

SPRING 2024

Unemployment Insurance

**Helping Out-of-Work Clients Navigate
the Unemployment Insurance System**

Resources on UI Law

- State law: M.G.L. c. 151A; 801 CMR 1.02; 430 CMR
- Federal law: 26 U.S.C. 3301; 42 U.S.C. 501
- DUA Unemployment Insurance Policy and Performance (UIPP) Memos (<https://www.mass.gov/lists/unemployment-insurance-policy-performance-memos>)
- Adjudication Handbook (AH) (<https://www.masslegalservices.org/content/dua-adjudication-handbook>)
- Mass. 2023 Unemployment Advocacy Guide(2024 Edition forthcoming): <https://www.masslegalservices.org/content/2023-unemployment-advocacy-guide>
- DUA website: www.mass.gov/lwd/unemployment-insur/
- Board of Review Decisions: www.mass.gov/dua/bor
- DOL website: <https://www.dol.gov/general/topic/unemployment-insurance>
- Legal Services Website: www.masslegalservices.org
- Other Resources:
 - Mass Legal Resource Finder: www.masslrf.org and www.masslegalhelp.org
 - Trial Techniques and Trials, 10th Edition, Thomas A. Mauet

COVID-19 Resources

- COVID-19 UI programs have ended as of Sept. 4, 2021. However, still some pending cases implicating these programs. Addressed where relevant throughout presentation, and see the following resources:
- UI Guide, Part VII: <https://www.masslegalservices.org/content/ui-part-vii-covid-19-ui-measures>
- Legal Aid Fact Sheet – UI and PUA, updated at: <https://www.masslegalservices.org/library/directory/covid-19/work-and-unemployment>
- Landing Page for MA Department of Unemployment Assistance (DUA): www.mass.gov/unemployment
- U.S. Department of Labor Materials on paid leave: <https://www.dol.gov/agencies/whd/pandemic>
- MA Office of Attorney General FAQ & Hotline About COVID-19: <https://www.mass.gov/guides/resources-during-covid-19>; 617-727-3465
- MassCOSH Worker Safety Toolkit: bit.ly/workertoolkitCOVID19

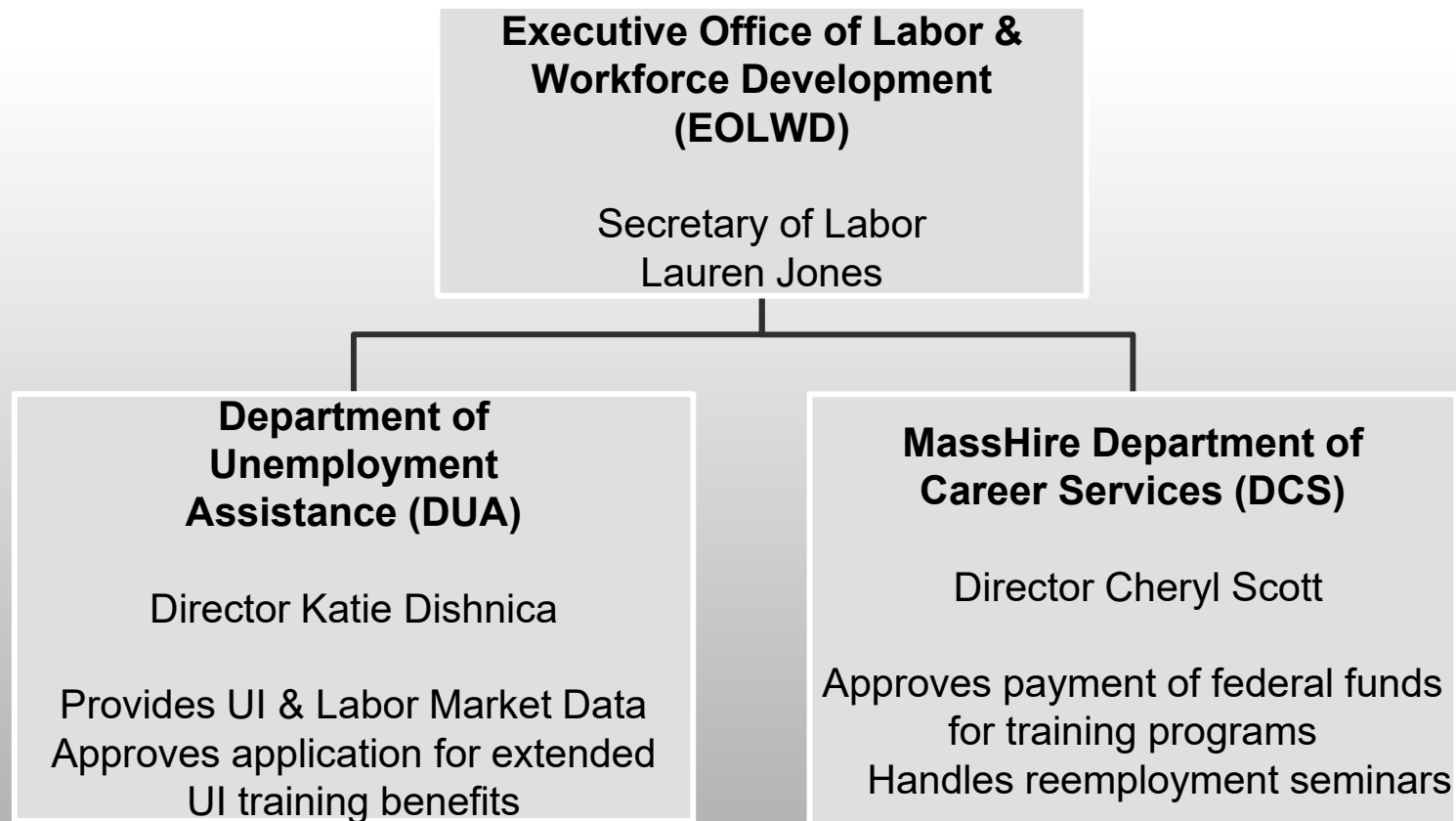
What Is Unemployment Insurance (UI)?

- Non-means tested cash assistance program established in 1935.
- UI is a joint state-federal program. States administer separate UI programs and set benefit amounts, duration, and disqualification criteria, but follow guidelines set by federal law.
- UI is the first line of defense in a recession.
- M.G.L. c. 151A, § 74: the UI law “shall be construed liberally in aid of its purpose, which purpose is to lighten the burden which now falls on the unemployed worker and [their] family.”

Funding Unemployment Insurance

- The UI program is funded by a tax on employers.
- UI is an insurance program. The tax each employer pays is the premium, and is determined by:
 - How many employees the employer has,
 - How many of those employees collected UI in the past year, and
 - How much money is needed to keep the UI program solvent.
- In Massachusetts, only the first \$15,000 of a worker's wages are taxed. This is called the Taxable Wage Base.
- As with other insurance programs, employers benefit by pooling risk.
- Non-profit and government employers can self-insure.

The Administration of Unemployment & Job Training Programs (especially relevant for extended UI benefits for training)



Overview: Eligibility for Unemployment

- A claimant is eligible for UI if they:
 - Earned at least \$6,300 (as of 2024) and 30 times the weekly benefit rate (about 15 weeks of earnings) in covered employment within the base period;
 - Separated from employment for a non-disqualifying reason (*UI Guide* Questions 11-36);
 - Are totally or partially unemployed (*UI Guide* Question 9); and
 - Are capable of, available for and actively seeking work, including part time work with or without reasonable accommodation (*UI Guide* Question 8).

Financial Eligibility Test

- Generally, a claimant must have earnings in the base period of at least:
 - A threshold earnings amount (currently \$6,300) which is adjusted annually proportionate to any increase in the state minimum wage, and
 - 30 times their weekly benefit amount (weekly benefit amount = $\frac{1}{2}$ the average weekly wage).
- The **base period** is generally the last four completed calendar quarters prior to the effective date of the claim.
- However, the claimant may use the **alternate base period** (last three completed calendar quarters, plus any earnings from the start of the current quarter through the effective date of the claim), if:
 - They would not qualify using the standard base period
 - They would be eligible for a total benefit credit at least ten percent greater using the alternate base period compared to the regular base period.

Financial Eligibility: Covered Employment and Misclassification

- To count towards a claimant's financial eligibility, wages must have been earned in employment covered by the UI statute.
- Most employment is covered employment, subject to limited exceptions (e.g., employees of churches, work-study jobholders at a college or university, and insurance agents paid solely by commission). See M.G.L. c. 151A, §§ 6, 6A.
- The UI statute presumes that workers are employees, and places the burden on employers to satisfy a three-part "ABC" test to demonstrate they are not employees. M.G.L. c. 151A, § 2.
 - Employment status does **not** turn on whether the employer made tax deductions, made contributions to DUA, issued the claimant a 1099, or called the claimant an independent contractor in their contract.
 - Misclassified workers will need to correct their wages after receiving a monetary disqualification.

Financial Eligibility: Benefit Amounts

- About ½ average weekly gross wages
 - Up to maximum set annually on October 1 (now \$1,033 per week); and
 - Allowance of \$25 per dependent child (no longer capped as of Dec. 2022)

- Base Period (BP) & Benefit Year (BY)
 - Base Period: time period used to calculate financial eligibility and benefit amount, generally last four completed calendar quarters prior to the claim
 - Benefit Year: the 52 weeks following the effective date of your claim

- For more information on weekly benefit calculations, see Guide, Q.4, and Appendix C. See also DUA website on benefit calculations at <https://www.mass.gov/info-details/how-your-unemployment-benefits-are-determined>

Financial Eligibility: Duration of Benefits

- State UI may last up to a maximum of 26 weeks
 - May be less if work income fluctuated or worked less than a year
 - Will go back to a maximum of 30 weeks if:
 - Federal unemployment benefits are no longer available, and
 - Unemployment rate is 5.1% or more in any MA region or hits 100,000 in claims

- UI may be extended
 - To participate in DUA-approved training for up to 26 weeks
 - By federal extended benefits during a recession.

Is UI Taxable?

- Yes. Claimants may request withholding, otherwise will be responsible for federal and state income taxes at tax time.
- 10% federal and 5% state income tax rates applied.
- The American Rescue Plan waived taxes on the first \$10,200 of UI benefits for taxpayers who had less than \$150,000 in adjusted gross income in 2020. This tax exemption not applicable for subsequent tax years.
- DUA sends out 1099-G, available at www.mass.gov/dua/webcert, call 617-626-5647, or request through UI Online at **View and Request 1099G**.
- If a person received a 1099-G from DUA but did not receive UI or PUA benefits, they should complete the fraud reporting form at <https://www.mass.gov/forms/unemployment-fraud-reporting-form>



Can a claimant work part-time without losing the entire weekly UI benefit?

- Yes, a claimant can earn up to 1/3 of the weekly benefit amount (WBA) without losing any UI benefit. This 1/3 amount is called the **earnings disregard**.
 - Any additional part time earnings above this 1/3 amount are deducted from the UI benefit.
 - If total earnings equal or exceed 133% of WBA, no longer eligible for UI.
 - Example: If Mary has a WBA of \$100, she can earn up to \$33 each week with no impact to her WBA. If Mary earns \$35, her WBA will be reduced dollar for dollar over the \$33, by \$2, to \$98.
 - If Mary earns \$132 per week, she will get \$1 in UI benefits.
 - If Mary earns more than \$133 per week, she will be disqualified from receiving benefits.
- **Claimants must report any earnings!**
 - DUA does a cross match with DOR and can discover earnings.
- UI benefits may be reduced when a claimant, who takes a part-time job while receiving UI, leaves that job for a disqualifying reason. *Guide, Q. 45, 49*

Availability and Work Search: Suitable Work

Claimants only need to search for **suitable** work. A job is **not suitable** if it:

- Is detrimental to health, safety, or morals;
- Doesn't fit employee's training or experience;
- Has worse pay, hours and benefits or doesn't meet the **prevailing conditions of work test**; *Guide*, Q. 8
- Requires an unreasonable commute; or
- Is vacant directly due to strike, lockout, or other labor dispute or requires joining union or limits joining or retaining membership in a union.
- Special rules apply for Domestic Violence situations, *Guide*, Q. 8 & 33
- Special rules applied during pandemic, See [UIPP 2020.12](#) and [UIPP 2020.14](#)

Can a claimant participate in training while receiving UI?

- Yes, if DUA approves the program. Must use a DUA TOP (Training Opportunities Program) application. (M.G.L. c. 151A, § 30)
Call 617-626-5375 or request TOP application via UI Online account.
- Training program: 2 years; 3 years for ESOL/Basic combined with vocational training; stand-alone ESOL is approved.
- Job search waived while in training.
- Can get up to 26 weeks of extended UI during training.
- Extended UI for training: must apply for training w/in 20 weeks of a new or continued approved claim, unless tolled or waived for good cause; if UI denial reversed, 20 weeks starts running 1 week after the reversal. *Guide, Q. 48, 53*
 - This period was tolled during pandemic, and the 20 weeks started in December 2021 when notices went out to claimants.
- Cannot receive any extra federal benefits during weeks receiving section 30 extended training benefits

Non-Citizens

Must be work authorized to collect UI, but -

- Different requirements in **base period and benefit year:**
- **Base period** has 3 categories:
 - ❑ Lawfully admitted for permanent residence at time of work
 - ❑ Lawfully present to work, or
 - ❑ PRUCOL (permanently residing under color of law)
- ❑ **Benefit year** - must prove work authorization to be considered available for work.

26 U.S.C. 3304(a)(14)(A); M.G.L. c. 151A, § 25(h)

Guide, Q. 51

Non-Citizens

Systematic Alien Verification of Entitlement (SAVE)

- Must provide A# and document verifying work authorization – same documents as I-9 (identity and work authorization)
 - DUA checks ICE database through SAVE - **primary verification**
 - If problem with verification - photocopies of documents sent to ICE **secondary verification**
- **UI must be paid during verification**
- For certain categories of work authorization, extensions beyond dates listed on EAD cards have been granted through DHS regulations. Be sure to check USCIS website: <https://www.uscis.gov/eadautoextend>
- Questions on immigration issues? Find the legal aid office that covers your region at: <https://masslrf.org/en/home>

Limited English Proficient Claimants

- *Luciano* settlement created changes for LEP claimants.
- Claimant's primary language preference must be designated at application or updated thereafter. Email DUA at LanguageChange@detma.org.
- Instructions on how to contact DUA are provided in the Adjudicator's Questionnaires in Spanish, Chinese, Haitian Creole, French, Italian, Portuguese, Vietnamese, Laotian, Khmer, and Russian, G.L. c. 151A, § 62A(d)(iii) (law requiring languages).
- LEP claimants can get 60 days or more to appeal UI denial if information is not in preferred language, 430 CMR 4.13(4) (even if not a listed language), AH c.1, § 4E, *UI Guide Q. 52*

IDENTITY VERIFICATION FOR REGULAR UI CLAIMS

DUA is using ID.me to verify the ID of regular UI claimants (not PUA)

Instructions for setting up an ID.me account are [here](#).

Need claimant's phone number, email address, and SSN; and photos of front and back of government issued photo ID.

Steps to follow

1. Create an account using the claimant's email address. Best to use same pw as used for UI account, and to provide a phone number for later password recovery.
2. Claimant can click link sent via email or share 6-digit code with helper (recommended).
3. Add phone number to account for verification purposes. Text message or phone call follows at option of claimant. Use code provided.
4. Choose the kind of photo ID you plan to upload and upload same.
5. Option to take photo of the ID with smartphone for ID confirmation.
6. Further verification provided via another link sent via text message.
7. Enter SSN number.
8. Verify accuracy of all information provided and consent to its use under the Fair Credit Reporting Act.
9. The link mentioned in step 6 is sent. The claimant clicks the link and should be taken to a webpage saying the process is complete.
10. Give permission to ID.me to share the information provided with DUA.

Important Advice for Claimants When No Longer Claiming UI

- When you **stop** collecting unemployment benefits, you should change your notification preference to **U.S. Mail**.
- DUA may send important notices, including notices of disqualification or overpayments, even **after** you stop collecting UI benefits. **With appeal deadlines as brief as 10 days, you may end up unable to challenge these costly determinations.**
- If you later move, you must update your mailing address with DUA so that notices sent by U.S. Mail will reach you timely.

UI Modernization Update

- DUA is in the process of re-modernizing its inaccessible UI Online system.
- Revenue portion of the program rolled out Fall 2024
- Claimant portal expected May 2025
- Opportunities for input and testing
- New identity verification solution expected to use Login.gov and leverage USPS locations as in-person verification option

Sequence of a Claim

Step #1 Applying for UI

- File claim or check claim status with DUA
 - UI Online since 7/1/13, *Guide, Q. 1*
 - UI Online computer access – English only, not mobile-friendly
 - UI application complete online only when confirmed
 - If U.S. mail chosen, will not get email reminders; if email chosen, will not get U.S. mail notices. Notices not accessible on all smartphone or tablet models. Must disable pop-up blocker.
 - Call 617-626-6800 or toll-free 1-877-626-6800, 8:30-4:30

Step #2 Ensuring Access

- UI Online is an English-only system.
- UI Online inaccessible for claimants who do not:
 - speak English,
 - have high-level reading skills,
 - have computer skills, or
 - have regular and reliable computer access.
- DUA acknowledges that many important notices are not accessible through smart phones.

Guide, Q. 1

Step #3 Ensuring UI Continues or Establishing Earlier UI Eligibility Date

- Claimant must certify active work search **every week** via English-only UI Online or TeleCert (multilingual).
- Claimant must certify eligibility weekly **even if initially denied UI**.
- Work search consists of 3 work search contacts per week. Claimants should keep work search log in case DUA requests copy.
- Work search requirements were suspended during the pandemic state of emergency (March 2020 – June 15, 2021). See [UIPP 2021.04](#) rescinding [UIPP 2020.15](#)
- If claimant did not file for UI after separating from work, it may be possible to **predate** claim. Claimants entitled to automatic predate if employer failed to provide adequate information in writing about right to apply for UI, or if they had good cause for the delay.
 - ❑ **Good cause** includes an inability to apply due to high call volume, inability to reach a career center, illness, death in the family, or other compelling reasons.
 - ❑ A claimant is deemed to have initiated their claim for UI benefits on the first day they contact or attempt to contact DUA, whether or not they can speak to a DUA representative at the time. M.G.L. c. 151A, § 62A(f).

Step #4 Filing a Claim and Employer's Response

- **Claimant** files claim with DUA online or by telephone.
- **DUA** notifies employer of claim.
- **Employer** has 10 days to respond
 - If employer checks **laid off**, UI should start shortly
 - If employer doesn't timely respond or if response does not provide supporting facts - unless **good cause** 430 CMR 5.02 (8), employer is not a party (can't cross examine or appeal)
 - Watch out for responses by employer **agents** such as USC or Equifax.

Step #5 DUA's Response

If not a layoff, DUA conducts an investigation

- **DUA** makes monetary eligibility determination.
- **DUA** requests separation info from employer and claimant.
- **DUA** issues a Notice of Disqualification to the claimant, **or**
- **DUA** issues a Notice of Approval of the claim and pays UI.
- Debit card is default. Must choose direct deposit.

Step #6 Claimant's Statement

- If possible, assist claimant with presenting claim to claims adjuster, by phone or via UI Online.
- Claimants may receive multiple questionnaires.
- Help with chronology, relevant facts, state of mind, and supporting documents.

Step #7 Employer's Statement

- Employers often outsource UI functions to companies who may have no first-hand knowledge of what occurred at workplace (such as UTC or Equifax).
- UI Online favors employer agents or HR personnel who know right **buzzwords** and as repeat users can navigate the online system more easily.
- Employer must swear to truth of statement under pains and penalties of perjury. 430 CMR 5.02 (8)

Step #8 Appeal to Hearings Department

- If UI denied, **claimant** has **10 days** to request hearing; 30 days if good cause; 60 days if LEP provisions are violated. If UI granted, **employer** has 10 days to appeal; 30 days if good cause.

Guide, Q. 52, 55

- Appeals can be requested via UI Online or U.S. Mail. Once the hearing is scheduled, the appeal case folder is made available through UI Online. DUA will send appeal case folder for telephone and virtual hearings to claimants via communication method chosen.
- Representing your client at the hearing is the focus of the next section of the training.

Step #9 the DUA Hearing

- **DUA** sends hearing notice. Request for postponement must be made 1 week before hearing, unless serious emergency.
- **DUA** holds administrative hearing.
- **DUA** issues a hearing decision to claimant, and only to advocates providing full representation (DUA full rep release filed, or UI online notice of full rep made at time of appeal).
- Losing party has **30** days to appeal to **Board of Review** by fax, mail (post mark date), or UI Online. *Guide, Q. 63*
- Always appeal meritorious cases to Board. If you lack resources to file the appeal, advise claimant to file appeal *pro se*.

Step #10 Board of Review

Board of Review may do the following:

- Deny further review;
- Do nothing - deemed denied after 21 days. Court appeal due within 30 days of date Board denies further review or date decision deemed denied if no response.
- Allow and remand to DUA for additional findings, or new hearing;
- Allow and Board reviews record; or
- Allow and Board may hold its own hearing. M.G.L. c. 151A, § 41

Since 2017, Board posts all its decisions on web and designates some as **key decisions** that may be binding on DUA. *Guide, Q. 63*

Step #11 Appeal to Court

- **Losing party** appeals to District Court which must **receive** complaint within **30 days** of the Board of Review's decision (or date on which Board appeal deemed denied).
 - Claimant, employer and DUA are all parties (unless single party issue) – must serve complaint within **7 days** of Court filing by certified mail, return receipt requested. M.G.L. c. 151A, § 42.

- **District Court** decision can be appealed to **Appeals Court** and then to **Supreme Judicial Court (by cert)**.
 - Claimants denied UI must **continue to certify** their eligibility during appeal process for duration of their benefit year and while extended federal benefits would be available to the claimant to get retro UI.

Guide, Q. 64

Reconsideration and Redetermination

- Remedy if time for appeal expired and not more than 1 year since the most recent decision.
- Letter to DUA Director requesting reconsideration under M.G.L. 151A, § 71.
- Decision fully discretionary.
- If DUA initiates redetermination (1 year from original or 4 years from original if fraud), must notify claimant of opportunity to present evidence before its decision **and before UI is stopped; Court ruling on 3/8/2021 has ruled that DUA's failure to do so legally erroneous.** *Marrero v. DUA*, Worcester Sup. Ct. Docket # 2085-cv-00937. See updated regulations 430 CMR 11.00
- Statute of limitations for § 71 redeterminations begins on **date of first payment** for any issue which must be decided favorably for payment to issue, regardless of whether DUA issued a written determination. See [UIPP 2021.12](#).
- M.G.L. c. 151A, § 71; 430 CMR 4.30 – 4.35; 11.01 – 11.10 *Guide, Q. 10*

Waiver of Overpayment

- Eligible for Waiver of Overpayment if:
 - There is no proof of fraud, and
 - Re-paying the money would:
 - **Either** “defeat the purpose of benefits” – deprives individual of income for ordinary and necessary living expenses,
 - **Or** would be “against equity and good conscience” – relinquished a valuable right or changed position for worst. Financial situation is irrelevant.
 - Under *Castillo* settlement, EAEDC and SSI recipients get presumption that they are eligible for waiver. 430 CMR 6.05(3)(b).
 - Federal pandemic benefits may be waived if (i) no fault and (ii) against “equity and good conscience” (under MA law: M.G.L. c. 151A, § 69(c); 430 CMR 6.01 – 6.15).
 - See M.G.L. c. 151A, § 69; 430 CMR 6.00 *et seq.*; *Guide*, Q. 62

Is it really fraud?

- Waiver available only if no finding of fraud.
- Examine whether fraud finding includes **finding of fraudulent intent, the state of mind** to intentionally defraud DUA.
- Did claimant have **capacity** to commit fraud? Consider age, intelligence, physical, mental, educational, and linguistic limitations, including facility with English.
- Did claimant make a **good faith mistake of fact**?
- If LEP, must be informed in primary language. M.G.L. c. 151A, § 25(j).
- If no intent, challenge through hearing or redetermination.

A **finding of fault or fraud** requires evidence that claimant

- 1) **intentionally** provided false information, or
- 2) **intentionally** withheld information for the purpose of receiving UI benefits to which she was not entitled.

See 430 CMR 6.03, defining fault, in *Guide*, Q. 54.

The DUA Hearing

The DUA Hearing #1

Informal Fair Hearing Rules: 801 CMR 1.02

- **Agency:** DUA/Hearings Department
- **Hearing Officer:** Review Examiner
- **Parties:** Claimant and Employer, unless single party issue

Guide, Q. 56 and 57

- Ask Hearings Department for opportunity to observe a hearing

The DUA Hearing #2

- Who can appeal? Either party
- Evidence: formal rules of evidence do not apply
- Proceedings: electronically recorded
- Discovery:
 - Contact the Hearings Department to confirm the procedure for obtaining a copy of the appeal folder. You will need a signed DUA release. DUA should provide copies of appeal case folder via UI Online and mail once hearing is scheduled.
 - For Boston hearings only, email signed release and request for folder to Sharon Leazott at Sharon.leazott@state.ma.us, Irene Zaroda at Irene.zaroda@state.ma.us.
 - Personnel Record (M.G.L. c. 149, § 52C) and Payroll Records (M.G.L. c. 151, § 15)
 - Request **only** if strategic to do so

The DUA Hearing #3

Review docs in DUA's Hearing File

- DUA Request for Information sent to employer
 - Examine date for timely return
- Notice to Claimant of Disqualification or Approval
- Statements from employer and claimant
 - Check who submitted employer statement
- Notice of Hearing
 - Confirm issues to be heard and the deadline to request a postponement
- Any other documents submitted by parties to claims adjuster or otherwise submitted through UI Online

Guide, Q. 58.

The DUA Hearing #4

Claimant Preparation Develop your theory of case and then -

- Take the time to thoroughly prepare client
- Think about the employer's best case, how to address it and confront bad facts; explore alternate theories and arguments for back-up path to victory
- Prepare direct, cross of employer and potential direct and cross of your client
- Describe hearing setting and what to expect at hearing

Guide, Q. 59, App. H: Checklist

The DUA Hearing #5

Rights and duties of parties

- Present witnesses
- Cross examine witnesses
- Present oral testimony
- Introduce documentary and video evidence

The DUA Hearing #6

Direct Examination

Do not ask leading questions!

- Use open-ended questions.
- Tell a story that fits with theory of case (see Mauet, Trial Techniques).
- Elicit relevant events chronologically, if critical to your case.
- Do not dwell on unimportant details.
- Do not interrupt your witness.

The DUA Hearing #7

Direct Examination

Prepare client for hidden traps

- Is client able to work?
- Is client available for work?
- Is client actively seeking work?
- Is client keeping track of work search? (Work search requirements were lifted in March 2020 due to the pandemic and reinstated effective 6/25/21. See [UIPP 2021.04](#) rescinding [UIPP 2020.15](#)).

The DUA Hearing #8

Re-Direct Examination

- Your client or your witness
- After your witness is cross-examined, you can re-direct, but only if necessary.
- Do **not** use it to bring out nit-picking points.
- Use your re-direct to:
 - Clarify a point;
 - Elaborate on a subject (brought out on cross) that helps your client; and/or
 - Rehabilitate your witness.

The DUA Hearing #9

Cross Examination – only if you must!

- Did the witness hurt you?
- Do you have real ammunition?
- Do you know how the witness will answer the question?
- **Ask** leading questions that require yes or no answers.
- **Avoid** open-ended questions that allow the witness to ramble or narrate their own tale.
- Do not ask any question that begins with the word **WHY!**

The DUA Hearing #10

Objections and Documents

- Relevance
 - Hearsay
 - Leading
 - Compound Question
 - Badgering
 - Mischaracterization
 - Lack of foundation
 - Argumentative
-
- When introducing a document into evidence: Assess authenticity of document. Is it dated, signed, on letterhead? Is author qualified to make statements in document?
 - Clarify for the record whether the witness is presenting first-hand or hearsay testimony.

The DUA Hearing #11

Closing Argument

- Make it short and to the point.
- Connect the dots.
- Highlight the most favorable facts.
- Do **not** recite the entire hearing.
- Submit proposed findings of fact and rulings of law, *sample at Guide, App. K.*
- If necessary, ask for 24 hours to submit proposed findings to conform facts to evidence and to add exhibit #s to findings.

Interpreters

DUA 430 CMR 4.16-20

- DUA provides interpreters at hearings at **no cost** to claimants.
- DUA allows 1.5 hours for interpreted hearings and 3 hours for continued, interpreted hearings with more than 1 witness.
- Claimant or claimant's advocate must request the interpreter.
- If you have a problem with interpreters, contact.

Marisa de la Paz, DUA Multilingual Services,
(617) 626-5471, mdelapaz@detma.org

Separation Issues

Disqualification: Discharge

Discharge: M.G.L. c. 151A, § 25(e)(2)

- Deliberate misconduct or a knowing rule violation
 - Employer has burden of proof

- Exception for Domestic Violence
 - No disqualification if discharge is due to circumstances resulting from DV
 - Includes individual's need to address the physical, psychological and legal effects of DV for self or minor child

Discharge: Deliberate Misconduct

- Claimant must have engaged in **deliberate misconduct** in **willful disregard** of the employer's interest.
- What was the claimant's state of mind at the time of the alleged misconduct? Were there any mitigating circumstances impacting the claimant's conduct?
- Intentional disregard of employer's interest and expectations.
- Employer must prove BOTH statutory elements.

Guide, Q. 11-13

Discharge: Knowing Violation #1

- Knowing violation of a **reasonable and uniformly enforced rule or policy** of the employer
- A knowing violation requires **intent**.
- Claimant must have intended to violate the rule or policy. See: Still v. Commissioner of Employment and Training, 423 Mass. 805, 672 N.E. 2d 105 (1996)
- Claimant must have been **aware** of rule or policy.
- Claimant must have been consciously aware of the policy **at the time of the act**.

Discharge: Knowing Violation #2

- Rule or policy must be **reasonable**.
- Rule or policy must be **uniformly** enforced with respect to other employees and the claimant.
 - Employer cannot disqualify a person for violations it had repeatedly tolerated in the past without imposing discipline.
- Incompetence does **not** constitute a violation.

Guide, Q. 14-18

Discharge examples: Disqualifying or not?

- Swearing at a supervisor
- Tardiness after **final** warning
- Failure to meet production goals
- Stealing guest property
- Fighting with co-worker
- Excessive absences to go to therapy
to deal with DV

Remember: state of mind

Disqualification: Leaving

Voluntary Quit: M.G.L. c. 151A, § 25(e)(1)

- Good cause attributable to the employer
- Urgent, compelling and necessitous reasons
- Claimant has burden of proof, Guide, Q. 21 – 32
- Exception for domestic violence, Guide, Q. 33

Voluntary Quit: Good Cause Attributable to the Employer

- Claimant must have made reasonable efforts to resolve the problem unless such efforts would have been futile.
- Exceptions for:
 - Domestic violence;
 - Sexual harassment;
 - Racial discrimination or harassment; and
 - Other unreasonable harassment.
- General job dissatisfaction or unfair criticism are not good cause for quitting a job for UI purposes.
- Substantial increase in responsibilities or decrease in pay may constitute good cause.

Voluntary Quit: Urgent, Compelling and Necessitous Reasons

Non-work related reasons – M.G.L. c. 151A, § 25(e), ¶ 3

- Claimant **must** have made reasonable efforts to preserve job, unless such efforts would have been futile. Consider state of mind.
- Employer's **account not charged** if insured.
- Benefits paid from UI solvency fund.
- May raise **availability** issues.
- **Explore client's circumstances.**

Special Rules for Temp Agency Jobs

- Claimant must prove that they contacted temp agency for a new job assignment before applying for UI.
- Temp agencies must give claimant written notice in customary way and include statement that failure to request reassignment will affect rights to UI.
- The job offer must be suitable.
- M.G.L. c. 151A, § 25 (e) ¶¶ 8,9; 430 CMR 4.04(8)(b)(2), *Guide*, Q. 38

Voluntary Quit Examples: Disqualifying or not?

- Shift change or transfer
- Unfair reprimand
- Harassment
- Inadequate pay
- Lack of transportation
- Domestic violence
- Temp assignment ends
- Hostile work environment

Thank you for participating!

Questions? Please contact:

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