

430 CMR: DEPARTMENT OF UNEMPLOYMENT ASSISTANCE

430 CMR 12.00: SEASONAL EMPLOYMENT UNDER M.G.L. c. 151A, §§ 1, 24

Section

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12.01: Purpose

The purpose of 430 CMR 12.00 is to establish standards and procedures concerning seasonal employment and the receipt of benefits by seasonal employees pursuant to M.G.L. c. 151A, §§ 1 and 24.

12.02: Scope and Applicability

430 CMR 12.00 applies to seasonal employers and any employer who seeks seasonal status as defined in M.G.L. c. 151A, § 1(z), and to seasonal employees who apply for or receive benefits pursuant to M.G.L. c. 151A, § 24A.

12.03: Definitions

The following words and phrases shall have the following meanings unless otherwise clearly indicated by the context of 430 CMR 12.00.

Director. Director of the Department of Unemployment Assistance or the Director's designee.

Functionally Distinct Occupation. An occupation in which the assigned duties or tasks are identifiably distinct from the duties or tasks assigned to employees outside the seasonal period. Mere addition of staff to perform the same or similar duties as those performed outside the season would not be considered seasonal.

Less than 20 Weeks - a maximum of 19 calendar weeks as defined by M.G.L. c. 151A, § 1(t), plus any additional days of work which total at least one work day less than the customary work week of the employer as specified on its seasonal application.

Seasonal Claimant. An individual who was employed by a certified seasonal employer for less than 20 weeks in a calendar year and who has filed a claim for unemployment benefits.

Seasonal Determination. A certification by the Director that an employer operates all or a functionally distinct occupation within its business during a regularly recurring period(s) of less than 20 weeks in a calendar year because of the nature of the product or service or because of climatic conditions.

Seasonal Employment. Service performed by an employee for wages for a certified seasonal employer during a period or periods of less than 20 weeks in a calendar year. Any such period(s) must be certified by the Director and must include definite beginning and ending dates.

Seasonal Unemployment. An individual's unemployment during the seasonal period for which the individual was hired or during the next regularly recurring seasonal period following the seasonal period in which the individual earned wage credits, provided that the individual is able and available for the seasonal employment and the unemployment is due to a qualifying separation or the unavailability of seasonal work for that individual. Any claim for seasonal unemployment must be filed within the operating period of the seasonal employment.

12.03: continued

Seasonal Employer. An employer determined by the Director to be seasonal because it customarily operates all or a functionally distinct occupation within its business only during a regularly recurring period or periods of less than 20 weeks in a calendar year due to climatic conditions or the nature of the product or service.

Seasonal Employee. An individual who has been employed by a seasonal employer in seasonal employment during a regularly recurring period or periods of less than 20 weeks in a calendar year for all seasonal periods, and has been notified in writing by the employer at the time hired, or immediately following the seasonal determination made by the Director that the individual is performing services in seasonal employment for a seasonal employer and such employment is limited to the beginning and ending dates of the seasonal employment as certified by the Director.

12.04: Certification

(1) An employer seeking seasonal status must make a written application on forms prescribed by the Director at least 60 days prior to the beginning of the season for which the employer seeks seasonal status. Such employer shall supply any additional information as may be deemed necessary by the Director to make such determination. Applications submitted on a date which is less than 60 days from the beginning date of the season shall be denied. Such application must attest to the fact that either the entire business operation is seasonal because it will be in operation for less than 20 weeks in a calendar year, or that a functionally distinct occupation within the business is seasonal because the assigned duties or activities as a whole are identifiably distinct under the usual and customary practice of the industry and such duties or activities will be performed during a period of less than 20 weeks in a calendar year due to the climate or the nature of the product or services. Upon review of the matters set forth in the application for seasonal status, the Director shall make a determination with respect to the seasonal nature of the employer, the seasonal period or periods, and any functionally distinct occupations deemed to be seasonal.

(2) If the last day of the 60 day period described in 430 CMR 12.04(1), occurs on a Saturday, Sunday, or legal holiday, then the last date for filing shall be the next succeeding business day.

(3) Seasonal employers must keep an account of wages paid to each seasonal worker within the seasonal period so as to readily distinguish seasonal from non-seasonal wages. These wages shall be reported on a special seasonal quarterly report form as prescribed by the Director. The Director shall furnish employers with the appropriate seasonal reporting forms upon request.

(4) A seasonal employer shall give written notice to the Director if the certified seasonal employment equals or exceeds 20 weeks in a calendar year. Such notice shall be filed within five days after completion of the 20th week of employment. The Director shall redetermine the seasonal status of either the entire business or the functionally distinct occupation within the business.

(5) Any successor to a business entity deemed to be seasonal must re-apply for seasonal status if it seeks to maintain the seasonal status of its business or functionally distinct occupation within such business.

(6) Nothing in the laws or regulations regarding seasonal determinations shall be construed as relieving any employer from paying the contributions required by law on all wages paid for employment nor from making reports required by law or regulations connected with an individual's right to claim benefits provided by M.G.L. c. 151A.

(7) The Director shall make a determination or redetermination on timely applications within 60 days from receipt of the application. Whenever the Director has determined or redetermined an employer with respect to seasonal status, the employer shall be notified of such determination or redetermination, and such notice shall contain the beginning and ending dates of any applicable seasonal period or periods.

12.05: Notification to Employee

- (1) Employers who have filed an application for certification as a seasonal employer, including employers who have been determined by the Director not to be a seasonal employer but who have appealed that determination or decision in accordance with M.G.L. c. 151A, §§ 39 through 42, must post a Notice of Application for Seasonal Status on forms provided by the Director. Such employers must further give a copy of such Notice to each prospective seasonal employee prior to hire or if a current employee, at the time of application, so that such seasonal employees will be on notice that such application has been filed. In addition, if such employees are represented by a labor union, employers must notify those unions representing employees likely to be affected, that an application for seasonal status has been filed.
- (2) An employer certified by the Director as a seasonal employer shall display notices of its seasonal status conspicuously on its premises in a sufficient number of places to be available for inspection by its employees. Such notices shall be furnished by the Director.
- (3) An employer who is certified by the Director as a seasonal employer, must notify the seasonal employee in writing prior to hire, or immediately following the seasonal determination of the following:
 - (a) The employee will be or has been hired for a specific seasonal period as certified by the Director;
 - (b) The employee will be performing services in seasonal employment for a certified seasonal employer;
 - (c) Employment is limited to the beginning and ending dates of the seasonal period or periods as certified by the Director.
 - (d) If a claim for unemployment benefits is filed and denied or the amount of benefits is reduced because of a seasonal determination, the affected employee may appeal his or her designation as a seasonal employee under M.G.L. c. 151A, §§ 39 through 42.

12.06: Benefits

- (1) For benefit years beginning after January 1, 1993, benefits based on seasonal employment may be paid to an otherwise eligible individual only:
 - (a) following a non-disqualifying separation which occurs during the seasonal period for which the individual was hired; or
 - (b) during the next regularly recurring seasonal period following the seasonal period in which the individual earned his wage credits.
- (2) If a claim for benefits is filed outside the operating period of seasonal employment, benefits may be paid on the basis of non-seasonal wages only. A seasonal determination shall not affect the benefit rights of seasonal workers to collect unemployment benefits with respect to non-seasonal employment.
- (3) When there is a transfer either from seasonal to non-seasonal work or from non-seasonal to seasonal work for the same employer without break or intermission, the claimant's benefits shall be based on all wages paid by the employer.
- (4) There is no continuing employer employee relationship once a seasonal period has ended unless such seasonal employee continues in employment with the same employer following the seasonal period.
- (5) If an unemployed individual refuses a recall to a prior seasonal employer, such refusal shall be considered under M.G.L. c. 151A, § 25(c).

12.07: Appeals

Any employer notified by the Director of a determination or redetermination regarding an approval or denial of an application for seasonal employment may appeal such determination or redetermination in accordance with M.G.L. c. 151A, §§ 39 through 42.

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12.08: Effective Dates

(1) Determinations with respect to seasonal employers may be made on or after January 1, 1993. Claimants may be determined to be seasonal employees on or after that date so long as all of the provisions in 430 CMR 12.05 have been met in a timely manner.

(2) The effective date of a seasonal determination is the first day of the calendar quarter beginning after the date of the seasonal determination. Once a seasonal determination is made, the seasonal status remains unless and until a redetermination is made by the Director. No employee may be considered to be in seasonal employment until the employee has performed services for wages after the effective date of a seasonal determination as described above.

REGULATORY AUTHORITY

430 CMR 12.00: M.G.L. c. 151A, §§ 1 and 24; c. 23, § 9J.