

CLIENT ALERT: Changes to Massachusetts Unemployment Benefits in the Wake of COVID-19

In March 2020, in response to the COVID-19 pandemic, the Massachusetts Executive Office of Labor and Workforce Development (EOLWD) and the Department of Unemployment Assistance (DUA) issued emergency regulations, and the state legislature and Baker-Polito administration enacted legislation, which collectively expand access to and expedite claimants' receipt of unemployment benefits. The EOLWD and the DUA have since issued lists of common questions and answers for **claimants** and **employers** to assist in understanding these changes and other important questions relative to unemployment benefits. Some of the most important aspects of these, and other, changes impacting Massachusetts unemployment benefits are discussed below.

The **emergency regulations**, 430 CMR 22.00, make it considerably easier for employees who are unemployed due to COVID-19 to apply for and receive unemployment benefits. These relaxed standards apply to all claimants who are unemployed due to COVID-19, regardless of whether the reason for lack of work is a temporary layoff with an expected return to work, a shutdown, or a result of quarantine (including a self-imposed quarantine based on a reasonable fear of illness or exposure). In such circumstances, a claimant now need only be capable of, available, and seeking suitable work.

The regulations significantly relax the definition of "suitable work" that is used to determine whether an individual seeking unemployment benefits has fulfilled work search requirements. In determining eligibility for unemployment benefits, the emergency regulations require the DUA to now consider whether a claimant has a "condition" preventing the individual from performing the essential functions of the job without a substantial risk to his or her health or safety. A "condition" means a request from an employer, medical professional, local health official, or civil authority that an individual, or member of the individual's immediate family or household, be isolated or quarantined in relation to COVID-19, even if that person has not been diagnosed with COVID-19. The DUA has further clarified that this includes claimants who self-quarantine due to a reasonable fear of exposure as well as those who are caring for children at home or family members who are sick. In these scenarios, the DUA does not require such individuals to accept work until the condition resolves. [1]

Additionally, the regulations create a new "standby status" making claimants eligible to receive unemployment benefits when they are temporarily unemployed due to lack of work (regardless of whether they are laid off, furloughed, or their workplace is fully or partially shut down temporarily) because of COVID-19. Claimants on standby are relieved of traditional work search requirements so long as they remain on standby, take reasonable measures to maintain contact with their employer, and are available for all hours of "suitable work" offered by their employer.

Employers will be asked to verify a claimant's standby status, including the expected return-to-work date. Individuals will be presumed eligible for standby status for a period of four (4) weeks and an employer need not respond as to the claimant's standby status for that presumption to apply. An employer may request an individual be placed on standby status for up to eight (8) weeks. The DUA

may, if necessary, extend a claimant's standby status beyond the eight (8) weeks where a COVID-19 infection at the employer's business results in closure or curtails business operations for a longer period of time.

In addition to the above changes, the EOLWD and the DUA have taken the following actions in response to the COVID-19 pandemic:

- All requirements for claimants to attend career seminars at the MassHire Career Center have been suspended;
- The DUA has advised that it may excuse, for good cause, missed deadlines during the processing of an unemployment claim, such as responding to fact-finding questionnaires or requesting an appeal, if the reason for failing to meet the deadline is due to COVID-19;
- Employers whose businesses are severely impacted by COVID-19 are allowed to request up to a 60-day extension for filing quarterly wage reports and paying unemployment contributions without being subject to any penalty or interest [2]; and
- All unemployment benefit appeal hearings will be conducted by telephone only during the COVID-19 emergency.

To further assist individuals who cannot work due to the impact of COVID-19, "[An Act Authorizing Waiver of the One Week Waiting Period for Unemployment Benefits](#)" (the Act) was signed into law on March 18, 2020. The Act waives the usual one-week waiting period for unemployment benefits, allowing all new unemployment claims to be paid more quickly. Pursuant to this emergency legislation, the DUA must pay benefits *immediately* to individuals who (i) file an unemployment claim on or after March 10, 2020 and (ii) who have become separated from work as a result of any circumstance relating to the outbreak of COVID-19 or the effects of the Governor's March 10, 2020 declaration of a state of emergency. This waiver of the one-week waiting period will expire 90 days after termination of the state of emergency.

Please note that the above information constitutes only a summary of the recent state regulatory and legislative changes implemented in response to COVID-19. This alert does not discuss any changes to unemployment resulting from federal law, including the Coronavirus Aid Relief and Economic Security Act (CARES Act) and its expansion of unemployment benefits. The DUA has clarified that the unemployment benefits provided by the CARES Act are not yet available in Massachusetts, and the DUA awaits further federal guidance on the CARES Act's requirements to make such benefits available. See the [MBJ alert](#) dated March 28, 2020 for more information on the CARES Act. Employers assessing potential risks associated with COVID-19, other employee illness, unemployment, disability and/or medical leave laws should also consult with their MBJ attorney.

Danielle Jurema Lederman and Deepa Desai are attorneys with Morgan, Brown & Joy, LLP, and may be reached at (617) 523-6666 or at dlederman@morganbrown.com and d-desai@morganbrown.com. Morgan, Brown & Joy, LLP focuses exclusively on representing employers in employment and labor matters.

This alert was prepared on April 1, 2020.

This publication, which may be considered advertising under the ethical rules of certain jurisdictions, should not be construed as legal advice or a legal opinion on any specific facts or circumstances by Morgan, Brown & Joy, LLP and its attorneys. This newsletter is intended for general information purposes only and you should consult an attorney concerning any specific legal questions you may have.

[1] Ordinarily, individuals are required to conduct active searches for work—meaning performing at least three distinct work searches per week—for each week in which they request unemployment benefits in order to maintain eligibility for such benefits. Those searches must usually be detailed in a written log of the individual’s work search activities. However, if a claimant’s filing is related to COVID-19, the EOLWD has now advised that the typical requirement of a written work search log has been supplanted with the much less onerous requirement that the claimant notify the EOLWD if his/her address or telephone number changes.

[2] Note that the emergency regulations, see 430 C.M.R. 22.06, require that a written request for extension be received within sixty (60) days of the original due date of the payment or return.