



**DEPARTMENT OF UNEMPLOYMENT ASSISTANCE
UI POLICY & PERFORMANCE
INTEROFFICE MEMORANDUM**

Date: February 19, 2020

Rescission(s): None

Reference No.: UIPP 2020.03

TO: All Senior Staff Directors, DUA Managers, Career Center Field Operations Directors, Call Center Staff

FROM: Emmy Patronick, Director of Policy and Performance

SUBJECT: Changes to the Training Opportunities Program

1. PURPOSE:

To provide guidance to DUA staff regarding the changes to 430 CMR 9.00: Training Benefits under M.G.L. C. 151A, § 30 (c)

2. BACKGROUND:

430 CMR 9.00: Training Benefits under M.G.L. C. 151A, § 30 (c) was updated and changes became effective on September 20, 2019.

Chapter 151A, § 30(c) (Training Opportunities Program) allows claimants to receive UI benefits while they are in approved training to obtain employment. Claimants attending DUA-approved training need not meet availability requirements under § 24(b) of the Law, are exempt from work search activities while attending approved training and may refuse offers of suitable employment under § 25(c) of the Law.

The following key changes to the regulations were implemented:

General: The sections of the new regulations have different numbering. Section 9.02 "Scope and Applicability" was combined with Section 9.01. All of the remaining

sections were renumbered. For example, the section containing definitions that was formerly Section 9.03, is now Section 9.02.

9.02 Definitions:

Some important definitions have been added to clarify when an application is timely:

The new definition of “application period” makes it clear how to count the 20-week period. “The 20-week application period commences with the week the first payment is issued to a claimant, and continues for each week payment is issued thereafter unless the period is tolled by regulation or waived for good cause under 430 CMR 9.05.”

The new definition also states that “if a determination denying regular benefits under M.G.L. c. 15 1A, § 39, 41 or 42 is reversed and regular benefits are awarded, however, the application period begins the week after the notice of such reversal is sent to the claimant. The claimant shall not be barred from applying for and commencing training, even if the benefit year has expired, so long as the claimant applies for training within 21 weeks of the notice of reversal and commences training with the first available program.”

The updated regulations also define when an application is deemed filed for purposes of determining if it is timely.

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

In order to be eligible for Section 30 benefits, an individual must be “permanently separated” from employment. 430 CMR 9.03 (2) now defines “permanently separated” as being 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).”

430 CMR 9.03 (3) modifies the requirement that a claimant show that he or she is unlikely to obtain suitable employment based on the claimant’s most recently utilized job skills. Two categories of claimants who are not required to make such a showing were added:

- The claimant has applied for or is participating in a course or training authorized by the Workforce Investment and Opportunity Act (WIOA) 430 CMR 9.03; or
- The claimant is in need of Basic Skills training or any other training in combination with Basic Skills.

Additionally, 9.03 (6) states that enrollment, regular attendance, and satisfactory progress in the selected training program is required for continued eligibility in the training program. Stated in 9.03 (11,) in most circumstances, the claimant shall commence training prior to expiration of a claimant's benefit year. The regulations now make it clear that in some cases, for instance where there are extended or emergency UI benefits, or where there is an applicable **tolling** provision (discussed below,) the claimant may commence training beyond the end of the benefit year.

9.04: Approval of Training Programs:

Section 9.04 (2) contains the requirement that the programs be completed within two years. The regulation was clarified to state when the two years starts to run and adds some limited circumstances in which the training may extend beyond two years.

Section 9.04 (2)(c) makes it clear that the training must be completed within two years of the date the claimant's application is approved or the date the claimant commences the approved training, whichever is later. If the program combines Basic Skills with vocational or industrial training, the claimant has up to three years to complete the training. Claimants who need a reasonable accommodation due to a disability may also take longer than two years to complete a program.

Section 9.04 (2)(d) authorized apprenticeship programs approved by the Division of Apprenticeship Standards and certain on-the-job training programs to be approvable programs. Because these types of programs may contain substantial periods of work rather than classroom training, those programs may extend beyond two years.

Please note also that the application of lost time in Section 9.04(f) and (g) has been removed. Claimants are no longer eligible for lost time and are subject to complete disqualification in any week they do not satisfactorily attend training, if they are not eligible for approved illness exceptions.

9.05: Application Procedure:

Sections (1,) (2,) (6,) (7,) and (8) have changes and/or additions:

Section 9.05 (1) now specifies when an application is deemed "filed" and "complete."
"The application date shall be deemed to be the date the claimant filed a completed application with the Department, as defined in 430 CMR 9.05(5). Submission of additional documents or information shall not be required for purposes of determining the date of application..."

This section now contains an exception to the rule that an application must be complete before it is deemed filed: claimants eligible for, or awaiting a determination of eligibility for, National Dislocated Worker Grants (NDWG), may file a placeholder application, in the form and manner prescribed by the Director, which shall preserve their rights under M.G.L. 151A, § 30(c) until such time as their NDWG application is approved or denied. If an NDWG application is approved, the claimant must file additional documentation to complete the application under 430 CMR 9.05 within two calendar weeks of NDWG approval.

Section 9.05 (2) now states that the Department shall make every reasonable effort to approve or deny the claimant's application no later than 15 working days after submission of the application (changed from 5 to 15 working days.)

Section 9.05 (6) contains some additional tolling provisions. The 20-week application period shall be **tolled** if the Director concludes that any of the following conditions apply:

(b) If the Department denies a claimant's application and the claimant's opportunity for reapplying for training during the 20-week application period will expire in fewer than two weeks, or has expired, then it shall be extended once for up to two weeks from the date notification is sent by the Department.

(c) If the Department denies a claim for regular benefits and that denial is reversed by the Hearings Department, Board of Review, or Court, the 20-week application period begins the week after the notice of such reversal is sent to the claimant. If the decision reversing the denial of benefits is made after the 31st week of the claimant's benefit year, the 20-week application period shall be extended to 21 weeks after the date notification of reversal is sent by the Hearings Department, Board of Review, or the Court, even if the benefit year has expired.

(d) The Department shall provide each claimant with written information regarding eligibility for training benefits under M.G.L. c. 151A, § 30(c), including notice that application for such training benefits must be filed within the 20-week application period in order to be eligible unless the 20-week application period has been tolled or waived for good cause. If the claimant has indicated that the claimant's primary language is one of the languages identified in M.G.L. c. 151A, § 62A, such notice must be provided to the claimant in that language. If the Department fails to do so, or if the Department, or its agents, gave the claimant misinformation that caused the claimant not to file a complete application for training benefits within the 20-week application period, the running of the

application period shall be tolled until the date the claimant learns of the eligibility requirements, including application deadlines, for M.G.L. 151A, §30(c) training benefits, provided that the claimant accurately identifies to the satisfaction of the Director the date and source of the misinformation in situations where misinformation is cited for tolling.

Section 9.05 (7) contains good cause waiver provisions, which are new to the regulations. The 20-week application period shall be **waived** for good cause if a claimant establishes to the satisfaction of the Director that circumstances beyond the claimant's control prevented the application from being filed within the prescribed time period. Such circumstances may include, but are not limited to, the following:

- (a) The claimant did not understand the deadline due to illiteracy, mental disability, or limited English proficiency where the claimant's language is not one included in M.G.L. c. 151A, § 62A;
- (b) A natural catastrophe such as a fire, flood, or hurricane;
- (c) Death or serious illness of an immediate family or household member;
- (d) The claimant's training provider failed to act in a reasonably prompt manner;
- or
- (e) The Department or its agents discouraged the claimant from applying for training under M.G.L. c. 151A, § 30(c).

A waiver for good cause may not be granted after the end of the benefit year, except as otherwise permitted under M.G.L. c. 151A, § 30(c) or 430 CMR 9.00.

Tolling and a **Waiver** are different. **Tolling** causes a time period to stop running. For example, if a claimant does not receive notice of his or her right to apply for training benefits, the 20-week application period does not start until the claimant receives such notice.

A **Waiver** is granted, however, when the 20-week period has elapsed, but the claimant has established good cause for missing it. For example, if a claimant has established that circumstances beyond his/her control, such as a death or serious illness of an immediate family member, prevented the application from being filed in the time period, a waiver will be granted.

9.05 (8) now contains an exception to the general rule that claimant may participate in only one training program in a benefit year. If circumstances beyond the claimant's control make participation, or continued participation, in the original program *impossible*, a claimant may seek approval to participate in a different training program.

The new application shall be deemed to have been filed on the date the completed application for the originally approved program was filed.

3. ACTION:

Effective immediately, the new regulations set forth should be applied when determining claimants' eligibility for the Training Opportunities program. Training on these changes will be forthcoming.

4. QUESTIONS:

Please contact the UI Policy & Performance Department at (617) 626-6422.