adjudicators and review examiners should consider the definition of good cause in 430 Code Mass. Regs. § 4.01(8) (dealing with claimants who are required to

make use of specified reemployment services because they have been identified as likely to exhaust regular benefits). The regulation defines “good cause” as:

- attendance at a job interview;
- claimant, household member, or immediate family member illness;
- an emergency family care issue, provided that attempts to secure family care for the scheduled activity have been made;
- unexpected transportation problems;
- death of a household member or immediate family member;
- previously scheduled health-related appointments;
- jury duty;
- the individual’s need to address the physical, psychological and legal effects of domestic violence as defined in G. L. c. 151A, § 1(g<sup>1/2</sup>); or
- other circumstances that the Director determines are beyond the individual’s control.

Also, a claimant who has a return-to-work date within four weeks of a scheduled work search activity review or required seminar has good cause for not attending.

An LEP claimant has good cause for not attending a Career Center Seminar that is offered only in English.

### 3. Good cause for failure to submit a work search log

Good cause reasons for failing to submit a work search log include:

- definite recall date or start date within four weeks of the issue start date;
- hospitalization;
- death of a family member; and
- family care issues.

Absent extraordinary circumstances, jury duty, attendance at a job interview, and other scheduling conflicts are **not** good cause for a claimant’s failure to submit a work search log, because claimants can submit work search logs outside of business hours and are not required to go anywhere to do so.



### H. Out-of-country filings

Because DUA is unable to verify a claimant’s activity outside the United States,

claimants may not request benefits for any weeks that they spend a majority of time outside the United States, its territories, or Canada (with which the United States has an agreement permitting filing from either country).

**Examples:**

- A claimant who certifies from outside the United States or Canada for a week the claimant was **in** the United States or Canada is not subject to disqualification under § 25(a). For example, a claimant who resides in Arizona and travels to Mexico to visit family for the weekend and while there certifies for the preceding week during which he was in the United States should not be found ineligible for benefits.
- A claimant who certifies from outside the United States or Canada for a week the claimant was **outside** the United States or Canada for the majority of the week has failed to meet the reporting/filing requirements under § 25(a). The claimant might be available for and actively seeking work (either in the United States or another country) under § 24(b) for the week(s) in question; however, this would not satisfy the reporting requirements under § 25(a).

**I. No courtesy claims**

Courtesy claims are no longer allowed. Before online and phone certification, claimants had to report in person at an unemployment office. As a courtesy, claimants who traveled to look for work outside Massachusetts, but within the United States, were permitted to report to an unemployment office in the state in which they were traveling. Likewise, claimants from other states were permitted to file out-of-state claims in Massachusetts. Today, this type of courtesy claim is no longer needed.

Courtesy claims have never applied to claimants filing from outside the U.S. and Canada.



## Section 2: Predating of claims (new and reopened)

This section discusses circumstances under which a claim may be predated, making the effective date of the claim earlier than the Sunday immediately preceding the date that the claimant first contacted DUA.

### A. Statutes and regulations

#### Statutes

##### G. L. c. 151A, § 23(b)

Benefits shall be paid to an eligible individual for no more than his weeks of unemployment subsequent to a waiting period, the duration of which shall be determined as follows:

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(b) With respect to an individual in total unemployment who has registered or given notice as required by this section the waiting period shall commence on the Sunday immediately preceding the date of registration. With respect to an individual in partial unemployment, such waiting period shall commence on the Sunday next but one preceding such registration or notice; provided, that in the case of an individual in partial unemployment the commissioner may prescribe an earlier Sunday on which such waiting period shall commence.

##### G. L. c. 151A, § 62A (f)-(g)

(f) A claimant shall be deemed to have initiated a claim for unemployment compensation benefits on the first day that the claimant contacts or attempts to contact the division, whether or not such employee is able to speak with a division representative at the time.

(g) ... Each employer shall issue to every separated employee, as soon as practicable, but not to exceed 30 days from the last day said employee performed compensable work, written information furnished or approved by said division which shall contain the name and mailing address of the employer, the identification number assigned to the employer by said division, instructions on how to file a claim for unemployment compensation, the address and phone number of the regional office which serves the recipient, and the phone number of the teleclaim information line. Delivery is made when an employer provides such information to an employee in person or by mail to the employee's last known address. The waiting period under section 23 for an employee who

did not receive the information required by this paragraph and who failed to file timely for benefits, shall be the Sunday of the initial week such employee would have been eligible to receive unemployment compensation. Each employer shall have the burden of demonstrating compliance with the provisions required herein.

## **Regulations**

### **430 Code Mass. Regs. §§ 4.01(3) – 4.01(4)**

(3) The effective date of a claim for an individual in partial unemployment shall be the Sunday of the week immediately preceding the week in which such registration and filing occurred, provided the individual was in partial unemployment during such earlier week and such earlier week occurred after the expiration of any benefit year previously established for such individual; except that for good cause the Commissioner or his authorized agent may allow an earlier effective date.

(a) In any case where an earlier effective date has been allowed, it shall be deemed, for the purpose of 430 CMR 4.00 that the individual registered and filed during the week of the effective date.

(b) In any case where an earlier effective date has been allowed, and the period between the effective date allowed and the date on which the registration actually occurred includes both weeks of partial and weeks of total unemployment, waiting period credit or benefits will be allowed only for the weeks of partial unemployment.

(4) Whenever the continuity of a claim has been interrupted for any reason, the claim may be reopened within the same benefit year.

(a) To reopen a claim, a claimant shall report in such manner as the Commissioner shall prescribe.

(b) The effective date of reopening of a claim shall be the Sunday of the week in which the claimant reports as under 430 CMR 4.01(4)(a); except that if the claimant was in partial unemployment prior to such reporting, the reopening shall be effective as of the Sunday of the week immediately preceding the week in which such reporting occurred, provided that for good cause an earlier date may be allowed.

## B. Principles

Section 23(b) gives general rules for the effective dates of claims for unemployment compensation. Generally, for a new claim,

- the effective date of a claim by an individual in total unemployment is the Sunday immediately preceding the filing date; and
- the effective date of a claim by an individual in partial unemployment during the week immediately preceding the filing of a claim is the Sunday of that earlier week (and no Reporting/Predate Request issue need be created).

DUA has several methods claimants may use to file a claim for benefits. These methods include:

- filing through UI Online;
- contacting the Teleclaims Center for help in filing;
- using the “call back” feature offered to English-speaking claimants calling the Teleclaims Center, which allows them to select a time for a DUA staff person to call them to file an initial claim or answer a customer service question;
- visiting a MassHire Career Center and speaking with a UI Representative; and
- visiting the Boston Walk-In Center on the first floor of the Hurley building.

Because of the many different ways to file, a predate request must both identify each attempt the claimant made to file the claim *and* give credible evidence establishing good cause, that is, that earlier attempts were unsuccessful for reasons beyond the claimant’s control.

## C. Good cause

Good cause reasons for a predate include:

- The claimant could not file because of illness, death in the family, or other compelling personal reasons.
- The claimant did not receive written information from the employer on applying for benefits as required by § 62A(g). (See Section D, below, for an in-depth explanation of the consequences of failure by the employer to provide UI information.)
- The claimant presents credible information establishing that a DUA employee instructed the claimant not to apply earlier.
- The claimant found new full-time employment that began in the middle of a week (if requesting a predate to a week of partial employment).

- The claimant did not know how to file a claim, took reasonable action under the circumstances to find out how to apply, but did not acquire the knowledge within the first full week of unemployment.
  - When determining whether a claimant took reasonable action to find out how to apply, investigate whether the claimant has access to online resources through a personal computer, smartphone, or tablet.
- The claimant attempted to file a claim for benefits by phone or online, but was unsuccessful due to technical difficulties.
  - When determining whether there were technical difficulties, the claimant must provide specific examples of the problems with the IVR system or the UI Online application.
- The claimant had difficulty applying for benefits due to limited English proficiency.
  - When determining whether the claimant was unable to file due to limited English proficiency, investigate whether the claimant took reasonable actions to find out how to file a claim.

#### **D. Employer requirements under § 62A(g)**

Section 62A(g) of Chapter 151A requires every employer to provide every separated employee with written information (form 590-A) regarding how to apply for unemployment benefits. If the employer fails to do so within 30 days from the last day the employee performed compensable work, then the claimant is entitled to a predate to “the Sunday of the initial week such employee would have been eligible to receive unemployment compensation.” The employer has the burden of demonstrating compliance with the § 62A(g) requirements. It does not matter whether the claimant already had an existing claim and is reopening it.

A claimant who requests a predate of more than one week should be sent a fact-finding questionnaire asking, among other things, whether the employer informed the claimant how to apply for benefits. If the claimant says the employer did not do so, then fact-finding should be sent to the employer. If the employer says it did provide the required information and provides supporting evidence, then the claimant must be asked for rebuttal. If the employer establishes that it sent the required information, the adjudicator must determine whether the claimant, in fact, received the information.

If the employer’s 30-day compliance period has not expired as of the time of adjudication, the predate issue should be analyzed under general good cause principles without regard to § 62A(g). If the 30-day compliance period ends after the initial fact-finding was sent, but before the determination has been issued, then, unless the claimant has acknowledged receipt of the required information, the employer must be sent additional fact-finding regarding the § 62A(g) issue. If the employer does not establish compliance, or if the claimant

establishes non-receipt of the information, the waiting period (or re-open) must be predated to the Sunday of the initial week that the individual would have been eligible to file a claim, regardless of whether the claimant had actual knowledge of the ability to file for benefits or re-open a claim.

### **E. Procedures**

If the request is granted, complete the necessary data entry to correct the effective date of the claim. If the predate is denied, the claimant will be sent an appealable determination notifying them of the denial.

Sometimes, a claimant who is granted a predate on a new claim may have payment on the new claim blocked due to a prior claim disqualification that overlaps once the BYB (benefit year beginning) date is changed. In this case, the prior claim disqualification will likely need to be modified by changing the end date. **Staff should follow the procedures outlined in the Policy Memorandum dated February 19, 2020, Reference Number: UIPP 2020.04.**

## Section 3: No withdrawal of a filed claim: exception

### A. Statutes

#### G. L. c. 151A, § 23(a)

(a) An individual who is in total or partial unemployment and who registers at an employment office or other place of registration maintained by the commissioner or has otherwise given notice of his unemployment in accordance with the procedure prescribed by the commissioner shall be eligible for benefits for unemployment subsequent to a waiting period sustained with respect to the benefit year to which the claim applies, which benefit year includes the week for which he claims payment for benefits. Said waiting period shall consist of one week of total or partial unemployment. No benefits shall be paid or become payable during said waiting period; thereafter benefits shall be payable weekly and shall be paid weekly; provided, however, that whenever, in the discretion of the commissioner, the public interest would be benefited thereby, benefits may be paid on a bi-weekly basis.

#### G. L. c. 151A, § 1(c)

The following words and phrases as used in this chapter shall have the following meanings, unless the context clearly requires otherwise:

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(c) “Benefit year”, the period of fifty-two consecutive weeks beginning on the Sunday immediately preceding the date on which an individual files a claim for benefits; provided, however, that the benefit year shall be fifty-three weeks if filing a new claim would result in overlapping any quarter of the base period of a previously filed new claim where such extension of the benefit year will prevent such overlapping; provided, further that, with respect to the week in which such claim is filed, (1) the individual has no unexpired benefit year and (2) the individual meets the requirement of subsection (a) of section twenty-four; provided, further, that if the individual has been denied benefits during the period the individual is receiving termination, severance, or dismissal pay, or payment in lieu of dismissal notice under the provisions of clause (3) of subsection (r), the individual’s benefit year shall be extended by the number of weeks for which the individual was disqualified but no more than fifty-two weeks.

## B. Principles

With one exception, DUA has no authority to withdraw a filed claim. Note, however, that a claim is not filed until it is submitted, and a claimant who begins to fill out a claim need not complete or file it.<sup>3</sup>

The exception is that a combined wage claim may be withdrawn because it is subject to federal law.<sup>4</sup> The requirements for withdrawing it are in 430 Code Mass. Regs. § 4.09(5). (A combined wage claim is a claim filed in Massachusetts by a claimant using wages earned in Massachusetts and at least one other state.)

A request to withdraw a filed claim must be denied, unless it is a combined wage claim. If it is, then fact-finding is needed from the claimant identifying the filing date and the reason for the request.

## C. Circumstances and policies

A claimant may offer one or more reasons for asking to withdraw an initial claim for benefits, including, for example:

- The claimant has discovered that a delay in filing might increase the benefit entitlement due to an increase in the maximum benefit rate or a change in the quarters comprising the base period.
- The claimant has returned to work.
- The claimant has decided not to pursue a claim for benefits.

The claim will *not* be withdrawn; DUA lacks authority to do so. The claimant has established a claim for unemployment benefits that will remain in effect until the expiration of the benefit year.

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<sup>3</sup> Note that the system automatically deletes all incomplete applications each Saturday evening.

<sup>4</sup> See 20 C.F.R. § 616.7(d) (2008) and U.S. Department of Labor, *ET Handbook Number 399, Interstate Arrangement For Combining Employment and Wages*, available at <http://wdr.doleta.gov/directives/attach/ETAH/ETHand399.pdf> (last visited 10/29/2019).

## Section 4: Consequences to employers for inadequate or untimely employer responses to requests for information

### A. Statutes

#### G. L. c. 151A, § 38(a)-(b)

(a) Benefit claims shall be filed at the employment office at which the claimant has registered as unemployed. The commissioner shall prescribe the form, the time, and the manner in which such claims, other than disputed claims, shall be filed. The commissioner shall also prescribe the form and manner in which reports on claims required from the claimant and from the employing units shall be presented, and the conduct of hearings, other than those on appeals. Such procedure shall be designed to ascertain the substantive rights of the parties involved, without regard to common law or statutory rules of evidence and other technical rules of procedure.

For the purpose of this section, the commissioner shall notify so many of the claimant's base period employers to report wages paid such individual during the base period as he finds necessary to make a proper determination on said claim. Each such employer shall thereupon promptly report to the commissioner, in such form and manner as the commissioner prescribes such information as may be necessary to determine a claimant's benefit rights under this chapter. If an employer fails to respond to the commissioner's notice under this section within ten days after such notice was mailed to him, the commissioner shall promptly determine the matter based on the available information. If an employer fails to respond to the commissioner's notice under this subsection without good cause the employer shall have no standing to contest such determination, and any benefits paid pursuant to such a determination shall remain charged to the employer's account; provided, that the commissioner shall impose a penalty of twenty-five dollars against the employer for each such failure without good cause. For the purpose of processing claims under this section, and for the purpose of subsection (b) of section forty-four, the commissioner shall not require any wage reports other than those provided for by this section.

The commissioner may promulgate rules and regulations allowing an employer to report wages on "wages paid" or "wages earned" basis.

(b) Notice of a claim so filed shall be given promptly by the commissioner or his authorized representative to the most recent employing unit of the claimant and to such other employing units



as the commissioner may prescribe. If such employing unit has reason to believe there has been misrepresentation or has other reasons which might affect the allowance of said claim, or has been requested by the commissioner to furnish any other pertinent information relating to said claim, it or he shall return the said notice to the indicated employment office with the reasons or information stated thereon within eight days after receipt, but in no case more than ten days after mailing of said notice, in accordance with the procedure prescribed by the commissioner. Failure without good cause to return said notice and information within the time provided in this section or prescribed by the commissioner shall bar the employing unit from being a party to further proceedings relating to the allowance of the claim, and failure knowingly to return it within such time shall subject the employing unit to the penalties provided in section forty-seven. For the purposes of this subsection, it shall be deemed that said notice has been returned as of the date indicated by the postal cancellation stamp thereon.

**G. L. c. 151A, § 38A**

(a) If the director, or the director's authorized representative, determines, after providing written or electronic notice to the employer, that a payment of benefits was made because the employing unit, or an agent of the employing unit, was at fault for failing to respond timely or adequately to any request of the department for information relating to the claim for benefits, then: (i) the employing unit, except for employing units making payments into the Unemployment Compensation Fund under section 14A, shall not be relieved of charges on account of any such payment of benefits; and (ii) if the employing unit makes payments into the Fund under section 14A, it shall not be relieved from reimbursing the fund on account of any such payment of benefits. For purposes of this subsection, a response shall be considered inadequate if it fails to provide sufficient facts to enable the department to make the proper determination regarding a claim for benefits. A response shall not be considered inadequate if the department fails to ask for all necessary information, except in any case where there has been a failure to respond.

(b) The director shall adopt regulations implementing this section.

(c) A determination that an employing unit, or an agent of an employing unit, is at fault for failing to timely or adequately respond to a request of the department relating to a claim for benefits may be appealed under sections 39 to 42, inclusive, but the remedy shall not be subject to appeal.

## B. Principles

To ensure that UI benefits are paid promptly and accurately, employers must respond to requests for wage and separation information timely and adequately. Under § 38(a), a base period employer from whom wage information has been requested must respond within 10 calendar days from the date the request for information was mailed or sent electronically. Under § 38(b), an employer from whom other information is sought regarding a claim must respond within eight days after receipt of the request for information, but in no case more than 10 days from the date it was mailed or sent electronically. If the last day falls on a Saturday, Sunday, or legal holiday, the response is due the next business day. The response is considered received as of the date of the electronic submission or, if mailed, as of the postmark date.

Under § 38(a), if there is not a timely response to the request for wages, then the claim should be adjudicated based on available information, which could be an affidavit from the claimant. If the employer fails to respond timely without good cause:

- it shall have no standing to contest the determination; and
- any benefits paid pursuant to the determination shall remain charged to the employers account, even if they later are determined to have been made erroneously.

Under § 38(b), DUA sends notice of a claim to the claimant's most recent employer and all other base period employers. If the employer:

- has reason to believe there has been a misrepresentation,
- has other reasons that might affect the allowance of the claim, or
- has been asked by DUA for any other pertinent information, for example, in a separation-related questionnaire,

then the employer must respond with the reasons or information. If the employer, without good cause, fails to respond timely or adequately, then it is barred from being a party to further proceedings relating to the allowance of the claim.

The timeliness of the employer's response only becomes an issue if the response involves a protest.<sup>5</sup> A response has been returned with a protest if the employer's response indicates any of the following:

- still employed or on call;
- reasonable assurance of reemployment;
- on a leave of absence;
- on strike or locked out;
- discharged due to a conviction of a felony or misdemeanor;
- suspended for violation of company rules or policy;
- discharged for deliberate misconduct or violation of company rules or policy, including absenteeism or tardiness;
- quit; or
- any additional items are selected indicating that the claimant received vacation pay or severance pay without the required signing of a release of claims.

In addition to being timely, an employer's response under § 38(b) must contain the pertinent information requested by DUA. For example, it must answer adequately any fact-finding questions pertinent to the claim. Similarly, a timely employer response that states, in substance, that reasons for the separation will follow, is not considered a protest, because the employer has not provided any information that could adversely affect the claimant's eligibility. If a protest is subsequently received, DUA will consider it received on the date it is postmarked, if mailed, or actually received, if submitted by any other method.

If an employer's response fails to meet the time deadline under § 38(a) or the time and adequacy requirements under § 38(b), it must be determined whether the employer had good cause. (See, below.)

### **C. Section 38A: Payment of benefits**

Section 38A requires that an employer not be relieved of charges on account of any payment of benefits determined to have been made because the employer, or its agent, is determined to have been at fault for failing to respond timely or adequately to any DUA request for information relating to the benefits claim.

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<sup>5</sup> This is so because 430 Code Massachusetts Regulations. § 5.01(8) provides that an employer whose response "merely question[s] the claimant's eligibility under [§ 24(b)] shall nevertheless bar such employing unit ... from being a party to further proceedings relating to the allowance of the claim unless the statement so furnished is supported by factual information." Because a non-protest, by definition, will not contain factual information offered to support a denial of eligibility, it, too, comes within the scope and intent of the regulation.

Section 38A defines an inadequate response as one that “fails to provide sufficient facts to enable [DUA] to make the proper determination regarding a claim for benefits,” unless DUA did not “ask for all necessary information[.]” A response may be determined to be inadequate if it is not readily understandable by DUA.

#### **D. Administering § 38 and § 38A**

DUA believes that §§ 38 and 38A should be administered together as part of a single, harmonious policy to encourage employers to respond timely and adequately to requests for wage and separation information. So far as their language permits, they should be interpreted consistently. For example, § 38’s “without good cause” standard should be interpreted consistently with § 38A’s “at fault” standard.<sup>6</sup>

An employer will lack good cause or will be at fault for failing to return information on time, unless it establishes that the late response resulted from:

- the information request being sent to the wrong address because of a DUA error; or
- a disaster or other compelling situation beyond the employer’s or agent’s control that made a timely response impossible.

There is an important difference in language, however, between § 38A’s requirement that an employer respond “adequately to any request ... for information relating to the claim,” and § 38(b)’s requirement that an employer must “return said notice and information[.]”

A timely response is not inadequate under § 38A, if DUA “fail[ed] to ask for all necessary information[.]”<sup>7</sup> This requirement is not in § 38(b). Instead, § 38(b) is limited to requests for “pertinent information relating” to a claim.

Section 38A thus does not apply when DUA has failed to ask the right questions. But if it has, then the employer’s response is inadequate if it:

- fails to provide sufficient facts for a proper determination of the claim; or
- is not readily understandable by DUA; or
- needs clarification to make its information understandable or to resolve internal contradictions regarding its information; or
- states information incorrectly; or

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<sup>6</sup> This approach is supported by DUA’s wage reports regulation, which defines “without good cause” in terms of being “without fault.” 430 Code Massachusetts Regulations § 5.04(4).

<sup>7</sup> G. L. c. 151A, § 38A.

- omits needed information that the employer, or its agent, has, or with reasonable diligence, could have obtained.

Although § 38(b) applies only to DUA requests for “pertinent information,” it does not matter whether DUA has asked all the questions needed to decide the claim. If a question is pertinent, the employer’s response is inadequate if it:

- fails to provide the requested information, unless the employer establishes either that it is not pertinent to the claim or that the employer, and its agent, if any, did not have the information and could not have found it with reasonable diligence; or
- is not readily understandable by DUA; or
- needs clarification to make its information understandable or to resolve internal contradictions regarding its information; or
- states information incorrectly.

Under both § 38A and § 38(b), a response is not inadequate just because more fact-finding is needed. For example, a response from either the claimant or an employer may lead DUA to request more information.

An employer response that the fact-finding questionnaire was incorrect—for example, it asks for information regarding why the claimant was discharged and the employer says the claimant quit—is adequate, if the response also gives an adequate statement of facts regarding the claimant’s separation.

When determining the adequacy of a response by the employer or its agent, only that response should be considered. The claimant’s response should not be considered, even where it differs substantially from that of the employer or its agent.

If it is determined under § 38(a) that the employer or its agent failed to respond timely or adequately to a request for wages, the employer:

- loses the right to contest the determination; and
- shall not be relieved of charges for the claim.

If it is determined under § 38(b) that the employer or its agent is at fault for failing to respond timely or adequately to a request for separation or other pertinent information, the employer is barred from being a party to further proceedings regarding the claim. This means that the employer loses the right to receive a copy of the determination, exercise the appeal rights that come with the determination, cross-examine witnesses at any subsequent hearing, receive a copy of the hearings decision, and appeal the decision to the Board of Review or to the District Court or the Boston Municipal Court, or to the Appeals Court and the Supreme Judicial Court.

**Adequacy must be measured not only by the timely protested lack of work notification, confirmation of employment, or form 931, but also the adequacy of the initial questionnaire subsequently issued due to any**

**protest returned on the *lack of work notification, confirmation of employment, or the form 931.***

### **E. Appeals**

An employer may appeal a § 38(a), § 38(b), or § 38A determination that it is at fault for failure to provide wage or separation information timely or adequately.