

430 CMR 23.00: COVID 19 Emergency Regulations

EMERGENCY PREAMBLE

The Director finds that immediate adoption of these regulations is necessary to continue to address the hardship that the COVID-19 pandemic emergency has caused to workers and employers, including historically unprecedented numbers of unemployment claims.

The Director, therefore, also finds that observance of requirements of notice and a public hearing would be contrary to the public interest.

23.01: Purpose of Regulations: The purpose of 430 CMR 23.00 is to establish procedures and interpret the provisions of G.L. 151A to alleviate hardship caused by COVID-19.

23.02: Scope and Applicability: These regulations apply to claimants and employers.

23.03: Standby Status:

(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 c. 151A, section 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 section 23.05 of these emergency regulations, 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 these regulations 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.

23.04 Work Search requirements for self-employed individuals and gig workers:

(1) Under circumstances where claimants are receiving Pandemic Unemployment Assistance benefits under Section 2102 of the CARES Act, and when such individuals are required to comply with the requirements of section 24 (b) regarding an active work search, the following actions by the individual shall be considered in determining whether the individual has followed a course of action designed to result in a prompt return to work:

1. Documented efforts to obtain new or additional clients for the individual's business;
2. Documented efforts to expand the individual's business beyond the services typically performed;
3. Documented efforts to market the individual's business to new, reasonably available customers;
4. If the individual performs work for an online platform, establishing an account with another similar online platform for the purpose of seeking work with that platform;
5. If the individual performs work for an online platform, seeking work with another online platform for which the individual may reasonably be qualified;
6. Any activity that demonstrates an active search for covered employment.

Consideration of the enumerated work-search activities shall not preclude consideration of other relevant activities or factors.

(2) A determination under this section shall be applicable only to the eligibility of the individual claiming benefits and shall not prevent the department from later determining that the individual was engaged in covered employment pursuant to G.L. c. 151A, section 2.

23.05: Suitable work:

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" includes, but is not limited to, an underlying medical or other condition that puts the claimant at increased risk for severe illness from COVID-19, 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.

23.06: Good Cause reasons for missing deadlines due to COVID-19:

In determining whether any party has good cause for lateness regarding a deadline set forth in M.G.L. c. 151A or 430 CMR 4.00, et seq., including, but not limited to

RESEA requirements, the department will consider whether COVID-19 prevented the party from meeting the deadline.

For purposes of this section:

- (i) a claimant will be considered prevented from meeting deadlines by COVID-19 if the claimant or a member of the claimant's immediate family or household is ill with a suspected or confirmed case of COVID-19, or is subject to a request from an employer, a medical professional, a local health official, or any civil authority to 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.
- (ii) An employer will be considered prevented from meeting deadlines by COVID-19 if the employer's business operations are severely impacted by COVID-19.

23.07: Relief from interest and penalty charges for employers:

Employers directly affected by COVID-19 are relieved from penalties and interest if they pay contributions or make payments in lieu of contributions as required by 430 CMR 5.02-5.04 and 5.06 within 60 days of the original due date of the payment. In order to be so relieved, an employer must timely file its quarterly wage reports. This section does not apply to nonprofit organizations covered under Section 5 of Chapter 81 of the Acts of 2020 (approved May 26, 2020).

23.08: Reemployment Services and Eligibility Assessment (RESEA) Program Requirements:

Claimants can fulfill the requirements under RESEA by registering with the MassHire Department of Career Services in a manner determined by the Director.