


Chapter 7: Voluntary leaving

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Section 1. Introduction

Under G. L. c. 151A, § 25(e)(1), a claimant who quits, that is, who leaves work voluntarily, is disqualified from receiving unemployment benefits, unless the claimant establishes good cause for leaving attributable to the employer, or that the leaving was for such urgent, compelling, and necessitous reasons that it may be considered involuntary. For the burden of proof, see Chapter 1- Adjudicator responsibilities. The disqualification lasts until the claimant has had eight weeks of new employment earning, in total, eight times the weekly benefit amount.

Generally, a claimant alleging good cause attributable to the employer or urgent, compelling, and necessitous reasons for quitting must have made a good-faith effort to preserve the employment, for example, by bringing problems to the employer's attention, requesting a job re-assignment, or exploring other alternatives to leaving. Alternatively, the claimant may establish that such efforts would have been futile.

For a discussion of issues that relate to all separations and how to determine whether a separation was a quit or a discharge, see Chapter 6 - Separations.

A. Overview of statute

Section 25(e) generally prohibits the payment of unemployment insurance benefits to persons who quit work. Under certain circumstances, however, an apparently voluntary quit will turn out to be involuntary or will be otherwise not disqualifying:

- The claimant had good cause for leaving attributable to the employer.
- The claimant had an urgent, compelling, and necessitous reason for leaving.
- The claimant left work to accept a new full-time, permanent position and became separated from the new employer for good cause attributable to the new employer.
- The claimant left work due to sexual, racial, or other unreasonable harassment.
- The claimant left work for reasons related to domestic violence or abuse.
- The claimant left work pursuant to a mandatory retirement program or pension plan.
- In certain circumstances, the claimant left work to enter § 30- or TRA-approved training.

The claimant has the burden of establishing that the reason for leaving employment fits within one of these provisions.

Note that special provisions apply to temporary employees of temporary help firms.

B. Statute

G. L. c. 151A, § 25(e)

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

(e) For the period of unemployment next ensuing and until the individual has had at least eight weeks of work and has earned an amount equivalent to or in excess of 8 times the individual's weekly benefit amount after the individual has left work (1) voluntarily unless the employee establishes by substantial and credible evidence that he had good cause for leaving attributable to the employing unit or its agent...

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

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

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

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

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

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

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

A temporary employee of a temporary help firm shall be deemed to have voluntarily quit employment if the employee does not contact the temporary help firm for reassignment before filing for benefits and the unemployment benefits may be denied for failure to do so. Failure to contact the temporary help firm shall not be deemed a voluntary quitting

unless the claimant has been advised of the obligation in writing to contact the firm upon completion of an assignment.

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

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

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

C. Concepts

1. Voluntary

Massachusetts courts hold that “the word ‘voluntarily,’ as used in § 25(e)(1), is a specialized term that must be read in light of the statutory purpose of providing compensation for those who are unemployed through no fault of their own.”¹ Hence, “in determining whether an employee left work ‘voluntarily’ for purposes of § 25(e)(1), the inquiry is not whether the employee would have preferred to work rather than become unemployed, but whether the employee brought his unemployment on himself.”²

This distinction explains why an individual who chooses to leave work, for example, for an urgent, compelling, and necessitous reason, or because of a reasonable belief that discharge is imminent, is not disqualified under § 25(e)(1), while an individual who is

¹ *Olmeda v. Director of the Division of Employment Sec.*, 394 Massachusetts 1002, 1002 (1985) (internal quotation marks omitted).

² *Id.* (internal citations omitted).

discharged for engaging in behavior that results in the loss of a driver's license required for work is treated as having quit voluntarily.

2. Reasonable belief

If a claimant left work because of a “belief” that good cause attributable to the employer existed or that the circumstances were urgent, compelling, and necessitous, the “reasonableness” of the belief must be determined. The claimant bears the burden to show that the belief was reasonable. Although the claimant generally will provide this evidence, it could come from evidence in the employer's submission. Fact-finding should focus on the reasonableness of the claimant's belief, not its correctness, and whether that belief caused the separation from employment. For example, a claimant may have had sufficient objective evidence to believe that a layoff was imminent, even though the claimant was not explicitly informed of an impending layoff. Leaving under such circumstances may be due to good cause attributable to the employer. Similarly, a claimant may reasonably believe that there is no viable alternative to leaving work to provide full-time care to an ill family member, and such a belief may support the claimant's argument that the leaving was for urgent, compelling, and necessitous reasons.

3. Good cause attributable to the employer

An individual who left work voluntarily may still qualify for benefits, if the individual had “good cause [for leaving] attributable to the employer or its agent.”³ The claimant must prove that the employer created the good cause reason for leaving, such as failing to correct hazardous working conditions or equipment, transferring the claimant to unsuitable work, or making a unilateral and unfair change to the employment contract, for example, significantly reducing wages or hours. In most cases, except for some situations involving sexual, racial, or other unreasonable harassment, the claimant “must prove that she made a reasonable attempt to correct that situation or that such an attempt would have been futile.”⁴

4. Involuntary: urgent, compelling, and necessitous

A claimant is not disqualified for leaving work for what the claimant reasonably believes are urgent, compelling, and necessitous reasons. These include personal and family reasons, such as a sudden loss of childcare or transportation; a serious medical condition; the need to care for a seriously ill spouse, child, or parent; childbirth; or the need to care for a new born, adopted, or foster child. But not all personal or family reasons are sufficiently compelling to qualify under the statute. The strength and nature

³ G. L. c. 151A, § 25(e)(1).

⁴ *Guarino v. Director of the Division of Employment Sec.*, 393 Massachusetts 89, 93 (1984).

of the compelling circumstances of each case must be evaluated.⁵ It is the claimant's burden to establish that the claimant acted reasonably, based on pressing circumstances, in leaving work. The claimant does not need to establish that there was "no other choice" than to leave work.⁶

A claimant who establishes that the leaving was for an urgent, compelling, and necessitous reason is not disqualified under § 25(e)(1), provided that either a reasonable attempt was made to preserve the employment relationship or such an attempt would have been futile.

Although a claimant who left work involuntarily for urgent, compelling, and necessitous reasons may not be disqualified under § 25(e)(1), the adjudicator should consider whether the circumstances that triggered the separation make the claimant not capable of, available for, or actively seeking work, as required by § 24(b), during any week for which the claimant has requested benefits. See Chapter 4 – Able, available, and actively seeking work.


Note: If a claimant left work involuntarily for urgent, compelling, and necessitous reasons, the charges against a contributory employer's account will be removed, provided the employer protested the claimant's eligibility in a timely manner and provided adequate information. See Chapter 2- Filing requirements and considerations, and Chapter 3 - Monetary determinations.

5. Reasonable attempt to preserve employment; futility

Generally, the claimant must have made a reasonable attempt to preserve the employment relationship, including, bringing the problem to the attention of the employer and seeking a solution on which both sides could potentially agree, such as changes to work hours, job duties, or work site. The idea is that, unless it would be futile, the claimant must attempt to correct the situation, or give the employer an opportunity to correct the situation, before leaving employment. If the claimant raises legitimate concerns with the employer, and is told that nothing will be done to address them, the claimant has done enough to preserve employment. Or, if the situation pertains to a compelling personal matter outside of the workplace, the employer generally must be given the opportunity to reasonably accommodate the claimant's needs, unless there is nothing the employer can or will do. (A reasonable attempt is not

⁵ *Reep v. Commissioner of Department of Employment & Training*, 412 Mass. 845, 847 (1992) (benefits are not to be denied to persons who can prove they acted reasonably, based on pressing circumstances, in leaving employment.)

⁶ See *Norfolk County Retirement System v. Dir. of Department of Labor & Workforce Development*, 66 Massachusetts Appeal Court 759, 766, (2006) ("[I]t is not necessary that a claimant seeking to prove that she left her job involuntarily establish that she had 'no choice to do otherwise.' This statement disregards our cases which recognize that unemployment compensation benefits should not be denied to one who leaves her employment for what she reasonably believes are compelling reasons...") (internal quotations and citations omitted).



required in certain situations involving sexual, racial, or other unreasonable harassment. See Section 5, below.)

Note that a claimant is not required to request a leave of absence in order to establish that a reasonable preservation attempt was made; requesting a leave of absence is just one of many possible ways that a claimant may attempt to preserve employment. Also note that attempts to preserve employment are not required if the claimant establishes that such attempts would be futile.

The term “futile” means pointless, ineffective, or useless.

Futility can have two aspects:

- the employer would not have agreed;
- even if the employer had agreed, the accommodation would have been ineffective.

Section 2. No good cause attributable to the employer

A. Fact-finding

When issues regarding an employer's role in a claimant's decision to quit arise, information on the following issues should be obtained. (For a detailed discussion of fact-finding, see Chapter 1- Adjudicator responsibilities.)

- Why did the claimant decide to leave employment?
- What was the sequence of events leading to the separation?
- What were the terms of the employment?
- What was the claimant's regular work?
- What could the employer have done to remedy any problems that the claimant had?
- What, if anything, did the claimant do to try to work out a solution to the problem with the employer before leaving? Can the claimant substantiate this?
- With whom did the claimant talk about the problem?
- If the claimant did not talk to the employer before leaving, what was the reason?
- Did the claimant exhaust any available union grievance procedures?
- Did the claimant know whether the employer had a policy regarding leaves of absence?
- What, if anything, did the claimant tell the employer about the reason for leaving work?
- Was the claimant required to leave work due to union or retirement rules?

B. Examples

1. Seeking new work

A claimant leaves work to look for a new job. The claimant will be disqualified unless the claimant establishes a good cause reason for leaving beyond a general desire for different employment.

Note: this is not the same situation as a claimant who left employment in good faith to accept new employment on a permanent, full-time basis, and became separated from such

new employment for good cause attributable to the new employing unit, which is not disqualifying.

2. General job dissatisfaction

A claimant leaves work because of general dissatisfaction with the job and working conditions. For example, the claimant believes that:

- little opportunity exists for advancement, or the claimant has been denied a promotion;
- wages are too low, although the claimant accepted those wages when hired;⁷
- the claimant's co-workers are disagreeable; the supervisor does not like the claimant, although harassment is not alleged;
- the claimant has too little or too much responsibility; or
- the job is not challenging enough, or the claimant is overqualified for the job.

General job dissatisfaction is not considered good cause for leaving employment and the claimant should be disqualified under § 25(e)(1) unless the employer significantly changed the conditions of the claimant's employment for the worse.

3. Personality conflict

A claimant leaves work because of a personality conflict with the employer, a supervisor, or a co-worker. Leaving due to a personality conflict is voluntary and without good cause attributable to the employer under § 25(e)(1), unless there was an irreconcilable conflict that interfered with the work process.


4. Reprimand or criticism

A claimant leaves work after being reprimanded or criticized by a supervisor. Leaving under these circumstances is voluntary and without good cause attributable to the employer, and the claimant is subject to disqualification under § 25(e)(1), unless the supervisor's actions were unreasonable, or the nature of the reprimand or criticism was offensive.

5. Disagreement with policies or methods of operation

A claimant leaves work because of an unwillingness to follow employer policies or methods of operation with which the claimant disagreed. Such leaving is subject to disqualification

⁷ If the wages are less than minimum wage or violate overtime laws, this constitutes good cause for leaving, regardless of whether the claimant knew that the wages violated the law. See *Kinch v. Director of the Div. of Employment Sec.*, 24 Mass. App. Ct. 79 (1987). See the Appendix to Chapter 8, listing employee rights.



under § 25(e)(1), as long as these policies or methods do not violate any statute, regulation, or public policy, and the claimant does not reasonably believe that there is such a violation.

6. Production requirements

A claimant leaves work due to an inability to meet the employer's production requirements, although the employer had never expressed unreasonable criticism of the claimant's performance. The claimant did not have reason to believe that being discharged was imminent and no other compelling reason caused the claimant to leave work. The leaving work is voluntary and without good cause attributable to the employer; the claimant is subject to disqualification under § 25(e)(1).

7. Union relations

If a claimant accepted a job with the understanding that membership in a union would be required after a certain period of time, and later lost the job after deciding not to join the union, the separation is considered a voluntary leaving without good cause attributable to the employer.

Section 3. Good cause attributable to the employer

A. Fact-finding

When issues regarding an employer's role in a claimant's decision to quit arise, information on the following issues should be obtained. (For a detailed discussion of fact-finding, see Chapter 1- Adjudicator responsibilities.

- Why did the claimant decide to leave employment?
- What was the sequence of events leading to the separation?
- What were the terms of the employment?
- What was the claimant's regular work?
- What could the employer have done to remedy any problems that the claimant had?
- What, if anything, did the claimant do to try to work out a solution to the problem with the employer before leaving? Can the claimant substantiate this?
- With whom did the claimant talk about the problem?
- If the claimant did not talk to the employer before leaving, what was the reason?
- Did the claimant exhaust any available union grievance procedures?
- Did the claimant know whether the employer had a policy regarding leaves of absence?
- What, if anything, did the claimant tell the employer about the reason for leaving work?
- Was the claimant required to leave work due to union or retirement rules?

B. Examples

1. General harassment

A claimant leaves work because of alleged harassment other than sexual, racial, or other unreasonable harassment. General harassment includes oral and written abuse, unfavorable or uneven distribution of work, unreasonable demands, threats, and so forth. The following issues should be investigated:

- What happened that the claimant considered harassment?
- Did the alleged harassment occur?

- Who is the alleged harasser?
- Did the employer, its agents, or its supervisory employees know, or should they have known, of the harassment?
 - If so, was prompt and appropriate corrective action taken?
- Did the claimant take reasonable steps to correct the situation before leaving, or did the circumstances establish that such efforts would have resulted in retaliation or otherwise been futile?

If the investigation into these factors establishes that the claimant was being harassed and the employer failed to address the situation despite the claimant's efforts to get it to do so, or if the claimant establishes that such efforts would have been futile, the leaving is with good cause attributable to the employer.

2. Medical condition related to work

Due to the nature of the work or working conditions, a claimant develops a medical condition. The employer has no other suitable work, and the claimant permanently leaves the job. The claimant presents medical evidence or other credible evidence showing that continuing in the job would have been harmful to the claimant's health.

If the nature of the work or working conditions put at risk the health of employees generally, or employees in certain positions, including the one in which the claimant worked, and if the employer created, allowed, or failed to properly address the health risk, then such leaving is voluntary, with good cause attributable to the employer, provided that the problem previously was known to the employer or the claimant informed the employer of the problem. But if the claimant became ill because of a susceptibility to generally safe working conditions, then the claimant quit due to urgent, compelling, and necessitous reasons, and the employer, if contributory, is not charged if the employer responded timely and adequately to fact finding. (For more on the distinction between contributory and reimbursable employers, see Chapter 3 - Monetary determinations.)

The claimant need not prove that the medical condition was definitely caused by the work or working conditions. So long as the claimant reasonably believed that the condition was caused by the work or working conditions, the claimant should not be disqualified.⁸

3. Illness or medical need; accommodation denied

When a separation occurs because a claimant with a legitimate need for time off requests a leave of absence or other accommodation and the request is denied, the claimant will not be subject to disqualification under § 25(e)(1). The reason the claimant

⁸ *Carney Hospital v. Director of the Div. of Employment Sec.*, 382 Mass. 691 (1981).

is not disqualified may be either good cause attributable to the employer or urgent, compelling, and necessitous circumstances. If the employer could have reasonably accommodated the claimant's request, but did not, the leaving will be considered to have been with good cause attributable to the employer. If the employer acted reasonably but could not accommodate the claimant's request, the claimant will be found to have left for urgent, compelling and necessitous reasons.

Example: A claimant requests and is denied a leave of absence or other accommodation for an injury, surgery, medical procedure, illness (the claimant's or a family member's), or to enter a treatment program for drug or alcohol addiction. Although the employer denies the request, the claimant remains away from work. The claimant must establish that there was a legitimate medical need for time off. Usually, a claimant will be able to provide medical or other credible evidence. While the adjudicator may draw a negative inference from the claimant's failure to provide such evidence, in appropriate circumstances the adjudicator may rely on the claimant's own statements.

A claimant who leaves work due to illness or medical need may be disqualified under § 24(b). See Chapter 4 - Able and available.

4. Unsafe or inadequate working conditions or equipment

A claimant leaves work because the working conditions exposed the claimant to a risk of injury or danger to health beyond the normal hazards of the job, for example, because the workplace had:

- inadequate heating, lighting, ventilation, or sanitation;
- faulty or unsafe equipment; or
- the claimant reasonably believed that such a condition existed.

If the claimant made the employer aware of the unsafe condition and the employer did not remedy the problem in a timely manner, or if the claimant establishes that making such a complaint would have been futile, the claimant left work with good cause attributable to the employer. (See Appendix at the end of Chapter 8 – Discharge, suspension, and conviction, for a list of workplace rights.)

5. Wages

A claimant will not be disqualified for leaving work due to a significant issue with wages or compensation,⁹ such as:

- The employer did not pay wages promptly, or the claimant had difficulty cashing paychecks because there were insufficient funds in the employer's account.¹⁰
- The employer did not pay the agreed-upon wage,¹¹ the statutory minimum wage,¹² the prevailing wage,¹³ or overtime as required by law.¹⁴
- The employer failed to grant a promised wage increase that was either unconditional or based on conditions that have been satisfied.
- The employer increased the claimant's work hours beyond occasional overtime customarily performed in the business without increasing the claimant's wages.
- The employer transferred the claimant to higher-skilled work for an indefinite amount of time without increasing the claimant's wages.
- The employer reduced the claimant's wages without reducing the claimant's hours or duties.

For a list of workplace right laws, including wage provisions, see the Appendix at the end of Chapter 8 – Discharge, suspension, and conviction.

⁹ For more information on Massachusetts wage laws, go to <https://www.mass.gov/guides/pay-and-recordkeeping> (last visited October 25, 2019).

¹⁰ G. L. c. 149, § 148.

¹¹ See *Fraelick v. Perkett PR, Inc.*, 83 Massachusetts Appeals Court 698, 703 (2013) (Finding that, for purposes of construing the Wage Act, when an employee has “completed the labor, service, or performance required of him [or her],” it necessarily follows that he or she has “earned” his or her due “wage.”)

¹² G. L. c. 151, § 1 et seq.

¹³ The Massachusetts Prevailing Wage Law, G. L. c. 149, §§ 26 - 27; c. 5, § 1; c. 71, § 7A and c. 121B, § 29B, establishes minimum wage rates for workers on public construction projects, workers engaged in school bus transportation, operators of vehicles and equipment engaged by public entities for public works purposes (including solid waste and recycling), workers engaged by employers which provide janitorial services for state buildings, office moving services, and for certain employees of housing authorities. Information can be found on the website of the Department of Labor Standards: <https://www.mass.gov/orgs/departement-of-labor-standards> (last visited October 25, 2019).

¹⁴ G. L. c. 151, § 1A.

Note: If the claimant made the employer aware of the problem and the employer did not remedy it in a timely manner, or if the claimant establishes that making such a complaint would have been futile, the claimant left work with good cause attributable to the employer.

A claimant who had been making a satisfactory living as a commissioned salesperson has the burden of establishing that a significant reduction in commissions was due to circumstances beyond the claimant's control and not due to any lack of effort on the claimant's part.

In cases involving sales representatives, significant changes in compensation may occur if:

- The employer transferred the claimant from a salary or salary-plus-commission compensation plan to a straight commission basis, a change not caused by the claimant's failure to comply with the conditions of hire.
- The employer transferred the claimant to a new sales territory, causing a substantial reduction in earnings not attributable to the claimant's performance or some other reason unrelated to the transfer.
- The employer discontinued the claimant's drawing account and the claimant is expected to earn a straight commission, from which the claimant would earn substantially less (and the inability to earn commissions equal to the drawing account is not due to lack of effort on the claimant's part).

6. Hours of work

A claimant paid hourly wages leaves work because the employer made a significant change to the claimant's hours, such as:

- permanently, indefinitely, or repeatedly reducing the claimant's hours, or
- requiring excessive overtime.¹⁵

Required overtime is 'excessive' if it is more than a reasonable amount of occasional or emergency overtime. Factors to consider in determining whether a claimant was being required to perform 'excessive' overtime include the effect of the overtime on the claimant, including the claimant's family, the length of time the claimant had been performing overtime, if any, the expected duration of the required overtime, and the reason(s) for the overtime.

¹⁵ See the Appendix at the end of Chapter 8 for a list of workplace rights.

If the claimant tried to resolve the matter with the employer before leaving, or if the claimant establishes that such efforts would have been futile, the claimant left work with good cause attributable to the employer.

7. Changes in duties; unsuitable work

A claimant leaves work because the employer made a substantial change to the claimant's duties, such as:

- permanently or indefinitely transferring the claimant to unsuitable work (see Chapter 5 - Suitable work); or
- permanently transferring the claimant to new duties that are outside of the claimant's general work classification or that will not permit continued use of the claimant's highest skill.

If the claimant tried to resolve the matter with the employer before leaving, or if the claimant establishes that such efforts would have been futile, the claimant left work with good cause attributable to the employer.

8. Commuting and transportation

An employer makes changes that cause problems for the claimant, such as:

- transferring the claimant's work site to a location that is beyond reasonable commuting distance from the claimant's home or that causes a substantial net increase in the claimant's transportation costs or other significant travel-related difficulties; or
- changing the claimant's shift or work hours so that the claimant does not have suitable transportation (public or private) for the new hours.

As a result of such a problem, the claimant leaves work. If the claimant tried to arrange alternate transportation or otherwise resolve the matter before leaving, then the claimant left work with good cause attributable to the employer. But if the claimant did not make any efforts to determine whether transportation would be available, then the leaving would not be involuntary, unless making such efforts would have been futile. (See Loss of Transportation, below, for a discussion of commuting and transportation issues not caused by the employer.)

9. Employer is acquired by another employer

If a claimant's employer is acquired by another employer, such as by merger or stock purchase, and the claimant refuses to work for the new ownership, the claimant is considered to have left work voluntarily. To determine whether the claimant established good cause attributable to the employer for voluntarily leaving, consider whether the acquisition made the claimant's job unsuitable. See Chapter 5 - Suitable work.

Section 4. Urgent, compelling, and necessitous reasons for leaving

Claimants may be eligible for UI benefits if they leave work for urgent, compelling, and necessitous reasons. Generally, the claimant must have made reasonable efforts to preserve the employment before leaving, such as bringing the problem to the attention of the employer, unless such efforts would have been futile.

Note that if the urgent, compelling, and necessitous reason the claimant had for leaving work is ongoing at the time that the claimant files a claim, the adjudicator should consider whether the claimant meets the requirements of § 24(b). See Chapter 4 - Able and available.

A. Fact-finding

Information on the following issues should be obtained:

- Why did the claimant leave work?
- Was there a compelling personal reason for leaving?
- Did the claimant leave work for a personal, family, or medical (including mental health) reason? If so:
 - What was the reason?
 - If this reason made it impossible for the claimant to continue to satisfy the duties of the job, why?
 - How does the claimant substantiate this reason?
- Did the claimant leave work to give birth or to adopt a child? (See Chapter 6 - Separations.)
 - How, if at all, did the employer inform employees of its parental leave policy?
- If leave was available, for example, under the Family and Medical Leave Act or the Massachusetts Parental Leave Act (see Chapter 6 - Separations), did the claimant request a leave of absence?
 - How, if at all, would a leave of absence have helped the claimant's situation?
 - Did the employer deny the claimant's request? If so, why?
- What attempt, if any, did the claimant make to preserve employment, prior to leaving? If the claimant did not attempt to preserve employment, why not?
- What reason for leaving work, if any, did the claimant give the employer?

B. Examples of urgent, compelling, and necessitous reasons for leaving

1. Serious medical condition: illness, injury, medical procedure or treatment program

A claimant who leaves work as the result of a medical issue after having made a good-faith effort to preserve employment, for example, by requesting a job re-assignment or time off, or exploring other alternatives to leaving, should not be disqualified under § 25(e)(1). Alternatively, the claimant may establish that such efforts would have been futile.

The claimant must provide substantial and credible evidence that there was a medical condition causing the claimant to be unable to continue employment. Usually, a claimant will be able to provide medical or other credible evidence. While the adjudicator may draw a negative inference from the claimant's failure to provide such evidence, in appropriate circumstances, for example when the employer states the claimant provided medical documents to them, the adjudicator may rely on the claimant's own statements.

A claimant may leave work to enter a treatment program for alcoholism. If the claimant admits to being an alcoholic, or presents a healthcare statement or other evidence of treatment for alcoholism, and is making a sincere effort to overcome the alcoholism, separation from work will be considered involuntary and not disqualifiable if the claimant attempts to preserve employment or establishes that an attempt would have been futile.

2. Care for a child or an ill family member

A claimant leaves work to care for a child or an ill family member after trying to arrange for accommodations with the employer, such as a reduction in hours, a flexible schedule, or a leave of absence, unless there were no accommodations available that would have helped the claimant's situation. The claimant is not disqualified under § 25(e)(1) because the leaving was for an urgent, compelling, and necessitous reason.

Note that the claimant must have made a reasonable attempt to preserve employment unless such an attempt would have been futile. The claimant does not specifically have to request a leave of absence. For example, if the employer does not offer paid leaves of absence to employees, and a claimant asked for a reduction in hours in order to manage an ill child's medical appointments without taking an unpaid leave of absence, and the employer denies the request for a reduction in hours, the claimant should not be disqualified. It does not matter whether the employer states that it would have granted a leave of absence if the claimant had requested one; the claimant made a reasonable attempt to preserve employment by requesting a reduction in hours.

3. Permanent inability to perform duties

A claimant leaves work when their mental or physical health renders them unable to continue performing the regular duties of the job. The claimant provides supporting

documentation from a health care provider. The employer has no other suitable work available. Leaving under these circumstances is not disqualifying under § 25(e)(1) because it was for an urgent, compelling, and necessitous reason. If the claimant's inability was related to an injury on the job, there may be a Workers' Compensation claim. See Chapter 11 - Special determinations. There may also be an Able & Available issue. See Chapter 4 – Able, available, and actively seeking work.

4. Loss of transportation

A claimant left work because the claimant's regular transportation was lost through no fault of the claimant. For example, the claimant's car broke down and could not be repaired in time to avoid missing work, or the claimant relied for transportation on someone else who became unavailable for reasons beyond the claimant's control. If the claimant unsuccessfully attempted to find other transportation or arrange for an accommodation with the employer before leaving work, the claimant has left work for an urgent, compelling, and necessitous reason.

5. Moving with spouse or another person for health, or another urgent, compelling, or necessitous reason

The last paragraph of § 25(e) states that claimants are not eligible for unemployment benefits "after having left work to accompany or join one's spouse or another person at a new locality." For example, a claimant would be disqualified for leaving work to accompany a spouse who was relocating for career reasons or personal preference.

But there are instances when the reason for moving may be urgent, compelling, and necessitous, and the fact that the spouse also moved does not invoke the last paragraph on § 25(e). For example, the move might be necessary for the health of the claimant's family member, or it might be necessary for the claimant to move with a family member to escape the threat of domestic or gang violence or to avoid homelessness. A legitimate urgent, compelling, and necessitous situation that compels a claimant to move along with a spouse or another person may be sufficient to avoid disqualification under § 25(e).

Spouse or another person: The statute refers to leaving to accompany a "spouse or another person". For these purposes, "another person" is defined as an imminent spouse, non-marital partner, dependent child, or relative for whom the claimant (or the claimant's spouse, imminent spouse, or non-marital partner) is principally responsible.

Spouse: The individual's wife or husband through a marriage legally recognized by Massachusetts.

Imminent spouse: A person whom the claimant has definite plans to marry.

Nonmarital partner - An individual with whom the claimant shares a household and is considered to be the claimant's partner. To determine whether people are nonmarital partners, look to see if an emotional and financial commitment exists between them.

Consider factors such as: the longevity of the relationship; whether the individuals regard each other and are regarded by others as partners; whether they share income; whether they have executed powers of attorneys authorizing one partner to make decisions for the other during the other's illness; whether they are named as beneficiaries of each other's life insurance policies; or whether they are the legatees or executors of each other's estates.

Dependent child - A biological child, adopted child, step-child, or legal ward of the claimant found to be dependent under Massachusetts law.

Relative - A parent, child, sibling, grandparent, or other person to whom a claimant is related, if the claimant or the claimant's spouse, imminent spouse, or non-marital partner is principally responsible for the care or well-being of such individual.

...

If a claimant claims to have left work to move with a spouse or another person because of that person's health needs, the claimant should be asked to confirm the existence of the health issue and the reason that it necessitated moving to a location incompatible with continuing to work for the employer.

If requested, the claimant must provide a copy of a written medical statement from the health care provider. If the adjudicator obtains confirmation from the employer that the claimant submitted such a medical statement to the employer prior to leaving employment, a copy to DUA will not be required unless there are credibility issues.

As in all voluntary leaving cases, the claimant must have made a reasonable attempt to preserve the employment relationship before leaving, unless the claimant establishes that the attempt would have been futile. The fact-finder should explore the availability and usefulness of possible accommodations. If an accommodation could have satisfied the claimant's need to accompany or care for a spouse or other person, the claimant must have requested it, unless it is established that such a request would have been futile.

6. Moving with a spouse who is a serving member of the armed forces

Serving members in the armed forces¹⁶ are often transferred involuntarily. Unlike civilian employees, service members may not resign their employment to avoid relocating or separating from their family.

When adjudicating these cases, first establish whether the spouse's transfer was involuntary. If the spouse requested a transfer, retired voluntarily, or decided not to re-enlist and was transferred for discharge, the transfer will be considered voluntary.

¹⁶ 'Armed forces' includes army, navy, marine corps, air force, and coast guard. See G. L. c. 4, § 7. *But See DiGiulio v. Director of the Dept. of Unemployment Assistance*, 94 Mass. App. Ct. 292 (2018), calling into question DUA's authority to make an exception to the language of § 25(e).

If the claimant's statement establishes that the spouse's transfer was involuntary, benefits may be approved only if the transfer presented one of these two other urgent, compelling, and necessitous causes for the claimant's leaving of work:

1. The claimant lived in housing provided by the military. Such housing is typically available for a limited time only, usually 90 days, once the service member is transferred. The claimant's statement should establish the inability of the claimant and spouse to bear the expense of obtaining housing at the current location and the location to which the service member is transferred. Separation under these circumstances will not be subject to disqualification.
2. The claimant's right to continued employment at the military facility was contingent on the spouse's assignment at the current duty station. Typically the claimant's employment terminates within a specified period, usually 90 days, following the service member's reassignment to another location. A separation under these circumstances will be treated as a non-disqualifying discharge for lack of work.

7. Minor moving with parents

A claimant who is under the age of 18 and not "emancipated," that is, granted legal independence and no longer under the control of parents or guardians, leaves work to move with parents to a new residence beyond commuting distance from the former place of employment. Consider this leaving as involuntary, because the claimant had no choice but to comply with the parents' wishes.

8. Moving due to severe economic hardship

In rare instances, claimants may avoid disqualification by establishing that they left work involuntarily due to a demonstrated, severe financial hardship that caused the claimant to move to a new location beyond commuting distance, which made continued employment with the employer impossible. As evidence, a claimant may be asked to submit documentation such as rent past due notices, eviction notices, bank account statements, medical bills, etc.

Section 5. Racial, sexual, and other unreasonable harassment

Section 25(e) provides that a claimant is not disqualified under § 25(e) for leaving work “due to sexual, racial, or other unreasonable harassment where the employer, its supervisory personnel or agents knew or should have known of such harassment.” “Other unreasonable harassment” includes harassment that is based on the victim’s color, age, religion, national origin, disability, sexual orientation, or gender identity.¹⁷ An employer is deemed to know of such harassment “committed by its agents and supervisory employees in connection with the employment relationship regardless of whether the employer had actual knowledge of these acts.”¹⁸ Sexual, racial, or other unreasonable harassment is different from general harassment, which is discussed above.

A. Statute and regulations

G. L. c. 151A, § 25(e) defines sexual harassment as:

[S]exual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(a) submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions;

(b) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual’s work performance; or

(c) such advances, requests or conduct have the purpose or effect of creating an intimidating, hostile, humiliating or sexually offensive work environment.

430 Code Mass. Regs. § 4.04(5)(a)(1) defines racial harassment as “conduct with racial content which has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.”

430 Code Mass. Regs. § 4.04(5)(a)(3) states that other unreasonable harassment “includes, but is not limited to, incidents of harassment related to age, religious creed, national origin, or handicap of any individual.” It also includes harassment related to “gender identity [or] sexual orientation.” See G. L. c. 151B, § 4.

¹⁷ 430 Code Mass. Regs. § 4.04(5)(a)(3) and G. L. c. 151B, § 4.

¹⁸ 430 Code Mass. Regs. § 4.04(5)(c)(2),

B. Fact-finding

- *What happened that the claimant considered harassment?*
- If the claimant cannot establish that the event or events rose to the level of harassment, the separation should be analyzed as any other voluntary quit under § 25(e)(1). Or, if the claimant did leave due to harassment, but not racial, sexual, or other unreasonable harassment, see general harassment, above.
- *Who is the harasser?* There are two distinct categories of sexual, racial, or other unreasonable harassment claims—**employer harassment, including harassment by its management and supervisory employees**, and **co-employee or non-employee harassment**. The criteria for eligibility depend on who commits the harassment.

For purposes of determining whether a claimant had good cause to quit because of employer harassment, an employer is deemed to know of sexual, racial, or other unreasonable harassment committed by its **management or supervisory employees**.¹⁹ A claimant who leaves work for this reason will not be disqualified for not taking reasonable steps to preserve employment.

In the case of alleged sexual, racial, or other unreasonable harassment by a **non-supervisory, fellow employee, or non-employee**, it must be determined:

- *Did the employer, management, or a supervisory employee know (or should have known) of the alleged harassment?* Knowledge can result from direct observation or a report of the alleged harassment. If so, then the claimant was not obliged to take any steps to preserve employment. If the employer failed to address the situation despite having known about it, the leaving is with good cause attributable to the employer. If the employer corrected the situation, and the claimant still quit, then the claimant is disqualified, unless the claimant establishes leaving work for urgent, compelling, and necessitous reasons.
- *If the employer, management or a supervisory employee did not know of the harassment, did the claimant take reasonable steps to correct the situation before leaving, or did the circumstances establish that such efforts would have resulted in retaliation or otherwise have been futile?* If the claimant can establish that reasonable steps would have resulted in retaliation or otherwise have been futile, leaving is with good cause attributable to the employer. If the claimant failed to establish either possible retaliation or futility and did not take reasonable steps to correct the situation, the claimant is disqualified, unless the claimant establishes that the claimant left for urgent, compelling, and necessitous reasons.

¹⁹ 430 Code Mass. Regs. § 4.04(5)(c)(2).

When making a determination in a sexual, racial, or other unreasonable harassment case, consider the following issues:

- An employer may not base a term or condition of employment on an implicit or explicit submission to sexual, racial, or other unreasonable harassment.
- The nature of the work environment is not relevant to whether an incident of sexual, racial, or other unreasonable harassment occurred.
- The victim's toleration of prior harassment is not relevant to whether the matter before the adjudicator constituted harassment, even if it may be important to examine a history of alleged harassment for other purposes.
- Sexual, racial, or other unreasonable harassment may result from conduct by the employer, the employer's managers or supervisory employees, co-employees, or non-employees (for example, clients or customers).
- Sexual, racial, or other unreasonable harassment may occur either on or off the worksite and during or outside work time. For the leaving to be attributable to the employer, if the incident(s) occurred off the worksite, the harasser ordinarily must be someone with whom the claimant must interact in the workplace, such as a fellow employee, customer, or client. If the harassment did not occur in connection with the claimant's employment, the adjudicator should consider whether the claimant left for urgent, compelling, and necessitous reasons.

C. Employer charge

If the claimant is eligible for benefits because the claimant left work due to employer harassment, the employer is charged for benefits. But if the claimant left work due to harassment by a **non-employee or a non-supervisory, fellow employee**, whether the employer is charged for the benefits depends on the employer's control over the harasser's conduct. While employers are responsible for providing a harassment-free work environment, they may be limited in their ability to control the conduct of non-employees and non-supervisory, fellow employees. If the employer could have taken reasonable steps to prevent or control the harassment, such as hiring bouncers to control unruly patrons in a bar, but did not do so, the claimant's leaving is with good cause attributable to the employer. In such cases, benefits are charged to the employer. If the employer could not have exercised control over the harasser's conduct, and the employer is a contributory employer whose responses were timely and adequate, the benefits should be charged to the solvency fund. See Chapter 3 - Monetary determinations.

Section 6. Domestic violence

Claimants should not be disqualified for leaving work because they or their dependent children were victims of domestic violence or because they needed to address the physical, psychological, or legal effects of domestic violence. This section discusses issues that arise specifically when a claimant has left work due to domestic violence. The statutes and issues related to working with claimants who have been victims of domestic violence, whether the claimant left work or was discharged, are discussed in Chapter 6 - Separations.

****Cases involving victims of domestic violence should be referred to the UI Policy and Performance Department for determination.**** See Chapter 6 – Separations. The information below is general background for all staff.


A. Leaving work

Domestic violence victims may present non-disqualifying circumstances for leaving work. The circumstances mentioned here are only some examples; adjudicators and UIPP staff may encounter a variety of situations not described here.

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

B. Attempts to maintain employment

The potential for maintaining the employer-employee relationship by requesting a transfer to another location or a change in the schedule of working hours is a factor typically considered when adjudicating cases involving the claimant's leaving work. This also may be true in some cases involving domestic violence. But such measures may not provide a suitable remedy in cases involving domestic violence. It may not be safe for the claimant to return to the workplace, for example, if there continues to be a reasonable fear that an abuser may seek out the claimant at the place of employment.



If the employer's or claimant's statement establishes that the claimant knew that a remedy short of separation was available, then the adequacy of the remedy must be determined. Additionally, the fact-finding should include information sufficient to determine whether it was, or was not, reasonable to expect the claimant to have considered any such remedy. What reasonably may be expected depends on the claimant's particular circumstances.

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

Section 7. Mandatory retirement programs

Under § 25(e), claimants are not disqualified from receiving unemployment benefits for leaving work if they left solely in accordance with a pension or retirement program requiring their retirement. Note that leaving work to retire may raise an issue under G. L. c. 151A, § 29(d)(6). See Chapter 9 - Total or partial unemployment.

A. Example

A claimant who retires to comply with a retirement program, union agreement, or pension program that requires retirement from work (generally, at a specific age) is not disqualified under § 25(e)(1).

Section 8. Leaving work to enter or return to school, or a Section 30-approved training program

A. Claimant in partial unemployment quits to enter approved training.

A claimant in partial unemployment who is receiving partial unemployment benefits is not disqualified under § 25(e) for leaving work from other than the most recent primary base period employer, if the claimant establishes that the reason for leaving was to enter training for which the claimant has received approval under Section 30. Leaving subsidiary work that would not be suitable for the claimant on a full-time basis to enter an approved Section 30 training program also is approvable under § 25(e).

B. Claimant quits or refuses suitable, full-time work to enter approved training.

A claimant who, after being approved for a Section 30 training program but before starting the program, is offered full-time, suitable employment of indefinite duration, will lose eligibility for the program if the offer of employment is refused. A claimant in this situation will be disqualified from receiving unemployment benefits, including Section 30 benefits, if the offer of employment is accepted and the claimant then quits to enter the Section 30 training program. But a claimant who is already attending an approved Section 30 training program is not disqualified for refusing suitable work or for leaving work obtained during semester breaks to return to the approved training program. See Chapter 11 - Special Determinations.

C. Claimant quits to enter or return to school or training that is not approved under Section 30

If a claimant leaves employment to enter or return to school (other than approved Section 30 training) and continuing work was available, the leaving is considered voluntary, regardless of whether the claimant had a prior agreement with the employer concerning the termination date.

However, if the claimant agrees to an employer's request, when hired, to work only until a specified date when work will no longer be available, and then leaves on schedule to enter or return to school, the claimant is not disqualified under § 25(e)(1). If there was no work available, there is no issue of leaving work. But the claimant must be otherwise eligible to collect benefits. (See Chapter 4 - Able, available, and actively seeking work.)

Section 9. Leaving work to accept an offer of new employment

Under § 25(e), a claimant is not disqualified if the claimant establishes that he left his employment in good faith to accept new employment on a permanent full-time basis, and that he became separated from such new employment under non-disqualifying circumstances.

Example: In order to accept new, permanent full-time employment, a claimant leaves the claimant's current job. The claimant is then separated from the new employer for reasons attributable to the new employer. Even if the claimant was separated from the new job before the claimant performed any services, an employer-employee relationship was established by means of a definite offer of employment to the claimant by the new employer. The new employer should be treated as the claimant's most recent employer. Note: if there was a gap between the claimant's former job and the start date of the new job, the claimant is not eligible for benefits during the gap because the claimant was not in total unemployment under § 29(a) and § 1(r)(1).

Note: If the claimant left a former employer solely for the purpose of accepting work with a new employer, the former employer should not be charged for any benefits received by the claimant, if the former employer was contributory and was timely and adequate in their responses. Benefits shall be charged to the solvency account.²⁰

²⁰ 430 Code Mass. Regs. § 5.05(4).

Section 10. Temporary employee of temporary help firm, including day laborers; contract employees

Section 25(e) and its implementing regulation place special requirements on both temporary help firms and temporary employees of temporary help firms who are assigned to work for the clients of a temporary help firm. These requirements do not apply to employees of the temporary help firm who provide services to the firm itself as either full- or part-time employees. Employers who provide day labor services to clients are an example of temporary help firms.

A. Statute and regulations

1. Statute

G. L. c. 151A, § 25(e)

The relevant portion of § 25(e) reads:

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

2. Regulations

430 Code Mass. Regs. § 4.04(8)

(a) **Definitions.** The following words and phrases shall have the following meanings:

Temporary help firm means a firm that primarily hires its own employees and assigns them to clients to support or supplement the client's workforce in work situations such as employee absences, temporary skill shortages, seasonal workloads and special assignments and projects.

Temporary Employee means an employee assigned to work for the clients of a temporary help firm.

(b) Unless the claimant satisfies the provisions of 430 CMR 4.04(8)(c), the commissioner shall determine that the claimant has voluntarily quit employment if:

1. the claimant was employed by a temporary help firm; and
2. the temporary help firm advised the claimant in writing as provided in 430 CMR 4.04(8)(e) of the need to contact the temporary help firm for reassignment upon completion of an assignment; and
3. the temporary help firm submits information, supported by contemporaneous documentation prepared in the ordinary course of business, that the claimant did not request another work assignment upon completion of the most recent assignment.

(c) The claimant may avoid the commissioner's determination in 430 CMR 4.04(8)(b) above if the claimant shows that he/she:

1. did request another assignment; or
2. did not receive written notice from the temporary help firm of the obligation to request another assignment; or
3. had good cause, as determined by the commissioner, for failing to request another assignment.

(d) The request for a new assignment must be made by the claimant upon completion of the current assignment and before filing an initial (new or additional) claim for benefits.

(e) Any notice given by the temporary help firm to its temporary employees of the need to request a new assignment upon completion of their current assignment must be in writing and inform the employees of the method and manner for requesting a new assignment, such method and manner to be consistent with the normal method and manner of communication between the temporary employee and the temporary employment firm for which he/she works, and that a failure to request a new assignment may affect their eligibility for unemployment compensation.

B. Applicability

To determine whether the requirements apply in a particular case, first determine whether the employer is a temporary help firm. Employers self-identify their primary business at the time they register with DUA as a new employer and periodically after that. **Companies that have identified themselves as providing primarily temporary help services will be designated as a temporary help firm and assigned NAICS code 561320. The NAICS code appears on the Employer's Account Profile screen and in the search results field when searching for an employer in UI Online.**

C. Fact-finding

1. Employer requirements

Initially, the burden is on the temporary help firm to:

- establish that the firm employed the claimant; and
- establish that the firm advised the claimant in writing of the need to contact the firm for reassignment upon completion of an assignment; and
- submit information, supported by contemporaneous documentation prepared in the ordinary course of business, that the claimant did not request another work assignment upon completion of the most recent assignment.

The written notice to the claimant must inform the claimant how to contact the employer. The method and manner of contact must be consistent with the normal method and manner of contact between the temporary help firm and its employees. For example, if employees usually contact the employer by telephone, the employer may not require the claimant to report in person to request reassignment. The notice also must state that failing to contact the temporary help firm for reassignment before filing for unemployment benefits may affect employees' eligibility for benefits. If any of the above requirements is not met, the claimant's failure to contact the employer when an assignment ends is not disqualifying.

2. Employee requirements

If the temporary employer meets the employer requirements listed above, then the claimant will be determined to have voluntarily quit employment, unless the claimant establishes that the claimant:

- did request another assignment; or

did not receive written notice from the temporary help firm of the obligation to request another assignment. The claimant may avoid disqualification under this part of § 25(e) by requesting another assignment at any time, beginning within two weeks of completion of the current assignment, before filing for benefits. This includes day laborers. Typically, a day laborer requests work by reporting daily to the employer's office.

D. Circumstances and policies

1. Temporary help firm does not document employee's failure to request another assignment

If the temporary help firm fails to submit information, supported by contemporaneous documentation prepared in the ordinary course of business, that the claimant did not

request another work assignment upon completion of the most recent assignment, then the claimant, if otherwise eligible, is entitled to benefits.

But if the temporary help firm does submit such information, then the claimant should be given the opportunity to establish that a timely request was made. This burden may be carried by providing information that the adjudicator credits, possibly in the form of mobile phone records or a written or oral statement.

2. Temporary employee requests another assignment

If the claimant requests another assignment from the temporary help firm and no work is offered, then the claimant's separation is attributable to a lack of work.

If the claimant requests another assignment from the temporary help firm and work is offered that the claimant declines, determine whether the work was suitable as specified in § 25(c). Investigate and adjudicate the issue as a refusal of suitable work under § 25(c). See Chapter 5 - Suitable work.

3. Temporary employee does not request another assignment

If the claimant did not timely request another assignment from the temporary help firm, determine whether the claimant had **good cause** for failing to make the request.

If the claimant **did not have good cause** for failing to request another assignment, the claimant is disqualified under § 25(e)(1).

Note: If the claimant did not request another assignment, there *may* be an issue under § 24(b). (See Chapter 4 – Able, available, and actively seeking work.)

4. Contract employee – not a temporary help firm

When a claimant obtains work from an employer that is **not** a temporary help firm and is sent to work for clients of the employer on assignments of varying lengths, each new assignment constitutes a separate contract of hire because duties, travel, hours, and working conditions are subject to change.

If a claimant was a contract employee of such a firm and completed the last assignment from the employer, the claimant is not subject to disqualification under § 25(e)(1) for failing to request a new assignment. This is because completion of each assignment ends that particular contract, and there is no longer an employment relationship. But if the claimant has filed a claim, and the employer then offers the claimant a new assignment and the claimant refuses it, the claimant may not be eligible for unemployment benefits under either § 25(c) or § 29(a) and § 1(r). See Chapter 5 - Suitable work.

If the claimant fails to complete an assignment, investigate the reason(s) and evaluate the claimant's eligibility under § 25(e). If the claimant is not subject to disqualification under this section, there may be an issue under § 24(b).