



DEPARTMENT OF UNEMPLOYMENT ASSISTANCE
UI POLICY & PERFORMANCE
INTEROFFICE MEMORANDUM

Date: January 29, 2021

Rescission(s): None

Reference No.: UIPP 2021.03

TO: All DUA Managers and Staff

FROM: Emmy Patronick, Director of Policy and Performance¹

SUBJECT: Flexibilities implemented by MA DUA as a result of the COVID-19 Pandemic for the period March 8- December 27, 2020

1. PURPOSE:

To memorialize the changes to DUA policies and procedures that were made as a result of new legislation, regulations and guidance enacted or issued to address the COVID-19 pandemic.

2. ATTACHMENTS:

- UIPL 10-20
- UIPP 2020.05
- 430 CMR 22.00 (effective 3/16/2020)
- 430 CMR 22.00 (effective 8/4/2020)
- UIPL 13-20
- Procedure Guide issued 4/7/2020,
- Call Center Procedure Update 6/29/2020
- COVID-19 Scenarios issued by UIPP 7/17/2020
- UIPP 2020.12 (October 8, 2020)
- Chart of voided issues
- UIPP 2020.13 (November 2, 2020)
- UIPP 2020.14 (November 25, 2020)
- UIPP 2020.15 (November 25, 2020)
- HUP EB guidance issued 12/3/2020
- UIPP 2021.02 (January 22, 2021)

¹ A special thank you to Anne Berlin, Carolyn Hunt and Martha Wishart, who all made considerable contributions to this memorandum.

3. **BACKGROUND:**

COVID-19 began spreading across the world in the early months of 2020 and was recognized as a threat to Massachusetts in late February and early March. On March 10, Governor Charlie Baker declared a state of emergency due to COVID-19. See Executive Order No. 591. Pursuant to that Executive Order, much of the Massachusetts economy was shut down.²

On March 11, the World Health Organization declared COVID-19 a pandemic.

UIPL 10-20 provided flexibility regarding Able and Available requirements:

On March 12, The Department of Labor (DOL) issued UIPL 10-20. The UIPL allowed for flexibility on certain basic requirements of UI law to address the COVID-19 emergency.

Many claimants who separated from work due to COVID-19 would otherwise be unable to meet the basic requirements that they be capable of (able) and available for work as those concepts are normally applied. These flexibilities apply only to individuals affected by COVID-19.

In order to assist claimants affected by COVID-19, UIPL 10-20 emphasized that, while the UI program requires individuals to be able and available for work, and to actively seek work,³ states have significant flexibility in implementing the requirements. States also have significant flexibility in determining what constitutes "suitable work." The UIPL specifically stated that "an individual may be quarantined or otherwise affected by COVID-19 but still eligible for UC, depending on state law."

Further, under the federal regulations governing unemployment benefits,⁴ a state may consider an individual available for work under any of the following circumstances:

² For example, on March 23, Governor Baker issued COVID-19 Order No. 13, closing all non-essential businesses effective immediately. The Department of Health also issued Safer at Home advisories, recommending all individuals limit travel outside the home. Schools and daycares were also closed as a result of the COVID-19 emergency. Because of these closures, Massachusetts' initial claims for unemployment benefits increased to levels never previously seen.

³ 42 USC 503(a)(12) (Section 303(a)(12) of the Social Security Act (SSA)).

⁴ 20 CFR 604.5(a).

- (1) The individual is available for any work for all or a portion of the week claimed, provided that any limitation placed by the individual on his or her availability does not constitute a withdrawal from the labor market.
- (2) The individual limits his or her availability to work which is suitable for such individual as determined under the State UC law, provided the State law definition of suitable work does not permit the individual to limit his or her availability in such a way that the individual has withdrawn from the labor market . . .
- (3) The individual is on temporary lay-off and is available to work only for the employer that has temporarily laid off the individual.

As stated above, the UIPL also pointed out that states could expand their interpretation of suitable work. “The UC program is designed to provide temporary wage insurance for individuals who are unemployed due to a lack of suitable work. The [able and available requirements] implement this design by testing whether the fact that an individual did not work for any week was involuntary due to the unavailability of suitable work.”⁵

On March 13, DUA issued UIPP memo 2020.05 to give guidance on how to apply the principles set forth in UIPL 10-20.

Further, in order to provide benefits to as many claimants as possible under the flexibility allowed by the UIPL, DUA promulgated emergency regulations.

Emergency Regulations (first set) issued by MA DUA, effective March 16, 2020:

Emergency regulations, 430 CMR 22.00 were filed and became effective on March 16.⁶ The emergency regulations made two important changes intended to carry out the purposes of UIPL 10-20.

First, as the UIPL explained, an individual need not quit or be discharged to potentially be eligible for benefits. But Massachusetts state law places limitations on the amount of time an individual may be considered “job attached” and

⁵ 72 Fed. Reg. 1890 (Jan. 16, 2007).

⁶ 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. The emergency regulations filed on March 16 expired on June 15, 2020. On August 4, 2020, a second version of the emergency regulations was filed. In order to treat all claimants fairly, the agency decided to adopt the interpretations set forth in the emergency regulations during the gap between June 14 and August 3, 2020. Claims falling between those dates should be determined under the rules expressed in the first set of emergency regulations. The second set of emergency regulations expired on November 2, 2020.

relieved from the work search requirements to four weeks, and only if there is a definite return to work date.

As a result, DUA promulgated emergency regulations, 430 CMR 22.00, creating a “stand-by status.” The specific language 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.⁷*

Second, the emergency regulations provided an expanded definition of suitable work as follows:

22.04: Suitable work: (Section 22.05 in the second set of emergency regs)

In determining whether work is suitable the department will consider whether a claimant has a condition that prevents the claimant from performing the essential functions of the job without a substantial risk to the claimant’s health or safety. For purposes of this section, “condition” means a request to a claimant from an employer, a medical professional, a local health official, or any civil authority that the claimant or a member of the claimant’s immediate family or household member be isolated or quarantined as a consequence of COVID-19, even if the claimant or the claimant’s immediate family or household member has not actually been diagnosed with COVID-19.

Note that 22.03, the establishment of standby status, applies only to claimants

⁷ Standby status was initially limited in time to 4 weeks automatically, and 8 weeks at the employer’s request. Under the Director’s authority, the application of the stand-by 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. By policy, the same principles apply to claims between June 15 and August 3. Thereafter, the second set of emergency regulations are applied. Claimants who attest 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, potentially for the duration of the emergency regulations, March 16 – November 2, 2020. See UIPP 2020.13.

whose lack of work is due to COVID-19, whereas the inability to accept suitable work may be a factor regardless of why the claimant was separated from employment.

FFRCRA mandates additional flexibility:

On March 18, The Families First Coronavirus Response Act (FFCRA),⁸ was signed into law. The FFCRA, in Division D, contains the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISSA). EUISSA provided for emergency grants to states for additional program funding and set forth the requirements for obtaining the funds.

EUISSA, section 4102(b) states: “notwithstanding any other law, if a state modifies its unemployment compensation law and policies with respect to work search, waiting week, good cause, or employer experience rating on an emergency basis as needed to respond to the spread of COVID-19, such modification shall be disregarded for the purposes of applying section 303 of the [SSA] and section 3304 of [FUTA] to such state law.

Massachusetts enacted a change to G.L. c. 151A, waiving the waiting week, effective March 10, 2020.⁹

UIPL 13-20 provided further direction regarding FFCRA flexibility:

On March 22, USDOL issued UIPL 13-20, providing further information regarding requirements for application and receipt of the FFCRA Emergency Administrative Grants. The UIPL specifically required states to temporarily ease state and federal eligibility requirements on claims as a condition of receipt of the emergency grants.

To receive the emergency grant funds, a state must, among other things, demonstrate “steps it has taken or will take to ease eligibility requirements and access to UC, including modifying or suspending work search requirements and the waiting week, and non-charging employers directly impacted by COVID-19 due to an illness in the workplace or direction from a public health official to isolate or quarantine workers.”

The additional temporary emergency flexibilities relating to waiver of the wait week, modifications to work search provisions and expansion of good cause

⁸ Pub. L. 116-127

⁹ Chapter 40 of the Acts of 2020. The statute expires 90 days after the termination of the governor’s March 10, 2020 declaration of a state of emergency.

are applicable to all claimants¹⁰ collecting UC during the COVID-19 emergency.

Good Cause flexibility:

Good cause is a concept that appears in many areas throughout UI. As stated above, USDOL has allowed the states to exercise flexibility in applying good cause during the COVID-19 pandemic. Because of that, DUA has issued individual policies or regulations addressing these issues in detail. Below is a list of issues to which good cause may be applicable and where those have been addressed by DUA:

- a. Voluntary job separations (COVID-19 Scenarios issued by UIPP on 7/17/2020)
- b. Able-and-available requirements, including suitability (see UIPP memos 2020.05 and 2020.12)
- c. Reporting requirements (Emergency regulations)
- d. Allowable reasons for extending deadlines (Emergency regulations and court ordered extension for appeals)
- e. Suspending in-person reporting requirements (Gov.'s order) Predates retroactive to March 8, 2020 (Procedure Guide issued 4/7/2020, and Call Center Procedure Update dated 6/29/2020)
- f. Other issues identified by the state as eligible for flexibility

Staff are reminded to be flexible in applying any good cause provisions where the claimant has been impacted by COVID-19.

Suitable Work flexibility:

In UIPP 2020.12, released on October 8, 2020, staff were reminded that claimants need only be available for suitable work, which the claimant has no good cause for refusing, under §§ 24(b) and 25(c). Employment is *not* suitable if it poses a substantial risk to the claimant's health or safety, or the claimant's health or safety would be compromised due to an underlying medical or other condition if the claimant accepted the employment, or the claimant has as reasonable belief that one of the preceding factors applies. Good cause reasons to refuse otherwise suitable work include childcare or other dependent care responsibilities caused by COVID-19 related closures. Thus, if a claimant was unable to accept an offer of employment because the claimant had to care for a family or household member for whom no alternate care was available due to COVID-19, the claimant is not disqualified under § 25(c) for refusing an offer of suitable employment. Also, because claimant need only be available for any work for all

¹⁰ The flexibilities relating to employers are limited to those directly impacted by COVID-19.

or a portion of the week claimed, a claimant who is caring for a child or adult at home may be considered available for work if the claimant could work from home via a teleworking or remote set-up.¹¹

UIPP 2020.14 was released on November 25, 2020, extending the COVID-19 related flexibilities to leave of absence / total or partial unemployment issues under §§ 29(a) and 1(r), and to involuntary quits for urgent, compelling, and necessitous reasons under § 25(e) that were related to COVID-19. This policy memo reminded staff that the critical issue in determining whether or not a claimant is in total unemployment is whether the claimant is receiving any wages or remuneration, not whether the claimant is still job-attached. Regardless of whether a leave of absence or furlough was initiated by the claimant or the employer, and regardless of whether the leave is for a definite or indefinite period of time, a claimant on any type of unpaid leave is not disqualified under §§ 29(a) and 1(r), so long as the reason for the claimant's inability to work is related to COVID-19. The same applies to claimants in partial unemployment. Staff were also informed that DUA is temporarily allowing claimants to limit their availability to part-time for COVID-19 related reasons, in addition to the other reasons listed in the regulations.

UIPP 2020.15 notified staff that DUA was waiving work search requirements for all claimants requesting benefits during the COVID-19 emergency, so long as claimants remain ready to return to work once the pandemic measures have been lifted.

NOTE: UIPP 2020.14 and 2020.15 are effective retroactively to the beginning of the pandemic emergency, which was March 8, 2020. See UIPP 2021.02.

COVID-19 related Employer Charge Changes:

As stated above, EUISSA allowed states to alter their statutes to provide for non-charging employers directly impacted by COVID-19 due to an illness in the workplace or direction from a public health official to isolate or quarantine workers.

¹¹ It does not matter whether the claimant has previously worked remotely. If a claimant would be able to perform some kind of work from home for some portion of the week, the claimant is considered available for work. So, a former food server who is caring for children at home and who would be able to accept a job answering or making phone calls at some point during the week would be considered able and available.

Massachusetts changed its statute, effective March 10, to **not** charge contributory employers' for COVID-19 related claims, and **not** to count those claims to the employers' experience rates.¹²

Extended Benefits (EB) and HUP EB (High Unemployment Period):

EB triggered "on" in May 2020. Claimants were required to exhaust all weeks of PEUC, so the first date upon which claimants were paid EB was the week ending August 8, 2020. At that time, the maximum duration of EB benefits was 13 weeks. In November 2020, the Massachusetts Legislature amended the EB law to take advantage of an alternate trigger option available under federal law.¹³ This allowed eligible claimants to collect an additional seven weeks of EB, for a total of 20 weeks, during the period of high unemployment. UIPP issued HUP EB guidance (not in the form of a UIPP memo) on December 3, 2020 (attached).

Operational changes:

Voiding of Certain Issues:

In order to comply with federal directives and changes to the law, DUA needed to identify COVID-19 related claims. On March 21, 2020, a "COVID-19 question" was added to the UI claim.

Prior to system implementation of the COVID-19 question, DUA presumed that any claimant who *filed* an initial or reopened claim effective the week of 3/08/20 and after who was not presented with the COVID-19 question would be considered a COVID-19 claim.

Claims *filed* on or after 3/21/2020, when the COVID-19 question was implemented can be identified as either COVID-19 claims or non-COVID-19 claims.

Due to the enormous influx of claims, and applying the federal flexibilities, DUA voided the following issues on **all** claims filed between 3/8/2020 and 3/21/2020, and on identified COVID-19 claims thereafter:

- ⊙ Actively seeking
- ⊙ Availability
- ⊙ Capability
- ⊙ Confidential

¹² Chapter 81 of the Acts of 2020. Reimbursable employers are charged 50% of charges for their employees' COVID-19 related claims.

¹³ St. 2020, c. 201, § 8.

- ⊙ Discharged
- ⊙ Late response
- ⊙ Leave of absence
- ⊙ Quit
- ⊙ Reasonable Assurance
- ⊙ Section 30
- ⊙ Still employed
- ⊙ Suitable work
- ⊙ Suspension

Because the claimant was being paid, and the employer was not being charged, DUA did not consider the employer to be an “aggrieved party” entitled to appeal rights.¹⁴ So correspondence and factfinding on the voided issues were not sent to either party.

The appended excel spreadsheet identifies the issues being voided and the dates voiding was ceased. Issue voiding continues on those issues identified as ongoing on the spreadsheet. As of the end of calendar year 2020, the main issues being voided were work search.

Predate flexibility:

During the period from 3/8/2020 through 6/28/2020, claimants who attested they could not file a claim in a timely manner due to **having been impacted by COVID-19** are automatically granted a predate to the effective week stated by the claimant. See Procedure Guide issued 4/7/2020, and Call Center Procedure Update dated 6/29/2020.

Suppression of Lack of Work Notices:

Due to the enormous influx of claims, and applying the federal flexibilities, DUA suppressed Lack of Work notifications for all claims from 3/8/2020 through 3/17/2020. From 3/18/2020-6/22/2020, DUA suppressed Lack of Work Notifications for COVID-19 related claims.

As of June 22, 2020, DUA resumed sending the following notices to employers on ALL claims, regardless of whether a claimant was impacted by COVID-19:

- o Lack of work notification
- o Confirmation of employment
- o Request for alternate base period wages

5. QUESTIONS:

Please email: UIPolicyandPerformance@detma.org

¹⁴ We later determined that this solution was not sufficient for reimbursable employers. A later memorandum will address steps taken to ensure reimbursable employers have due process.