

430 CMR 9.00: TRAINING BENEFITS UNDER M.G.L. C. 151A, § 30(c)

Section

- 9.01: Purpose
- 9.02: Definitions
- 9.03: Eligibility of Claimants and Special Conditions for Training Extension Benefits
- 9.04: Approval of Training Programs
- 9.05: Application Procedure
- 9.06: Rights and Obligations of Program Participants
- 9.07: Training Breaks
- 9.08: Qualified Individuals with a Disability

9.01: Purpose

M.G.L 151A, § 30(c) allows claimants eligible for Unemployment Insurance (UI) benefits to receive those benefits while enrolled in approved training. The purpose of 430 CMR 9.00 is to establish procedures and interpret the standards for approval of training programs (courses) and the eligibility of claimants to participate in such programs. In addition, 430 CMR 9.00 describes the conditions under which a claimant may be eligible to receive an extension of benefits of up to 26 times his or her benefit rate if the training extends beyond his or her maximum monetary entitlement. The 26-week training extension is available only to those claimants who have filed a completed application for training with the Director no later than the 20th paid week of the claim, unless that period is tolled or waived for good cause pursuant to 430 CMR 9.05 (6) or (7).

The general goal of M.G.L. c. 151A, § 30(c) is to allow claimants to acquire new skills or knowledge necessary to obtain appropriate employment, including, but not limited to, enhanced or improved employment. M.G.L. c. 151A, §§ 24 and 25(c) pertaining to work search, availability for work, and acceptance of suitable work, are waived if a claimant is otherwise eligible for UI and is enrolled in approved training.

9.02: Definitions

The following words and phrases shall have the following meanings, unless otherwise clearly indicated by the context of 430 CMR 9.00:

A.B.E. (Adult Basic Education): Academic training in basic literacy and numeracy skills. Such training may be geared at the primary or secondary school level, and may include preparation for a high school equivalency diploma or certificate.

(ADA) Americans with Disabilities Act: A law passed by Congress in 1990, as amended, which establishes certain rights for qualified individuals with disabilities.

Application Period: The application period is a period of time within which an individual may apply for training and benefits under M.G.L. c. 151A, § 30(c). The 20-week application period commences with the week the first payment is issued to a claimant, and continues for each week payment is issued thereafter unless the period is tolled by regulation or waived for good cause under 430 CMR 9.05. If a determination denying regular benefits under M.G.L. c. 151A, §§ 39, 41 or 42 is reversed and regular benefits are awarded, however, the application period begins the week after the notice of such reversal is sent to the claimant. The claimant shall not be barred from applying for and commencing training, even if the benefit year has expired, so long as the claimant applies for training within 21 weeks of the notice of reversal and commences training with the first available program.

Approvable Training: A training program not yet approved by the Director for the purposes of M.G.L. c. 151A, § 30(c) but in the sole discretion of the Director, meets the standards of M.G.L. c. 151A, § 30(c), and 430 CMR 9.04(2). No program shall be denied solely because it is conducted in another state.

Approved Training: A training program approved by the Director for purposes of M.G.L. 151A, § 30(c).

9.02: continued

Basic Skills: Courses offering A.B.E., E.S.O.L., or high school equivalent diploma or certificate preparation, either individually or in combination.

Certificate Program: A vocational program, generally offered at the post-secondary level, but not necessarily by a post-secondary educational institution, designed to teach an individual the knowledge and skills necessary to become employed in the occupation of study, and that offers a certificate upon successful completion, but that does not confer an academic degree.

Claimant: Any individual who has filed a claim for unemployment benefits pursuant to M.G.L. c. 151A.

Classroom Training: Supervised training of the type normally conducted in an institutional setting, but not necessarily in a classroom, including vocational and industrial education.

Declining Occupation: An occupation or job type within the claimant's work search area that the Director has determined has a demonstrated pattern of reduced employment or is suffering an immediate and significant reduction in employment.

Demand Occupation: An occupation for which work opportunities are presently available, or future growth is anticipated, as determined by the Department.

Department: The Department of Unemployment Assistance (DUA) within the Executive Office of Labor and Workforce Development.

Director: The Director of the Department of Unemployment Assistance.

Disability: A physical or mental impairment as defined in the ADA, 42 U.S.C. § 12102, and accompanying regulations.

DUA: The Department of Unemployment Assistance within the Executive Office of Labor and Workforce Development.

E.S.O.L. (English for Speakers of Other Languages): A course given to teach basic English literacy skills to non-English speaking persons.

File: Applications filed by U.S. mail shall be deemed filed on the date contained in the U.S. postal cancellation stamp or U.S. postmark, and not the date contained on a postal meter stamp. Applications filed by Electronic Medium shall be deemed filed on the date received by DUA. Applications filed by all other means shall be considered hand-delivered, and shall be deemed filed on the date received by DUA during usual business hours. Applications filed by any means other than Electronic Medium received after usual business hours shall be deemed filed on the following business day.

High School Equivalency: A program, overseen by the Massachusetts Department of Elementary and Secondary Education's High School Equivalency Office, designed to provide an individual with a high school equivalency credential.

Pilot or Demonstration Project: A project sponsored or funded by the federal, state or municipal government, that provides basic or work skills training and is designed to test new methods of training or skills development.

Qualified Individual with a Disability: Under the ADA, "an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." 28 CFR 35.104.

9.02: continued

Suitable Employment: Employment which is determined by the Director to be suitable, taking into consideration whether the employment is detrimental to the health, safety or morals of an employee, is one for which he or she is reasonably fitted by training and experience, including employment not subject to M.G.L. c. 151A, is one which is located within reasonable distance of his or her residence or place of last employment, is one which does not involve travel expenses substantially greater than that required in his or her former work, and which reasonably accommodates the individual's need to address the physical, psychological and legal effects of domestic violence. No work shall be deemed suitable under the provisions of M.G.L. c. 151A, § 25(c) if the position offered is vacant due directly to a strike, lockout or other labor dispute; if the remuneration, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or if the acceptance of such work would require the individual to join a company union or would abridge or limit his or her right to join or retain membership in any *bona fide* labor organization or association of working people.

Toll: Pausing, delaying or suspending the time allowed for the 20-week application period.

Training Program: A program or course, guided by an instructor or teacher, that offers participants a structured course consisting of one or more sequential or simultaneous classes, training sessions including, but not limited to, on-the-job training, subjects designed to provide a specified skill or ability, or a certificate or degree. A training program may combine basic skills, for example, E.S.O.L., high school equivalency, or A.B.E. preparation, with a vocational training component. The curriculum may be academic, technical, trade or other preparation for gainful employment in a recognized occupation, including applicable apprentice and on-the-job training programs.

Training Related Employment: Employment in the field or job-type for which the training was intended to prepare participants.

WIOA (Workforce Innovation and Opportunity Act): A law enacted in 2014 to supersede the Workforce Investment Act of 1998 and amend the Adult Education and Family Literacy Act, the Wagner-Peyser Act, and the Rehabilitation Act of 1973. WIOA was designed to help job seekers access employment, education, training and support services needed to succeed in the labor market and to match employers with the skilled workers they need to compete in the global economy.

Work Search Area: One or more economically integrated geographic units within reasonable traveling distance for job seeking and commuting.

9.03: Eligibility of Claimants and Special Conditions for Training Extension Benefits

(1) Claimants may be eligible for approved training if it is determined that they are permanently separated from work, unlikely to obtain suitable employment based on their most recently utilized job skills, the requested training is for a demand occupation and:

- (a) They are in need of training to become re-employed; or
- (b) They have been permanently separated from a declining occupation, or they have been permanently separated from work as a result of a permanent reduction of operations.

(2) For purposes of 430 CMR 9.00, a claimant will be considered permanently separated from work if he or she is unemployed with no recall date or with an indefinite date of recall, or if he or she leaves partial unemployment from other than the most recent base period employer to enter training pursuant to M.G.L. c. 151A, § 25(e).

(3) For purposes of 430 CMR 9.00, a claimant will be deemed unlikely to obtain suitable employment based on the claimant's most recently utilized job skills and in need of training to become re-employed, if any of the following apply:

- (a) The claimant has applied for or is participating in a course or training program authorized by WIOA;

9.03: continued

(b) The claimant requires training to become re-employed in his or her current occupation, because his or her present skills in that occupation are insufficient or are technologically out of date; provided, however, that a claimant possessing sufficient skills in his or her current occupation to obtain suitable employment in that occupation shall not be determined to be in need of training, unless the claimant has separated from a declining occupation or is unemployed as a result of a permanent reduction of operations and the claimant is training for a demand occupation;

(c) A claimant's existing skills are obsolete due to technological change or because there is currently no demand for his or her skills in his or her work search area, or because a disability has made the claimant unable to perform the essential functions of jobs in the claimant's previous occupation;

(d) A claimant is in need of Basic Skills training or any other training in combination with Basic Skills.

(4) Claimants must possess sufficient aptitude and skills, as determined by the Director, to successfully complete and benefit from the approved training, provided that individuals with a disability are not denied eligibility due to their disability and without the consideration of reasonable accommodation to facilitate their participation including, but not limited to, reasonable modifications of attendance policies, course loads and completion dates for training.

(5) Individuals who do not speak English or require remedial education must be approved for E.S.O.L., A.B.E. or other Basic Skills courses to facilitate their participation in further training and reemployment.

(6) Enrollment, regular attendance, and satisfactory progress in the selected training program are required for continued eligibility in the training program.

(7) A claimant who is determined to be eligible, shall remain eligible during the pendency of any dispute regarding eligibility due to separation from work under M.G.L. 151A, § 25(e), provided the claimant is receiving benefits pursuant to a determination made under M.G.L. c. 151A, §§ 39 through 42.

(8) No claimant participating in an approved training program shall be considered ineligible for benefits because of absence from training if such absence is due to illness or disability. However, in the case of illness, this exception shall apply to not more than three weeks within a benefit year, including weeks in the benefit year for which benefits were paid prior to entry into the training program.

(9) A claimant participating in an approved training program who is absent for three or more days in a week and who does not meet the provisions of 430 CMR 9.03(9) shall be ineligible for benefits for that week.

(10) A claimant who applies to the Director for training shall have his or her total benefits extended up to 26 times his or her benefit rate after exhaustion of all Extended Benefits, Emergency Unemployment Compensation, or other Federal extended unemployment benefits. Such benefits shall be paid only during the period the individual is attending the training course and if:

(a) the claimant meets the eligibility criteria of 430 CMR 9.03;

(b) the claimant files a completed application with the Director for enrollment in training within the 20-week application period, or within the tolled or extended period allowed in 430 CMR 9.05;

(c) the claimant applies for enrollment in a training program that has been approved, or is approvable, including but not limited to out of state programs, under the standards set forth in 430 CMR 9.04, provided that, if a claimant has been approved to attend a Basic Skills training program coupled with vocational training, such individual does not have to reapply for approval upon completion of the Basic Skills program; and

(d) the claimant begins training in the first available appropriate program that is affordable for the claimant, or for which funding is available, and is located within a reasonable distance from the claimant's residence.

9.03: continued

(11) A claimant shall commence training prior to expiration of a claimant's benefit year, unless economic circumstances permit the provision of extended benefits or any other emergency unemployment benefits funded in whole or in part by the federal government. The 20-week application period shall be extended, however, beyond the end of the claimant's benefit year, provided that:

- (a) if the claim for regular benefits was denied, and
- (b) the reversal of said denial did not occur until after the 31st week of the claimant's benefit year, the claimant shall not be barred from filing an application within 21 weeks of the notice of reversal, so long as the claimant commences training in the first available program.

9.04: Approval of Training Programs

(1) Training must prepare the claimant for marketable skills in a demand occupation in the claimant's work search area, or any other work search area to which the claimant wishes to relocate or commute.

(2) Training providers, and in particular, the training they offer must meet the following measurable standards:

(a) Have achieved or, if a new program, show reasonable expectation of achieving an average placement rate in full time or part time (20 hours per week or more) training related employment of 70% during the most recent 12-month period for which such data is available, except that if the state-wide total unemployment rate is greater than 7.0% at the time of application, the placement rate shall be no less than 60% during the most recent 12-month period for which such data is available. If the unemployment rate is greater than 8.0%, the Director shall determine a lower, appropriate placement rate. Other evidence that successful completion of the program is likely to lead to reemployment may also be provided and may be considered. Further, the Director may, in his or her sole discretion, approve a new program with no placement data if the program is needed to address an acute workforce need. These Director-approved programs shall be subject to same placement rate criteria no later than the earlier of when data of at least 12 consecutive calendar months are available for calculating the placement rate or 18 calendar months following the date of the program's initial graduation.

(b) Be a full-time course, providing a minimum of at least 20 hours of supervised classroom training per week; provided, however, that:

- 1. if the program is offered by a community college, college, or university, this requirement shall be met if the program provides a minimum of 12 credits each semester or the equivalent; and provided further that:
- 2. if the program is offered as part practicum or internship and part classroom hours, the program will be approved only for the time needed to complete state or federal certification or licensing requirements, or the time deemed necessary by the Director to allow the claimant to become employable in the occupation for which the training has been provided; and provided further that:
- 3. if the program is an E.S.O.L. program that is less than 20 hours, and no program of 20 or more hours is available within a reasonable distance from the claimant's residence, the Director may waive the 20 hour limitation.

(c) Be completed within two years of the date the claimant's application is approved or the date the claimant commences the approved training, whichever is later, or within three years if the program combines Basic Skills with vocational or industrial training unless a reasonable accommodation to an individual with disabilities requires an extended completion date. No E.S.O.L. program shall be denied approval solely because it is not combined with another program.

(d) Apprenticeship programs approved by the Division of Apprenticeship Standards and the Director under 430 CMR 9.04, and certain on-the-job training programs approved by the Director, which may contain substantial periods of work rather than classroom training, may extend beyond two years, if enrollment and attendance in the program are interrupted by such work.

(e) Be offered by a training institution which has paid all contributions, payments in lieu of contributions, and interest or penalty charges due under M.G.L. c. 151A.

9.04: continued

(f) Any training program approved under WIOA shall be deemed an approved training program under 430 CMR 9.00.

(3) The Director may, within his or her discretion, waive the applicability of 430 CMR 9.04(2) for a training course or program sponsored by a pilot or demonstration project if he or she determines that:

(a) The proposed course or program supports the goals of the M.G.L. c. 151A § 30(c) program as stated in 430 CMR 9.04(1); and

(b) An application for waiver is submitted in writing which demonstrates to the Director's satisfaction that the proposed course or program supports the goals of the M.G.L. c. 151A § 30(c) program and meets the criteria of the pilot or demonstration project.

9.05: Application Procedure

(1) An application for benefits under M.G.L. 151A, § 30(c) shall be made in writing, on a form provided by the Department. The application date shall be deemed to be the date the claimant filed a completed application with the Department, as defined in 430 CMR 9.05(5). Submission of additional documents or information shall not be required for purposes of determining the date of application, but may be required before a determination is made; provided however, that claimants eligible for, or awaiting a determination of eligibility for, National Dislocated Worker Grants (NDWG), may file a placeholder application, in the form and manner prescribed by the Director, which shall preserve their rights under M.G.L. 151A, § 30(c) until such time as their NDWG application is approved or denied. If an NDWG application is approved, the claimant must file additional documentation to complete the application under 430 CMR 9.05 within two calendar weeks of NDWG approval.

(2) The Department shall make every reasonable effort to approve or deny the claimant's application no later than 15 working days after submission of the application.

(3) If an application is approved prior to the start of the applied-for program, such approval shall be preliminary, and shall become final only upon the claimant's being in attendance at the program and only if, up to the time the claimant begins attending the program, the claimant is otherwise eligible for benefits including, but not limited to, under the requirements of M.G.L. 151A, §§ 24(b) and 25(c).

(4) A claimant who begins attending a training program before his or her participation in the program is approved, continues to be subject to the requirements of M.G.L. 151A, §§ 24(b) and 25(c) until that approval is given.

(5) A claimant's application for a training program will be deemed complete at the time it is filed with the Department and contains all the information the application asks the claimant to provide.

(6) The 20-week application period shall be tolled if the Director concludes that any of the following conditions applies:

(a) If the claimant is a qualified individual with a disability under the ADA and the training program to which he or she has applied cannot or refuses to provide a reasonable accommodation, then the 20-week application period shall be tolled from the date the claimant filed a complete application with the Department until the date the claimant was notified of the refusal or failure by the training provider.

(b) If the Department denies a claimant's application and the claimant's opportunity for reapplying for training during the 20-week application period will expire in fewer than two weeks, or has expired, then it shall be extended once for up to two weeks from the date notification is sent by the Department.

(c) If the Department denies a claim for regular benefits and that denial is reversed by the Hearings Department, Board of Review, or Court, the 20-week application period begins the week after the notice of such reversal is sent to the claimant. If the decision reversing the denial of benefits is made after the 31st week of the claimant's benefit year, the 20-week application period shall be extended to 21 weeks after the date notification of reversal is sent by the Hearings Department, Board of Review, or the Court, even if the benefit year has expired.

9.05: continued

(d) The Department shall provide each claimant with written information regarding eligibility for training benefits under M.G.L. c. 151A, § 30(c), including notice that application for such training benefits must be filed within the 20-week application period in order to be eligible unless the 20-week application period has been tolled or waived for good cause. If the claimant has indicated that the claimant's primary language is one of the languages identified in M.G.L. c. 151A, § 62A, such notice must be provided to the claimant in that language. If the Department fails to do so, or if the Department, or its agents, gave the claimant misinformation that caused the claimant not to file a complete application for training benefits within the 20-week application period, the running of the application period shall be tolled until the date the claimant learns of the eligibility requirements, including application deadlines, for M.G.L. 151A, §30(c) training benefits, provided that the claimant accurately identifies to the satisfaction of the Director the date and source of the misinformation in situations where misinformation is cited for tolling.

(e) If economic circumstances permit the provision of extended benefits or any other emergency unemployment benefits funded in whole or in part by the Federal Government, the application shall be extended until the end of such period.

(f) If a claimant who is not permanently separated at the time of the initial claim becomes permanently separated during the course of his or her benefit year, the 20-week application period shall commence on the date the claimant becomes permanently separated.

(g) If a claimant is unable to seek, apply for, or attend training because of the need to address the physical, psychological or legal effects of domestic violence, as defined in M.G.L. c.151A, § 1(g^{1/2}) of the 20-week application period shall commence or resume on the date the claimant becomes able to seek, apply for, and attend training.

(h) If a claimant has been separated from a declining occupation, or if the claimant has been involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations and the claimant is training for a demand occupation, the 20-week application period shall be extended until the end of the claimant's benefit year, or further extended as provided under 430 CMR 9.05(6)(c).

(7) The 20-week application period shall be waived for good cause if a claimant establishes to the satisfaction of the Director that circumstances beyond the claimant's control prevented the application from being filed within the prescribed time period. Such circumstances may include, but are not limited to, the following:

(a) The claimant did not understand the deadline due to illiteracy, mental disability, or limited English proficiency where the claimant's language is not one included in M.G.L. c. 151A, § 62A;

(b) A natural catastrophe such as a fire, flood, or hurricane;

(c) Death or serious illness of an immediate family or household member;

(d) The claimant's training provider failed to act in a reasonably prompt manner; or

(e) The Department or its agents discourages the claimant from applying for training under M.G.L. c. 151A, § 30(c).

A waiver for good cause may not be granted after the end of the benefit year, except as otherwise permitted under M.G.L. c. 151A, § 30(c) or 430 CMR 9.00.

(8) Claimants may participate in only one training program in a benefit year, unless circumstances beyond their control make participation, or continued participation, in the original program impossible. If such circumstances cause a claimant to seek approval to participate in a different training program, the new application shall be deemed to have been filed on the date the completed application for the originally approved program was filed.

A Basic Skills training program coupled with vocational or industrial training, or a Certificate Program shall constitute one training program.

9.06: Rights and Obligations of Program Participants

(1) Benefits provided under M.G.L. c. 151A, § 30(c) are payable only while the claimant is in attendance at the training course, or while participating in a Section 30-approved classroom training portion of an apprenticeship program approved by the Division of Apprenticeship Standards and the Director under 430 CMR 9.04. If the claimant finishes training or ceases to attend training, the claimant will be entitled to the remaining regular unemployment insurance benefit credit if otherwise eligible. In order to qualify for benefits under M.G.L. c. 151A, § 30(c), a claimant must begin training prior to the expiration of the benefit year, unless otherwise permitted under 430 CMR 9.00. If a claimant is approved to collect benefits under M.G.L. c. 151A, § 30(c) and the benefit year then expires while the claimant is still attending training, a new benefit year claim must be filed and the facts investigated. If, as a result of the new benefit year claim, the claimant is not eligible for the new benefit year claim, the claimant may continue to collect benefits on the old benefit year claim under M.G.L. c. 151A, § 30(c) beyond the benefit year expiration date. If the claimant is eligible for a new benefit year claim, the facts will be investigated and another determination of entitlement to training benefits under M.G.L. c. 151A, § 30(c) will be made on the new claim.

(2) Participants approved under M.G.L. c. 151A, § 30(c) shall not be required to engage in work search activities, and shall be deemed available for suitable work during any week in which the participant is in attendance at the approved training program, or during an approved break in training pursuant to 430 CMR 9.07.

9.07: Training Breaks

Claimants may be paid benefits during the following breaks if they were attending training immediately prior to the break and will be in attendance immediately after the break:

- (1) Pre-scheduled breaks within a semester, or holidays or other purposes.
- (2) Semester or other similar breaks that do not exceed three weeks.

9.08: Qualified Individuals with a Disability

Nothing in 430 CMR 9.01 through 9.07 shall be deemed to exclude a qualified individual with a disability from training benefits under M.G.L. c. 151A, § 30(c).

REGULATORY AUTHORITY

430 CMR 9.00: M.G.L. c. 23, § 9J; M.G.L. c. 151A, § 30(c).