

Wages and remuneration are not the same under G.L. c. 151A. Because the DUA must account for all remuneration paid to individuals performing services for a farm business, wages paid to the sole proprietor's husband and daughter are material to the analysis under G.L. c. 151A, § 8A(b). Inasmuch as the employing unit paid more than \$40,000 in remuneration during the 3rd quarter of 2022, it is subject to G.L. c. 151A.

**Board of Review
100 Cambridge Street, Suite 400
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

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

Issue ID: 0079 0619 79

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 employer was subject to the provisions of G.L. c. 151A in 2022. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On January 4, 2023, the agency initially determined that the employer was subject to the provisions of G.L. c. 151A, beginning March 1, 2022. The employer appealed this determination and attended the hearing. Following a hearing on the merits, the review examiner affirmed the agency's initial determination in a decision rendered on May 5, 2023. We accepted the employer's application for review.

The review examiner concluded that the employer was subject to the provisions of G.L. c. 151A pursuant to G.L. c. 151A, § 8A(b), because it had paid sufficient wages for agricultural labor during at least one quarter of the 2022 calendar year. Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the employer was subject to the provisions of G.L. c. 151A because it paid wages in excess of \$20,000 during 2nd, 3rd, and 4th quarters of 2022, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

The review examiner's findings of fact are set forth below in their entirety:

1. The appealing entity is a sole proprietorship agricultural business.
2. The business season runs about late March through early November.
3. In 2022, the employer paid the following wages.

1st Qtr - \$ 4,858.58
2nd Qtr - \$27,968.13
3rd Qtr - \$42,801.95
4th Qtr - \$22,543.69

4. The agricultural entity, in the 2nd, 3rd and 4th quarters of 2022, paid \$20,000.00 or more in wages.
5. In the 3rd Quarter of 2022, the employer's spouse earned wages totaling \$4,250.01.
6. In the 3rd Quarter of 2022, the employer's daughter, age 15, earned wages totaling \$125.25.
7. The employer's spouse's 3rd quarter wages of \$4,250.01 and the employer's daughter's 3rd quarter wages totaled \$4,375.26 (\$4,250.01+125.25).

Ruling of the Board

In accordance with our statutory obligation, we review the record and the decision made by the review examiner to determine: (1) whether the findings are supported by substantial and credible evidence; and (2) whether the review examiner's conclusion is free from error of law. Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. We do note, however, that the review examiner used the term "wages" in Findings of Fact ## 3-7 to identify compensation paid by the employer. As discussed further below, the term "wages" has a legal definition in G.L. c. 151A, which is distinct from its conventional use. In context, the review examiner's findings appear to be utilizing the ordinary definition of the term "wages," rather than its legal meaning for purposes of the Massachusetts Unemployment Insurance statute. However, as explained below, we believe that the review examiner's findings of fact support the conclusion that employer is subject to the provisions of G.L. c. 151A.

There was no dispute that the employer is a "farm employing unit" that paid compensation for work "in agricultural labor." G.L. c. 151A, § 4A(b). *See* Finding of Fact # 1. Therefore, the question becomes whether the instant employer is subject to the provisions of G.L. c. 151A, under G.L. c. 151A, § 8A(b), which states, in relevant part:

An employing unit for which services described under subsection (b) of section four A are performed, shall be subject to the provisions of this chapter as of January first, nineteen hundred and seventy-eight, who or which, paid remuneration in cash in any calendar quarter during the year nineteen hundred and seventy-seven, amounting to \$40,000 or more to individuals performing such services

On appeal, the employer correctly notes that the review examiner did not correctly articulate the requirements of G.L. c. 151A, § 8A(b), as Part I of his decision explains an employing unit shall be subject to the provisions of G.L. c. 151A if it has paid wages of \$20,000 or more for agricultural labor in any calendar quarter. The current language of G.L. c. 151A, § 8A(b), specifies that an

employer shall be subject to the provisions of G.L. c. 151A if it paid *remuneration* in the amount of \$40,000 or more for agricultural labor during any calendar quarter.

The employer also argues that the wages it paid to the owner's husband and daughter during the 3rd quarter of 2022 may not be used in assessing the employer's liability under G.L. c. 151A, § 8A(b), because the employer is a sole proprietorship. The language of G.L. c. 151A, § 8A(b), instructs the DUA to assess an employing unit's liability based on all remuneration paid in a given quarter. The employer's business entity status as a sole proprietorship does not affect our analysis. Nor are we of the opinion that the husband and daughter's wages must be excluded in the calculation of remuneration paid.

While the terms 'remuneration' and 'wages' both appear throughout G.L. c. 151A, they are not used interchangeably. Remuneration is defined as "any consideration" received "*for services rendered to an employing unit. . .*" G.L. c. 151A, § 1(r)(3) (emphasis added). In contrast, wages are limited to forms of remuneration "*of an employee subject to this chapter for employment by an employer . . .*" G.L. c. 151A, § 1(s)(A) (emphasis added). Thus, whereas the individual being paid must perform services considered employment under Chapter 151A in order to count the payment as wages, that is not required to consider the payment remuneration. Wages are a subcategory of remuneration.

"Employment" is defined under G.L. c. 151A, § 1(k), as "service . . . by an employee for his employer as provided in this section and in sections two, three, four A, five, six and eight C." It is thus clear that the term wages is limited to income from certain categories of work, whereas the term remuneration does not have these statutory limitations. So, while the employer is correct that the monies it paid to the sole proprietor's husband and daughter would not be considered wages, because services performed in the employ of a spouse or service performed by a child under the age of eighteen in the employ of his father or mother are specifically excluded from the definition of 'employment' in G.L. c. 151A, § 6(d), this exclusion does not apply to remuneration.

Because the language of G.L. c. 151A, § 8A(b), specifies that an employer's liability will be assessed based on remuneration paid, not wages paid, our analysis in this case must account for all consideration the employer paid in exchange for services in agricultural labor, including the consideration it paid to the sole proprietor's husband and daughter.

The record confirms that the employer paid remuneration exceeding \$40,000 to individuals for services rendered to the employer in the 3rd quarter of 2022. *See* Findings of Fact ## 3–7. Therefore, we conclude as a matter of law that the review examiner correctly concluded that the employer was subject to the provisions of G.L. c. 151A beginning January 1, 2022.

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

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 29, 2023



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, Esq. declined to sign the majority opinion.

**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