


Chapter 3: Monetary determinations

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Section 1: General principles

The coverage provisions of c. 151A determine which employers are liable for contributions and which workers may claim unemployment insurance (UI) benefits. State UI laws are influenced by the taxing provisions of the Federal Unemployment Tax Act (FUTA) because employers paying state contributions under a federally-approved state law may credit those contributions against the federal tax. State coverage provisions are also influenced by a FUTA provision requiring that certain services, although excluded from the FUTA definition of employment, must be covered under state law, such as service for governmental entities and for certain nonprofit organizations.¹ To understand coverage, it is necessary to understand who is an employee, who is an employer, what constitutes employment, and what constitutes wages. Status determinations usually are made by the Status Unit in the Revenue Department. To familiarize adjudicators with the basic principles, this chapter provides an overview of the subject; more detailed information can be found in the *Employer Liability Handbook*.

To be monetarily eligible, a claimant must have been paid wages during the base period amounting to at least 30 times the weekly benefit amount, provided that the wages paid totaled at least \$4,700, a figure subject to change based on increases in the minimum wage.² For these purposes, “wages” include “every form of remuneration” paid by an employer, with statutory exceptions, for example, for certain kinds of services.³



If there is any dispute on the *use* of wages to establish a UI claim, the issue must be submitted to the Status Unit of the Revenue Department for a status determination. The claimant may appeal a monetary determination. Disputes about the **amount** of wages (as opposed to the use of wages) are determined by the Wage Processing Unit.

¹ See 26 U.S.C. § 3304(a)(6)(A) (setting forth criteria for approval of state laws).

² See G. L. c. 151A, § 24(a).

³ See, e.g., G. L. c. 151A, § 1(s) (defining “wages”).

Section 2: Employing units subject to G. L. c. 151A

An “employing unit” is any individual or entity that “had one or more individuals performing services for him or it within” Massachusetts.⁴ An “employer” is an employing unit subject to c. 151A,⁵ as determined by the Status Unit in the Revenue Department. All employing units doing business in Massachusetts must register with DUA on UI Online. The Status Unit also determines whether an employer is required to pay unemployment contributions or is eligible to become a reimbursing employer.

Note: DUA is responsible for wage reporting for the Commonwealth.

The general rules are set forth in § 8. Under § 8(a), a subject employer is an employing unit that either:

(1) employs “at least one individual” “on some day in each of thirteen weeks in the year “(without the necessity that the weeks be consecutive or the individual be the same each week),

or

(2) pays wages of \$1,500 or more in any calendar quarter.

Different payroll thresholds apply to agricultural, domestic, and out-of-state employers.⁶ (Although § 8 excludes employing units for which certain kinds of services are performed, those exclusions are modified, in the case of agricultural and domestic employers, by § 8A.)

A. Coverage of city, town, state, and non-profit employers

Sections 4A(a), 4A(d), and 8A(a) cover governmental and non-profit employers, including religious, charitable, scientific, educational, and similar organizations. Governmental employers and non-profit employers registered under § 501(c)(3) of the Internal Revenue Code may elect to make payments in lieu of contributions.

⁴ The complete statutory definition in G. L. c. 151A, § 1(j), reads:

“Employing unit”, any individual or type of organization including any partnership, firm, association, trust, trustee, estate, joint stock company, corporation, whether domestic or foreign, or his or its legal representative, or the assignee, receiver, trustee in bankruptcy, trustee or successor of any of the foregoing or the legal representative of a deceased person who or which as or subsequent to January first, nineteen hundred and forty-one, had one or more individuals performing services for him or it within this commonwealth.

⁵ G. L. c. 151A, § 1(i).

⁶ See 430 CMR § 5.02. Out of state employers are subject if they employed one or more individuals in Massachusetts and paid more than \$200 in payroll during a calendar quarter. 430 CMR § 5.02(2)(b).

B. Multi-state employment

1. Statute

G. L. c. 151A, § 3

The term “employment”, except in such cases as the context of this chapter otherwise requires, shall include an individual’s entire service, performed within, or both within and without the commonwealth, if—

(a) the service is localized in the Commonwealth. Service shall be deemed to be localized within the commonwealth if the service is performed entirely within the commonwealth, or the service is performed both within and without the commonwealth, but the service performed without the commonwealth is incidental to the individual’s service within the commonwealth; for example, is temporary or transitory in nature, or consists of isolated transactions.

(b) the service is not localized in any state, but some part of the service is performed in the commonwealth and (1) the individual’s base of operations is in the commonwealth or, if there is no base of operations, then the place from which such service is directed or controlled, is within the commonwealth, or (2) the individual’s base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual’s residence is in the commonwealth.

Sometimes an individual may perform service for the same employer in more than one state. Whether such service is covered in Massachusetts is determined by examining the four factors listed in § 3 in the following order: (1) localization, (2) base of operations, (3) place of direction and control, and (4) residence of the employee. These issues, which are determined by the Revenue Department, are discussed in detail in the *Employer Liability Handbook*.

Alternatively, when a so-called reciprocal arrangement exists between the affected states, an employing unit may request that multi-state service be treated as employment by only one of the participating states in which (1) the employee does any work; or (2) the employee resides; or (3) the employer maintains a place of business related to the employer’s work. G. L. c. 151A, § 66(a) authorizes DUA to enter into such arrangements. Under G. L. c. 151A,

§ 5, “employment” includes services covered by such an arrangement, if DUA approves the employing unit’s request.

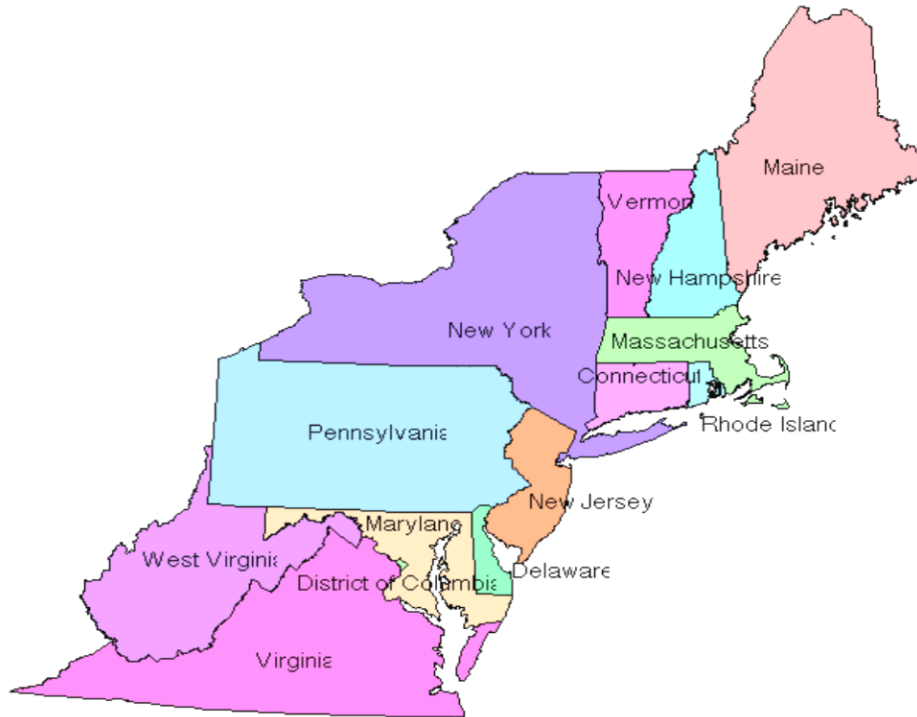
2. Localization

If an employee’s services are localized in Massachusetts, they are considered employment in Massachusetts. Services are localized in Massachusetts if:

- the services are performed entirely within Massachusetts; or
- services performed outside Massachusetts are incidental to the Massachusetts services, for example, because they are temporary or transitory in nature.

Example: A Rhode Island general contractor obtains a contract for a project in Massachusetts. The contractor engages some employees in Massachusetts and some in Rhode Island to work on the project. When the project is completed, they are laid off. The services of all these employees are deemed to be localized in Massachusetts because they were performed entirely in Massachusetts. Therefore, the employees’ services are covered by Massachusetts.

Example: A Massachusetts general contractor takes some of its regular Massachusetts employees into Rhode Island to work on a project; after the project ends, it returns them to Massachusetts for continued work on other projects. These regular Massachusetts employees are covered by Massachusetts for unemployment compensation purposes because the services performed outside of Massachusetts were incidental to the individual’s service within Massachusetts: the services were temporary or transitory in nature.



Example: A sales person employed by a Massachusetts corporation lives in New Jersey and does all her work in New York. Because her work is localized in New York, its law applies.

3. Base of operations

Even if an employee's services are not localized in any state, coverage exists in Massachusetts if some services are performed within Massachusetts and the employee's base of operations is in Massachusetts. The base of operations is the place from which the employee starts work or to which the employee customarily returns to receive instructions.

Example: A sales representative residing in Massachusetts sold products in Massachusetts, New Hampshire, and Maine for an employer with its place of business in Connecticut. The sales representative operated from home. Once a year, the sales representative went to Connecticut for a two-week sales meeting. The base of operations was in Massachusetts and some services were performed in Massachusetts. All services are covered by Massachusetts.

4. Place of direction and control

If neither of the first two tests results in the choice of some state's law, then, if the employee is directed and controlled from Massachusetts and performs some services in Massachusetts, then the employee's services are covered. Work is directed or controlled from the place where the basic authority exists

and from which the general control originates, which may be other than the place where the employee is directly supervised by a manager or supervisor.

Example: A contractor whose main office is in Massachusetts regularly engages in road construction work in Massachusetts and New Hampshire. All operations are directed by a general superintendent whose office is in Massachusetts. Work in a state is directly controlled by a field supervisor working from a field office in that state. Each field supervisor has the power to hire and fire employees, but all requests for employees must be cleared through the main office in Massachusetts. Employees report to work at the field offices. Time cards are sent weekly to the main office in Massachusetts where the payrolls are prepared. Employees regularly perform services in both Massachusetts and New Hampshire. Even if neither the localization nor the base-of-operation criterion applies, the services are covered by Massachusetts because the basic authority of direction and control comes from the main office in Massachusetts.

5. Residence of employee

If the state that should cover a multi-state employee's services cannot be determined based on the factors discussed above—localization, base of operations, and place of direction and control—then the services should be covered by the state of the employee's legal residence.

Example: A sales person employed by a Massachusetts company lives in New Jersey. Her territory covers New Jersey, Delaware, and parts of Pennsylvania. Her work is not localized in any state. She uses her employer's New York office as her base of operations, and her work is directed from that office. But she does no work in New York. She does some work in New Jersey, the state where she lives. All of her work is subject to New Jersey's unemployment compensation law.

C. Agricultural employees

Sections 4A(b), 6(a), 8A(b), 8B(b), and 8C specify which workers engaged in agricultural labor are covered by c. 151A and who is the worker's employer. If an issue arises as to whether the employment in question involved "agricultural labor," it should be submitted to the Revenue Department for an employer status determination.

An agricultural employer will be a subject employer if:

- the employer paid \$40,000 or more in wages in any calendar quarter; or
- the employer employed ten or more individuals on some day in each of twenty weeks.

In general, the term “agricultural labor” includes:

- Services performed on a farm in the production of vegetables, fruits, tobacco, and flowers, and in raising, feeding, and caring for animals, bees, and poultry.
- Services performed on a farm in the employ of the owner or operator or tenant of the farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment.
- Services performed in the employ of the owner, operator, or tenant of a farm, in the processing, retail sale, or delivery to a point for further distribution of the products of a farm.

The term “farm” includes stock, dairy, poultry, fruit, tobacco, and truck farms, plantations, nurseries, greenhouses, and orchards. Mink farms and chinchilla farms are also included.

Processing of the farm products includes handling, planting, packing, grading, storing, or delivering to storage, provided such operations are incidental to ordinary farming operations.

In general, the term “agricultural labor” does not include services performed in connection with landscaping, forestry, and lumbering.

Individuals furnished by a crew leader are covered whether they are employees of the crew leader or of the person or entity for whom services are performed.



D. Domestic employers

Sections 4A(c), 6(b), and 8A(c) specify when domestic services are covered by Chapter 151A.

Domestic employment is work performed in the operation and maintenance of a private home, local college club, or local chapter of a sorority or fraternity. It includes domestic services rendered by a personal care attendant, maid, butler, cook, valet, cleaner, gardener, or chauffeur of an automobile for family use.

Domestic employers who pay cash wages of \$1,000 or more in a calendar quarter in the current or preceding calendar year for all domestic services are

required to report those earnings. If this criterion is met, both cash and non-cash wages are reportable.

An individual paid by a private service firm to perform domestic service is an employee of the service firm and not of the household. In this case, the private service firm is obligated to report the wages, which would be covered for UI purposes.

E. Employment outside of the United States

Section 4A(e) specifies circumstances under which services performed outside of the United States are considered “employment” and covered by c. 151A. For services to be considered employment under § 4A(e), the following conditions must be met:

- The claimant must be:
 - a United States Citizen;
 - outside of the United States, Canada, and the Virgin Islands;
 - in the employ of an American employer;⁷
 - performing services other than services that would be considered employment under § 3 or the parallel provisions of another state’s law. (Section 3 relates to services that are performed in multiple states and is discussed elsewhere in this chapter.)

⁷ “An ‘American employer’, for the purposes of this subsection, means an individual who is a resident of the United States; a partnership, if two-thirds or more of the partners are residents of the United States; a trust, if all of the trustees are residents of the United States; or a corporation organized under the laws of the United States or of any state.” G. L. c. 151A, § 4A(e).



- The employer must:
 - have its principal place of business in the United States located in the Commonwealth; or,
 - if the employer does not have a place of business in the United States, the employer must be:
 - an individual who is a resident of the Commonwealth; or
 - a corporation organized under the laws of the Commonwealth; or
 - a partnership or a trust and the number of the partnership trustees who are resident of the Commonwealth is greater than the number who are residents of any other state.

F. American vessels and aircraft

Under § 4A(f), services performed on an American vessel or aircraft are considered employment covered by c. 151A if:

- the services are performed “on or in connection with American vessels and American aircraft under a contract of service which is entered into within the United States”; or
- “the vessel or aircraft touches at a port in the United States” during the performance of the service; or
- the services are performed “on American aircraft operating within or within and without the United States, and such operations are ordinarily and regularly supervised, managed, directed and controlled from an operating office managed by an employing unit in this Commonwealth.”



“Employment” under this section does **not** include “service performed on a vessel of ten net tons or less engaged in catching, taking or harvesting of fish,” but it **does** include “services performed within the commonwealth on or in connection with a vessel or aircraft not an American vessel or American aircraft, unless the individual is employed on and in connection with such vessel or aircraft when outside the United States.”

Section 3: Contributory and reimbursable employers

Employers in the United States fund the Unemployment Insurance Program through federal and state UI taxes. Funds collected at the federal level, under the Federal Unemployment Tax Act are used to cover the program’s administrative costs, such as staff wages, phones, computers, and so forth. Funds collected at the state level, which are placed in the state’s UI Trust Fund, are used to pay UI benefits to claimants. The standard FUTA tax rate is 6% of the first \$7,000 paid during a calendar year. Employers paying their state UI tax on time receive an automatic tax credit of up to 5.4% of the state tax paid on their federal UI tax, resulting in an effective tax rate of 0.6%.

Employers subject to c.151A pay into the UI Trust Fund using one of two methods: quarterly contributions or after-the-fact reimbursements. Most employers, including all private, for-profit entities such as businesses, are contributory.⁸ Some types of employers, including state and local governments and some non-profit organizations, may choose to be designated as

⁸ See G. L. c. 151A. § 14.

“reimbursable,” meaning that they are billed only after an employee or former employee collects UI benefits.⁹

A. Contributory employers

Contributory employers are billed quarterly, even when no unemployment benefits are being paid. Each contributory employer is assigned a contribution rate, which determines the percentage it pays on the first \$15,000 earned by each employee during the year. Contributory employers also contribute, when appropriate, for Extended Benefits and the Workforce Training Fund.

Contributory employers fund the “solvency account,” which is used to pay benefits that are not chargeable to an individual employer account. For example, a contributory employer that timely protested a claim and provided all requested information should also be relieved of charges, with benefits being charged to the solvency fund when a claimant left work for urgent, compelling, and necessitous reasons, left work due to domestic violence, or left work to accept an offer of work from another employer and is then separated from the new employment for good cause attributable to the new employer.¹⁰ The solvency account also is charged for dependency allowances and benefits paid to claimants in training programs approved under § 30(c).

On claims with multiple employers in the base period, DUA charges the most recent employer first. When the maximum liability with that employer is reached (36% of gross wages paid in the base period), the next-most-recent employer’s account is charged up to the same maximum percentage.¹¹ When an employer in this charging sequence is relieved of charges, the solvency fund is charged in its place.

B. Reimbursable employers

State and local governments and some non-profit organizations may choose to be reimbursable employers, meaning they only pay into the UI Trust Fund when benefits have been paid to a current or former employee.¹² (For a non-profit organization to be eligible to elect reimbursable status, it must be registered with the Internal Revenue System under § 501(c)(3) of the Internal Revenue Code and be tax-exempt under § 501(a).¹³) This method of payment

⁹ Although DUA bills reimbursable employers on a reimbursement basis for most things, there are exceptions. For example, reimbursable employers are billed quarterly, just like contributory employers, for Employer Medical Assistance Contributions (EMAC), under G. L. c. 149, § 189.

¹⁰ See G. L. c. 151A, § 14(d)(3), and 430 Code Mass. Regs. § 5.05(4).

¹¹ See G. L. c. 151A, § 14(d)(3).

¹² See G. L. c. 151A, § 14A.

¹³ See G. L. c. 151A, § 14A.

also is known as “payments in lieu of contributions.” DUA bills a reimbursable employer on a monthly basis, after paying the claimant(s), for the duration of the claim. Reimbursable employers must reimburse DUA on the same basis, when appropriate, for dependency allowances, extended benefits, Section 30 training benefits, and benefits for individuals who were disqualified but re-qualify with wages from subsequent employment.

Reimbursable employers may not be relieved of charges for any reason.¹⁴ Reimbursable employers also may be charged for a former employee who was denied benefits based on a disqualifying separation from the reimbursable employer, if the former employee earns sufficient re-qualifying wages, then re-opens the claim and begins collecting UI benefits. (This is not true of contributory employers.¹⁵)

A reimbursable employer may switch to contributory employer status for the upcoming year by timely-notifying DUA in writing. It may switch back after specified amounts of time have passed.¹⁶

Section 4: Services excluded from covered employment

A. Independent contractors: § 2

Work performed by an independent contractor is not “employment” covered by Chapter 151A. Under § 2 work is presumed to be employment, and therefore covered, unless the employer proves each part of a three-part test to establish that a worker was an independent contractor. Staff must apply this so-called ABC test to determine whether an employer has established that a worker is an independent contractor. Facts outside the ABC test are not to be considered, such as the non-withholding of federal or state income taxes; the issuance of, and use by the worker, of a 1099 form regarding income taxes; and the non-payment of workers compensation premiums.

1. Statute

G. L. c. 151A, § 2

Service performed by an individual, except in such cases as the context of this chapter otherwise requires, shall be deemed to be employment subject to this chapter irrespective of whether the

¹⁴ See G. L. c. 151A, § 14A(f).

¹⁵ See G. L. c. 151A, § 14(d)(3).

¹⁶ See G. L. c. 151A, § 14A(a).

common-law relationship of master and servant exists, unless and until it is shown to the satisfaction of the commissioner that—

(a) such individual has been and will continue to be free from control and direction in connection with the performance of such services, both under his contract for the performance of service and in fact; and

(b) such service is performed either outside the usual course of the business for which the service is performed or is performed outside of all the places of business of the enterprise for which the service is performed; and

(c) such individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.

The failure to withhold federal or state income taxes or to pay workers compensation premiums with respect to an individual's wages shall not be used for the purposes of making a determination under this section. An individual's exercise of the option to purchase insurance as permitted by subsection (4) of section 1 of chapter 152 shall not be used for purposes of making a determination under this section.

Whoever fails to treat an individual as an employee according to this chapter shall be punished as provided in section 47. Nothing in this section shall limit the availability of other remedies at law or in equity.

2. The ABC Test

An employer, to establish that a claimant was an independent contractor rather than its employee, must meet all three prongs of the ABC test. Otherwise, the Status Unit will determine that the claimant was its employee, the claimant's wages will be subject to UI, and the claim will be treated like any other claim. A more detailed explanation of the ABC Test may be found in the *Employer Liability Handbook*.

Prong A:

Prong (a) “examines the degree of control and direction retained by the employing entity over the services performed.”¹⁷ To satisfy this part of the test, an employer must establish with substantial and credible evidence that the “individual has been and will continue to be free from control and direction in connection with the performance of such services, both under ... contract for the performance of service and in fact[.]”¹⁸ If the employer maintains the right to direct or control what a worker does or how the work will be performed, the worker is considered to be its employee and not an independent contractor. The existence of a contract right to control and direct performance means that the employer fails prong (a), even if the right is never exercised. And even if no such contract right exists, an employer that controls and directs the performance of the worker and/or the work performed fails prong (a).

Example: An employer having the right to direct and control an individual’s work may allow the individual to perform independently a job requiring little or no supervision. Even though the employer does not exercise the right to direct and control, the existence of that right means that the individual is an employer.

Prong B:

An employer satisfies prong (b) by providing substantial and credible evidence that the individual performed services “**either** outside the usual course of the business for which the service is performed **or** ... outside of all the places of business of the enterprise for which the service is performed.”¹⁹

The “**usual course of the business**” element looks to the nature of the employer’s business.

- **Examples:** Painters and carpenters who are hired by an advertising agency to paint and renovate its offices are performing services outside the usual course of the agency’s business, even though the work promotes or advances its business by making the offices more appealing to potential clients. Similarly, an accountant hired to prepare business tax returns for the agency is performing services outside the usual course of the advertising agency’s business, even though the agency must file the returns to stay in business.

¹⁷ *Athol Daily News v. Board of Rev. of the Div. of Employment & Sec.*, 439 Mass. 171, 177–78 (2003) (internal citations and quotation marks omitted).

¹⁸ G. L. c. 151A, § 2(a).

¹⁹ G. L. c. 151A, § 2(b) (emphasis added).

The “**places of business**” element looks to where the services are performed. If they are performed at the employer’s place of business or on premises that fairly could be considered the employer’s places of business, then the employer fails prong (b). An employer carries its burden of persuasion in showing that the services are performed outside of the employer’s places of business by, for example:

- showing that the individuals repaired the employer’s business equipment in a repair shop away from the employer’s premises or places of business;
- showing that the individuals printed the advertisements or brochures for the employer’s business away from the employer’s premises or places of business; and
- showing that the individuals delivered newspapers away from any business premises of the employer.²⁰

In a case involving taxi drivers, one of several factors considered by the Appeals Court as showing the employer satisfied this element was that the “[d]rivers were not confined to a specific geographic location and were free to choose locations where they would look for passengers.”²¹

Prong C:

“The third part of the test asks whether the worker is ‘customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed.’”²² Under prong (c), DUA must “consider whether the service in question could be viewed as an independent trade or business because the worker is capable of performing the service [for] anyone wishing to avail themselves of the services or, conversely, whether the nature of the business compels the worker to depend on a single employer for the continuation of the services.”²³ Some questions to ask the employer are:

- Does the worker possess a valid business license?
- Are the worker’s services advertised to the public?
- Does the worker employ others on his/her own?

²⁰ *Athol Daily News v. Board of Rev. of the Div. of Employment & Sec.*, 439 Mass. at 179.

²¹ *Commissioner of the Div. of Unemployment Assistance v. Town Taxi of Cape Cod, Inc.*, 68 Mass. App. Ct. 426, 431 (2007).

²² *Athol*, 439 Mass. at 179 (quoting § 2(c)).

²³ *Id.*, at 181.







- Does the worker have an established office or place of business?
- Does the worker offer his/her services to a community of potential clients? If so how is this accomplished?

Prong (c) is not satisfied simply by looking to what the individual was capable of doing rather than what the individual actually did. An additional consideration is “whether ‘the nature of the business compels the worker to depend on a single employer for the continuation of the services.’”²⁴ In other words, we must look to “whether the worker is wearing the hat of an employee of the employing company, or is wearing the hat of his own independent enterprise.”²⁵

B. Services excluded from covered employment

1. Certain government service

Under § 6A, certain employees of the Commonwealth and its cities and towns perform services in positions that are not covered employment.

-  Elected officials (such as a mayor or selectman).
-  Members of legislative bodies (such as State Representatives and State Senators, but not their staff).
-  Members of the judiciary (such as judges, but not their staff).
-  Members of the National Guard or Air National Guard (unless there are at least 90 days of consecutive service and the separation meets the requirements of an approvable Unemployment Compensation for Ex-service Members (UCX) claim. (For a full discussion of UCX claims, see chapter 10 (federal programs affecting UI eligibility.)
-  Employees serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency (such as on-call fire fighters and emergency medical technicians (EMTs)).
-  An employee serving in a position that, under the laws of the Commonwealth, is appointed to either a non-tenured policymaker or advisor, or in a policymaking or advisory position the performance of the

²⁴ *Coverall N. Am., Inc. v. Commissioner of the Div. of Unemployment Assistance*, 447 Mass. 852, 858 (quoting *Athol*, 439 Mass. at 181).

²⁵ *Boston Bicycle Couriers, Inc. v. Deputy Dir. of the Div. of Employment & Training*, 56 Mass. App. Ct. 473, 480 (2002) (quoted with approval in *Coverall*, 447 Mass. at 858).

duties of which ordinarily does not require more than eight hours per week (such as a water and sewer or electric light commission).



An election official or election worker, if the amount of remuneration received by the individual during the calendar year for such services is less than \$1,000.

Section 6A does not apply to employees of a private employer that provides services for a municipality. For example, an EMT employed by ABC Ambulance Company is not covered by § 6A, even if the company is engaged by a municipality to respond to emergencies.

Section 6(e) exempts any service performed in the employ of the United States government itself or of an instrumentality of the United States that is wholly- or partially-owned by the United States. In general, however, these services are usually covered under the Unemployment Compensation for Federal Employees (UCFE) program. (For a full discussion of UCFE claims, see chapter 10.)

Some of these issues may come to adjudicators as still-employed or on-call issue types. For questions on specific cases, contact the UI Policy & Performance Department.

2. Service for religious and charitable organizations

Sections 4A(d), 6(r), and 6(s) define exempt employment for religious, charitable, educational, and other non-profit organizations.



Section 6(r) exempts from coverage service performed in the employ of a church, or convention or association of churches, or an organization operated primarily for religious purposes that is operated, supervised, controlled, or principally supported by a church or convention or association of churches.

Note: Service performed for a church-operated elementary or secondary school is exempt from coverage under § 6(r).²⁶ This exemption also applies to religious schools that are not owned and operated by a church, so long as they are “operated primarily for religious purposes” and are “principally supported” by religious organizations.²⁷ The applicability of the exemption depends on the nature of the employer, not on the nature of the service.

²⁶ *Ursuline Academy, Inc. v. Director of Div. of Employment Sec.*, 383 Mass. 882, 883 (1981).

²⁷ *See Bleich v. Maimonides School*, 447 Mass. 38, 47-48 (2006).

For example, service performed for a training center that was subject to church control also is exempt from coverage, even if the training center serves a secular purpose and is primarily government-funded.²⁸

Section 6(s) exempts ministerial service performed by a duly ordained, commissioned, or licensed minister of a church, or by a member of a religious order in the exercise of duties required by such order.

3. Services performed for certain family members

G. L. c. 151A, § 6(d)

The term “employment” shall not include:

(d) Service performed by an individual in the employ of his son, daughter or spouse, and service performed by a child under the age of eighteen in the employ of his father or mother;

Note that, if the claimant’s 18th birthday occurs during the base period, services performed after such birthday would be covered employment while services performed before the birthday would be excluded from coverage.

“Child” includes a legally adopted child.

If one of the family relationships listed in § 6(d) existed between the claimant and the employer, the wages from the employment cannot be used to compute benefits. Section 6(d) does not apply if the employer is a corporation. (See chapter 11.)

4. Casual labor

G. L. c. 151A, § 6(h)

The term “employment” shall not include:

(h) Service not in the course of the employer’s trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is fifty dollars or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For the purpose of this subsection, an individual shall

²⁸ *Kendall v. Director of Div. of Employment Sec.*, 393 Mass. 731, 773 (1985).

be deemed to be regularly employed by an employer during a calendar quarter only if (A) on each of some twenty-four days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business; or (B) such individual was regularly employed, as determined under clause (A), by such employer in the performance of such service during the preceding calendar quarter;

This section is only applicable to calendar quarters in which the remuneration for the service is less than \$50.

5. Railroad employment

G. L. c. 151A, § 6(i)

The term "employment" shall not include:

(i) Service performed by an individual as an employee or employee representative as defined in section one of the Federal Railroad Unemployment Insurance Act; and service with respect to which unemployment benefits are payable under an unemployment compensation system for maritime employees established by an act of Congress;

6. Fraternal, civic, non-profit, and benevolent associations

G. L. c. 151A, § 6(j)

The term "employment" shall not include:

(j) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) of the Federal Internal Revenue Code, other than an organization described in section 401(a) of said Code, or exempt from income tax under section 521 of said Code, if the remuneration for such service is less than fifty dollars;

This section is only applicable if the remuneration for the service is less than \$50.

7. Student wages

Section 6(k) combines two related exclusions from the FUTA definition of “employment” in 26 U.S.C. § 3306.²⁹ For easier understanding, the Handbook discusses these two exclusions separately.

G. L. c. 151A, § 6(k)

The term “employment” shall not include:

(k) [1] Service performed in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university, or by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and such employment will not be covered by any program of unemployment insurance; or [2] service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

The statute exempts services of students employed by a school, college, or university statute only if the student is enrolled in and regularly attending classes at that institution. Federal regulations state that a student is “enrolled... if the [individual] is registered for a course or courses creditable toward an educational credential [.]”³⁰ “In addition, the [individual] must be

²⁹ State unemployment laws must conform with federal law. G. L. c. 151A, § 6(k) is based on a provision of the Federal Unemployment Tax Act (FUTA), 26 U.S.C. § 3306(c)(10)(B), as interpreted by federal regulations at 26 C.F.R. § 31.3306(c)(10)-2.

³⁰ 26 C.F.R. § 31.3306(c)(10)-2.

regularly attending classes to have the status of a student. [...]”³¹ Further, the student must not be working full-time for the institution. The federal regulations provide that a student employee is full-time if either their normal work schedule is at least 40 hours per week *or* if they would be considered full-time under the institution’s “standards and practices[.]”³²

If fact-finding establishes that during the applicable term, a student was not regularly attending classes or was working full-time for the institution, then the wages paid by the institution are not exempted by § 6(k) and should be used to establish monetary eligibility for benefits.

Example: A student enrolled in a Ph.D. program has completed all required classes and spends 40 hours a week performing paid research in the lab of her Ph.D. supervisor, while also working on her dissertation on her own time. Such services are not exempt, both because the student is not regularly attending classes and because she is working full-time.

The statute also exempts work-study students, spouses of students who work for the school as part of the student’s financial aid package, and work that is done as part of an educational program (co-ops, vocational training).

The statute’s exemption does not apply if the program was established by an employer or group of employers.

There are many different ways of combining academic instruction with work experience in use by educational institutions in Massachusetts. Application of § 6(k) requires investigating the circumstances under which an individual student receives scholastic training and work experience. The adjudicator should determine whether the work is exempt under this section.

Examples include:

Work study: As a form of financial aid, a school may provide enrolled students with jobs within the school itself. Such services are exempt. A student’s spouse’s services for the school also are exempt, if the spouse is informed at the start of the employment that the purpose of the job is to assist the student financially and that the services will not be covered by unemployment insurance.

Northeastern University: Northeastern University has a cooperative education program through which students spend some terms in full-time job

³¹ 26 C.F.R. § 31.3306(c)(10)-2. “[A] class is an instructional activity led by a faculty member or other qualified individual hired by the school, college, or university [...] for identified students following an established curriculum.”

³² 26 C.F.R. § 31.3306(c)(10)-2.

assignments approved by the university. Work performed by these students is exempt under § 6(k)[2].

High schools – vocational technical education: “Vocational-technical education” refers to “organized education programs offering sequences of courses designed to educate and prepare students for both employment and continuing academic and occupational preparation. Such programs shall integrate academic and vocational education and shall include competency based applied learning which contributes to an individual’s academic knowledge, higher order reasoning, and problem solving skills, work attitudes, general employability skills and the occupational-specific skills necessary for economic independence as a productive and contributing member of society. Vocational-technical education shall also include applied technology education to be taught by personnel certified in technology education.”³³

As part of their vocational education, students participating in such programs may perform work for private or public employers in coordination with their school, through a “Cooperative education” program, which is “a program of vocational-technical education for persons who, through a cooperative arrangement between the school and employers, receive instruction, including required academic courses and related vocational-technical instruction, by the alternation of study in school with a job in any occupational field. Such instruction shall be planned and supervised by the school and the employer so that each contributes to the student’s education and employability. Work periods and school attendance may be on alternate half-days, full days, weeks or other coordinated periods of time.”³⁴

Work performed as part of a cooperative education program combines academic instruction with work experience and, if it meets all of the other requirements of § 6(k)[2], is exempt.

8. Student nurses and interns

G. L. c. 151A, § 6(l)

The term “employment” shall not include:

(l) Service performed as a student nurse in the employ of a hospital or a nurses’ training school by an individual who is enrolled and is regularly attending classes in a nurses’ training school chartered or approved pursuant to law; and service performed as an interne in the employ of a hospital by

³³ G. L. c. 74, § 1. See 603 CMR § 4.00 et. seq. for applicable regulations.

³⁴ G. L. c. 74, § 1.

an individual who has completed a four years' course in a medical school chartered or approved pursuant to state law;



Services performed by a student nurse employed by a hospital or nurses' training school are exempt, if the individual is enrolled and regularly attending classes in an approved nurses' training school. Services performed by an intern, as distinguished from a resident doctor, in the employ of a hospital are exempt, if the intern has completed a four-year course in an approved medical school.

9. Foreign governments

G. L. c. 151A, § 6(m)

The term "employment" shall not include:

(m) Service performed in the employ of a foreign government, including service as a consular or other officer or employee or a non-diplomatic representative; or, service performed in the employ of an instrumentality wholly owned by a foreign government and exempt under the provisions of chapters 21-25 inclusive of the Federal Internal Revenue Code or any acts in addition thereto and amendments thereof;



Services exempt under this subsection include those performed by ambassadors, ministers, consuls and other diplomatic or non-diplomatic representatives in the employ of foreign governments.

10. Insurance agents

G. L. c. 151A, § 6(n)

The term "employment" shall not include:

(n) Service performed by an individual as an insurance agent or as an insurance solicitor, if all such service is performed for remuneration solely by way of commission and such service is excluded from the term "employment" under the provisions of section 3306 of the Federal Internal Revenue Code or any acts in addition thereto and amendments thereof; provided, that service performed by any agent selling or servicing policies of industrial life insurance, as defined by section one of chapter one hundred and seventy-five, and employed by any life insurance company authorized to do business in this

commonwealth, whether his remuneration for such service is by way of commission or otherwise, shall be deemed employment within the provisions of this chapter;

Fact finding:

The following information is needed for submission to the Status Department:

- The exact name of the employer. This may be an insurance company or a general agent of an insurance company.
- The nature of the claimant’s duties.
- The method of compensation; salary, commission, or a combination of salary and commission.
- Whether or not the claimant handled industrial life insurance, otherwise known as “weekly debit.”

11. Newspaper carriers

G. L. c. 151A, § 6(o)

The term “employment” shall not include:

(o) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution.



Section 6(o) exempts from coverage the services of individuals under the age of 18 in selling or delivering newspapers or shopping news. Also exempt are incidental services, such as assembling the papers for sale or distribution to the customer, which are regarded as integral parts of the distribution process.

If services involve the transporting of papers to a central point for subsequent sale or distribution, they are not exempt.

12. Licensed real estate brokers

G. L. c. 151A, § 6(p)

The term “employment” shall not include:

(p) Services performed by an individual as a real estate broker or salesman if he is licensed by the state as a real estate broker or salesman, and if he is remunerated solely by way of commission; provided, however, that the term “employment” shall include service performed by a real estate broker or a salesman, if such service is performed for a governmental employer as defined in subsection (i) of section one.

Section 6(p) excludes services performed by licensed real estate brokers and sales people **who are paid solely on commission**, unless they work for a governmental employer.

13. Specified poll takers and opinion takers

G. L. c. 151A, § 6(q)

The term “employment” shall not include:

(q) Service performed by an individual as a poll taker or opinion taker, if the rate of such individual’s remuneration is determined by a person other than the person supervising him and if said individual is free to accept or decline any given assignment; provided, however, that term “employment” shall include service performed as a poll taker or opinion taker, if such service is performed for a governmental employer as defined in subsection (i) of section one.

Section 6(q) excludes services performed by opinion and poll takers only if (1) their remuneration is determined by an individual other than their supervisor, (2) they are free to accept or decline any assignment, and (3) their services are not performed for a governmental employer. Adjudicators should not confuse poll-takers with individuals who work at the polls during elections.

14. Religious, rehabilitative, training, custodial, medical, and similar facilities

See above (Service for Religious and Charitable Organizations) for a discussion of services for such organizations that are covered under c. 151A.

G. L. c. 151A, §§ 6(t), 6(u), 6(v), and 6(w)


The term “employment” shall not include:


(t) Service performed in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;


(u) Service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof or an Indian tribe, by an individual receiving such work relief or work training;

(v) Service performed in a custodial or penal institution by an inmate of said custodial or penal institution.

(w) Service performed by a patient in the employ of a hospital, whether public, nonprofit, or proprietary.

 Section 6(t) excludes services performed by specified **individuals receiving rehabilitative services** in a rehabilitative facility. (Providers of rehabilitative services in such facilities should not have their services excluded.)

 Section 6(u) excludes services performed as part of an unemployment relief program financed by federal or state agencies.

 Section 6(v) excludes services performed in a custodial or penal institution by an inmate.

Section 6(w) excludes services performed by a patient in the employ of a hospital.

15. Employment by a full-time student in an organized camp

G. L. c. 151A, § 6(x)

The term “employment” shall not include:

(x) service performed by a full-time student, as defined in section 3306(q) of said Internal Revenue Code of 1954, in the employ of an organized camp if such camp: (i) did not operate for more than seven months in the calendar year and did not operate for more than seven months in the preceding calendar year, or (ii) had average gross receipts for any six months in the preceding calendar year which were not more than thirty-three and one-third per cent of its average receipts for the other six months in the preceding year and if such full-time student performed services in the employ of such camp for less than thirteen calendar weeks in such calendar year.



Section 6(x) excludes service performed by a full-time student in the employ of an organized camp, if the camp either:

- did not operate for more than seven months in each of the current and preceding calendar years; or
- the student worked for the camp for less than 13 weeks in the preceding calendar year, during which year the camp's average gross receipts for any six months were not more than one-third of its average gross receipts for the other six months.

An individual shall be treated as a “full-time student” for any period:

- during which the individual is enrolled as a full-time student at an educational institution, or
- that is between academic years or terms if:
 - the individual was enrolled as a full-time student at an educational institution for the immediately preceding academic year or term, and
 - there is a reasonable assurance that the individual will be enrolled during the immediately succeeding academic year or term.

Section 5: Subsequent benefit year claim (§ 31)

A. Statute

G. L. c. 151A, § 31

No individual may receive benefits in a subsequent benefit year unless, since the beginning of the previous benefit year during which he received benefits, he performed service for an

employer subject to this chapter and has been paid wages for such service of not less than three times his weekly benefit rate for said previous benefit year.

Section 31 prevents an individual from receiving benefits in two benefit years based on only one period of employment. To be monetarily eligible in the subsequent benefit year, the claimant must satisfy two separate earnings tests: **regular monetary eligibility** and § 31's **previous benefit-year employment**.

1. Regular monetary eligibility

All claimants must meet the regular UI monetary eligibility requirements of § 24(a). That is, they must have earned at least thirty times the weekly benefit amount and have earned \$4,700 in the base period of the new claim, which is the current minimum wages requirement.

2. Previous benefit year employment

Under § 31, the claimant must have performed services for wages after the effective date of the previous valid claim; and the wages from the new employment must equal or exceed three times the weekly benefit amount (3 x WBA) on the **previous claim** (not including any dependency allowances), not on the current claim. These wages must have been paid to the claimant prior to the effective date of the new claim.


Note that the services performed during the previous benefit year need not be covered, but the employer must have been subject to Chapter 151A and an employer-employee relationship must have existed.

3. Examples

The following examples use termination, severance, and dismissal pay to illustrate the principles of § 31. There is no § 31 issue unless the claimant:

- received UI benefits in the previous benefit year; and
- performed service for a subject employer.

Example 1: An individual is separated from employment and receives 24 weeks of termination, severance, or dismissal pay. The individual files a claim immediately after the last day of work and is disqualified for the 24-week period. Thereafter, the claimant reopens the claim, serves a waiting period, and receives 27 weeks of benefits. The claimant then obtains another job, works for three months, and is again laid off. The claimant files a subsequent claim for benefits. The claimant has received sufficient earnings from the new employer to establish eligibility for a claim under both § 31 (three times the claimant's weekly benefit rate for the previous benefit year) and § 24(a) (\$4,700 and 30



times the benefit rate for the subsequent claim). If otherwise eligible, the claimant may receive benefits during the subsequent benefit year claim based on all wages and remuneration received during the base period, including the wages received for services and any remuneration—termination, severance or dismissal pay—the claimant received from the employer on the first claim that was paid during the base period of the subsequent claim.

Example 2: An individual is separated from employment and receives 52 weeks of termination, severance, or dismissal pay. The individual does not file a claim until the end of the 52-week period of payment. Since this is an initial, and not a subsequent, claim, the termination, severance, or dismissal pay may be used to establish monetary eligibility and the claimant, if otherwise eligible, should receive benefits. Because this is not a subsequent benefit year claim, § 31 does not apply.

Section 6: Extension of base period due to the receipt of workers' compensation

G. L. c. 151A, § 1(a)

...[I]f a claimant received weekly compensation for temporary total disability under the provisions of chapter one hundred and fifty-two or under a similar law of the United States, not including payments for certain specified injuries under section thirty-six of said chapter one hundred and fifty-two or payments for similar specified injuries under workers' compensation laws of any other state or under any similar law of the United States, for more than seven weeks within the base period, as heretofore defined, his base period shall be lengthened by the number of such weeks, but not to exceed fifty-two weeks, for which he received such payments; and provided, further, that no extended base period shall include wages upon which benefits were established and paid with respect to a prior benefit year claim.

Monetary eligibility and a claimant's weekly benefit amount are determined from wages in the base period of a claim. Workers' compensation payments do not count towards the monetary eligibility because they are not wages. But if a claimant receives more than seven weeks of **temporary total disability** workers' compensation payments, then § 1(a) enlarges the base period by the number of such weekly payments, up to a maximum of 52 weeks. Note, however, that, if wages from the extended base period already were used in establishing and paying benefits for a prior benefit year claim, they may not be reused. It is not necessary to extend the base period, if the claimant has been determined to be eligible for the maximum number of weeks at the maximum weekly benefit amount.

The base period shall be extended if:

- the monetary determination based on the claimant's regular base period indicates that the claimant is entitled to less than the maximum benefit rate and/or less than the maximum benefit credit;
- the claimant was on workers' compensation for **total temporary disability** for more than seven weeks in the base period (§ 1(t) of c. 151A defines a week as "seven consecutive days beginning on Sunday"); and
- there are wages paid in the extended base period that were not used to establish and pay benefits on a prior initial claim.

To extend the base period:

1. Identify the benefit-year beginning (BYB) of the claim
2. Identify the base period
3. Determine the period of time the claimant was on workers' compensation
4. Determine the weeks (Sunday - Saturday) the claimant was on workers' compensation in the base period
5. Count the number of weeks of workers' compensation in the base period. Is it more than seven weeks?
6. Determine the weeks by quarter that the claimant was on workers' compensation in the base period (answer to #4).

The four quarters are: January 1- March 31, April 1- June 30, July 1- September 30, October 1- December 31.

7. Count the number of weeks in each quarter that the claimant was on workers' compensation. Remember that a full quarter has 13 weeks. The number of weeks must equal the answer to #5. If the results of #5 and #7 are not equal, start over.
8. Identify the Saturday of the first full week before the base period. The Saturday date is the end of the extended base period.
9. Determine the beginning of the base period by counting backwards from the Sunday of the first full week before the base period. The Sunday date is the beginning of the extended base period.
10. Use the information from step 6 and step 7 to request an extension of the base period in UI Online.

Section 7: Dependency allowance

A. Statute

G. L. 151A, § 29(c)

(c) An individual in total or partial unemployment and otherwise eligible for benefits shall be paid for each week of such unemployment, in addition to the amount payable under subsections (a), (b) or (d) as the case may be, the sum of twenty-five dollars for each unemancipated child of such individual who is in fact dependent upon and is being wholly or mainly supported by such individual, and who is under the age of eighteen, or who is eighteen years of age or over and

incapable of earning wages because of mental or physical incapacity, or who is under the age of twenty-four and is a full-time student at an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, or who is in his custody pending the adjudication of a petition filed by such individual for the adoption of such child in a court of competent jurisdiction, and for each such child for whom he is under a decree or order from a court of competent jurisdiction to contribute to such child's support and for whom no other person is receiving allowances hereunder; provided, that such child is domiciled within the United States or the territories or possessions thereof.

In no instance shall the dependency benefits as provided in this subsection be more than fifty per cent of the individual's weekly benefit rate except that if such amount of dependency benefits includes a fractional part of a dollar, it shall be rounded to the next lower full dollar amount.

The amount of dependency benefits determined as of the beginning of an individual's benefit year shall not be reduced for the duration of such benefit year; provided, however, that this provision shall not prevent the transfer thereof from one spouse to another in accordance with this section.

If both the husband and wife receive benefits with respect to a week of unemployment, only one of them shall be entitled to a dependency allowance with respect to any child.

The commissioner shall prescribe standards as to who may receive a dependency allowance when both the husband and wife are eligible to receive unemployment compensation benefits.

No dependency benefits shall be paid unless the individual submits documentation satisfactory to the commissioner establishing the existence of the claimed dependent.

If the above provisions are satisfied, an otherwise eligible individual who has been appointed guardian of such child by a court of competent jurisdiction shall be paid such dependency benefits.

B. Principles

An otherwise eligible claimant may be entitled to receive a \$25 per week dependency allowance for each of the claimant's qualified dependent children, up to 50% of the claimant's weekly benefit amount. In all cases, a dependent child must live in the U.S. or its territories or possessions.



A “dependent” is an unemancipated **child**, under the age of 18, who is dependent upon and wholly or mainly supported by the claimant; a child older than 18 but younger than 24 who is a full-time student; and a child 18 or older who is unable to earn wages because of a mental or physical incapacity. A married child of any age is considered emancipated, as is a child under the age of 18 who has an agreement—explicit or implied—to be free from parental control and to keep the child's own earnings.

A child who is self-supporting, a member of the Armed Forces, or a direct recipient of UI benefits may not be claimed as a dependent by a claimant.

Note: a claimant may be the main support for someone who is not the claimant's child, for example, an adult relative with a disability. For UI purposes, however, such an individual is not a “dependent” for purposes of the dependency allowance.

Section 29(c) requires that a dependent be “domiciled within the United States or the territories or possessions thereof, “meaning the 50 states, the District of Columbia, American Samoa, the Federated States of Micronesia, Guam, Midway Islands, Northern Mariana Islands, Puerto Rico, the Republic of Palau, the Republic of the Marshall Islands, and the U.S. Virgin Islands. The domicile of an individual does not change while temporarily residing in another country, for example, for a semester abroad or travel during vacation.

For any particular week, only one claimant may receive a dependency allowance for a particular dependent. For example, if two people claim a dependency allowance for the same child for the same week, only one of them may receive it.

If an adjudicator grants the dependency allowance, the adjudicator also must update the dependency allowance screen.

1. Claimant-dependent relationship

In addition to the child qualifying as a dependent, for a claimant to be eligible for a dependency allowance the claimant must be:

- a parent;
- a step-parent;
- awaiting adjudication of a petition for adoption while the child is in the claimant's custody;
- subject to decree or court order to contribute to the support of the child;
or
- a guardian appointed by a court of competent jurisdiction.



2. Whole or main support

Generally, a dependent child is considered wholly or mainly supported by a claimant when it is established that the claimant provided a majority of the child's support during the base period. Support includes all expenses incurred, including but not limited to, housing, food, clothing, transportation, and other related expenses. If the dependent is a child supported by more than one claimant, only one of them may receive the dependency allowance for any given week.

In any week in which two or more claimants claim a dependency allowance for the same child, it first must be determined whether a dependency allowance is payable. If it is, the allowance is awarded to the claimant who provides more of the support of the child. If it cannot be determined which claimant provides more support, the dependency allowance should be granted to the custodial claimant.

3. Dependency allowance claimed by two claimants

If two claimants simultaneously claim an allowance for the same dependent(s), a detailed statement regarding support of the dependent(s) must be obtained from each claimant. The information must be specific and include the amounts contributed during the base period for items such as rent, utilities, insurance, food, and clothing. This is a two-party issue.

4. Parents under a court decree

A claimant who is under a court decree or order to contribute to the child's support is eligible to receive a dependency allowance without having to satisfy the whole or main support test, if no one else is receiving a dependency allowance for the same dependent. Upon request, the claimant must produce a copy of the court decree or order.

Note that, the statute does not require that a claimant actually make court-ordered payments. Note, too, that, under §29B(b), any unpaid court-ordered child support is subject to being withheld from the claimant's weekly benefit amount.

5. Social Security number used to verify dependent's existence

In 2003, under the same Federal statute (42 USC 1320b-7) that allows states to require claimants to furnish their SSN as a condition to receive UI benefits, DUA modified its policy to require all claimants applying for dependency allowances to provide a Social Security number for each child claimed. DUA validates the Social Security number of each dependent claimed with the Social Security Administration via a computer crossmatch program.

A claimant must provide the Social Security number of each dependent child for whom an allowance is claimed before any allowance may be paid. If during the course of the interview or while filing the claim the claimant is unable to provide the Social Security number for each claimed dependent, a "Dependency Allowance/Authentication" issue will be created and fact finding will be issued to the claimant. In the event that the claimant indicates that the number cannot be obtained or fails to respond with the necessary information in accordance with the specified deadline, then a disqualification will be issued.

6. Production of supporting documentation

When requested by DUA, the claimant must produce documentation verifying the identity of the claimant, the existence of the dependent, the claimant's relationship to the dependent, student status, whole or main support, the existence of a court order to pay support, etc.



7. Student status

A dependency allowance is payable for dependent children under the age of 24, if the claimant provides the main financial support for the dependent *and* the dependent is a full-time student at an educational institution that normally maintains a regular faculty and curriculum and normally has a regularly-organized body of students in attendance at the location where its educational activities are carried on. Claimants will be asked to provide the name of the institution. If the claimant fails to name the institution the dependent attends, an issue will be created, generating a questionnaire.

Claimants may be asked to provide documentation as proof of each full-time student dependent's current status, for example, registration, acceptance letter, report card, bill, or other appropriate official school documentation. A student is considered "in attendance" during the vacation period between two academic years and during any holidays or breaks between semesters within an academic year. Adjudicators may approve a dependency allowance for a student between high school and another educational institution. When necessary, the claimant may be asked to provide evidence, usually a letter of acceptance, that the child will be a full-time student when the next term begins, and will continue to be wholly or mainly supported by the claimant.

Dependents in a "cooperative" program, which combines academic instruction with work experience, are considered students during both the classroom and work periods.

8. Incapacitated, incapable of earning wages

A dependency allowance is payable for a dependent child of any age, if the claimant provides the whole or main financial support for the dependent and the dependent cannot earn wages because of a mental or physical disability. Documentation from a health care provider may be requested to confirm such incapacity.

Section 8: Extended Benefits (EB)

During certain periods of increased unemployment, federal law authorizes the Commonwealth to pay benefits beyond the period provided by § 30. Section 30A gives the requirements for these payments.

A. Statutes

G. L. c. 151A, § 30A(3)(a) (Qualifying wage requirements)

(3)(a) An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the commissioner finds that with respect to such week: (1) he is an exhaustee (2) he has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits, except as provided in paragraph (b) and (3) said individual has had twenty weeks of full time insured employment, or the equivalent in insured wages. For the purposes of this subsection, insured wages are wages paid during the base period of the current benefit year in an amount which exceeds forty times the most recent weekly benefit amount or one and one-half times the wages of the individual's highest quarterly earnings. The commissioner shall prescribe by regulation which of the foregoing methods of measuring employment and earnings shall be used to effectuate the purposes of this chapter and to provide the greatest coverage to individuals in need of extended benefits.

G. L. c. 151A, § 30A(1)(j) - (Definition of eligibility period)

(j) "Eligibility period", the period consisting of the weeks in an individual's benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

G. L. c. 151A, § 30A(5) - (Claimant's Extended Benefit credit)

(5) The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year rounded to the next lower full dollar amount shall be the least of the following amounts:

(a) fifty per cent of the total amount of regular benefits, including dependency benefits, which were payable to him under this chapter in his applicable benefit year;

(b) thirteen times his average weekly benefit amount, including dependency benefits, which was payable to him under this chapter for a week of total unemployment in the applicable benefit year; or

(c) thirty-nine times his average weekly benefit amount, including dependency benefits, which was payable to him under this chapter for a week of total unemployment in the applicable benefit year, reduced by the total amount of regular benefits which were paid, or deemed paid, to him under this chapter with respect to the benefit year.

Notwithstanding any other provisions of this subsection, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for this paragraph, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced, but not below zero, by the product of the number of weeks for which the individual received any amounts as readjustment allowances under the Trade Act of 1974 within that benefit year, multiplied by the individual weekly benefit amount for extended benefits.

G. L. c. 151A, § 30A(3)(b) - (Effect of § 25(c) regular claim disqualification)

Any individual who has been disqualified from receiving regular benefits pursuant to subsection (c) of section twenty-five for refusing to apply for or accept suitable employment shall not be eligible for extended benefits until such individual has been employed during at least four weeks which begin after such failure and the total of the remuneration earned by the individual for being so employed is not less than the product of four multiplied by the individual's average weekly benefit amount, as determined for purposes of clause (c) of subsection (5) for such individual's benefit year.

G. L. c. 151A, § 30A(1)(m) - (Suitable work for EB claim)

(m) "Suitable work", any work which is within an individual's capabilities, except that, if the individual furnishes evidence satisfactory to the director that such individual's prospects for obtaining work in his customary occupation within a

reasonably short period are good, the determination of whether any work is suitable with respect to such individual shall be made in accordance with subsection (c) of section twenty-five.

B. Monetary determinations

After filing an EB (extended benefits) claim, the claimant will be issued a monetary determination. Note that the extended benefit amount includes dependency allowances. To be eligible for EB, a claimant must have earned 1½ times the high quarter wages in the base period of the regular claim or 40 times the most recent weekly benefit amount including dependency allowance. Or, if the claimant does not meet either of those eligibility tests, the claimant may establish eligibility for EB by showing that he or she has had 20 weeks of covered full-time employment.³⁵

C. Benefit-year expired prior to EB period

Claimants must go on EB before their regular benefit year ends. Otherwise, the claimant is disqualified under § 30A(1)(j), which defines the eligibility period as “the period consisting of the weeks in an individual’s benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period. “

D. Reduction in maximum number of weeks on regular claim

Whenever there is an EB period or extended benefit federal program, the maximum amount of weeks on a regular claim is reduced from 30 to 26 weeks. A revised monetary determination of the regular claim will be issued to the claimant.

E. Impact on EB of § 25(e) disqualification on regular claim

In the following examples, the claimant’s benefit credit is not exhausted until the benefit year expires on the regular claim. Any disqualification under § 25(e) carries over into a new benefit year claim or EB Claim until the claimant requalifies.

Example 1: Claimant was disqualified under § 25(e)(1) for a voluntary quit on the regular claim. Claimant returned to work for another employer for two months and was laid off after earning an amount equal to or in excess of four times the claimant’s weekly benefit amount. Claimant is eligible for Extended Benefits.

³⁵ See 430 CMR § 4.01(7).

Example 2: Claimant was disqualified under § 25(e)(1) for a voluntary quit on the regular claim. EB triggered on before the benefit year expired. After the benefit year expired on the regular claim, Claimant, who had not worked since being disqualified, was determined to be monetarily ineligible on a new benefit year claim. Claimant files an EB claim and remains in a period of disqualification.

Example 3: Claimant was disqualified under § 25(e)(1) for a voluntary quit from a subsidiary employer for which the claimant was working part-time. If Claimant files an EB claim, Claimant is subject to a constructive deduction until Claimant has worked four weeks and in each week has earned an amount equivalent to or in excess of the weekly benefit amount on the regular claim.

F. Difference between disqualification provisions on regular claim and EB claim

Unlike a disqualification on a regular claim under § 25(c) for refusing suitable work, which covers the week in which work was refused and “the next seven consecutive weeks in addition to the waiting week” (See Chapter 5- Suitable work), under § 30A(3)(b) the refusal-of-suitable-work disqualification is indefinite, lasting until the claimant has worked in each of four weeks with the total remuneration equaling at least four times the claimant’s average weekly benefit amount. (The average weekly benefit amount is the average, for all paid weeks of the regular claim, of the sum of the weekly benefit amount and any dependency allowance.)

G. Types of work needed to end an EB disqualification

If a claimant, who was disqualified for refusing suitable work on the regular claim, returns to work, satisfies the disqualification, and earns at least four times the average weekly benefit amount any time prior to the initial EB claim, it is not necessary to issue a disqualification on the initial EB claim. Only weeks of work and earnings from an employment relationship, not self-employment, may be used to requalify.

Example 1: Claimant was disqualified under § 25(c) for a refusal of suitable work on the regular claim. Claimant served the disqualification and resumed collecting regular benefits, but has not earned at least four times the average weekly benefit amount. Claimant is not eligible for EB and must be disqualified under § 30A.

Example 2: Claimant was disqualified under § 25(c) for a refusal of suitable work on the regular claim. Claimant served the disqualification and resumed collecting regular benefits. Claimant then returned to work for four months, and then was laid off after earning four times the claimant’s weekly benefit amount. Claimant is eligible for EB. Claimant is not disqualified under § 30A because claimant is monetarily eligible under regular benefit rules.

H. Suitable work for an EB claim

1. Good prospects

Determining suitability first requires determining whether an EB claimant has good prospects of finding employment in the claimant's occupation within a reasonably short period of time. For these purposes, "good" means that the claimant has a recall date from a former employer or definite prospects of employment within the first four weeks of EB. Anything else is not "good."

If an individual's prospects for securing work in the individual's customary occupation are "good," then suitability is determined under § 25(c), which also applies to claimants on regular UI benefits. But if the individual refuses suitable work, the EB disqualification lasts until the individual works four weeks and earns an amount not less than four times the average weekly benefit amount.

2. Not good prospects, § 30A (3)(e)

If a claimant's prospects of obtaining work are not good, the definition of suitable work applicable to the EB work test for EB claimants applies. If the individual refuses suitable work, an indefinite disqualification, until the individual has worked four weeks and earned an amount which totals not less than four times the average weekly benefit amount, applies. Section 30A (3)(e) imposes the following restrictions:

- The EB work test defines suitable work as any work within the individual's capabilities. If a disqualification for refusing to apply for or accept suitable work would be imposed under this "not good" classification, such a disqualification would be subject to the following restrictions:
 - The gross average weekly pay for the offered work must exceed the individual's weekly benefit amount, plus any supplemental unemployment benefits (SUB) payable.
 - The job must have been offered to the individual in writing or listed with the MassHire Department of Career Services.
 - The pay must equal or exceed the higher of the minimum wage under § 6(a)(1), the Fair Labor Standards Act of 1938, or any applicable state or local minimum wage.
 - The work must have been suitable under all suitable work provisions for regular benefits which do not conflict with the special EB provisions. Under this provision for example, the offered work must meet the labor standards requirements of the State law.

I. Work search requirements

1. Systematic and sustained effort

Subject to the exceptions discussed below, under § 30A(3)(c), all EB claimants must actively engage in seeking work, which the statute defines as:

- engaging in a systematic and sustained effort to obtain work each week; and
- providing tangible evidence to DUA of an active search for work each week. A work search log satisfies the tangible evidence requirement.

These requirements apply to EB claimants, whether they are in total or partial unemployment. Union membership does not exempt an EB claimant from actively seeking work under § 30A.

2. Minimum requirements

An EB claimant is expected to make a more diligent and active search for work than is required of claimants receiving regular benefits. Also, employer contacts by EB claimants are subject to DUA verification. An EB claimant must:

- make at least two direct contacts each week, using methods customary in the claimant's occupation;
- engage in at least three work search activities per week; and
- use more than one work search method.

3. Period of disqualification

If it is determined that an EB claimant did not actively seek work during a week, the adjudicator should issue a determination making the claimant ineligible for EB for that week and until the claimant has had employment during at least four weeks and has received remuneration for such employment totaling not less than four times the claimant's average weekly benefit amount as calculated under § 30A(4). The requalifying weeks of work need not be consecutive.

4. Failure to request benefits

Work search requirements do not apply to any week for which a claimant does not claim benefits.

5. Exemption from work search requirements

Under G. L. c. 151A, § 30A(3)(c), EB work search requirements are waived for an individual who:

- is in court pursuant to a lawfully-issued summons for jury duty.
- is hospitalized for treatment of an emergency or life-threatening condition. (Someone who is ill but not within the hospitalization exemption remains subject to the EB work search requirement. The three weeks of approved illness available on a regular claim for benefits cannot be used on an EB claim. The waiver of work search requirements is only available to an EB claimant who is hospitalized for treatment of an emergency or life-threatening condition.)

Under § 30(c) or § 236(e) of the Trade Act of 1974, claimants who are attending classes in approved training programs also are exempt from making a sustained and systematic search for work.

J. Miscellaneous provisions

1. Interstate claimant residing in a state not on Extended Benefits

Under G. L. c. 151A, § 30A (7), an interstate claimant who is residing in a state which is not in an Extended Benefit period may collect only two weeks of extended benefits. Thereafter, such claimants will be issued a Notice of Disqualification.

2. Reduction of EB due to receipt of Trade Readjustment Allowances

Under the last paragraph of G. L. c. 151A, § 30A(5):

Notwithstanding any other provisions of this subsection, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for this paragraph, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced, but not below zero, by the product of the number of weeks for which the individual received any amounts as readjustment allowances under the Trade Act of 1974 within that benefit year, multiplied by the individual weekly benefit amount for extended benefits.

A claimant determined to be eligible for EB benefits will have their EB benefit credit reduced, but not below zero, by the amount of TRA benefits received during the benefit year.