



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

Date: October 14, 2021

Rescission(s): None

Reference No.: UIPP 2021.10

TO: All DUA Managers and Staff
FROM: Emmy Patronick, Director of Policy and Performance
SUBJECT: Adjudication of Separation Issues related to Vaccination Requirement

1. PURPOSE:

To provide guidance to staff on adjudication of separation issues related to failure to meet an employer's vaccination requirement(s).

2. ATTACHMENTS:

- None

3. BACKGROUND:

Currently, some workers are experiencing a requirement imposed by employers that they be vaccinated as a condition of employment. This raises new scenarios when adjudicating 25(e) issues.

If a claimant is discharged for failure to comply with a vaccination requirement; in accordance with 25(e)(2) a claimant is ineligible for benefits when they have been discharged for a knowing violation of a reasonable and uniformly enforce rule or policy, or for deliberate misconduct in willful disregard of the employing unit's interest.

If a claimant voluntarily separates from employment rather than complying with the employer's rule or policy regarding vaccination, in accordance with 25(e)(1) a claimant is ineligible for benefits unless facts establish that the separation was for good cause attributable to the employing unit or for urgent, compelling, and necessitous reasons.

4. ACTION:

Discharge

When a claimant has been discharged for failure to obtain the required vaccination(s), the fact finding must follow the standard questioning and fact pattern of 25(e)(2).

- Was there a rule?
- Did the claimant know of the rule?
- Was there a violation of the rule?
- Was the claimant consciously aware of the act and the fact that the action was a violation of the employer's rule or policy?
- Was the rule reasonable?
- Was the rule Uniformly enforced?
- Was the rule reasonably applied?

If all the above have been answered "yes", the claimant will be ineligible for benefits.

Otherwise, additional fact finding is needed.

The claimant will be ineligible for benefits unless the facts establish that the claimant's refusal of vaccination was due to a substantiated medical condition that prevented vaccination or a sincerely held religious belief, and no opportunity to request or apply for reasonable accommodation was offered by the employer.

If an employer's vaccine policy permitted such requests and a claimant's request for an exemption or accommodation was denied, Adjudicators should not "second guess" the employer's decision. Specifically, Adjudicators should not ask to review medical documentation that was already reviewed by the employer and found to be insufficient to support a medical exemption. Similarly, where an employer—through a review of documentation or an interview, or some other reasonable process—has found that an employee's professed religious belief either is not sincerely held or does not prevent the employee from being vaccinated, an Adjudicator should not attempt to overturn that decision through paper fact finding. Nor should Adjudicators permit employees to submit documentation or raise arguments that were not made at the time of the discharge.

Importantly, DUA is not the MCAD or the EEOC. Our Adjudicators are not sufficiently trained or authorized to make determinations regarding an employer's compliance with the reasonable accommodation provisions of the ADA, Title VII of the Civil Rights Act of 1964, MGL c. 151B, or any other EEO considerations or legal requirements.

Voluntary Quit

When a claimant voluntarily separates from employer rather than complying with the employer's rule or policy regarding vaccination, the fact finding must follow the standard voluntary quit questioning and fact pattern of 25(e)(1).

- Did the claimant voluntarily leave the job?
- Did the claimant have a reasonable belief that they had no choice but to leave?
- Were there urgent, compelling, and necessitous reasons for the separation?
- Did the claimant establish the separation was for good cause attributable to the employer?

When a claimant voluntarily separates from employment rather than receiving a vaccination, the separation must be viewed as a disagreement with the employer's policies or methods of operation. Unless the claimant can establish that the policy in question violates a statute, regulation or public policy, the claimant will be disqualified under 25(e)(1).

5. **QUESTIONS:** Please email UIPolicyandPerformance@detma.org