

**Board of Review
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Member
Michael J. Albano
Member**

Issue ID: 0061 1578 63

Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) concluding that the employing unit is subject to the provisions of G.L. c. 151A pursuant to G.L. c. 151A, § 8. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On December 29, 2020, the agency determined that the claimant was a subject employer pursuant to the provisions of G.L. c. 151A, § 8. The employer appealed and attended the hearing. In a decision rendered on November 1, 2021, the review examiner affirmed the agency determination, concluding that, because the employing unit employs at least one employee performing services in Massachusetts and paid wages in the amount of at least fifteen hundred dollars in any calendar quarter for such services, the employing unit is considered a subject employer pursuant to G.L. c. 151A, § 8. The Board accepted 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 decision regarding the employer's liability under G.L. c. 151A, § 8, is based on substantial evidence and is free from any error of law affecting substantive rights.

We note that the record raises a separate question regarding whether the services performed by the employees in question constituted employment within the meaning of G.L. c. 151A, § 3. That issue is not currently before the Board. However, we believe this warrants a separate investigation and determination by the DUA.

The review examiner's decision is affirmed. The employer is subject to the provisions of the Massachusetts Unemployment Insurance Law pursuant to G.L. c. 151A, § 8.

N.B.: The record raises the possibility that the services performed by individuals for the employer in Massachusetts were excluded from the definition of employment. For this reason, we are asking the agency to investigate whether the services performed by such employees were to be excluded pursuant to G.L. c. 151A, § 3.

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 23, 2021



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS
STATE DISTRICT 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.

LSW/rh