

**Review examiner erred in denying seasonal status to two positions. A mere addition of staff occurs only when a position performs the same or similar duties to another position operating *outside* the defined seasonal period. Held the positions of Summer Days Program Assistant Director, and Assistant Beach Director are granted seasonal employment status under G.L. c. 151A, §§ 24A and 1(z), even though they performed the same or similar duties to other seasonal employees working in the same seasonal program.**

**Board of Review  
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**Issue ID: 352-MDHV-M554**

### Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA), which awarded seasonal employee status to eight of the ten positions the employer submitted for certification. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

On April 2, 2024, the DUA determined that the employer would not receive seasonal employment status for the positions of Summer Days Program Director, Summer Days Program Assistant Director, Summer Days Program Art Director, Summer Days Program Head Counselor, Summer Days Program Counselor, Beach Director, Beach Assistant Director, Head Lifeguard, Lifeguard, and Parking Snack Bar Attendant for the 2024 calendar year. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the employer, the review examiner modified the agency determination, granting seasonal employment status for all positions except for the Summer Days Program Assistant Director and Assistant Beach Director in a decision rendered on June 28, 2024. We accepted the employer's application for review.

Seasonal employment status was denied only for the positions of Summer Days Program Assistant Director and Assistant Beach Director after the review examiner determined that those two positions were mere additions of staff and, thus, the employer was not entitled to seasonal status for those two positions under G.L. c. 151A, §§ 1(z) and 24A. 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 positions of Summer Days Program Assistant Director and Assistant Beach Director were mere additions of staff because they perform the same or substantially similar duties to the Summer Days Program Director and Beach Director respectively, 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 employer is a municipality. The employer runs a summer youth program consisting of various activities for children ages 4 to 13 years old.
2. The summer program includes art and other activities. The summer season is from June 1, 2024, through August 11, 2024.
3. The program takes place at two locations, [Address 1] and at the [Address 2] (the town beach).
4. The town beach is only open during the period indicated as the summer season.
5. The Summer Days Program Director is responsible for overseeing the day-to-day operation of the program, providing support and structure, [sic] the children are having fun, and the activities are involved, environment is conducive to fun and safety, provides supervision and structure and provides support to the activity leaders and counselors.
6. The Summer Days Program Assistant Director [assists] with overseeing staffing including activity leaders and counselors, assists with supervision and training of all staff, assists with the surveillance of facility and participants.
7. The Summer Days Program Art Director creates and coordinates the daily art activities for the summer program, creates lesson plans, maintains and orders supplies, creates reports and assists with supervisory instruction when the Program Director is off-site.
8. The Summer Days Program Head Counselor assists with the day-to-day operation, provides supervision, structure, instruction and supports the counselors.
9. The Summer Days Program Counselor works with an assigned group of children, leads and circulates groups through a variety of activities throughout the day and assists with the activity, and is responsible for overseeing and engaging with their group.
10. The Beach Director oversees the daily operations of the beach facility and its staff.
11. The Assistant Beach Director assists with the daily operation of the facility and staff, reporting to the Beach Director and can act as the Beach Director in their absence.
12. The Head Lifeguard ensures the operation is running smoothly and the patrons are safe, implements emergency procedures, enforces and communicates the

rules to the patrons, and provides supervisor structure and instruction to support lifeguard staff.

13. The Lifeguard is to ensure the safety of the patrons and respond to emergencies, watching the patrons of the town lake. The Lifeguard is under the supervision of the Head Lifeguard.
14. The Parking Snack Bar Attendant maintains an order of parking the cars and seasonal passes, along with cooking, selling and running the concession stand.
15. On March 29, 2024 the employer submitted a Seasonal Employment Application for the seasonal period of June 1, 2024 through August 11, 2024, listing the positions as Summer Days Program Art Director, Summer Days Program Assistant Director, Summer Days Program Counselor, Summer Days Program Director, Summer Days Program Head Counselor, Assistant Beach Director, Beach Director, Head Lifeguard, Lifeguard, and Parking Snack Bar Attendant.
16. On April 2, 2024, the employer was issued a Seasonal Certification Determination indicating that the employer was denied seasonal status for all positions. The employer filed an appeal [of] that determination.

### 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. However, as discussed more fully below, we reject the review examiner's legal conclusion that the Summer Days Program Assistant Director and Assistant Beach director do not meet the seasonal employment requirements.

An employer's status as a seasonal employer is governed by G.L. c. 151A, §§ 1(z) and 24A. In relevant part, § 1(z) defines a seasonal employer as:

[A]n employer that, because of climatic conditions or the nature of the product or service, customarily operates all or a functionally distinct occupation within its business only during a regularly recurring period or periods of less than 20 weeks for all seasonal periods during a calendar year.

The term functionally distinct occupation is defined in 430 CMR 12.03 as:

Functionally Distinct Occupation. An occupation in which the assigned duties or tasks are identifiably distinct from the duties or tasks assigned to employees outside the seasonal period. Mere addition of staff to perform the same or similar duties as those performed outside the season would not be considered seasonal.

The review examiner granted seasonal employment status to the positions of Summer Days Program Director, Summer Days Program Art Director, Summer Days Program Head Counselor, Summer Days Program Counselor, Beach Director, Head Lifeguard, Lifeguard, and Parking Snack Bar Attendant, because they performed services only for the employer's summer youth program during the 2024 calendar year. *See Findings of Fact ## 1, 5, 7–10, and 12–14.* As the program operates for a period of less than 20 weeks in a calendar year and those positions perform duties unique to the program, we agree that these eight positions meet the criteria for seasonal employment status. *See Findings of Fact ## 2–4.* However, we believe that the review examiner erred in denying seasonal employment status for the positions of Summer Days Program Assistant Director and Assistant Beach Director positions.

The review examiner concluded that the Summer Days Program Assistant Director and Assistant Beach Director positions were mere additions of staff because they performed many of the same functions as their corresponding director positions, the Summer Days Program Director and Beach Director. Pursuant to 430 CMR 12.03, positions are considered to be a mere addition of staff if they “perform the same or similar duties as those performed *outside* the season . . . .” (emphasis added). Thus, it follows that a position operating during the same seasonal period and performing the same or similar duties as another seasonal employee would not be a mere addition of staff. For example, in this case, the Lifeguard position is not a mere addition of staff even though it has some overlapping responsibilities with the Head Lifeguard position. *See Findings of Fact ## 12 and 13.*

The Summer Days Program Assistant Director and Assistant Beach Director, like their corresponding director positions, only perform their duties during the approximately ten-week period between June 1, 2024, and August 11, 2024. *Findings of Fact ## 1, 2, 6, and 11.* Because there is no indication from the record that they perform the same or similar duties to any positions that operate outside of the defined seasonal period, the Summer Days Program Assistant Director and Assistant Beach Director also perform functionally distinct occupations for a period of less than 20 weeks.

We, therefore, conclude as a matter of law that the review examiner erred in denying seasonal employment status for the positions of Summer Days Program Assistant Director and Assistant Beach Director under G.L. c. 151, §§ 24A and 1(z). These two positions also meet the requirements for seasonal employment status.

The review examiner's decision is affirmed in part and reversed in part. The employer is granted seasonal employment status for the positions of Summer Days Program Director Assistant Director, and Assistant Beach Director, as well as the positions of Summer Days Program Director,

Summer Days Program Art Director, Summer Days Program Head Counselor, Summer Days Program Counselor, Beach Director, Head Lifeguard, Lifeguard, and Parking Snack Bar Attendant.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - June 4, 2025**



Paul T. Fitzgerald, Esq.  
Chairman



Michael J. Albano  
Member

Member Charlene A. Stawicki, Esq. 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](http://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