To: Advocates for Unemployed Workers

From: Monica Halas

Re: DUA Policy on Caregiving Responsibilities and Availability & Suitability Concepts During COVID-19

Date: October 9, 2020

On October 8, 2020, the Massachusetts Department of Unemployment Assistance (DUA) that administers unemployment programs issued a policy describing how certain aspects of unemployment law are to be applied during the pandemic.[[1]](#footnote-1)

Ordinarily, under Massachusetts law, workers are eligible for unemployment benefits only if they can show that they are “capable of, available, and actively seeking work in [their] usual occupation or any other occupation for which [they are]reasonably fitted.”[[2]](#footnote-2) This requirement applies to “suitable work” which workers do not have “good cause” to refuse.[[3]](#footnote-3) Additionally, in order to be eligible in care-giving situations, workers must, at a minimum, be eligible for part-time work.[[4]](#footnote-4)

However, during the pandemic, the United States Department of Labor (USDOL) has afforded states significant flexibility to expand interpretations of their laws in the context of work search and the refusal of work.[[5]](#footnote-5)

As a result, DUA’s policy acknowledges that: 1) workers have reasonable concerns that working may result in a substantial risk to the health and safety not only to themselves, but also to their children or dependents, immediate family members or household members; and, 2) that workers have caregiving responsibilities for family or household members that prevent them from working.

1. Expansions to “Suitable Work” and “Good Cause”

Under DUA’s policy, work is not considered “suitable” (and therefore can be refused without any impact on unemployment benefits) if the worker has a reasonable belief that the job poses a substantial risk to the health or safety of the worker, the worker’s child, a member of the worker’s immediate family or household member, or the worker’s health or safety would be compromised due to an underlying medical or other condition if the worker accepted the job. In each of these situations, the worker has “good cause” to refuse otherwise suitable work.

2. Caregiving Responsibilities

Under DUA’s policy, a worker is not disqualified on the grounds of refusing otherwise suitable work if “due to age, medical condition, or other condition or infirmity, another individual requires the claimant’s full-time care and no alternate care is available due to COVID-19.”[[6]](#footnote-6)

Under federal guidelines concerning the Pandemic Unemployment Assistance (PUA) program[[7]](#footnote-7), claimants are considered eligible for a COVID-19 related reason if their child is attending school virtually on a full-time or part-time basis. Eligibility is denied if the worker “chooses” not to send a child to a school offering classes in-person.[[8]](#footnote-8)

However, the DUA policy ameliorates this harsh result when in-person school is available with the following cautionary note:

“*When reviewing the claimant’s responses to fact-finding questions, adjudicators must keep in mind that many things are beyond any individual claimant’s control. For example, a claimant whose child has a mental or physical health condition or who is too young to wear adequate personal protective equipment such as a mask should not be penalized for being unable to send their child to daycare or school due to reasonable concerns about exposing themselves or their families to COVID-19*.”

“*Other issues to consider include whether or not the school is located in a low-risk district according to the Governor’s COVID-19 Community-Level Data Map (*[*https://www.mass.gov/info-details/community-level-covid-19-data-reporting*](https://www.mass.gov/info-details/community-level-covid-19-data-reporting)*), whether the school or classroom is following the state’s safety guidelines, whether the claimant, the claimant’s child or immediate family or household have preexisting medical conditions and whether the child has any condition which may make remote or hybrid learning problematic. When in doubt, adjudicators are encouraged to use the flexibility granted by USDOL in determining these issues.*”

Finally, DUA’s policy memorializes in writing its policy during the pandemic. Therefore, any workers who were denied benefits for reasons inconsistent with this policy should seek a redetermination.

1. Unemployment Insurance Policy and Performance Interoffice Memorandum (UIPP) 2020-12 (10/08/2020). [↑](#footnote-ref-1)
2. Mass. General Laws, chapter 151A, sec. 24(b). [↑](#footnote-ref-2)
3. Mass. General Laws, chapter 151A, sec. 25(c). [↑](#footnote-ref-3)
4. 430 Code of MA Regulations 4.42 – 4.45. [↑](#footnote-ref-4)
5. USDOL Unemployment Insurance Policy Letter (UIPL) 10-20 (3/20/2020); UIPL 13-20 (3/22/2020). [↑](#footnote-ref-5)
6. UIPP 2020-12. Under pre-COVID requirements, the need to care for another constituted good cause for leaving work, but with the exception of limited circumstances, the claimant would be denied as not available to work. Note 4, above and DUA Adjudication Handbook, Rev. 3/1/2020, ch. 4 available at [www.mass.legalservices.org](http://www.mass.legalservices.org). [↑](#footnote-ref-6)
7. PUA, a new program is available for non-traditional workers such as independent contractors and also those not eligible for regular UI. For further information, see [www.mass.gov/PUA](http://www.mass.gov/PUA). [↑](#footnote-ref-7)
8. UIPL 16-20, Change 3 (8/27/2020). [↑](#footnote-ref-8)