

**Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member**

Issue ID: 0022 0031 10

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA), which concluded that the services performed by a claimant are subject to the Massachusetts Unemployment Law, pursuant to G.L. c. 151A, § 3. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On May 25, 2017, the agency initially determined that the services performed by the claimant were subject to Chapter 151A.¹ The employer appealed and attended the hearing. In a decision rendered on February 17, 2018, the review examiner affirmed the agency determination, concluding that the services were subject to G.L. c. 151A, § 3(b). The Board accepts the employer's application for review.

Ruling of the Board

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal, we conclude that the review examiner's findings of fact, except for the first phrase of Finding of Fact # 15, are based on substantial evidence in the record. In the first part of Finding of Fact # 15, the review examiner found that the claimant has a desk at "the employer's Massachusetts location." However, the record lacks credible evidence that the employer has a business location or facility in Massachusetts. The employer's vice-president of sales testified that there is not a business location in Massachusetts, and the DUA initially obtained information that a business location does not exist in this state.² However, rejecting that portion of the finding does not affect the ultimate outcome of the review examiner's decision. We conclude that the review examiner's application of G.L. c. 151A, § 3(b), is free from any error of law.

¹ If the services are subject to Chapter 151A, then the employer must report the claimant's wages to the DUA and pay the appropriate amount of unemployment tax contributions.

² See Exhibit # 16, p. 1.

The review examiner's decision is affirmed. The services performed by the claimant are covered employment in Massachusetts, and, therefore, the wages shall be reported to Massachusetts.

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 9, 2018



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**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS STATE DISTRICT
COURT OR TO THE BOSTON MUNICIPAL COURT
(See Section 42, Chapter 151A, General Laws, Enclosed)**

The last day to appeal this decision to a Massachusetts District Court is thirty days from the mail date on the first page of this decision. If that thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the business day next following the thirtieth day.

To locate the nearest Massachusetts District Court, see:
www.mass.gov/courts/court-info/courthouses

Please be advised that fees for services rendered by an attorney or agent to a claimant in connection with an appeal to the Board of Review are not payable unless submitted to the Board of Review for approval, under G.L. c. 151A, § 37.

SF/rh