

# D.S. O'CONNOR & ASSOCIATES, P.C.

ATTORNEYS AT LAW

## LEGAL ADVISORY

*Unemployment Insurance During COVID-19*

**March 20, 2020**

In Massachusetts, Unemployment Insurance is administered by the Department of Unemployment Assistance (DUA). The federal Department of Labor sets up certain guidelines and funds the states' administrative costs. In times of high unemployment, the federal government may also supplement state UI benefits with a federal funds.

This legal advisory is intended to provide basic information related to the processing of UI claims and to provide specific information concerning legislative changes in reaction to the COVID-19 pandemic.

### **Question 1:**

**Generally, what are the rules regarding receipt of unemployment insurance?**

#### Answer:

Applicants apply for the benefits online or over the phone with the Department of Unemployment Assistance ("DUA"), the Massachusetts agency tasked with approving and distributing unemployment benefits. After benefits are approved, applicants will receive weekly benefits equal to approximately 50% of their average weekly wage. If the DUA is slow in approving benefits, then claimants will receive unemployment benefits retroactively.

Ordinarily, an applicant is entitled to unemployment benefits upon a separation from employment so long as she is ready, willing and able to work and so long as: (a) the claimant did not voluntarily quit without good cause, (b) the claimant was not terminated for deliberate misconduct or willful disregard of the employer's interest or of the employer's uniformly enforced rules and policies, and/or (3) the claimant was not terminated due to conviction of a crime.

### **Question 2:**

**How will the Massachusetts Emergency Bill, signed into law on March 18, 2020, affect unemployment insurance?**

#### Answer:

The Emergency Bill ("MEB") is meant to provide relief to individuals affected by Governor Baker's state of emergency announced on March 10. The MEB waives the one week waiting period for receipt of unemployment benefits. Normally, applicant would not start receiving benefits until one week after the Sunday before the application for benefits. This waiting period is waived so

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639 Granite Street, Suite 305  
Braintree, Massachusetts 02184

65 Holbrook Street, Suite 240A  
Norfolk, Massachusetts 02056

617-655-6788  
www.Law-DSO.com

that one can receive benefits for the week of the application. The order is effective from March 10, 2020 to 90 days after the end of the state of emergency.

The Bill waives the requirement that applicants attend a career center seminar.

Notably, the Bill also waives the requirement that applicants be able to work, available for work, and searching for work while unemployed.

**Question 3:**

**Are applicants entitled to unemployment benefits if they are out of work sick, quarantined, quarantined as a safety precaution, at home where they need to attend children who are out of school, or for other similar reasons?**

Answer:

Yes, such applicants should be qualified for unemployment benefits. Governor Baker has indicated that the intent is for applicants in the situations similar to the scenarios above to receive benefits. This is accomplished by Massachusetts waiving the requirement that applicants be ready, able, and searching for work while collecting unemployment benefits. Upon the signing of the MEB, one does not need to be able to work, or searching for work, while collecting unemployment benefits.

**Question 4:**

**How long can an applicant receive unemployment benefits?**

Answer:

At this time, you can receive unemployment benefits for up to 26 weeks, but we can expect an expansion of benefits and an extension to the period of benefits. The number of weeks an individual can receive unemployment benefits is based on the unemployment in the state and whether the federal government is extending such benefits. Prior to the coronavirus outbreak, Massachusetts was experiencing historically low unemployment, and an applicant could receive at most 26 weeks of unemployment benefits. Massachusetts historically extends the receipt of benefits to 30 weeks during periods of normal or high unemployment. Lastly, the federal government passed a law after the recession of 2009 where it would extend unemployment benefits by an additional 53 weeks when the economy is doing poorly. This unemployment extension ended several years ago but will likely be reinstated due to the coronavirus pandemic.

**Question 5:**

**Is the federal government attempting to pass legislation that affects unemployment insurance?**

Answer:

The Department of Labor has recently passed new regulations allowing states to widen the scope of its unemployment insurance programs. The advisory notice can be found here, [link](#). They largely mirror the steps Massachusetts has taken. The federal government continues to propose new measures to combat the coronavirus pandemic, but at the time of writing this advisory there are no other federal legislative actions affecting unemployment insurance.

**Question 6:**

**Can you apply for unemployment benefits if you are out of work without pay but still have your job?**

**Answer:**

Yes you can. You should be qualified for unemployment benefits if you are out of work, without pay, even if you have not been fired or laid off. For example, if you are out of work indefinitely due to your employer taking precautionary steps to shut down, and are unpaid, then you should qualify for unemployment benefits. If your work has furloughed you then you should be entitled to unemployment benefits.

**Question 7:**

**Will applications for unemployment benefits to the DUA be approved quickly?**

**Answer:**

Probably not. Monday March 16, 2020 saw nearly as many new unemployment applications (19,844) as the entire month of February (25,400). It is likely that the volume of applications will increase delays and increase the possibility that the DUA makes errors. The quickest way to apply for benefits is to do so online. The online application website can be found at this [link](#).

**NOTE:** We have learned that the online unemployment application system does not accept Verizon e-mails. Submission of an e-mail address is required to move through the online portal. As of March 20<sup>th</sup>, the DUA online system was not accepting Verizon e-mails. This may well be a temporary glitch that is corrected, but we suggest creating a gmail account and using that e-mail to ensure the processing of unemployment claims.

**Question 8:**

**What happens if the DUA disqualifies an employee from receiving unemployment benefits?**

**Answer:**

If an employee is disqualified from benefits, the employee can appeal. This does not require a detailed letter or an argument. It is simply a notice that must be provided to the DUA to schedule an appeal hearing. This gives you time to confer with your union representative to see if you are entitled to benefits. If you are entitled to benefits, then you may win the appeal hearing. If not, then you can simply withdraw the appeal.

One must file the appeal request with the DUA within 10 days of the date the denial was mailed or sent to you, not the date you receive it. Late appeals may be allowed if there is good cause for the delay.