

## 430 CMR: DIVISION OF UNEMPLOYMENT ASSISTANCE

### 430 CMR 9.00: TRAINING BENEFITS UNDER M.G.L. C. 151A, § 30(c)

#### Section

- 9.01: Purpose
- 9.02: Scope and Applicability
- 9.03: Definitions
- 9.04: Eligibility of Claimants and Special Conditions for Training Extension Benefits
- 9.05: Approval of Training Programs (Courses)
- 9.06: Application Procedure
- 9.07: Rights and Obligations of Program Participants
- 9.08: Training Breaks
- 9.09: Qualified Individuals with a Disability

#### 9.01: Purpose

M.G.L. 151A, § 30(c) allows claimants to receive Unemployment Insurance (UI) benefits while enrolled in approved training. The purpose of 430 CMR 9.00 is to establish procedures and interpret the standards for approval of training programs (courses) and the eligibility of claimants to participate in such programs. In addition, 430 CMR 9.00 describes the conditions under which a claimant may be eligible to receive an extension of benefits up to 26 times his or her benefit rate if the training extends beyond his or her maximum monetary entitlement. The 26 week training extension is available only to those claimants who have applied to the Director for training no later than the 15th compensable week of the claim, unless that period is tolled pursuant to 430 CMR 9.06.

The general goal of M.G.L. c. 151A, § 30(c) is to allow claimants to acquire the new skills necessary to obtain employment. M.G.L. c. 151A, §§ 24 and 25(c) pertaining to worksearch, availability for work, and acceptance of suitable work, are waived if a claimant is otherwise eligible for UI and is enrolled in approved training.

#### 9.02: Scope and Applicability

430 CMR 9.00 applies to any person who has an eligible claim for unemployment compensation benefits and is seeking benefits while enrolled in training under M.G.L. c. 151A, § 30(c).

#### 9.03: Definitions

The following words and phrases shall have the following meanings, unless otherwise clearly indicated by the context of 430 CMR 9.00:

A.B.E. (Adult Basic Education): academic training in basic literacy and numeracy skills. Such training may be geared at the primary or secondary school level, and may include preparation for a high school equivalency diploma or G.E.D.

Americans with Disabilities Act (ADA): a law passed by Congress in 1990, as amended by the ADA Amendments Act of 2008 (ADAAA), which establishes certain rights for qualified individuals with disabilities.

Applied To: a claimant has submitted the required application for training as set forth in 430 CMR 9.06(1).

Basic Skills: courses offering A.B.E., E.S.O.L., or G.E.D. preparation, either individually or in combination.

Certificate Program: a vocational program generally offered at the post-secondary level, but not necessarily by a post-secondary educational institution, that is designed to give an individual the skills necessary to become employed in the occupation of study, and offers a certificate of accomplishment upon completion, but does not confer a degree.

Claimant: any individual who has filed a claim for unemployment benefits pursuant to M.G.L. c. 151A.

430 CMR: DIVISION OF UNEMPLOYMENT ASSISTANCE

9.03: continued

Classroom Training: supervised training of the type normally conducted in an institutional setting, including vocational and industrial education, which may be provided to individuals who meet the conditions for approval of training.

Demand Occupation: an occupation for which work opportunities are presently available, or future growth is anticipated, as determined by the Department.

Department: the Department of Workforce Development (DWD) within the Executive Office of Labor and Workforce Development.

Director: the Director of the Department of Workforce Development, as defined in M.G.L. c. 23H, §§ 1 and 8.

Disability: a physical or mental impairment that substantially limits a major life activity (including but not limited to caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, the operations of major bodily functions and working) of such individual; a record of such an impairment; or being regarded as having such an impairment because of an actual or perceived physical or mental impairment. This determination is made without regard to the use of mitigating measures such as medications, prosthetics, medical supplies, equipment, and low-vision devices.

DUA: The Division of Unemployment Assistance within the Department of Workforce Development.

E.S.O.L. (English for Speakers of Other Languages): a course given to teach basic English literacy skills to non-English speaking persons.

15 Week Period: The 15 week period coincides with the 15 compensable weeks of a regular benefit claim after receipt of the notice required by 430 CMR 9.07(3). However, if any determination denying regular benefits under M.G.L. c. 151A, §§ 39, 41, or 42 is reversed, the 15 week period shall begin with the week following the week notice of such determination or decision was mailed to the claimant, provided the benefit year has not expired and the tolling provisions of 430 CMR 9.06 do not apply.

G.E.D. (General Equivalency Diploma): a program designed to provide an individual with a high school equivalency diploma.

L.M.A. (Labor Market Area): an economically integrated geographic unit consisting of a central city or cities and surrounding territories within reasonable traveling distance for job seeking and commuting.

Pilot or Demonstration Project: a project sponsored or funded by the federal or state government which provides basic or work skills training and is designed to test new methods of training or skills development.

Qualified Individual with a Disability: under the ADA, "an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." 28 CFR 35.104.

9.03: continued

Suitable Employment: employment which is determined by the Director to be suitable taking into consideration whether the employment is detrimental to the health, safety or morals of an employee, is one for which he or she is reasonably fitted by training and experience, including employment not subject to M.G.L. c. 151A, is one which is located within reasonable distance of his or her residence or place of last employment, and is one which does not involve travel expenses substantially greater than that required in his or her former work. No work shall be deemed suitable under the provisions of M.G.L. c. 151A, § 25(c) if the position offered is vacant due directly to a strike, lockout or other labor dispute; if the remuneration, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or if the acceptance of such work would require the individual to join a company union or would abridge or limit his or her right to join or retain membership in any bona fide labor organization or association of working people.

Toll: to suspend or stop temporarily the running of a time period.

Training Program: a program that offers students, participants, or trainees, guided by an instructor or teacher, a structured and detailed course of study consisting of one or more sequential or simultaneous, classes or subjects in a specified course that is coordinated to provide a specified skill, ability, certificate or degree. A program may include in certain circumstances a combination of basic skills, for example, ESOL, GED or ABE preparation followed by a vocational training component. The curriculum may be academic, technical, trade, or other preparation for gainful employment in a recognized occupation.

Training Related Employment: employment in the field for which the training was intended.

Workforce Investment Act of 1998 (WIA): a law passed by Congress to establish a national workforce preparation and employment system to meet the needs of businesses, job seekers, including dislocated workers, and those who want to further their careers.

9.04: Eligibility of Claimants and Special Conditions for Training Extension Benefits

(1) Claimants may be eligible for approved training if it is determined that they are permanently separated from work, unlikely to obtain suitable employment based on their most recently utilized skills, and in need of training to become re-employed; or if it is determined that they have been separated from a declining occupation, or they have been involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations and they are training for a high-demand occupation. In addition, claimants must possess sufficient aptitude and skills to successfully complete and benefit from the approved training, provided that individuals with disabilities are not denied eligibility due to their disability and without the consideration of reasonable accommodation to facilitate their participation including but not limited to reasonable modifications of attendance policies, and provided further that individuals who do not speak English or require remedial education are offered E.S.O.L., A.B.E. or other Basic Skills courses to facilitate their participation in further training and reemployment. Enrollment, regular attendance, and satisfactory progress in the selected training program are required for continued eligibility in the training program.

(a) A claimant will be considered permanently separated from work if he or she is unemployed with no recall date or with an indefinite date of recall, or if he or she leaves partial unemployment from other than the most recent base period employer to enter training pursuant to M.G.L. c. 151A, § 25(e).

(b) A claimant will be deemed to be unlikely to obtain suitable employment and in need of training to become re-employed, if any of the following apply:

1. The claimant is participating in a course or training program authorized by WIA.

2. The claimant requires training to become re-employed in his or her current occupation, because his or her present skills in that occupation are insufficient or are technologically out of date; provided, however, that a claimant possessing sufficient skills in his or her current occupation to obtain suitable employment in that occupation shall not be determined to be in need of training, unless the claimant has separated from a declining occupation or as a result of a permanent reduction of operations and the claimant is training for a high-demand occupation.

9.04: continued

3. The claimant requires training to realize suitable employment in a new occupation, because the claimant's existing skills are obsolete due to technological change or because there is currently no demand for his or her skills in his or her L.M.A., or because a disability has made the claimant unable to perform the essential functions of jobs in the claimant's previous occupation.

(c) A claimant shall be eligible, subject to 430 CMR 9.04(1)(a) and (b) during the pendency of any dispute regarding eligibility for leaving work under M.G.L. c. 151A, § 25(e), provided the claimant is receiving benefits pursuant to a determination made under M.G.L. c. 151A, §§ 39 through 42.

(d) No claimant participating in an approved training program shall be considered ineligible for benefits because of absence from training if such absence is due to an illness or disability. However, this exception shall apply to not more than three weeks within a benefit year, including weeks in the benefit year for which benefits were paid prior to entry into the training program.

(e) A claimant participating in an approved training program who is absent for three or more days in a week and who does not meet the provisions of 430 CMR 9.04(1)(d) shall be ineligible for benefits for that week.

(f) A claimant participating in an approved training program who is absent for less than three days in a week shall be charged with lost time if:

1. the claimant is absent due to an illness or disability and such absence exceeds the three week exception under M.G.L. c. 151A, § 24 and 430 CMR 9.04(1)(d); or
2. the claimant is participating in a training program beyond his or her benefit year; or
3. the claimant is absent for reasons other than illness or disability.

(g) Lost time shall be computed at 4% of the claimant's weekly benefit rate for each hour lost. When the claimant is absent for less than a day, lost time shall be determined on a pro rata basis, using as a basis for such determination an eight hour day and a five day week.

(2) A claimant who applies to the Director for training shall have his or her total benefits extended up to 26 times his or her benefit rate after exhaustion of all Extended Benefits, Extended Unemployment Compensation, or other Federal extended unemployment benefits. Such benefits shall be paid only during the period the individual is attending the training course approved by the Director under 430 CMR 9.06 and if:

- (a) the claimant meets the eligibility criteria of 430 CMR 9.04(1);
- (b) the claimant, including a claimant eligible pursuant to 430 CMR 9.04(1)(b)1., applies to the Director for enrollment in training within the 15 week period, or within the tolled or extended period allowed in 430 CMR 9.06;
- (c) the claimant applies for enrollment in a training program that has been approved or is approvable under the standards set forth in 430 CMR 9.05(2) or (3), provided that, if a claimant has been approved to attend a Basic Skills training program coupled with vocational training, such individual does not have to reapply for approval upon completion of the Basic Skills program; and
- (d) the claimant begins training in the first available appropriate program, which is affordable for the claimant or for which funding is available, for which he or she has been approved which is located within a reasonable distance from the claimant's residence. In no case may the claimant commence training after the expiration of a claimant's benefit year.

#### 9.05: Approval of Training Programs (Courses)

(1) Training must prepare the claimant for marketable skills in a demand occupation, in the claimant's L.M.A. or any other L.M.A to which the claimant wishes to relocate or commute.

(2) Training programs must meet certain measurable standards as set forth in 430 CMR 9.05(2)(a) through (e):

- (a) Have achieved or, if a new program, show reasonable expectation of achieving an average placement rate in full time or part time (20 hours per week or more) training related employment of 70% during the most recent 12 month period for which such data is available, except that if the state-wide total unemployment rate is greater than 7.0% at the time of application, the placement rate shall be no less than 60% during the most recent 12 month period for which such data is available. If the unemployment rate is greater than 8.0%, the

430 CMR: DIVISION OF UNEMPLOYMENT ASSISTANCE

9.05: continued

Director shall determine a lower, appropriate placement rate. Other evidence that successful completion of the program is likely to lead to reemployment may also be provided and shall be considered.

(b) Be a full-time course, providing a minimum of at least 20 hours of supervised classroom training per week; provided, however, that:

1. if the program is offered by a community college, college, or university, this requirement shall be met if the program provides a minimum of 12 credits each semester or the equivalent; and provided further that:

2. if the program is offered as part practicum or internship and part classroom hours, the program will be approved only for the time needed to complete state or federal certification or licensing requirements, or the time deemed necessary by the Director to allow the claimant to become employable in the occupation for which the training has been provided; and provided further that:

3. if the program is an E.S.O.L. program that is less than 20 hours, and no program of 20 or more hours is available within a reasonable distance from the claimant's residence, the Director may waive the 20 hour limitation.

(c) Be completed within two years, or within three years if the program combines Basic Skills with vocational or industrial training. No E.S.O.L. program shall be denied approval solely because it is not combined with another program.

(d) Be offered by a training institution which has paid all contributions, payments in lieu of contributions, and interest or penalty charges due under M.G.L. c. 151A.

(e) Any training program approved under WIA shall be deemed an approved training program under 430 CMR 9.00.

(3) The Director may, within his or her discretion waive the applicability of 430 CMR 9.05(2)(c) for a training course or program sponsored by a Pilot or Demonstration Project if he or she determines that:

(a) The proposed course or program supports the goals of the M.G.L. c. 151A, c. 30(c) program as stated in 430 CMR 9.05(1);

(b) The proposed course or program meets the eligibility criteria of 430 CMR 9.05(2) except for 430 CMR 9.05(2)(c);

(c) An application for waiver is submitted in writing which demonstrates to the Director's satisfaction that the proposed course or program:

1. supports the goals of the M.G.L. c. 151A, c. 30(c) program;

2. meets the criteria of 430 CMR 9.05(2) except for 430 CMR 9.05(2)(c); and

3. meets the criteria of the pilot or demonstration project.

9.06: Application Procedure

(1) Application for approval under M.G.L. c. 151A, § 30(c), shall be made in writing, on a form provided by DUA. The date a claimant submits the completed form to DUA shall be deemed to be the date of application for training for the purpose of 430 CMR 9.00. Submission of additional documents shall not be required for making the application, but may be required before a determination is made.

(2) DUA shall make every reasonable effort to approve or deny the claimant's application no later than five working days after submission of the application.

(a) If the application is approved prior to the commencement of the program in question, such approval shall be preliminary, and shall become final upon the claimant's being in attendance at the program and being otherwise eligible for benefits.

(b) A claimant who begins a training program prior to final approval of an application shall not be eligible for waiver under 430 CMR 9.07(2) of the requirements for work search or availability for suitable work from the first date of such attendance until the date claimant's application is approved.

(c) The application will be deemed complete:

1. on the date the completed application form provided by DUA is received by DUA if the training program has already been approved under 430 CMR 9.05 or WIA;

## 430 CMR: DIVISION OF UNEMPLOYMENT ASSISTANCE

9.06: continued

2. on the date all documentation and information regarding the training program which has been required by DUA is received by DUA if the program has not previously been approved, provided that all such information and documentation must be received no later than five working days prior to the commencement of the program.
- (3) The 15-week application period shall be tolled or extended, except that in no event shall the 15 week period be tolled or extended beyond the claimant's benefit year, if any of the following conditions occur:
  - (a) If the training program for which a claimant has applied cannot or refuses to reasonably accommodate an individual who is a qualified individual with a disability pursuant to the Americans with Disabilities Act (ADA), then the 15 week period shall be tolled from the date the claimant applied to DUA until the date of the denial by DUA of the training program.
  - (b) If DUA denies a claimant's application after the period provided in 430 CMR 9.06(3) because the training program applied for does not meet the requirements of 430 CMR 9.05 and the claimant's opportunity for reapplying for training during the 15 week period is thereby decreased by two weeks or more, then the 15 week period shall be tolled from the date the claimant first applied for training until the date of DUA's denial.
  - (c) If DUA fails to comply with the provision of 430 CMR 9.07(3), or if DWD, DUA, or their agents have given the claimant misinformation that causes the claimant to miss the 15-week deadline, the 15 week period shall be tolled until the date the claimant learns of the eligibility requirements, including application deadlines, for training benefits provided in M.G.L. c. 151A, § 30(c).
  - (d) If economic circumstances permit the provision of extended benefits or any other emergency unemployment benefits funded in whole or in part by the federal government, the 15 week application period shall be extended until the end of the claimant's benefit year.
  - (e) If a claimant who is not permanently separated at the time of the initial claim becomes permanently separated during the course of his or her benefit year, the 15 week period shall commence on the date the claimant becomes permanently separated.
  - (f) If a claimant is unable to seek, apply for or attend training because of the need to address the physical, psychological or legal effects of domestic violence as defined in M.G.L. c. 151A, § 1(g 1/2 ), the 15 week period shall commence or resume on the date the claimant becomes able to seek, apply for and attend training.
  - (g) if a claimant has been separated from a declining occupation, or if the claimant has been involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations and the claimant is training for a high-demand occupation, the 15 week application period shall be extended until the end of the claimant's benefit year.
- (4) Claimants may participate in only one training program in a benefit year. A Basic Skills training program coupled with vocational or industrial training approved under 430 CMR 9.04(2)(b), or a Certificate Program shall constitute one training program.
- (5) A notice of denial of application shall include a statement of the reason(s) for the denial, the specific facts upon which the denial is based, citation of the statute or regulation(s) upon which the denial is based, and an explanation of the claimant's right to appeal, right to be represented, and the manner and time limits for filing an appeal under M.G.L. c. 151A, § 39.

### 9.07: Rights and Obligations of Program Participants

- (1) Benefits provided under M.G.L. c. 151A, § 30(c) are payable only while the claimant is in attendance at the training course. If the claimant finishes training or ceases to attend training, the claimant will be entitled to the remaining regular unemployment insurance benefit credit if otherwise eligible. In order to qualify for benefits under M.G.L. c. 151A, § 30(c), a claimant must begin training prior to the expiration of the benefit year. However, in order to be eligible for up to 26 weeks of additional training benefits, a claimant must apply to the Director for training no later than the 15th compensable week of a claim, subject to the tolling provisions of the 430 CMR 9.06. If a claimant is approved to collect benefits under M.G.L. c. 151A, § 30(c) and the benefit year then expires while the claimant is still attending training and the claimant is not eligible to file a new benefit year claim, the claimant may continue to collect benefits

430 CMR: DIVISION OF UNEMPLOYMENT ASSISTANCE

9.07: continued

under M.G.L. c. 151A, § 30(c) beyond the benefit year expiration date. If the claimant is eligible to file for a new benefit year claim, the new benefit year claim must be filed and the facts will be investigated and another determination of entitlement to training benefits under M.G.L. c. 151A, § 30(c) will be made on the new claim.

(2) Participants approved under M.G.L. c. 151A, § 30(c) shall not be required to engage in work search activities, and shall be deemed available for suitable work during any week in which the participant is in attendance at the approved training program, or during an approved break in training pursuant to 430 CMR 9.08.

(3) DUA shall provide each claimant with written information regarding eligibility for training benefits, including notification that application for such training benefits must be made no later than the first 15 compensable weeks after receipt of such written information, or within an extended filing period under 430 CMR 9.06 in order to be eligible for the benefit extension of up to 26 times their benefit rate under 430 CMR 9.04(2). Such notification shall inform the claimant that the application for training benefits must be filed by the end of the benefit year where the filing period is extended by reason of the application of 430 CMR 9.06(3)(d) or 430 CMR 9.06(3)(g).

9.08: Training Breaks

Claimants may be paid benefits during the following breaks if they were attending training immediately prior to the break and will be in attendance immediately after the break:

(1) Pre-scheduled breaks within a semester, for holidays or other purposes.

(2) Semester or other similar breaks that do not exceed three weeks.

9.09: Qualified Individuals with a Disability

Nothing in 430 CMR 9.01 through 9.08 shall be deemed to exclude a qualified individual with a disability from training benefits under M.G.L. c. 151A, § 30(c).

REGULATORY AUTHORITY

430 CMR 9.00: M.G.L. c. 151A, § 30(c) and c. 23, § 9J.

NON-TEXT PAGE