



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

Date: March 2, 2016

Classification: Use of Work Release Wages

Rescission(s): None

Reference No.: UIPP 2016.03

TO: All DUA Managers, Job Service Representatives, Compliance Officers and Call Center Staff, Senior Staff Directors
FROM: Jennifer Lavin, Director, Policy and Performance Department
SUBJECT: Proper Procedure for Processing UI Claims Filed by Former Work Release Inmates

1. PURPOSE.

To provide guidance on whether services provided while working as part of a work-release program at a Department of Correction facility constitutes employment for the purposes of Chapter 151A and whether the wages earned in the work release program can be used to establish a UI benefit claim.

2. REFERENCES.

- G.L. c. 151A, §6(v)
- G.L. c. 127, §48, §49, §49A, and §86F
- 103 CMR 464
- Board of Review Decision 0002 3718 15 (November 6, 2015), clt. ID # 2004086

3. BACKGROUND.

Inmates incarcerated within a correctional facility operated by the Department of Correction may be eligible to participate in a work release program prior to their release from the correctional facility, providing they meet certain requirements. According to 103 CMR 464.01, the work release program "is intended to provide inmates with access to a wide range of employment opportunities which help facilitate their successful reintegration into the community."

Some of the eligibility requirements for participation in a work release program are an inmate must be within eighteen months of parole eligibility, and have completed any mandatory portion of his/her sentence. The general rules of the program state, among other things, that:

- an inmate participating in a work release program remains in the custody of the Department of Correction and is subject to the rules and regulations of the Department and the facility/institution during the period of his/her participation in the program,
- inmates participating in work release programs may be housed in state correctional institutions, county correctional facilities, contract facilities and on electronic monitoring,
- work release participants shall be housed only with other pre-release status inmates and minimum security inmates, and
- the rates of pay and other conditions of employment shall not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed.

DUA does not currently have a uniform procedure in place to process claims filed by claimants who become separated from their work release employment when they are released from the Department of Correction. Claimants are usually monetarily eligible for benefits based on their work for a private employer in the Department of Corrections work release program because the wages earned must be equal to wages earned by other employees of the company performing comparable work. The questions surrounding these types of claims are:

- do the services performed while the claimant was an inmate participating in a work release program constitute employment for use in a UI claim, and if so,
- how should we categorize the separation from employment?

A recent Board of Review decision concluded the services a claimant in a work release program provided to the private employer did not constitute employment because “for all intents and purposes, the claimant was performing services in a custodial or penal institution.”¹ The facts of the case were:

- The claimant worked for the employer from June 2011 until December 12, 2012.

¹ Board of Review, Issue ID: 0002371815, November 6, 2015

- The claimant worked full time as a laborer, most recently as a stockperson, for the employer's supply company. The claimant performed services under the direction of the employer's manager.
- The claimant earned \$8.00 per hour, which met the Massachusetts minimum wage requirement at that time. The claimant performed services at the employer's warehouse facility.
- Throughout the claimant's services for the employer, the claimant was an inmate at a correctional center in Massachusetts. The correctional center is a pre-release correctional center ("Center") operated by the Department of Correction.
- The Center Coordinator assisted the claimant in finding the job with the employer.
- The employer's business is not owned, supported or funded by the DOC or part of the Center.
- In order to perform services at the employer's facility, the claimant needed a Community Release Permit issued by the Center to leave detention. The claimant carried the inmate copy of the Permit with him when on work release.
- The claimant's services were all performed at the employer's place of business and were not performed at his Center or any state or federal detention facility.
- The claimant received his wages via paycheck through the Center treasurer's office. The claimant's wages were paid from the employer's funds.
- No state or federal agency funded the claimant's wages, provided money in support of the claimant's work release, or provided capital to the employer for employing the claimant or other work release inmates.
- The inmates travel to and from their jobs by Center transportation.
- An inmate participating in a work release program remains in the custody of the Center staff and is subject to the rules and regulations of the Center. An inmate is subject to the direction of the staff of the Center during the period of his/her participation in the work release program.
- If an inmate walks out and leaves the employer's worksite during the work shift for more than two hours without authorization, it is viewed and treated the same as if the inmate escaped and left the Center.
- The Center provides lunches to inmates during the work shifts and the Center management addresses any disciplinary matters that arise.
- When the claimant was released from incarceration at the Center his/her employment ended with the private employer.

G. L. c. 151A, §6(v) reads as follows:

The term "employment" shall not include:

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

The Board of Review decision indicated that “even though the claimant was performing services for the employing unit at the employing unit’s place of business, he/she was treated as if still on the premises of the correctional facility.” The claimant was transported to and from the place of employment by the Center, subject to rules and policies of the Center while at the employing unit, and if the claimant left the employer’s premises without permission, would have been considered an escaped inmate. The Board concluded that the claimant was still within the control of the Center and “the walls of the correctional facility were moved to the employer’s premises.” Based on this conclusion, in accordance with c. 151A, §6(v), the claimant’s services for the employing unit were determined to be excluded from the definition of employment. As a result, the earnings the claimant received from the employing unit were not considered wages and the claimant was not monetarily eligible for a UI claim.

4. ACTION.

Effective immediately, whenever fact finding from the claimant or the employer indicates the claimant worked for the employer as part of a work release program of the Department of Correction and has become separated due to release from incarceration, the claimant’s earnings for the employer should be excluded from use as the services performed are not considered employment. In most cases this would make the claimant monetarily ineligible for benefits and convert any other issues on the claim to flag status. Staff should contact the Wage Processing Department at 617-626-5039 to have the wages adjusted accordingly.

Any questions regarding services performed in a work release program for the Department of Correction should be directed to the UI Policy and Performance Department at (617) 626-6422.