

## Chapter 4: Able, available, and actively seeking work

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## Section 1. Introduction

To be eligible for unemployment benefits, claimants must be able and available to work and be actively seeking work. In general, therefore, claimants must:

- be physically, mentally, and emotionally able to do suitable work (*able/capable*);
- be available to accept full-time work, unless they are permitted to limit themselves to part-time work (*available*); and
- make reasonable efforts to find new employment in light of relevant economic conditions and the claimant's individual circumstances (*actively seeking work*).

These eligibility requirements are week-to-week issues: A claimant may fulfill all of these requirements one week, but not fulfill one or more of them during another week. **A claimant who has been disqualified indefinitely for any of these reasons may later meet the requirements because the claimant's circumstances changed. Staff should follow the procedures listed in the Policy Memorandum dated February 19, 2020, Reference Number: UIPP 2020.04 to end the indefinite disqualification.**

A claimant who claims benefits for a week when these requirements are not met should be disqualified for that week. A claimant who is not able to work or is not available to work for part of a week may be subject to a lost-time charge, that is, a partial reduction in benefits.

### A. Statutes and regulations

#### 1. Statute

##### G. L. c. 151A, § 24(b) (General requirements)

An individual, in order to be eligible for benefits under this chapter, shall—

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- b) Be capable of, available, and actively seeking work in his usual occupation or any other occupation for which he is reasonably fitted...

## **G. L. c. 151A, § 24(c) (Approved illness)**

[First two paragraphs omitted]

No individual shall be considered ineligible for benefits because of failure to comply with the provisions of said clause (b) if such failure is due to an illness or disability which occurs during a period of unemployment after he has filed a claim and registered for work, and has been determined to be otherwise eligible; provided, that no work which would have been considered suitable but for such illness or disability was offered to him after he became ill or disabled; provided further, that the exception granted under this paragraph shall apply to three weeks only within a benefit year.

## **2. Regulations**

### **430 Code Mass. Regs. § 4.06 (lost time)**

The cash value of time lost for reasons other than failure to furnish full-time work shall be determined by multiplying the average hourly earnings for the week by the number of hours lost. If it is not possible to ascertain the average hourly earnings for the week of such “lost time”, such lost earnings shall be computed at four percent of the benefit rate for each hour lost.

### **430 Code Mass. Regs. §§ 4.42–4.45 (Part-time availability)**

#### **4.42: Purpose**

The purpose of 430 CMR 4.42 through 430 CMR 4.45 is to establish criteria under which an individual, otherwise eligible for benefits, may limit his/her availability solely to part-time employment.

#### **4.43: Scope and applicability**

430 CMR 4.42 through 430 CMR 4.45 applies to individuals receiving unemployment benefits under M.G.L. c. 151A.

#### **4.44: Definitions**

The following words and phrases shall have the following meanings unless otherwise clearly indicated by the context of 430 CMR 4.42 through 4.45:

**Benefits or unemployment benefits** means the money allowances payable to an individual as compensation for wage losses due to unemployment as provided in M.G.L. c. 151A.

**Benefit year** shall have the meaning as set forth in M.G.L. c. 151A, § 1(c).

**Commissioner** means the Director of the [Department] of Unemployment Assistance established by M.G.L. c. 23, § 9I.

**Disability** means a physical or mental impairment that substantially limits a major life activity of such individual; a record of such an impairment; or being regarded as having such an impairment because of an actual or perceived physical or mental impairment. This determination is made without regard to the use of mitigating measures such as medications, prosthetics, medical supplies, equipment, and low-vision devices.

**Initial claim** means a claim for unemployment benefits establishing an individual's benefit year pursuant to M.G.L. c. 151A.

**Major life activities** means functions including but not limited to caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, the operations of major bodily functions, and working.

**Most recent 26 weeks of employment** means a period of time consisting of the most recent 26 weeks of employment immediately prior to the filing of an initial claim for benefits.

**Part-time** employment means employment at less than the full-time work schedule customary for the individual's occupation.

**Prior work history of part-time employment** means a period of time consisting of not less than 20 weeks of part-time employment during the most recent 26 weeks of employment.

**Qualified individual with a disability** means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or for the participation in programs or activities provided by a public entity.

#### **4.45: Conditions for limiting availability**

(1) An individual otherwise eligible for benefits may limit his/her availability for work during the benefit year to part-time employment provided, that the individual:

(a) has a prior work history of part-time employment; establishes to the satisfaction of the commissioner good cause for restricting availability during the benefit year to part-time employment and that such good cause reason is the same as, or is related to that which existed during the prior work history of part-time employment; and is available during the benefit year for at least as many hours of work per week as used to establish the prior work history of part-time employment; or

(b) establishes to the satisfaction of the commissioner that the reasons for leaving his or her employment were for such an urgent, compelling, and necessitous nature as to make his or her separation involuntary; and establishes to the satisfaction of the commissioner that the same or related urgent, compelling, and necessitous reasons require the individual to limit availability for work during the benefit year to part-time employment; and such limitation does not effectively remove the individual from the labor force, and

(2) An individual who falls under the provisions of 430 CMR 4.45(1)(b) who obtains suitable part-time employment during the benefit year shall be determined not to be in partial unemployment and will not be eligible to receive partial unemployment benefits while so employed in the benefit year.

(3) Notwithstanding the provisions of 430 CMR 4.45(1), an otherwise eligible individual who does not meet the requirements of 430 CMR 4.45(1) may limit his/her availability for work during the benefit year to part-time employment provided, that the individual is:

(a) a qualified individual with a disability;

(b) provides documentation to the satisfaction of the commissioner substantiating an inability to work full-time because of such disability; and

(c) establishes to the satisfaction of the commissioner that such limitation does not effectively remove himself/herself from the labor force.

(4) Any individual who meets the requirements of either 430 CMR 4.45(1) or (3) must be actively seeking and available for suitable work to be eligible for benefits. An offer of employment will not be considered an offer of suitable employment and the individual will not be disqualified for refusing such offer where such offer:

(a) in the case of an individual who meets the requirements of 430 CMR 4.45(1)(a) requires greater hours than those used to establish the individual's prior work history of part-time employment; or

(b) in the case of an individual who meets the requirements of 430 CMR 4.45(3) requires greater hours than the individual is capable of working.

## Section 2. Capable of work

### A. General principles

#### 1. Definition

To be considered capable of work, a claimant must be physically, mentally, and emotionally able to perform some type of suitable, paying work.<sup>1</sup> Although the work need not be in the claimant's most recent or customary occupation, it must be work for which the claimant is "reasonably fitted."<sup>2</sup>

#### 2. Burden of proof

The burden of proof is on the claimant. See Chapter 1 - Adjudicator responsibilities.

#### 3. Presumptions

Absent evidence to the contrary, an individual is presumed to be capable of working.

A qualified individual with a disability who has not withdrawn from the labor force and who is able to work with or without a reasonable accommodation is considered capable of work.

### B. Fact-finding

When a question of a claimant's capability arises, information on the following issues should be obtained. If the claimant's response to the initial fact-finding questionnaire does not contain sufficient information, additional information should be obtained by sending a custom fact-finding questionnaire.

- Can the claimant do his or her regular or most recent work?
  - If not, can the claimant do some type of full-time or part-time work for which he or she is reasonably fitted?
  - What type of work is the claimant looking for?
- Are there any restrictions on the claimant's ability to work?

If medical evidence is needed to evaluate a claimant's ability to work, the claimant should be asked to provide written documentation or a written

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<sup>1</sup> See G. L. c. 151A, § 1(r) (defining remuneration).

<sup>2</sup> G. L. c. 151A, § 24(b).



statement from a health care provider detailing the claimant's capability to work during the week or weeks in question.

## **C. Fact patterns and exceptions**

### **1. Claimant admission or medical statement**

If a claimant or a competent health care provider states that the claimant's health prevents the claimant from working, that statement is sufficient evidence for disqualification. But if different competent health care providers give conflicting statements regarding the claimant's ability to work, the adjudicator must evaluate the credibility and weight of the statements.

### **2. Leave of absence**

If the claimant is on a leave of absence granted or imposed by the employer, the adjudicator must determine, under § 29(a) and § 1(r)(2), whether the claimant is in total or partial unemployment. In some cases, an eligibility determination also must be made under § 24(b). (For a more detailed discussion of leaves of absence, see Chapter 6 - Separations.)

### **3. Approved illness or bereavement**

Under § 24(c), an otherwise eligible ill or disabled claimant may receive benefits for up to three weeks of "approved illness" during a benefit year, provided no suitable work was offered while the claimant was ill or disabled. Approved illness weeks may be used only for *continued* weeks claimed, not for the waiting period week. Each week of approved illness is a separate determination. The exception applies only if the illness makes the claimant incapable of working for half or more of the claimant's regular work week. If a claimant is unable to fulfill one or more of the § 24(b) requirements for less than half a week, lost time charges may apply.

Approved illness weeks may be used by a claimant receiving benefits under any program, except § 30A extended benefits (EB), which has its own limited exception for claimants who are "hospitalized for treatment of an emergency or life-threatening condition."<sup>3</sup> Approved illness weeks may be used for federal extended benefits, § 30 (Retraining Extended Duration (RED) benefits) and any other federal emergency compensation program during the benefit year only. After the benefit year has expired, a claimant may not use approved illness weeks even if still eligible to receive RED or federal extended benefits.

A period of bereavement when there is a death in the immediate family is treated as a period of approved illness, provided that no suitable work was

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<sup>3</sup> G. L. c. 151A, § 30A(3)(c).

offered. The claimant's immediate family includes the claimant's spouse, imminent spouse or non-marital partner,<sup>4</sup> the claimant's children, parents, siblings, grandparents, and other people to whom the claimant (or the claimant's spouse, imminent spouse, or non-marital partner) is related.

#### **a. Exhausted approved illness benefits**

After a claimant has used all three approved illness weeks in a benefit year, any continuing or new illness that makes the claimant incapable of working results in the claimant being ineligible for benefits.

#### **4. Workers' compensation**

A claimant receiving total temporary disability payments under workers' compensation is not considered able and available for work. A claimant receiving partial temporary disability payments under workers' compensation may be able and available for work. (See Chapter 11 - Special determinations.)

#### **5. Permanent physical or mental disability**

A claimant with a permanent physical or mental disability who has a recent history of working notwithstanding the disability satisfies § 24(b)'s availability and capability requirements, unless there is evidence that the claimant's situation has changed so that the claimant is no longer available for or capable of work. A claimant without such a recent history may satisfy the requirements by providing substantial and credible supporting information.

#### **6. Permanent and total disability payments**

Fact-finding is needed to determine the capability for work of a claimant who is receiving, or who has applied for, disability benefits under the federal Social Security Disability Insurance (SSDI) program, also known as the Old Age and Survivor Disability Insurance program (OASDI). The claimant should be asked for medical documentation showing that the claimant is capable of work.

If credible medical documentation establishes a capability to work full-time, the claimant should not be disqualified. A claimant with a disability who is only able to work part-time will be eligible if the claimant meets one of the three part-time availability requirements in 430 Code Mass. Regs. §§ 4.42–4.45.

The claimant may be entitled to approved illness even though the claimant has applied for Social Security Disability (SSDI or OASDI) benefits. However, if the

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<sup>4</sup>An imminent spouse is a person whom the claimant has definite plans to marry. A nonmarital partner is an individual with whom the claimant shares a household and who is considered to be the claimant's partner.

illness or disability is not a recent one, you should investigate the claimant's ability to work in earlier weeks for which he or she had signed for benefits. If it appears that the claimant is not capable of working in earlier weeks, a new issue will need to be created for the week(s) in question and a new determination will need to be issued.

**a. Claimant returns to work after SSDI award**

A claimant who qualifies for disability benefits may recover sufficiently to return to work while continuing to receive disability benefits for a trial period of nine months or longer.<sup>5</sup> If the claimant has a history of working since beginning to receive disability benefits, that work history may be used to establish an ability to work and avoid disqualification under § 24(b). If there are any doubts about a claimant's ability to work, the claimant should be asked to provide written medical documentation or a written statement from a health-care provider.

**7. Physical or mental condition requiring change in occupation**

Section 24(b) does not disqualify a claimant who, although no longer able to work in his or her customary occupation because of a change in physical or mental condition, is capable of, available for, and actively seeking other work for which he or she is reasonably fitted.

**8. Failure to return requested medical documentation**

The adjudicator should request appropriate information from the claimant when evidence suggests that a medical issue may affect the claimant's ability to work. If the claimant fails to provide substantial and credible information, the adjudicator should issue a disqualification.

**Note: A claimant who has been disqualified indefinitely for any of these reasons may later meet the requirements because the claimant's circumstances changed. Staff should follow the procedures listed in the Policy Memorandum dated February 19, 2020, Reference Number: UIPP 2020.04 to end the indefinite disqualification.**

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<sup>5</sup> 20 C.F.R. § 404.1592.

## Section 3. Available for work

### A. General principles

#### 1. Definition

To be considered available for work, a claimant must be ready and willing to work in any occupation reasonably matching the claimant's training or experience, and must not have unreasonable restrictions on shifts, wages, or locations, that would make obtaining work unlikely. The claimant should be ready and willing to accept suitable work when offered. In order to be eligible for benefits an individual need only be available for suitable employment which the claimant has no good cause to refuse.<sup>6</sup> Although, in certain circumstances, good cause may include personal reasons, such as restrictions on acceptable shifts or time of work, wages, or locations, these restrictions must not make the claimant unavailable for work by effectively removing the claimant from the labor force.<sup>7</sup>

#### 2. Burden of proof

The claimant bears the "initial burden of establishing eligibility for benefits."<sup>8</sup>

#### 3. Presumptions

Absent evidence to the contrary, a claimant is presumed to be available for work.

#### 4. Lost-time charges

A claimant who is not able or available to work for **fewer than three days** during a week may be subject to a lost-time charge based on the amount of time the claimant was not available for and able to work. A claimant who is unable to work or unavailable for work for **three days or more** during a week will be disqualified for that week. (There is a limited approved illness exception, discussed earlier in this Chapter.)

A claimant who refuses an offer of short-term employment because of unavailability or an inability to work may be subject to a lost-time charge based on the earnings the claimant could have received from that job. If a claimant refuses an offer of short-term employment during the benefit year, and if the information provided by the claimant is found not credible or if more information is needed, the employer should be contacted. If a claimant refuses

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<sup>6</sup> *Conlon v. Director of Div. of Employment Sec.*, 382 Mass. 19, 21 n.1 (1980).

<sup>7</sup> *Id.*

<sup>8</sup> *Cantres v. Director of Div. of Employment Sec.*, 396 Mass. 226, 232 (1985).

an offer of long-term employment, the claim should be adjudicated under the suitable work provisions of § 25(c). (See Chapter 5 - Suitable work.)

Lost-time charges are calculated by multiplying the average hourly earnings for the week by the number of hours lost. If it is not possible to determine the average hourly earnings for the week, the lost-time charge is four percent of the benefit rate for every hour lost.<sup>9</sup> (Enter the number of hours the claimant was unavailable into UI Online.) In general, eight hours of lost-time should be charged for each day the claimant was not in compliance with § 24(b). If the claimant ordinarily worked **part-time**, charge lost time for the number of hours the claimant ordinarily would be available to work each day. If the lost-time charge would reduce the claimant's benefit rate to zero, issue a disqualification for the week or weeks at issue.

## **5. Available for part-time work**

Generally, an individual must be available for full-time work. But an individual who is available for only part-time work may be considered available for work under the conditions set forth in 430 Code Mass. Regs. §§ 4.42–4.45.

### **a. Fact-finding**

When an issue regarding availability for work arises, information on the following issues should be obtained. Sufficient information may be available in the claimant's response to the initial fact-finding questionnaire. If not, additional information should be obtained by sending out a custom fact-finding questionnaire.

- Is the claimant available for full-time or part-time work?
  - If the claimant is only available for part-time work, the adjudicator must determine whether the claimant's situation meets one of the three sets of conditions described in 430 Code Mass. Regs. § 4.45.
- What kind of work is the claimant seeking?
- Does the claimant have any preferences or restrictions regarding hours, shifts, wages, type of work, or location?
- What are they? Why does the claimant have them?
- Are they preferences or restrictions?

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<sup>9</sup> 430 Code Mass. Regs. § 4.04(6).

- If the claimant has a *preference*, and so would be willing to accept work that does not fulfill the preference, the claimant will be considered available for work.
- If the claimant has a *restriction*, and so would not be willing to accept work that does not meet the restriction, the adjudicator must determine whether the restriction effectively removes the claimant from the labor force.

## **B. Fact patterns and exceptions**

### **1. Part-time availability**

A claimant who is available to work only part-time may meet the requirements of § 24(b) by meeting any one of the three sets of conditions for limiting availability described in 430 Code Mass. Regs. § 4.45:

- Having a prior history of part-time work, and establishing
  - good cause<sup>10</sup> for restricting availability during the benefit year to part-time work; and
  - that the good cause is the same as, or is related to, that which existed during the prior work history of part-time work; and
  - availability during the benefit year for at least as many hours of work each week as used to establish the prior work history of part-time employment; or
- Establishing that the reasons for leaving employment were of such an urgent, compelling, and necessitous nature as to make the separation involuntary, and that
  - the same or related urgent, compelling, and necessitous reasons require the individual to limit availability for work during the benefit year to part-time employment; and
  - such limitation does not effectively remove the individual from the labor force; or

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<sup>10</sup> “Good cause” includes health issues that prevent the claimant from working full-time or domestic responsibilities, such as the need to care for a child or other family member. But the claimant’s preference for part-time work, attendance at school (other than in a § 30 approved program—see, below)—or an unwillingness to exceed Social Security retirement income limits does NOT constitute good cause.

- Being a qualified individual with a disability, that is, an individual with a disability who, with or without a reasonable accommodation, meets the essential eligibility requirements for the receipt of services or for participation in programs or activities provided by a public entity, or being an individual who is a caregiver to a relative with a disability, and
  - providing documentation substantiating an inability to work full-time because of such disability; and
  - establishing that such limitation does not effectively remove the individual from the labor force.

If a claimant who is available for part-time work is approved under § 24(b), eligibility for partial benefits must be determined under § 29(b) and § 1(r). Note that a claimant with restricted hours of availability who accepts a part-time job will not be considered to be in partial unemployment during any week in which the employer offers all of the part-time hours requested.

## **2. Caring for family members**

If a claimant has left work to care for an ill family member under urgent, compelling, and necessitous circumstances within the meaning of § 25(e), the adjudicator should investigate whether the claimant meets the availability requirements of § 24(b). (For more on urgent, compelling, and necessitous circumstances, see Chapter 7 - Voluntary leaving.) A claimant who establishes that he or she is ready to re-enter the labor force because the circumstances that caused the separation have changed is considered available for work. Availability is a week-to-week issue. The crucial issue is whether the claimant is available for work during the week for which benefits are claimed.

## **3. Restrictions to certain shifts**

**Good Cause:** A claimant may, with good cause, restrict availability to certain shifts of work, provided this does not effectively remove the claimant from the labor force.<sup>11</sup> “[I]n certain circumstances, ‘good cause’ may include personal reasons,”<sup>12</sup> for example, health or safety reasons or a need to be at home evenings with school-age children or a disabled family member may warrant a claimant restricting availability to a day shift.

## **4. Domestic violence**

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<sup>11</sup> See *Conlon*, 382 Mass. at 25, citing *Keough v. Director of the Div. of Employment Sec.*, 370 Mass. 1, 4 (1976).

<sup>12</sup> *Id.*, 382 Mass. at 23.



For a more detailed discussion of domestic violence issues, see Chapter 6 - Separations.

**Cases involving domestic violence should be referred to the UI Policy and Performance Department for a determination.**

**Shelter restrictions on availability:** An agency providing temporary shelter to victims of domestic violence may require the claimant to leave work with a current employer or not work while a resident at the shelter. (See discussion of Domestic Violence in Chapter 7 - Voluntary leaving.) Such requirements often are imposed to protect the claimant and other shelter residents, who might be endangered should an abuser contact the claimant at a known place of employment or follow the claimant from a place of employment to the shelter. The shelter also may require the claimant to devote a substantial amount of time to searching for permanent housing.

Compliance with such shelter-imposed restrictions will not result in a claimant's being disqualified as unavailable for suitable work, if the claimant is willing to look for work and to relocate from the shelter within a reasonable period of time after being offered a job.

**Childcare requirements:** Sometimes, the claimant's dependent children, rather than the claimant, may be the direct victims of abuse. The claimant may need to provide direct care to dependent children affected by physical or psychological abuse, or remain in direct custody of dependent children threatened with abuse. A claimant need not already have childcare arrangements in place to be eligible for benefits, but a claimant who receives an offer of suitable work must be willing and able to arrange for childcare within a reasonable time.

## **5. Home-based work**

**Restricted industries:** Under U.S. Department of Labor regulations, certain restricted industries—embroidery, women's apparel, gloves and mittens, jewelry, knitted outerwear, buttons and buckles, and handkerchiefs—may, under a special homework certificate, employ homeworkers who are:

- unable to adjust to factory work because of age or physical or mental disability; or
- unable to leave their home because their presence is required to care for an invalid; or
- engaged in industrial homework under the supervision of a state vocational rehabilitation agency.



A claimant with a homeworke’s permit who works in any of these industries does not meet the requirements of § 24(b), regardless of whether the unemployment is partial or total. But a claimant with a homeworke’s permit who has been working in a non-restricted industry or a claimant who does homework of a type not requiring a federal permit should be approved under § 24(b).

## **6. Jury duty**

An otherwise available claimant summoned for jury duty during a period of unemployment continues to be eligible for benefits under § 24(b) during the period of jury service.

## **7. Legal detention or incarceration**

During any period of incarceration or other legal detention, a claimant is not available within the meaning of § 24(b). The claimant will be charged lost-time for one or two days’ absence or will be disqualified for the entire week if unavailable for three or more days.

## **8. Minimum level of wages**

A claimant’s accustomed remuneration (earnings) is one factor to be considered when determining the suitability of work for which a claimant must be available. When a claimant is only available for work that pays a certain level of wages, the adjudicator must determine whether:

- the claimant possesses the skills or abilities needed for the work at the desired pay;
- work paying the desired wages is available in the locality where the claimant is seeking work;
- the wages sought are higher than the prevailing rates for the type of work the claimant is seeking.

If the claimant will only accept a wage exceeding the prevailing rates, the adjudicator should determine whether the claimant has realistic, verifiable prospects of obtaining such wages. If not, the claimant does not meet the requirements of § 24(b). A claimant who has been employed at wages higher than the prevailing rate should be given a reasonable period of time (up to 15 weeks) to find work paying similar wages, taking into account the claimant’s prior earnings, training, or educational level, and the likelihood of finding a job for which the claimant is reasonably fitted in the claimant’s labor market area. (For a fuller discussion of suitable work, see Chapter 5 - Suitable work.)

**Example:** A claimant last worked as an experienced welder at a shipyard for \$30 an hour plus fringe benefits. The shipyard closed. The nearest operating shipyard is outside the claimant's labor market area and beyond a reasonable commuting distance. The prevailing wage rate for welders in the claimant's labor market area is \$20 an hour. If, after a reasonable time (15 weeks is considered reasonable), the claimant refuses to seek a job at the prevailing wage, the claimant is subject to a disqualification under § 24(b) unless the claimant can show realistic prospects of obtaining a job at the claimant's customary wage. (See below - Reasonable Time to Return to Customary Occupation.)

## **9. Restriction to one employer**

Generally, a claimant who restricts availability to a particular employer will be disqualified under § 24(b) for an indefinite period of time. But a claimant who restricts availability for employment to one employer remains eligible for benefits as long as the employer verifies that the claimant has been given a **definite** date to return to work with the employer within four weeks. If the claimant has a return-to-work date more than four weeks in the future and has restricted his or her availability to that employer, the claimant is not considered to be available for work and is disqualified for all but the last four weeks before the return-to-work date. See Vacation Shutdown, below.

## **10. Part-time odd jobs; services for a charity or welfare agency**

A claimant who works part-time odd jobs, or receives aid from a welfare agency or other charitable organization in return for part-time services, is not subject to disqualification, provided these activities do not interfere with the claimant's availability and ability to obtain work, and as long as the claimant properly reports all earnings.

## **11. Religious beliefs**

A claimant who is unavailable for work on a specific day or days of the week because of religious beliefs, and who is available during the remainder of the week, is generally not disqualified or charged for lost time.

## **12. Self-employment**

A claimant's plans or efforts to enter self-employment, such as a sole proprietorship, partnership, or independent business enterprise, may result in the claimant not being available for work. If the claimant is spending more than twenty hours a week on self-employment activities, this information should be taken into consideration in making a determination. While this amount of time is not necessarily disqualifying, the adjudicator should consider whether the claimant is truly available for work with an employer. Preparation activities include, but are not limited to, making cash

investments, renting property or equipment, hiring staff, ordering office supplies, and soliciting customers. If the claimant received pay for such self-employment, the amount of net earnings should be deducted under § 29(b).

### **13. Specific geographic area**

A claimant whose availability for work is unreasonably restricted to a specific area is not available within the meaning of § 24(b). Whether a restriction is reasonable depends on the claimant's particular circumstances, such as prior working arrangements, commuting possibilities, employment opportunities in the specific area, and the time and expense of travel outside the specific area.

### **14. Transportation issues**

Lack of transportation may make an individual unavailable for work and therefore ineligible for unemployment benefits under § 24(b).<sup>13</sup> For example, a claimant who restricted her availability to within walking distance of her home or where a ride was available so restricted her employability that she effectively removed herself from the labor force, and was not available for work.<sup>14</sup> A claimant should be given an opportunity to demonstrate the availability of transportation to possibly suitable work sites, such as the claimant's own vehicle, ride-sharing, public transportation, or the assistance of others, including household members. (See Chapter 5 - Suitable work.) A claimant who acknowledges not being available for any work that might be offered due to a lack of transportation is not available under § 24(b) because such a restriction removes the claimant from the labor force.

### **15. Travel within the United States and Canada**

**Time spent traveling for personal reasons:** A claimant who travels for personal reasons during a majority of the week for which benefits are claimed is not available under § 24(b), if the traveling and related activities would prevent the claimant from accepting an offer of suitable work or from starting the offered work within a reasonable time. Travel for personal reasons includes vacations, visits to friends and relatives, time spent traveling to another area for health reasons, and time spent traveling to join one's spouse in another area.

**Main purpose of travel is to seek new employment:** A claimant who travels during a week or part of a week for which benefits are claimed is not disqualified or charged for lost time, if the main purpose of the claimant's travel was worksearch activities, such as seeking new employment, including

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<sup>13</sup> *Keough v. Director of the Div. of Employment Sec.*, 370 Mass. 1, 4 (1976).

<sup>14</sup> *Id.*

going to a scheduled job interview or job fair. The adjudicator may ask for supporting documentation.

## **16. Travel outside of the U.S. and its territories**

The U.S. and Canada have an agreement that allows for the filing and continuance of claims from within either country. A claimant who travels to Puerto Rico or the U.S. Virgin Islands is within a US territory and no filing and reporting issue is raised.<sup>15</sup> Travel to any other place or country raises a filing and reporting issue if the claimant requests benefits for a week during which the claimant was out of the country for a majority of the week (Filing and Registration/Out of Country) under § 25(a). (See Chapter 2 – Out-of-country filings.)

## **17. Vocational or academic training**

Claimants attending an approved § 30(c) training program are exempt from § 24(b)'s availability and worksearch requirements. (See discussion of Section 30 in Chapter 11 - Special determinations.) Claimants attending any other vocational or academic training nevertheless must be available for work. The claimant should be asked for the name of the school, the course, the number of hours devoted to the program and actual schedule of the course, the number of credits to be earned, and the claimant's intentions if suitable work is offered.

**Full-time vocational or academic training:** A claimant who is registered for and attending full-time day classes or training—12 or more credit-hours in the case of a college or university program—is generally considered not to be “available” under § 24(b). But a claimant who demonstrates compliance with worksearch and capability requirements and a willingness to accept suitable work, either by changing the class schedule or stopping full-time schooling, as necessary, is available for work. Also, a claimant who can show that the school schedule is such that the claimant can work full time around that schedule is also considered available under § 24(b). It must be established that the type of work the claimant is seeking is available during the hours the claimant is not in school, or that the claimant's academic schedule can and will be rearranged as necessary to accept suitable work. A claimant who satisfies these requirements need not have a prior history of working full time while attending school full time to be considered available.

**Apprentice training programs:** Attendance/participation in apprentice training or union-required skills enhancement training shall be deemed as

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<sup>15</sup> <https://www.irs.gov/individuals/international-taxpayers/persons-employed-in-a-us-possession-futa> (Lasted visited 10/29/2019)

failing to meet the availability standards under G. L. c. 151A, § 24(b) unless the training is an approved training program under G. L. c. 151A, § 30(c).

**Part-time vocational or academic training:** A claimant attending vocational training on a part-time basis (1 to 19 hours per week), or academic training on a part-time basis (1 to 11 credit hours per week), and who is available for a full-time job outside of school hours or who is willing and able to quit the program or change the schedule as needed to accept an offer of a suitable job meets the requirements of § 24(b).

**Training period at no pay:** A claimant who has been hired for a job that requires a one- or two-week on-the-job training period with no pay, or a stipend for expenses only, is considered available for those weeks. **Claims involving the payment of benefits for on-the-job training with no pay for a period of longer than two weeks should be denied for the weeks following the first two weeks.**

**Post-graduate study not requiring attending classes:** If a claimant is doing graduate work, that is, studying for a masters or doctorate degree, the adjudicator should question the claimant to determine whether the claimant is ready and willing to accept suitable work within a reasonable period of time.

## Section 4. Actively seeking work

### A. General principles

#### 1. Definition

A claimant must make an active and realistic search for work, taking steps that would be taken by a reasonable person in the claimant's circumstances who was interested in obtaining work. Consideration should be given to the customary methods of obtaining work in the claimant's usual occupation or one for which the claimant is reasonably suited. Individuals filing claims for benefits are responsible for meeting the work search requirements for *every week claimed*. Note: claimants with an offer of new employment or a definite recall date are not required to actively seek work during the four week period prior to the start/recall date.

#### 2. Burden of proof

The burden of proof is on the claimant. (See Chapter 1 - Adjudicator responsibilities.)

#### 3. Requirements

The claimant must make a good faith effort to find a new job.<sup>16</sup>

#### 4. Seeking part-time work

Generally, a claimant must seek full-time work. But a claimant who is searching for only part-time work can satisfy § 24(b) under the conditions set forth in 430 Code Mass. Regs. §§ 4.42–4.45.

### B. Fact-finding

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

- Complete at least 3 work search activities per week;
- Keep a detailed, written work search log; and
- When asked, provide the work search logs and any other requested information.

<sup>16</sup> *Russo v. Director of Div. of Employment Sec.*, 377 Mass. 645, 647 (1979), citing *Evancho v. Director of the Div. of Employment Security*, 375 Mass. 280, 282 (1978).

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 and sends a fact-finding questionnaire to the claimant.<sup>17</sup> **If the claimant fails to return the fact-finding within 10 days, the issue will be auto-adjudicated, notice of the determination will be sent, and the claimant will be denied benefits for the week in question.** The claimant has the right to appeal the determination to the Hearings Department.

When the claimant's response is timely, the adjudicator must determine whether the claimant satisfied the work search requirements.

**Note:** Some claimants are not required to meet work search requirements for certain weeks, such as those in approved Section 30 training programs (see Chapter 11 – Special determinations), those who are eligible for Approved Illness (see 'Capable of work' section, above), and those who meet the exceptions listed below (see 'Fact patterns and exceptions' section).

The claimant's work search logs should list all work search activities for each week in question, including the date of each activity, the names and titles of persons contacted, contact details, and the result of each activity. Acceptable work search activities include, but are not limited to:

- Registering for work and reemployment services with a local MassHire Career Center.
- Completing a job application in person or online with employers who reasonably may be expected to have an opening for suitable work.
- Mailing a job application and/or résumé, as instructed in a public job notice in connection with an opening for suitable work.
- Making in-person visits with employers who reasonably may be expected to have an opening for suitable work.
- Sending job applications to employers who may reasonably be expected to have openings for suitable work.

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<sup>17</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 reviews work search activities in connection with a Reemployment Services and Eligibility Assessment (RESEA).



- Interviewing with potential employers regarding suitable work in person or by telephone.
- Registering for suitable work with private employment agencies or placement services.
- Using the employment resources available at MassHire Career Centers that may lead directly to obtaining employment, such as:
  - obtaining and using local labor market information;
  - participating in skills assessments for occupation matching;
  - participating in instructional workshops; and
  - obtaining and following up on job referrals from the MassHire Career Center.
- Attending job search seminars, career networking meetings, job fairs, or employment-related workshops that offer instruction in improving individuals' skills for obtaining employment.
- Using online job matching systems, including the Massachusetts One-Stop Employment System (MOSES).
- Reporting to a union hall, if this is the claimant's primary work search method.
- Using other job search activities, such as reviewing job listings on the internet, newspapers or professional journals, contacting professional associations, and networking with colleagues or friends.

To determine whether a claimant actively sought work during the week(s) in question, information on the following issues should be obtained. If sufficient information is not obtained through the claimant's response to the initial fact-finding questionnaire, additional information should be obtained by sending out a custom fact-finding questionnaire or by requesting the claimant's work search log.

- What work search activities did the claimant undertake?
- Where did the claimant look for work?
- What methods did the claimant use to seek work?
- Did the claimant refuse to accept any employment that was offered?



**Note:** If work load credit is taken by an adjuster for investigating an actively seeking work issue, the adjudicator must have attempted to verify the work search activities listed by the claimant.

**Note:** If the claimant indicates a refusal to accept employment, the matter should be investigated as a § 25(c) issue. See Chapter 5- Suitable work.

## **C. Fact patterns and exceptions**

### **1. Domestic Violence**

For a discussion of issues that arise with claimants who may have been victims of domestic violence, including accommodations to the work search requirements that may be made for such claimants, see Chapter 6 - Separations.

Cases involving domestic violence should be referred to the UI Policy and Performance Department for a determination.

### **2. Attending Section 30 training course**

A claimant who is “certified as attending a vocational training course,” also known as “Section 30 training,” should not be disqualified for failing to make an active search for work.<sup>18</sup>

### **3. Reasonable time to return to customary occupation**

A claimant is entitled to a reasonable period of time following a separation to find work in the claimant’s customary occupation, provided such work exists in the area in which the claimant is seeking work. What is reasonable depends on the nature of the work sought and the economic conditions in that particular job sector. The more skilled the job, or the more difficult the economic conditions, the more time may be required to obtain the work. This is a case-by-case determination based on the individual circumstances and the likelihood of obtaining employment.

The Supreme Judicial Court has held that, after such reasonable period, if it becomes clear that the claimant has little or no prospects of finding work in the claimant’s previous or customary occupation, a claimant who insists on such a limitation, and who will not seek other suitable work, will be disqualified under § 24(b) because of the unreasonable restriction on availability.<sup>19</sup>

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<sup>18</sup> See *Russo*, 377 Mass. at 647 (fn. omitted).

<sup>19</sup> See *Farrar v. Director of Div. of Employment Sec.*, 324 Mass. 45 (1949).

#### **4. Union members seeking union work**

Union members are required to actively seek work. Although few unions limit their members to accepting work obtained from a union hiring hall, if the union does impose such a restriction a union-member in good standing satisfies this requirement by adhering to all reporting and availability requirements imposed by the union.

Some unions do not provide a hiring hall but do prohibit members from performing non-union work in their regular occupation. Such union members are expected to seek union work on their own and should do so in accordance with the requirements imposed on all claimants.

Additionally, some union members may have skills that enable them to seek work in an occupation other than that governed by their union membership. After a three-month period of unemployment, such union members must also seek non-union work for which they are suited, provided this does not adversely affect their union membership.

#### **5. Vacation shutdown**

A claimant who is temporarily unemployed because of a vacation shutdown or a brief layoff need not be available for or actively seek work with other employers, provided that the layoff does not exceed four weeks and there is a **definite** date to return to work with the same employer. The claimant must file a claim, be otherwise eligible, and meet all the standard filing and registration requirements for weeks during which benefits are claimed.

This section is not applicable to those industries characterized by long-term layoffs, such as ski resorts, summer employment on Cape Cod or in the Berkshires, landscaping contractors, etc. To meet the requirements of § 24(b), claimants on such long-term layoffs must actively seek work.