



DEPARTMENT OF UNEMPLOYMENT ASSISTANCE  
UI POLICY & PERFORMANCE  
INTEROFFICE MEMORANDUM

Date: November 2, 2020

Rescission(s): None

Reference No.: UIPP 2020.13

**TO:** All DUA Managers and Staff

**FROM:** Emmy Patronick, Director of Policy and Performance

**SUBJECT:** Application of the emergency regulations in relation to stand-by status

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**1. PURPOSE:**

To provide guidance regarding the application of the emergency regulations in relation to stand-by status.

**2. ATTACHMENTS:**

- 430 CMR 22.00 (effective 3/16/2020)
- 430 CMR 22.00 (effective 8/4/2020)

**3. BACKGROUND:**

Under normal circumstances, Massachusetts state law places limitations on the amount of time an individual may be considered “job attached” and relieved from the work search requirements up to four weeks, and only if there is a definite return to work date.

The Department of Labor allowed certain flexibilities to be applied to normal unemployment concepts in order to adapt to the COVID-19 emergency. As a result, DUA promulgated emergency regulations, 430 CMR 22.00 which were filed and became effective on March 16.<sup>1</sup> The emergency regulations created a

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<sup>1</sup> Emergency regulations become effective on the date they are filed with the Secretary of State, and they expire 90 days after filing unless steps are taken to make them permanent.

“stand-by status.” The specific language relating to the establishment of stand-by status is set forth below.

### 22.03: Establishment of Standby Status

#### *(1) Standby Status:*

- (a) “Standby” refers to a claimant who is temporarily unemployed because of a lack of work due to COVID-19, with an expected return-to-work date.*
- (b) The requirement to search for work is fulfilled so long as the claimant is on standby and takes reasonable measures to maintain contact with the employer.*
- (c) The claimant must be available for all hours of suitable work offered by the claimant’s employer.*

Standby status was limited in the regulations to 4 weeks automatically, and 8 weeks at the employer’s request. Under the Director’s authority, however, the time limitation on the standby period and the necessity of an employer request were waived.

So, under the first set of regulations, an individual may be on standby for the entire period during which the emergency regulations were in effect from March 16, 2020 - June 14, 2020, so long as the employer meets the requirements above.

The emergency regulations filed on March 16, 2020 expired on June 15, 2020.

**In order to treat all claimants fairly, the agency has, by policy, extended all of the terms of the first set of emergency regulations to cover the gap between the two sets of emergency regulations, which is the period between June 14, 2020 and August 3, 2020. Claims falling between those dates should be determined under the rules expressed in the first set of emergency regulations.**

On August 4, 2020, a second version of the emergency regulations was filed. Thereafter, the second set of emergency regulations are applied until its expiration date on November 4, 2020. <sup>2</sup>

Standby status in the second set of regulations is different:

### 23.03: Standby Status:

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<sup>2</sup> We do not anticipate issuing a third set of emergency regulations at this time.

- (1) *Requirements:*
  - (a) *Standby refers to a claimant who is temporarily unemployed because of a lack of work due to COVID-19, with an expected return-to-work date.*
  - (b) *The requirement to search for work is fulfilled so long as the claimant is on standby status and takes reasonable measures to maintain contact with the employer.*
  - (c) *The claimant must be available for all hours of suitable work offered by the claimant's employer.*
- (2) *Duration:*
  - (a) *A claimant is presumed to be on standby status during any period in which the claimant is "unemployed" as defined in M.G.L. c. 151A, § 1(r) and the sole cause of the claimant's unemployment is that the employer is temporarily closed or operating at reduced staffing levels due to COVID-19;*
  - (b) *If the employer re-opens and offers the claimant "suitable work," as defined in 430 CMR 22.05, and the claimant fails or refuses to return to work, the claimant will be deemed to have voluntarily resigned from employment.*
  - (c) *If the employer re-opens during the effective period of 430 CMR 22.00 and does not offer the claimant suitable work, the claimant will be presumed to remain on standby status until the employer offers suitable work to the claimant, or gives notice to the claimant that the claimant is separated from employment.*

As a practical matter, claimants who attest that they are unemployed due to having been impacted by COVID-19 and intend to return to their former employer are automatically considered to be on standby status. A claimant could remain on standby potentially for the entire period from March 16, 2020- November 4, 2020, so long as the claimant fulfills the requirements.

In all cases, however, the claimant must act reasonably.

**4. ACTION:**

DUA should apply these emergency regulations as it relates to stand-by status.

**5. QUESTIONS:**

Please email [UIPolicyandPerformance@detma.org](mailto:UIPolicyandPerformance@detma.org)