

April 4, 2016

Martha M. Wishart, Assistant Chief Counsel  
Department of Unemployment Assistance  
19 Staniford Street  
Boston, MA 02114

Re: **Comments on DUA Regulations 430 CMR Pursuant to Executive Order 562**

Dear Attorney Wishart:

Thank you for the opportunity to comment on behalf of Greater Boston Legal Services' clients who are low-wage workers and often the first to be laid off during a recession. For this reason, the proper scope of DUA's regulation, **430 CMR 4.01(7)**—pertaining to federal extended unemployment insurance (UI) benefits that are paid to unemployed workers by the federal government during a recession—is critical. UI has properly been called the “first line of defense” in a recession. Not only do unemployed workers need UI to provide necessities for their families, but also employers benefit, at no cost to them, when federal extended UI is spent immediately in the local economy for rent, food, heat, and other immediate necessities. Ensuring that federal dollars through the federal extended UI program are available to the fullest extent possible is consequently a win-win-win for workers, employers, and state coffers.

Executive Order 562 states that “government regulations are intended to protect public health, safety, environmental and welfare functions and to improve the operation of government for the citizens of the Commonwealth.” This purpose is accomplished by improving the federal extended UI regulations so that they serve the intended audience of workers and business during a recession to the full extent permitted under federal law and required under state law.

By way of background, claimant eligibility for federal extended UI is governed by the Federal-State Extended Unemployment Compensation Act of 1970, Pub. L. No. 91-373, 84 Stat. 708, as amended. Section 202(a)(5) of the Act provides two alternative tests to determine claimant eligibility: (1) 20 weeks of full-time insured employment [during the claimant's base period] (“employment test”); or (2) the equivalent in insured wages (“earnings test”); and permits the states to choose which test or tests will qualify individuals for federal extended UI.

Massachusetts unemployment law implements the choice of tests federal law allows by adopting both tests: “[a]n individual shall be eligible to receive extended benefits . . . only if . . . said individual has had twenty weeks of full time insured employment, or the equivalent in insured wages.” G.L. c. 151A, § 30A (3)(a)(3). (Emphasis added). The statute directs DUA to prescribe regulations for the measurement of both “employment and earnings,” in order to “effectuate the purposes of [the Unemployment Insurance Law] and to provide the greatest coverage to individuals in need of extended benefits.” *Id.*

DUA's current regulation, § 4.01(7), measures "earnings" but, in conflict with state law, fails to measure "employment" as an eligibility test. The proposed regulation corrects this omission by providing that an individual who does not meet the earnings test but who can demonstrate that she has had 20 weeks of insured employment under the employment test will be eligible to receive federal extended UI. After public notice and comment, the DUA Advisory Council voted to approve the proposed regulation on February 19, 2015.

The proposed regulation also mirrors DUA's conduct following agreements reached in *Stone v. Amante, Director of Dep't of Unemployment Assistance*, Suffolk Sup. Court, CA # SUCV2012-04456. In response to that class action, DUA: (1) paid federal extended UI to Mr. Stone whose 20 weeks of work qualified him under the employment test; and, (2) sent notices to all other claimants who were denied federal extended UI because they did not meet the earnings test. DUA informed these individuals that if they believed that they had worked 20 weeks full time, DUA would consider their eligibility under the alternative statutory earnings test.

The following is the previously approved regulation, with the underlined text indicating the changes to the current regulation:

(7) Extended Benefits. To be eligible to receive extended benefits with respect to any week of unemployment in the individual's eligibility period: (1) the individual must have been paid wages during the base period of the current benefit year in an amount which exceeds 1½ times the wages of the individual's highest quarterly earnings or 40 times the most recent weekly benefit amount including dependency benefits; or (2) the individual must have had twenty weeks of full-time insured employment. If the individual is denied extended benefits on the basis of either test set forth in paragraph (1) above, the department will inform the individual that the individual may present evidence to the department in a manner prescribed by the Director that the individual has had twenty weeks of full-time insured employment. If the department concludes based upon the evidence so presented that the individual has had twenty weeks of full-time insured employment the individual will be eligible to receive extended benefits.

In sum, the proposed regulation is identical to the regulation previously approved by the DUA Advisory Council after the requisite notice and comment period and is consistent with DUA's prior actions taken as a result of the *Stone* litigation. It makes clear that there are two separate eligibility tests, and that DUA will inform claimants who have been denied under the "earnings test" of their potential eligibility under the "employment test."

Thank you for your kind consideration of these comments.

Sincerely



Monica Halas  
Lead Attorney