

430 CMR: DEPARTMENT OF UNEMPLOYMENT ASSISTANCE

430 CMR 4.00: BENEFIT SERIES

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4.01: Registration and Claims in General

(1) To file a claim an unemployed individual shall appear in person and register for work at the public employment office that is nearest to his home or nearest to the place of business at which he was last employed, or in such other manner as the Commissioner shall prescribe; except that an individual who has wage credits in Massachusetts but is not residing in Massachusetts, may register and file claims as provided for in 430 CMR 4.05, Interstate Claims.

(3) The effective date of a claim for an individual in partial unemployment shall be the Sunday of the week immediately preceding the week in which such registration and filing occurred, provided the individual was in partial unemployment during such earlier week and such earlier week occurred after the expiration of any benefit year previously established for such individual; except that for good cause the Commissioner or his authorized agent may allow an earlier effective date.

(a) In any case where an earlier effective date has been allowed, it shall be deemed, for the purpose of 430 CMR 4.00, that the individual registered and filed during the week of the effective date.

(b) In any case where an earlier effective date has been allowed, and the period between the effective date allowed and the date on which the registration actually occurred includes both weeks of partial and weeks of total unemployment, waiting period credit or benefits will be allowed only for the weeks of partial unemployment.

(4) Whenever the continuity of a claim has been interrupted for any reason, the claim may be reopened within the same benefit year.

(a) To reopen a claim, a claimant shall report in such manner as the Commissioner shall prescribe.

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(b) The effective date of reopening of a claim shall be the Sunday of the week in which the claimant reports as under 430 CMR 4.01(4)(a); except that if the claimant was in partial unemployment prior to such reporting, the reopening shall be effective as of the Sunday of the week immediately preceding the week in which such reporting occurred, provided that for good cause an earlier date may be allowed.

(5) To continue a claim, a claimant shall report as directed by the Commissioner or his or her authorized representative for each period for which benefits are being claimed, and shall furnish all facts pertaining to eligibility with respect to each week for which he or she is claiming benefits.

(a) A claimant shall complete all required information on the benefit certification form and sign the form.

(b) A claimant who is directed to report by mail may return the benefit certification form by mailing as a postcard, placing the form in an envelope and mailing, or by returning the form to a designated location at his or her local office.

(c) A claimant who is directed to report in person to the local office during a specified week must do so as directed, but no later than the third Friday after the Saturday ending date of the bi-weekly reporting period on the certification form or where the form was reissued, no later than the third Friday following the week in which said form was reissued unless otherwise directed by the Commissioner or his or her authorized representative.

(d) The claimant's benefit certification form, if returned by mail, must be postmarked no earlier than Saturday of the last week of the bi-weekly reporting period for which benefits are claimed and no later than 21 days after the Saturday of the last week of the bi-weekly reporting period. In cases where the benefit certification form was reissued, the form must be postmarked no later than the third Friday following the week in which said form was reissued unless otherwise directed by the Commissioner or his or her authorized representative.

(e) A claimant may return the benefit certification form to a designated location at his or her local office. The claimant shall return the form no earlier than the first business day following the Saturday of the last week of the bi-weekly reporting period for which benefits are being claimed and no later than the third Friday after the Saturday ending date of the bi-weekly reporting period. In cases where the benefit certification form was reissued, the form must be returned no later than the third Friday following the week in which said form was reissued unless otherwise directed by the Commissioner or his or her authorized representative.

(f) The benefit certification form shall be deemed filed by the postmark date on the benefit certification form or by the date stamp at a local office.

(g) The Commissioner may consider the claimant to have filed the benefit certification form timely if the postmark date or date stamp is illegible or missing.

(h) The claimant may inquire as to lost or missing benefit certification form(s) at his or her local office no earlier than eight days after the last reporting period. Reissuance of a new benefit certification form will begin a new filing period.

(6) A claimant shall report as directed by the Commissioner all remuneration earned in any week for which he or she claims benefits:

(a) The Commissioner may require a claimant who is in partial unemployment in any week to present evidence of earnings, as obtained from the employing unit, to substantiate his or her claim for benefits for such week.

(b) Individuals inducted into the Armed Forces of the United States, who were eligible for benefits immediately prior to the date of such induction, may be eligible for partial benefits for the week in which they were inducted. The cash remuneration received as members of the United States Armed Forces during the week in which they were inducted plus a subsistence rate of \$3.00 per day shall be deemed to be partial earnings for that week.

(7) Extended Benefits. To be eligible to receive extended benefits with respect to any week of unemployment in the individual's eligibility period, the individual must have been paid wages during the base period of the current benefit year in an amount exceeding 1½ times the wages of the individual's highest quarterly earnings or 40 times the most recent weekly benefit amount including dependency benefits. If the individual is denied extended benefits on the basis of either test set forth above, the individual may present evidence to the Department, in a manner

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prescribed by the Director, that the individual has had 20 weeks of full-time insured employment. If the Department concludes, based upon the evidence so presented that the individual has had 20 weeks of full-time insured employment, the individual will be eligible to receive extended benefits.

(8) Profiling.

(a) Any individual who has been identified pursuant to a profiling system established by the Commissioner as likely to exhaust regular benefits and in need of job search assistance services to make a successful transition to new employment shall not be eligible for benefits for any week such individual fails without good cause to attend and participate in a reemployment services seminar or such follow-up review sessions as directed by the Commissioner.

(b) For the purposes of 430 CMR 4.01(8)(a), the term "good cause" shall mean:

1. attendance at a job interview;
2. claimant, household member or immediate family member illness;
3. emergency family care issue, provided, that attempts to secure family care for the scheduled activity have been made;
4. unexpected transportation problems;
5. previously scheduled health-related appointments;
6. jury duty;
7. death of a household member or immediate family member (including a spouse, child, parent, brother, sister, grandparent, stepchild or parent of a spouse);
8. the individual's need to address the physical, psychological and legal effects of domestic violence as defined in M.G.L. c. 151A, § 1(g $\frac{1}{2}$); and
9. other circumstances which the Commissioner determines are beyond the individual's control.

(c) An individual who fails to attend a reemployment services seminar or review session (either for good cause or otherwise) shall attend a rescheduled seminar or review session as directed by the Commissioner.

(d) A claimant who has been determined to have good cause for failing to attend a reemployment services seminar or review session shall be eligible for benefits, provided, that the claimant is otherwise eligible for benefits under the other provisions of M.G.L. c. 151A.

4.03: Replacement of Benefit Checks

(1) Whenever a benefit check has been lost or destroyed, such check may be replaced upon application made to the Commissioner. Said application shall be made by the claimant or by a holder in due course. Prior to granting such request, the Commissioner, at his or her discretion, may require that a satisfactory surety bond be furnished.

(2) Whenever a check has not been cashed within 90 days from the date of issue thereof, it will be void. The holder of such check may present the uncashed check to the Commissioner or his or her authorized representative for the purpose of issuance of a new check.

4.04: Disqualification for Benefits

(1) A claimant who does not report as directed to continue his or her claim at the assigned time may be disqualified for the week in which he failed to report.

(2) A claimant who has been authorized to continue for benefits by mail shall be disqualified from receiving waiting period or compensable week credit for the week claimed if he or she fails to return the form provided by the Division of Unemployment Assistance (Division) for this purpose within 21 days after the Saturday of the last week of the bi-weekly reporting period or no later than the third Friday following the week in which said form was reissued unless he or she can prove to the satisfaction of the Commissioner or his or her authorized representative that he or she had good cause for not returning such form within the prescribed time.

4.04: continued

(3) A claimant who fails, without good cause, to answer a call-in card, letter or other message requesting him to contact the public employment office relative to a job opening, shall be deemed to have failed to comply with reporting requirements and shall be disqualified for the week in which he failed to answer the call-in.

(4) A claimant who has been suspended from his work by his employing unit as discipline for breaking established rules and regulations of his employing unit shall be disqualified from serving a waiting period or receiving benefits for the duration of the period for which he has been suspended, but in no case more than ten weeks, provided it is established to the satisfaction of the Commissioner that such rules or regulations are published or established by custom and are generally known to all employees of the employing unit. that such suspension was for a fixed period of time as provided in such rules or regulations. and that a claimant has the right to return to his employment with the employing unit if work is available at the end of the period of suspension.

(5) Harassment.

(a) Definitions. The following words and phrases shall have the following meanings:

1. Racial harassment-conduct with racial content which has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
2. Sexual harassment-sexual advances, requests for sexual favors, and other physical conduct of a sexual nature when
 - a. submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions;
 - b. such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance; or
 - c. such advances, requests or conduct have the purpose or effect of creating an intimidating, hostile, humiliating or sexually offensive work environment.
3. Other unreasonable harassment-includes, but is not limited to, incidents of harassment related to age, religious creed, national origin, or handicap of any individual.

(b) Sexual, racial or other unreasonable harassment may result from conduct by the employer or the employer's agents, supervisory employees, co-employees or non-employees. Such conduct may occur on or off the worksite and on or off company time.

(c)1. A claimant shall not be disqualified from receiving benefits under M.G.L. c. 151A, § 25(e)(1) for leaving work voluntarily without good cause attributable to the employing unit or its agent if he or she establishes to the satisfaction of the Commissioner that his or her reason for leaving work and separation from employment is due to:

- a. sexual, racial or other unreasonable harassment by an employer, its agents or supervisory employees and the employer, its agents or supervisory employees knew or should have known of such harassment;
 - b. In the case of a non-employee, the Division will consider the extent of the employer's control over the non-employee's conduct.
2. For purposes of determining a claimant's eligibility for benefits under 430 CMR 4.04(7)(c)1.a., an employer is deemed to have knowledge of sexual, racial or other unreasonable harassment committed by its agents and supervisory employees in connection with the employment relationship regardless of whether the employer had actual knowledge of these acts.
 3. In all cases involving allegations of harassment (other than allegations of sexual, racial or other unreasonable harassment as defined at 430 CMR 4.04(7)(a)) by an employer, its agents or supervisory employees, a claimant shall not be disqualified from receiving benefits under M.G.L. c. 151A, § 25(e)(1) if he or she establishes to the satisfaction of the Commissioner that,
 - a. the employer, its agents or supervisory employees knew or should have known of the harassment and the employer failed to take immediate and appropriate corrective action; and
 - b. he or she took reasonable steps to preserve his or her employment, which may include notifying the employer of the harassment, unless the circumstances indicate that such efforts would be futile or result in retaliation.

4.04: continued

(d) In determining whether a claimant's reason for leaving work is due to harassment, the Division will look at the totality of the factual circumstances resulting in the claimant's separation from employment, such as the nature of the alleged harassment and the context in which the alleged harassing incidents occurred.

(6) Lost Time. The cash value of time lost for reasons other than failure to furnish full-time work shall be determined by multiplying the average hourly earnings for the week by the number of hours lost. If it is not possible to ascertain the average hourly earnings for the week of such "lost time", such lost earnings shall be computed at four percent of the benefit rate for each hour lost.

(7) Reemployment Services.

(a) Definitions: The following words and phrases shall have the following meanings:

Profiling System means, for the purposes of 430 CMR 4.01(10) and 430 CMR 4.04(9), a system established by the commissioner pursuant to Public Law 103-152 to identify claimants who are: permanently laid off, likely to exhaust their regular unemployment compensation benefits, and in need of reemployment services in order to make a successful transition to new employment. Reemployment Services means job search assistance and job placement services, such as assessment counseling, testing, provision of labor market information, job search workshops, job clubs, referrals to potential employers and other similar services.

Similar Services means reemployment services that individuals are attending or have attended on their own initiative. Examples of "similar services" include, but are not limited to, services offered by a company prior to a permanent layoff.

(b) An individual who has been referred to reemployment services pursuant to a profiling system established by the commissioner shall be eligible to receive benefits with respect to any week only if the individual participates in such reemployment services or similar services (such as outplacement services) to the satisfaction of the commissioner, unless the commissioner determines that:

1. The individual has completed such services; or
2. There is justifiable cause for the individual's failure to participate in such services for such week.

(c) For the purpose of 430 CMR 4.04(9)(b), the term "justifiable cause" includes any reason which constitutes "good cause" under 430 CMR 4.01(10)(b). The commissioner shall apply the "reasonable person" test in determining if justifiable cause exists for failure to participate.

(d) An individual who fails to participate in reemployment services or similar services (either for justifiable cause or otherwise) shall participate as directed by the commissioner in any rescheduled services.

(e) An individual who has been determined to have justifiable cause for failure to participate shall be eligible for benefits, provided, that the individual is otherwise eligible for benefits under the other provisions of M.G.L. c. 151A.

(f) Any individual who is approved by the Division to attend training under M.G.L. c. 151A, § 30(c) shall not be required to participate in reemployment services or similar services.

(g) Any individual who has been determined to have failed to participate in reemployment services or similar services may appeal such determination under the provision of M.G.L. c. 151A, §§ 39 through 42.

(8) Temporary Help Firm Former Employees.

(a) Definitions. The following words and phrases shall have the following meanings:

Temporary Help Firm means a firm that primarily hires its own employees and assigns them to clients to support or supplement the client's workforce in work situations such as employee absences, temporary skill shortages, seasonal workloads and special assignments and projects.

Temporary Employee means an employee assigned to work for the clients of a temporary help firm.

(b) Unless the claimant satisfies the provisions of 430 CMR 4.04(8)(c), the commissioner shall determine that the claimant has voluntary quit employment if:

4.04: continued

1. the claimant was employed by a temporary help firm; and
 2. the temporary help firm advised the claimant in writing as provided in 430 CMR 4.04(8)(e) of the need to contact the temporary help firm for reassignment upon completion of an assignment; and
 3. the temporary help firm submits information, supported by contemporaneous documentation prepared in the ordinary course of business, that the claimant did not request another work assignment upon completion of the most recent assignment.
- (c) The claimant may avoid the commissioner's determination in 430 CMR 4.04(8)(b) above if the claimant shows that he/she:
1. did request another assignment; or
 2. did not receive written notice from the temporary help firm of the obligation to request another assignment; or
 3. had good cause, as determined by the commissioner, for failing to request another assignment.
- (d) The request for a new assignment must be made by the claimant upon completion of the current assignment and before filing an initial (new or additional) claim for benefits.
- (e) Any notice given by the temporary help firm to its temporary employees of the need to request a new assignment upon completion of their current assignment must be in writing and inform the employees of the method and manner for requesting a new assignment, such method and manner to be consistent with the normal method and manner of communication between the temporary employee and the temporary employment firm for which he/she works, and that a failure to request a new assignment may affect their eligibility for unemployment compensation.

4.05: Interstate Claims

430 CMR 4.05 governs the Massachusetts Division of Unemployment Assistance in its administrative cooperation with other States adopting a similar regulation for the payment of benefits to interstate claimants.

4.05: continued

- (1) Definitions. As used in 430 CMR, unless the context clearly requires otherwise:
- Agent State means any State in which an individual files a claim for benefits from another State.
- Benefits means the compensation payable to an individual with respect to his unemployment, under the unemployment insurance law of any State.
- Liable State means any State against which an individual files, through another State, a claim for benefits.
- Interstate Benefit Payment Plan means the plan approved by the Interstate Conference of Employment Security Agencies under which benefits shall be payable to unemployed individuals absent from the State (or States) in which benefit credits have been accumulated.
- Interstate Claimant means an individual who claims benefits under the unemployment insurance law of one or more liable States through the facilities of an agent State. The term "interstate claimant" shall not include any commuter provided, however, that the Massachusetts Division of Unemployment Assistance may, by arrangement with any adjoining State employment security agency, treat certain commuters as interstate claimants if they reside in geographical areas from which the Massachusetts Division of Unemployment Assistance finds that requiring commuters to file their benefit claims in the State of their last employment would cause undue hardship to such claimants. The term "commuter" applies to each individual who, before becoming unemployed, customarily commuted from his/her residence in the agent State to his work in the liable State. State includes the District of Columbia and Puerto Rico.
- Week of Unemployment includes any week of unemployment as defined in the law of the liable State from which benefits with respect to such week are claimed.
- (2) Registration for Work.
- (a) Each interstate claimant shall be registered for work, through any public employment office in the agent State when and as required by the law, regulations and procedures of the agent State. Such registration shall be accepted as meeting the registration requirements of the liable State.
- (b) Each agent State shall duly report, to the liable State in question, whether each interstate claimant meets the registration requirements of the agent State.
- (3) Benefit Rights of Interstate Claimants.
- (a) A claimant may file a claim against any State in which he has earned wages, and if it is determined by such State that the claimant has available benefit credits in such State, then claims shall be filed only against such State as long as benefit credits are available in that State. Thereafter, the claimant may file claims against any other State in which he has earned wages. For the purposes of 430 CMR 4.00, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction.
- (b) The benefit rights of interstate claimants established by 430 CMR 4.00 shall apply only with respect to new claims (notices of unemployment) filed on or after July 5, 1953.
- (4) Claims for Benefits.
- (a) Claims for benefits or waiting period shall be filed by interstate claimants on uniform interstate claim forms and in accordance with uniform procedures developed pursuant to the Interstate Benefit Payment Plan. Claims shall be filed in accordance with the type of week in use in the agent State. Any adjustments required to fit the type of week used by the liable State shall be made by the liable State on the basis of consecutive claims filed.
- (b) Claims shall be filed in local employment offices, or by mail in accordance with agent State regulations by interstate claims, or in accordance with the schedule provided by itinerant service.
1. With respect to claims for weeks of unemployment in which an individual was not working for his regular employer, the liable State shall, under circumstances which it considers good cause, accept a continued claim filed up to one week, or one reporting period, late. If a claimant files more than one reporting period late, an initial claim must be used to begin a claim series and no continued claim for a past period shall be accepted.

4.05: continued

2. With respect to weeks of unemployment during which an individual is attached to his/her regular employer, the liable State shall accept any claim which is filed within the time applicable to such claims under the law of the agent State.
- (5) Determination of Claims.
 - (a) The agent State shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable State in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent State.
 - (b) The agent State's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent State shall not refuse to take an interstate claim.
- (6) Appellate Procedure.
 - (a) The agent State shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefits claims.
 - (b) With respect to the time limits imposed by the law of a liable State upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable State on the date when it is received by any qualified officer of the agent State.
- (7) Extension of Interstate Benefit Payments to Include Claims Taken in and for Canada. 430 CMR 4.00 shall apply in all its provisions to claims taken in and for Canada.

4.07: Mass Layoff

- (1) The term "mass layoff", not elsewhere defined, shall mean a separation of ten or more employees for the same reason from employment in a single establishment for an expected duration of seven or more days.

4.07: continued

(2) In cases of mass layoffs arrangements may be made for the distribution of claim application forms to the affected workers at the plant, public employment office or other location. Such forms upon completion and return in accordance with the schedule established by an authorized representative of the Commissioner shall constitute the employee's registration for work and claim for benefits as of the date established by the form.

4.09: Combined Wage Claims

430 CMR 4.09 governs the Massachusetts Division of Unemployment Assistance in its administration of an arrangement whereby an unemployed worker with covered employment or wages in more than one State may combine all such employment and wages in order to qualify for benefits or to receive more benefits.

(1) Definitions: As used in 430 CMR 4.09, unless the context clearly requires otherwise:

Base Period and Benefit Year mean the base period and benefit year applicable under the law of the paying state.

Combined Wage Claimant means a claimant who has covered wages under the unemployment compensation law of more than one State and who has filed a claim under this arrangement.

Employment and Wages. The term "employment" means all services which are covered under the unemployment compensation law of a State, whether expressed in terms of weeks or otherwise. The term "wages" refers to all remuneration for such employment.

Paying State means a single State against which the claimant files a combined wage claim, if the claimant has wages and employment in that State's base period(s) and the claimant qualifies for unemployment benefits under the unemployment compensation law of that State using combined wages and employment.

State includes the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands.

Transferring State means the State in which a combined wage claimant had covered employment and wages in the base period of a paying State, and which transfers such employment and wages to the paying State for its use in determining the benefit rights of such claimant under its law.

(2) A claimant who has had employment covered under the unemployment compensation law of two or more States, whether or not he is monetarily qualified under one or more of them, may elect to file a combined wage claim. He may not so elect, if he had previously established a benefit year under the State or Federal Unemployment Compensation Law and:

- (a) The benefit year has not ended, and
- (b) He still has unused benefit rights based on such benefit year.

(3) For the purpose of this arrangement, a claimant will not be considered to have unused benefit rights based on a benefit year which he has established under a State or Federal Unemployment Compensation Law if:

- (a) He/she has exhausted his rights to all benefits based on such benefit year; or
- (b) His/her rights to such benefits have been postponed for an indefinite period or for the entire period in which benefits would otherwise be payable; or
- (c) Benefits are affected by the application of a seasonal restriction.

(4) If an individual elects to file a combined wage claim, all employment and wages in all States in which he worked during the base period must be included in such combining, except:

- (a) Any employment and wages which have been transferred to any other paying State and not returned unused, or which have been used in the transferring State as the basis of a monetary determination which established a benefit year.
- (b) Any employment and wages which have been canceled or are otherwise unavailable to the claimant as a result of a determination by the transferring State made prior to its receipt of the request for transfer, if such determination has become final or is in the process of appeal but is still pending. If the appeal is finally decided in favor of the combined wage claimant, any employment and wages involved in the appeal shall be transferred to the paying State and any necessary redetermination shall be made by the paying State.

4.09: continued

(5) A combined wage claimant may withdraw his/her combined wage claim within the period prescribed by M.G.L. c. 151A for filing an appeal, protest, or request for redetermination from the monetary determination of the combined wage provided:

- (a) He/she repays in full any benefits paid to him/her thereunder, or
- (b) He/she authorizes the State(s) against which he/she files a substitute claim(s) for benefits to withhold and forward to the paying State a sum sufficient to repay such benefits.

(6) Employment and wages which have been used under this arrangement for a determination of benefits which establish a benefit year shall not thereafter be used by another State as the basis for another monetary determination of benefits.

(7) If an individual requests to file a combined wage claim that does not have any wages and employment in Massachusetts, the Division of Unemployment Assistance shall inform the claimant of the option to file in another State in which the claimant has wages and employment during that State's base period(s).

4.10: Solicitation by Non-commercial Legal Training Programs

The Division interprets the anti-solicitation provision of the last sentence of M.G.L. c. 151A, § 37 (and in particular its element of "business"), not to prohibit solicitation which is devoid of any commercial or commercially-motivated element. Non-profit, non-commercial entities, which seek to further the objectives of the employment security law by providing assistance to unemployed workers in representing them at Division hearings, and which charge no fee for their services (or which request, but do not require, a nominal gratuity, pursuant to Division authorization under M.G.L. c. 151A, § 37), and their representatives are not, in the Division's view, prohibited by M.G.L. c. 151A, § 37 from soliciting claimants for unemployment benefits for purposes of representing said claimants at such hearings and advocating for unemployment insurance benefits at such hearings. Any such solicitation is subject to reasonable restrictions of time, place and manner, *e.g.* 430 CMR 4.08, to protect the rights of those unemployed persons being solicited and to assure that the smooth functioning of the business of the Division and the orderly administration of the employment security Law are not impaired.

4.11: Notice of Hearing

The notice of hearing on an appeal of a determination or a redetermination by the Commissioner shall be mailed to all interested parties and their authorized representatives and shall specify the time, date, place of hearing and the issues to be considered at the hearing. The Commissioner shall mail the notice of hearing at least ten days before the hearing, unless all interested parties have, with the approval of the Commissioner, waived the notice or agreed to a shorter period of time. It shall be good cause for postponement of the scheduled hearing when an interested party or their attorney or authorized representative was not provided with adequate time to prepare for the hearing because the notice of hearing was mailed to such party, attorney or authorized representative less than ten days prior to the scheduled hearing.

GOOD CAUSE FOR FILING A REQUEST FOR HEARING BEYOND THE TEN DAY LIMIT AS PROVIDED FOR IN M.G. L. C. 151A, § 39(B)

4.12: Purpose

The purpose of 430 CMR 4.12 through 430 CMR 4.15 is to set forth standards under which the Commissioner of the Division may extend the ten day time limit for filing a request for a hearing under M.G.L. c. 151A, § 39(b).

4.13: Filing a Request for a Hearing

(1) An interested party shall request a hearing within ten calendar days after delivery, in hand, or mailing of the Commissioner's determination. This ten day filing period may be extended by the Commissioner, for good cause shown as set forth in 430 CMR 4.14, provided a party files his or her request for a hearing within 30 calendar days after delivery or mailing of the Commissioner's determination.

4.13: continued

(2) The Commissioner shall not find good cause if a party fails to request a hearing within 30 calendar days after delivery or mailing of the Commissioner's determination.

(3) A request for a hearing shall be deemed filed on the date it is received, if delivered in hand to a Division employee designated to receive such request, or on the date postmarked, if mailed. A request is timely if it is delivered to the Division or postmarked on or before the tenth calendar day after the date of mailing or date of delivery, in hand, of the Commissioner's determination.

(4) Notwithstanding 430 CMR 4.13(1) through (3), where the party is an individual whose preferred language is listed under M.G.L. c.151A, § 62A and who did not receive the Commissioner's determination in his or her preferred language, the request for hearing shall be deemed timely if filed within 60 calendar days from the date of mailing of the determination or if filed after the 60 day period and the reason for the delay in filing is caused by the Commissioner's determination having not been in his/her preferred language.

4.14: Good Cause for a Late Appeal

The Commissioner may extend the ten day filing period where a party establishes to the satisfaction of the Commissioner or authorized representative that circumstances beyond his or her control prevented the filing of a request for a hearing within the prescribed ten day filing period. Examples of good cause for a failure to file a timely request for a hearing include, but are not limited to, the following:

(1) A delay by the United States Postal Service in delivering the Commissioner's determination;

(2) Death of a household member or an immediate family member (including a spouse, child, parent, brother, sister, grandparent, stepchild or parent of a spouse);

(3) A documented serious illness or hospitalization of a party household member an immediate family member during the entire ten day filing period or a portion of the appeal period if the party's ability to timely appeal is thereby affected;

(4) An emergency family crisis which requires a party's immediate attention during the entire ten day filing period or a portion of the appeal period if the party's ability to timely appeal is thereby affected;

(5) An inability to effectively communicate or comprehend English and the party is unable to find a suitable translator to explain the notice of determination within the ten day filing period;

(6) The Commissioner's determination is not received and the party promptly files a request for a hearing after he or she knows or should have known that a determination was issued;

(7) A continuing absence from the Commonwealth, while seeking employment, during all or most of the ten day filing period;

(8) Intimidation, coercion or harassment by an employer resulting in a party failing to timely request a hearing;

(9) A Division employee directly discourages a party from timely requesting a hearing and such discouragement results in a party believing that a hearing is futile or that no further steps are necessary to file a request for a hearing.

(10) An inability because of illiteracy or a psychological disability to understand that a request for a hearing must be filed within the ten day filing period;

(11) The individual's need to address the physical, psychological and legal effects of domestic violence as defined in M.G.L. c. 151A, § 1(g^{1/2});

(12) Any other circumstances beyond a party's control which prevented the filing of a timely appeal.

4.15: Late Appeals Filed Beyond 30 Days

The 30 day limitation on filing a request for a hearing shall not apply where the party establishes that:

4.15: continued

- (1) A Division employee directly discouraged the party from timely requesting a hearing and such discouragement results in the party believing that a hearing is futile or that no further steps are necessary to file a request for a hearing;
- (2) The Commissioner's determination is received by the party beyond the 30 day extended filing period and the party promptly files a request for hearing;
- (3) The Commissioner's determination is not received and the party promptly files a request for a hearing after he or she knows that a determination was issued.
- (4) An employer threatened, intimidated or harassed the party or a witness for the party, which resulted in the party's failure to file for a timely hearing.

USE OF INTERPRETERS

4.16: Purpose

The purpose of 430 CMR 4.16 through 430 CMR 4.20 is to state the Division of Unemployment Assistance's policy regarding the use of interpreters at administrative hearings conducted under M.G.L. c. 151A, § 39(b).

4.17: Scope and Applicability

430 CMR 4.16 through 4.20 apply to claimants who cannot effectively communicate in English.

4.18: Statement of Policy

The Division of Unemployment Assistance encourages claimants who cannot effectively communicate in English to use an interpreter at any administrative hearing conducted under M.G.L. c. 151A, § 39(b).

4.20: Matters Relating to Hearings

- (1) A claimant shall have the right to use an interpreter at a hearing, whether or not the claimant has indicated previously the need for an interpreter.
- (2) If a claimant wants an interpreter but does not have one at the hearing, the claimant shall have the right to a stay of the hearing for the purpose of securing an interpreter.
- (3) If at any point in the hearing, the review examiner observes that a claimant cannot effectively communicate in English, the review examiner shall attempt, on the record, to explain the claimant's right to a stay of the hearing for the purpose of securing an interpreter. The review examiner shall attempt to encourage the claimant to use an interpreter at the hearing.
- (4) If a claimant elects to proceed without an interpreter, the claimant shall not be deemed to have waived the right to use an interpreter at any subsequent point in the hearing.
- (5) The review examiner shall take all reasonable measures to ensure that a claimant who uses an interpreter at the hearing is able to comprehend the proceedings as fully as if the claimant was able to effectively communicate in English.
- (6) The review examiner shall take all reasonable measures to ensure that the interpreter provides full interpretation throughout the hearing.

INTEREST ON OVERPAID BENEFITS

4.21: Purpose

The purpose of 430 CMR 4.21 through 430 CMR 4.26, inclusive, is to establish procedures regarding interest on overpaid unemployment benefits as provided by M.G.L. c. 151A, § 69(a).

4.22: Scope and Applicability

430 CMR 4.21 through 4.26 applies to any individual who fails to pay when due any amount paid to said individual because of such individual's failure knowingly to furnish accurate information concerning any material fact, including amounts of remuneration received, as provided in M.G.L. c. 151A, § 24(c).

4.23: Definitions

Division means the Division of Unemployment Assistance.

Failure Knowingly to Furnish Accurate Information means that the overpayment resulted from

- (a) the individual furnishing information which he or she knew, or should have known, to be incorrect or
- (b) the individual failed to furnish information which he or she knew, or should have known, to be material.

Overpayment means any amount of unemployment benefits which an individual received in excess of that which he or she was entitled to under the applicable law.

Remuneration means any consideration as defined in M.G.L. c. 151A, § 1(r)(3).

4.24: Assessment of Interest

- (1) An overpayment becomes due when the determination, redetermination or decision which is the basis for the overpayment becomes final. A determination, redetermination or decision becomes final when the overpaid individual has exhausted all levels of administrative and judicial review or has failed to request review at the next applicable level within the time allowed by M.G.L. c. 151A.
- (2) Filing of a request for waiver of the recovery of the overpayment shall not stay the assessment of interest.
- (3) Interest shall accrue commencing with the first day after the overpayment becomes final.

4.25: Application of Payments

- (1) When the Division receives as payment on the overpayment less than the full amount of the overpayment and applicable interest, the Division shall apply the payment first to the overpayment with the balance, if any, applied to the interest on that overpayment except as provided in 430 CMR 4.25(3).
- (2) If an individual has two or more overpayments, the Division shall apply any payment received to the oldest weeks of overpayment which have become final. The Division shall apply said payments in accordance with 430 CMR 4.25(1).
- (3) If the Division receives payment by way of offset against current or future benefits, the Division shall apply such payment only to the overpayment. In such situations, the Division may use such methods as are otherwise authorized to collect any interest owed.
- (4) If payment is made by mail, it shall deem to be received on the date indicated by the postal cancellation stamp thereon. If payment is hand-delivered, it shall deem to be received on the date delivered.

4.26: Cancellation of Interest

- (1) Cancellation of any overpayment pursuant to M.G.L. c. 151A, § 69(b) will cancel the balance of any interest owed on that overpayment.
- (2) Where only interest on the overpayment remains due, the Division may cancel the balance of any interest due in accordance with the provisions of M.G.L. c. 151A, § 69(b).

RECONSIDERATION OF A DECISION

4.30: Purpose

The purpose of 430 CMR 4.30 through 430 CMR 4.35 is to establish procedures regarding the Commissioner's reconsideration of a decision issued pursuant to M.G.L. c. 151A.

4.31: Scope and Applicability

430 CMR 4.30 through 430 CMR 4.35 applies to any reconsideration requested or made pursuant to M.G.L. c. 151A, § 71 and 430 CMR.

4.32: Definitions

Commissioner means Commissioner of the Division of Unemployment Assistance (or designee) as defined in M.G.L. c. 151A, § 1(e $\frac{1}{2}$)

Party means an individual or employing unit whose legal rights, duties or privileges has been decided in a hearing conducted under M.G.L. c. 151A, § 12 or M.G.L. c. 151A, § 39(b) and who was entitled to participate in the hearing.

Request for Reconsideration means a document submitted by a party (or representative) requesting review of a decision issued pursuant to M.G.L. c. 151A, § 12 or M.G.L. c. 151A, § 39(b).

4.33: Request for Reconsideration

- (1) A party aggrieved by a decision issued pursuant to M.G.L. c. 151A, § 12 or M.G.L. c. 151A, § 39(b) may file a request for reconsideration of said decision with the Commissioner, provided that no application for review has been filed pursuant to M.G.L. c. 151A, § 12 or M.G.L. c. 151A, § 40.

4.33: continued

- (2) A party who files a request for reconsideration shall mail a copy of said request to every other party to the original hearing. Within 20 days from mailing of the notice, any party so notified may file with the Commissioner a written statement giving the reasons for not allowing reconsideration and shall mail a copy to the party requesting reconsideration.
- (3) A request for reconsideration must be in writing, include a statement of the specific reasons reconsideration should be allowed and indicate that a copy of the request was mailed to every other party to the original hearing.
- (4) A request for reconsideration must be filed with the Commissioner no earlier than 30 days and no later than one year from the mailing date of the original decision.
- (5) In determining whether a party has timely filed a request for reconsideration or a response to a request for reconsideration, the provisions of 801 CMR 1.02(4)(a) shall apply.
- (6) The filing of a request for reconsideration shall not stay the running of the appeal period provided by M.G.L. c. 151A, § 12 or M.G.L. c. 151A, § 40.
- (7) If the Commissioner reconsiders the decision on his own motion, the 30 day period provided in 430 CMR 4.33(4) shall not apply. In such circumstances, the Commissioner shall give notice together with his reasons for reconsidering the decision, to all parties to the original hearing. The parties shall have 20 days from the mailing of the notice to submit in writing to the Commissioner, with a copy to the other party, a statement of the reasons reconsideration should be allowed or denied.

4.34: Conditions for Reconsideration

- (1) Upon his/her own motion or by request filed pursuant to 430 CMR 4.33, the Commissioner may reconsider a decision issued pursuant to M.G.L. c. 151A, § 12 or M.G.L. c. 151A, § 39(b) for which no application for review pursuant to M.G.L. c. 151A, § 12 or M.G.L. c. 151A, § 39(b) has been filed when, in his/her judgment, it appears that because of newly discovered evidence or for any other reasonable cause he should reconsider said decision.
 - (a) A party requesting reconsideration because of newly discovered evidence must demonstrate that by due diligence it could not have discovered said evidence in time to present it at the original hearing and that such evidence is material to the issues in the case.
 - (b) A party requesting reconsideration for any other reasonable cause must show that the original decision was based on an error of law or procedural irregularities underlying the original decision.
- (2) Nothing in 430 CMR 4.34 shall require the Commissioner to conduct an interview or a hearing in allowing or denying reconsideration.

4.35: Effect of Reconsideration

- (1) If the Commissioner denies a request for reconsideration, the denial shall be final and is not subject to appeal under any provision of M.G.L. c. 151A.
- (2) If the Commissioner allows a request for reconsideration or reconsiders a decision on his/her own motion, he/she shall reopen the original hearing giving notice to all parties to the original hearing. The reopened hearing shall be conducted in accordance with the procedures prescribed by M.G.L. c. 151A, § 12 or M.G.L. c. 151A, § 39(b), whichever is applicable.
- (3) If the Commissioner reopens the original hearing, benefits shall be paid or denied in accordance with the original decision until such time as a new decision is issued.

Remuneration

4.36: Purpose

The purpose of 430 CMR 4.36 through 430 CMR 4.41 is to interpret the standards regarding receipt of remuneration under M.G.L. c. 151A, § 1(r)(3).

4.37: Scope and Applicability

430 CMR 4.36 through 430 CMR 4.41 applies to remuneration received by an employee from the employee's employer.

4.38: Definitions

Commissioner: the Commissioner of the Division of Unemployment Assistance or his/her designee as defined in M.G.L. c. 151A, §1(e½).

Date of Certification: the actual or anticipated date of plant closing as determined by the commissioner.

Dismissal Pay: payment made to an employee by the employee's employer as a result of the employee's separation from the employ of the employer.

Facility: a plant, factory, commercial business, hospital, institution or other place of employment located in the commonwealth which had 50 or more employees during any month in the six month period prior to the date of certification.

Payment in Lieu of Dismissal Notice: a payment made under the circumstances where the employer, not having given an advance notice of separation to an employee, whether or not notice is required and irrespective of the length of service of the employee, makes a payment to the employee equivalent to the wages which the employee could have earned had the employer permitted the employee to work during the period of the notice.

Permanent Separation: the permanent severance of an employee from the employ of an employer; provided, that, for the purpose of determining whether a plant closing has occurred, an employee who has transferred to another facility owned or operated by the employer shall not be considered to be permanently separated.

Plant Closing: the permanent cessation or reduction of business at a facility or facilities, where such facilities are located at a single site of employment as defined by 20 CFR 639.3(i), of at least 50 employees which results or will result as determined by the Commissioner in the permanent separation of at least 50% of the employees of the facility or facilities within a period of six months prior to the date of certification or within such other period as the commissioner shall prescribe, provided, that such period falls within the six month period prior to the date of certification.

Severance Pay: a payment to an employee at the time of separation in recognition and consideration of the past services the employee has performed for the employer. The amount of the payment is usually based on years of service.

Termination Pay: the maintenance by an employer of an employee's wages following the employee's separation from the employ of an employer. Termination pay includes, but is not limited to, continuation pay, so-called.

4.39: Certification

(1) In determining whether at least 50% of the employees of the facility or facilities have been or will be permanently separated within a specified period, such period will include the date of certification.

4.39: continued

(2) Any certification shall remain in effect from the date of certification through the subsequent 90 day period or through the anticipated separation completion date as scheduled by the employer at the time of certification, whichever is longer. At the discretion of the commissioner, the certification period may be extended for an additional 90 days or through the anticipated separation date as revised by the employer, and approved by the commissioner, whichever is longer.

(3) A finding made by the commissioner or his representative that a plant closing has or will occur shall, along with any supporting documents, become part of the record in any proceeding under M.G.L. c. 151A, §§ 39(b), 41, and 42 and shall be prima facie evidence in such proceeding that plant closing has or will occur.

(4) Whenever an employer is requested to furnish information necessary to determine whether a plant closing has occurred, such information shall be furnished within ten days of the date of request.

(5) Whenever an employer has failed to provide the requested information within the time period prescribed by 430 CMR 4.39(4), the commissioner shall determine whether a plant closing has occurred on the basis of information furnished by the employee supplemented by such other information as may be available and satisfactory to the commissioner.

4.40: Receipt of Remuneration

(1) Except as provided in 430 CMR 4.41, the term "remuneration" includes termination, severance or dismissal pay, or as payment in *lieu* of dismissal notice, whether or not notice is required, or as payment for vacation allowance during a period of regular employment. The payment may be made in a lump sum or periodically.

(2) The commissioner may apply a lump sum payment to the week or weeks following the employee's separation by dividing such lump sum by the employee's average weekly wage as determined under M.G.L. c. 151A, § 1(w).

4.41: Exceptions to Receipt of Remuneration

(1) The term "remuneration" shall not include payment for unused vacation leave or unused sick leave.

(2) The term "remuneration" shall not include payment of termination, severance or dismissal pay, or payment in lieu of dismissal notice made to an employee in a lump sum in connection with a plant closing.

(3) The term "remuneration" shall include payment of termination, severance or dismissal pay, or payment in lieu of dismissal notice made to an employee in periodic payments in connection with a plant closing even if the employee has the option of electing to receive the payment in a lump sum.

(4) On any appeal of a determination or decision finding that the payment received constitutes remuneration, the employee has the burden of producing evidence showing that such payment falls within the exception to the receipt of remuneration.

PART-TIME AVAILABILITY

4.42: Purpose

The purpose of 430 CMR 4.42 through 430 CMR 4.45 is to establish criteria under which an individual, otherwise eligible for benefits, may limit his/her availability solely to part-time employment.

430 CMR: DEPARTMENT OF UNEMPLOYMENT ASSISTANCE

4.43: Scope and Applicability

430 CMR 4.42 through 430 CMR 4.45 applies to individuals receiving unemployment benefits under M.G.L. c. 151A.

4.44: Definitions

The following words and phrases shall have the following meanings unless otherwise clearly indicated by the context of 430 CMR 4.42 through 4.45:

Benefits or Unemployment Benefits means the money allowances payable to an individual as compensation for wage losses due to unemployment as provided in M.G.L. c. 151A.

Benefit Year shall have the meaning as set forth in M.G.L. c. 151A, § 1(c).

Commissioner means the Director of the Division of Unemployment Assistance established by M.G.L. c. 23, § 9I.

Disability means a physical or mental impairment that substantially limits a major life activity of such individual; a record of such an impairment; or being regarded as having such an impairment because of an actual or perceived physical or mental impairment. This determination is made without regard to the use of mitigating measures such as medications, prosthetics, medical supplies, equipment, and low-vision devices.

Initial Claim means a claim for unemployment benefits establishing an individual's benefit year pursuant to M.G.L. c. 151A.

Major Life Activities means functions including but not limited to caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, the operations of major bodily functions, and working.

Most Recent 26 Weeks of Employment means a period of time consisting of the most recent 26 weeks of employment immediately prior to the filing of an initial claim for benefits.

Part-time Employment means employment at less than the full-time work schedule customary for the individual's occupation.

Prior Work History of Part-time Employment means a period of time consisting of not less than 20 weeks of part-time employment during the most recent 26 weeks of employment.

Qualified Individual with a Disability means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or for the participation in programs or activities provided by a public entity.

4.45: Conditions for Limiting Availability

- (1) An individual otherwise eligible for benefits may limit his/her availability for work during the benefit year to part-time employment provided, that the individual:
 - (a) has a prior work history of part-time employment; establishes to the satisfaction of the commissioner good cause for restricting availability during the benefit year to part-time employment and that such good cause reason is the same as, or is related to that which existed during the prior work history of part-time employment; and is available during the benefit year for at least as many hours of work per week as used to establish the prior work history of part-time employment; or
 - (b) establishes to the satisfaction of the commissioner that the reasons for leaving his or her employment were for such an urgent, compelling, and necessitous nature as to make his or her separation involuntary; and establishes to the satisfaction of the commissioner that the same or related urgent, compelling, and necessitous reasons require the individual to limit availability for work during the benefit year to part-time employment; and such limitation does not effectively remove the individual from the labor force, and

4.45: continued

(2) An individual who falls under the provisions of 430 CMR 4.45(1)(b) who obtains suitable part-time employment during the benefit year shall be determined not to be in partial unemployment and will not be eligible to receive partial unemployment benefits while so employed in the benefit year.

(3) Notwithstanding the provisions of 430 CMR 4.45(1), an otherwise eligible individual who does not meet the requirements of 430 CMR 4.45(1) may limit his/her availability for work during the benefit year to part-time employment provided, that the individual is:

- (a) a qualified individual with a disability;
- (b) provides documentation to the satisfaction of the commissioner substantiating an inability to work full-time because of such disability; and
- (c) establishes to the satisfaction of the commissioner that such limitation does not effectively remove himself/herself from the labor force.

(4) Any individual who meets the requirements of either 430 CMR 4.45(1) or (3) must be actively seeking and available for suitable work to be eligible for benefits. An offer of employment will not be considered an offer of suitable employment and the individual will not be disqualified for refusing such offer where such offer:

- (a) in the case of an individual who meets the requirements of 430 CMR 4.45(1)(a) requires greater hours than those used to establish the individual's prior work history of part-time employment; or
- (b) in the case of an individual who meets the requirements of 430 CMR 4.45(3) requires greater hours than the individual is capable of working.

REDUCTION OF JOB INSURANCE BENEFITS RELATING TO PART-TIME EMPLOYMENT

4.71: Purpose

The purpose of 430 CMR 4.71 through 430 CMR 4.78, inclusive, is to establish procedures and interpret the standards for denial of benefits for leaving subsidiary part-time work. Such standards implement the decision of the Supreme Judicial Court in the case of *Susan Emerson v. Director DES*, 393 Mass. 351 (1984).

4.72: Scope and Applicability

430 CMR 4.71 through 4.78 applies to any person who has an eligible claim for unemployment compensation benefits and has left subsidiary part-time work or newly obtained part-time work in the benefit year under disqualifying circumstances within the meaning of M.G.L. c. 151A, § 25(e).

4.73: Definitions

The following words and phrases shall have the following meanings, unless otherwise clearly indicated by the context of 430 CMR 4.00:

Constructive Deduction means the amount of remuneration that would have been deducted from the claimant's weekly benefit amount under M.G.L. c. 151A, § 29(b) if the claimant had continued to be employed on a part-time basis. Full-time work means the most recent primary or principal work of the claimant as determined by 430 CMR 4.74 and 4.75.

Newly Obtained Part-time Work means employment obtained in the benefit year with an employer other than the employer who employed the claimant on his/her primary or principal work.

Part-time Work means all employment other than claimant's primary or principal work.

Subsidiary Part-time Work means employment worked contemporaneously with full-time work.

4.74: Criteria for Determining Full-time Work

In determining whether the claimant's most recent work was full-time or part-time; the following factors to be considered in priority are:

- (a) The number of hours spent on the work.
- (b) The wages earned for the week.
- (c) The duration of the claimant's employment with the employer.
- (d) The occupation of the claimant.

4.75: Application for Criteria for Determining Full-time Work

(1) The number of hours spent on the work and the wages earned for the week(s) will dictate whether the work was full-time or part-time.

4.75: continued

- (2) The claimant's most recent work will be presumed to be full-time if he or she worked the normal full-time hours of the occupation in which the claimant was employed.
- (3) The claimant's most recent work will, in the case of multiple contemporaneous employers, be presumed full-time if he or she worked more hours or earned more money in the most recent work than in all other contemporaneous employment.
- (4) If a claimant is employed by multiple "most recent" employers under substantially the same terms of wages and hours, the claimant will be presumed to have worked full-time for the employer with which he or she has had the longest duration of employment.

4.76: Reduction of Benefits

(1) A constructive deduction, as calculated under 430 CMR 4.78, from the otherwise payable weekly benefit amount, rather than complete disqualification from receiving unemployment insurance benefits, will be imposed on a claimant who separates from part-time work for any disqualifying reason under M.G.L. c. 151A, § 25(e), in any of the following circumstances:

- (a) if the separation is:
 1. from subsidiary, part-time work during the base period and, at the time of separation, the claimant knew or had reason to know of an impending separation from the claimant's primary or principal work; or
 2. if the separation from part-time work occurs during the benefit year; or
- (b) if, after the separation from subsidiary, part-time work, the claimant applies for and obtains unemployment insurance benefits on account of a non-disqualifying separation from primary or principal work that preceded the separation from part-time work.

(2) The constructive deduction from the weekly benefit amount will remain in effect for the period of unemployment next ensuing and until the claimant has had at least eight weeks of work and in each of said weeks has earned an amount equivalent to or in excess of the claimant's weekly benefit amount; provided, however, that, if the subsidiary, part-time work specified in 430 CMR 4.76(1) is for a fixed period of time, the constructive deduction based on the separation from such part-time work shall remain in effect only through the last week of such fixed period.

(3) If a claimant subject to a constructive deduction obtains part-time work or returns to the former part-time work, the claimant shall be subject to the earnings offset only while so employed, not that constructive deduction.

4.77: The Effect of Subsequent Part-time Work

The remuneration for subsequent part-time work, while a constructive deduction remains in effect, shall be added to the average part-time earnings as determined by 430 CMR 4.78(1)(a), (1)(b), or (1)(c). The deduction from the weekly benefit amount shall be computed by applying the earnings disregard standards provided for in M.G.L. c. 151A § 29(b) to the sum of the average part-time earnings and the remuneration for subsequent part-time work.

4.78: Constructive Deduction Calculation

- (1)(a) If the claimant's separation from part-time subsidiary work occurred in the last four weeks of employment prior to filing of the unemployment claim; the average part-time earnings will be computed dividing the gross wages paid by the subsidiary employer in the last completed quarter by 13. If there are less than 13 weeks of work, then the gross earnings shall be divided by the actual number of weeks worked.
- (b) On any separation from subsidiary part-time work after the establishment of a claim, the gross wages paid shall be divided by the number of weeks worked for the subsidiary part-time employer after the filing of a claim to determine the average part-time earnings.
- (c) On any separation from part-time work which is obtained after the establishment of a benefit year claim, the average part-time earnings will be computed by dividing the gross wages paid by the number of weeks worked.

4.78: continued

(2) The constructive deduction shall be computed by applying the earnings disregard standards provided for in M.G.L. c. 151A, § 29(b) to the average partial earnings as calculated in 430 CMR 4.78(1)(a) through (c).

BASE PERIOD

4.81: Purpose

The purpose of 430 CMR 4.81 through 4.86 is to establish procedures under which an alternate base period will be used as provided by St. 1994, c. 260.

4.82: Scope and Applicability

430 CMR 4.00 applies to any individual whose benefit year begins on or after October 2, 1994.

4.83: Definitions

The following words and phrases shall have the following meanings, unless otherwise clearly indicated by the content of 430 CMR 4.00:

Alternate Base Period shall mean with respect to benefit years beginning after October 1, 1994 but before April 2, 1995, the period of 52 consecutive calendar weeks ending with the day immediately preceding the first day of a claimant's benefit year. With respect to benefit years beginning on or after April 2, 1995, the term "alternate base period" shall mean the period including the last three completed calendar quarters immediately preceding the first day of a claimant's benefit year plus the lag period.

Benefit Credit means the total benefits which a claimant may receive during the benefit year as calculated pursuant to M.G.L. c. 151A, §30(a).

Benefit Year means the period of 52 consecutive weeks beginning on the Sunday immediately preceding the date on which an individual files a claim for benefits; provided, however, that the benefit year shall be 53 weeks if filing a new claim would result in overlapping any quarter of the base period of a previously filed new claim where such extension of the benefit year will prevent such overlapping; provided, further that, with respect to the week in which such claim is filed:

- (a) the individual has no unexpired benefit year; and
- (b) the individual meets the requirement of M.G.L. c. 151A, § 24(a); provided, further, that if the individual has been denied benefits during the period the individual is receiving termination, severance, or dismissal pay, or payment in *lieu* of dismissal notice under the provisions of M.G.L. c. 151A, §24(r) clause (3), the individual's benefit year shall be extended by the number of weeks for which the individual was disqualified but no more than 52 weeks.

Calendar Quarter means any one of the following periods in any year: January 1st to March 31st; April 1st to June 30th; July 1st to September 30th; and October 1st to December 31st.

Claimant means an individual who has filed a claim for unemployment benefits pursuant to M.G.L. c. 151A.

Commissioner means the commissioner of the Division of Unemployment Assistance established under the provisions of M.G.L. c. 23, § 9I.

Lag Period means the period beginning with the day following the end of the last completed calendar quarter in the primary base period and ending with the day immediately preceding the first day of the benefit year.

Monetary Determination for the purposes of 430 CMR 4.85 and 4.86 means a determination involving the claimant's total benefit credit.

4.83: continued

Primary Base Period shall mean with respect to benefit years beginning after October 1, 1994 but before April 2, 1995 the first four of the last five completed calendar quarters immediately preceding a claimant's benefit year. With respect to benefit years beginning on or after April 2, 1995, the term "primary base period" shall mean the last four completed calendar quarters immediately preceding the first day of a claimant's benefit year.

4.84: Procedures with Respect to Benefit Years Beginning After October 1, 1994 but Before April 2, 1995

- (1) The Commissioner shall use the alternate base period for calculating a claimant's benefit credit and average weekly wage as defined by M.G.L. c. 151A, § 1(w) under the following circumstances:
 - (a) The claimant does not have sufficient wages in the primary base period to meet the requirements of M.G.L. c. 151A, § 24(a); or
 - (b) The claimant has reason to believe that his/her benefit credit using the primary base period is less than or equal to 90% of his/her benefit credit using the alternate base period and has submitted within one year from the date of the monetary determination information satisfactory to the Commissioner to justify that belief.
- (2) Information satisfactory to the Commissioner includes, but is not limited to, payroll checks, payroll stubs and payroll records. Where such information is not available or is incomplete, the Commissioner may accept an affidavit signed by the claimant under the pains and penalties of perjury which justifies that belief. The claimant shall submit such information within ten calendar days from the date notified by the Commissioner to provide such information.
- (3) The Commissioner may verify the claimant's belief by requesting wage data from any employer within the lag period.

4.85: Procedures with Respect to Benefit Years Beginning on or After April 2, 1995

- (1) The Commissioner shall use the alternate base period for calculating a claimant's benefit credit and average weekly wage as defined by M.G.L. c. 151A, § 1(w) under the following circumstances:
 - (a) The claimant does not have sufficient wages in the primary base period to meet the requirements of M.G.L. c. 151A, § 24(a); or
 - (b) The claimant has reason to believe that his/her benefit credit calculated using the primary base period would be increased by at least 10% using the alternate base period and has presented within one year of the date of the monetary determination credible substantiation for such belief to the Commissioner in writing including, but not limited to, an individual's wage statement for each week paid in the lag period and the Commissioner has verified such substantiation either by requesting wage data from any employer in the lag period or by applying the provisions of 430 CMR 5.04(3) where the employer has not provided the requested wage data.
- (2) For the purposes of 430 CMR 4.85(1)(b), an "individual's wage statement" includes, but is not limited to, payroll checks, payroll stubs and payroll records.

4.86: General Procedures

- (1) Where the claimant has met the requirements of 430 CMR 4.84(1)(b) or 430 CMR 4.85(1)(b), whichever is applicable, the Commissioner shall calculate the claimant's benefit credit using both the primary and alternate base period and shall provide the claimant with the results of such calculations. The Commissioner may provide such results on the claimant's monetary determination form. The claimant shall elect within one year of the date of any notice of election and in accordance with the procedures specified by the Commissioner, which method of determining the base period shall be used in calculating his/her benefit credit. Where the claimant has not made such election, the Commissioner shall make payment using the primary base period. Such election shall be final; provided, that the Commissioner may redetermine the calculation of the claimant's benefit credit for any of the reasons specified in M.G.L. c. 151A, §71 and, if applicable, shall give the claimant a new election. The Commissioner shall not be required to give the claimant a new election where the requirements of 430 CMR 4.84(1)(b) or 430 CMR 4.85(1)(b) are no longer met as a result of the redetermination or the redetermination will not affect the original election.

4.86: continued

(2) If the Commissioner finds that the claimant has not met the requirements of 430 CMR 4.84(1)(b), or 430 CMR 4.85(1)(b), whichever is applicable, the Commissioner shall inform such claimant that the claimant may appeal such finding and such appeal may be included as part of any appeal of the claimant's monetary determination. In such cases, the burden of proof rests with the claimant to show that he or she has met the requirements of 430 CMR 4.84(1)(b) or 430 CMR 4.85(1)(b), whichever is applicable.

(3) If the Commissioner has requested wage data from an employer; such information shall be provided in accordance with M.G.L. c.151A, § 38(a) and the regulations promulgated there-under.

(4) In determining whether the 90% or 10% threshold has been met, whichever is applicable, the Commissioner shall round the resulting calculation to the next lower whole dollar amount.

430 CMR: DEPARTMENT OF UNEMPLOYMENT ASSISTANCE

PAYMENT OF RETROACTIVE UNEMPLOYMENT BENEFITS FOR NON-PROFESSIONAL
EMPLOYEES WHO PERFORMED SERVICES FOR EDUCATIONAL INSTITUTIONS
(M.G.L. C. 151A, § 28A(B))

4.91: Purpose

The purpose of 430 CMR 4.91 through 4.98 is to establish procedures and interpret the standards for payment of retroactive unemployment benefits, in accordance with M.G.L. c. 151A, s 28A(b), as amended by St. 1983, c. 451, § 5.

4.92: Scope and Applicability

430 CMR 4.00 applies to any person who performed services for and educational institution or was the employee of an educational service agency performing services in an educational institution during the past academic year or term in any capacity other than in instructional, research or principal administrative capacity and who has filed a claim for retroactive unemployment benefits.

4.93: Definitions

The following words and phrases shall have the following meanings, unless otherwise clearly indicated by the content of 430 CMR 4.00:

Academic Year or Term shall mean the date that the majority of students begin academic classes, and such academic year or term shall end when the majority of students are no longer attending academic classes, taking examinations or engaged in other curricular activities required by the school.

Opportunity to Perform Service means a chance to actually perform service in the next ensuing academic year or term.

Reasonable Assurance means a written or verbal agreement that the individual will perform such service during the ensuing academic year or term.

Retroactive Benefits means benefits paid for any week(s) for which a claimant has been denied benefits between academic years or terms solely by reason of the "reasonable assurance" aspect of M.G.L. c. 151A, § 28A(b); and for such week(s) has filed a timely claim for benefits if the individual is not offered an opportunity to perform services for the educational institution for the next academic year or term, and if the individual is otherwise eligible.

Short-term Employment means less than 20 working days.

Substitute Employee means any individual who performs services in an educational institution in place of a regular employee who is absent during the academic year or term.

Suitable Services as used in 430 CMR 4.96(1) means service in the same or substantially similar position at the same or higher pay, except as otherwise provided by a collective bargaining agreement.

Unemployment Benefits mean any monetary payment of benefits, including dependency allowances, which are made pursuant to M.G.L. c. 151A.

4.94: Filing a Claim

Claims will be filed in accordance with M.G.L. c. 151A, § 24(c) and regulations pursuant to 430 CMR 4.01: *Registration and Claims in General*.

4.95: Determination of Reasonable Assurance

After a claim is filed, the Commissioner or his/her authorized representative shall promptly determine, in accordance with procedures established by the Commissioner and after making such inquiries and investigation as he/she deems necessary whether or not the individual has reasonable assurance of reemployment in the next ensuing academic year or term. If it is determined that there is a reasonable assurance, the written notice to the claimant of the reasonable assurance shall include:

- (a) The period of disqualification. The denial of benefits because of reasonable assurance under M.G.L. c. 151A, § 28A is limited to weeks of unemployment between the academic years or terms.
- (b) An explanation of the claimant's right to a hearing, and the time limits and procedures for requesting such a hearing, and;
- (c) An explanation that if the claimant is not offered an opportunity to perform services in the next ensuing academic year or term he/she will be entitled to retroactive payment for benefits for each week for which he/she has filed, if otherwise eligible.
- (d) If the claimant is denied benefits because of reasonable assurance under M.G.L. c. 151A, § 28A, he/she will be instructed that it will not be necessary to continue to report between academic years or terms. He/she will be advised to reopen his/her claim if he/she is not rehired when the next academic year or term begins.

4.96: Opportunity to Perform Service

- (1) An opportunity to perform suitable services must be offered by the educational institution or educational service agency, from which the individual was given reasonable assurance. The offer shall be in writing and must be given by the end of the second full week from the beginning of the academic year or term to those individuals who are not currently employed at that time by the educational institution or educational service agency. Such individuals must begin performing services by the end of the fourth full week from the beginning of the academic year or term.
- (2) An offer of short term employment shall not constitute an opportunity to perform services.
- (3) Substitute employees will be considered to be offered an opportunity to perform services if they are assured that they will be recalled under the same terms and conditions as in the most recently completed academic year or term. Such individuals shall be exempt from the definition of short term employment.
- (4) A claimant will not be entitled to retroactive benefits when the offer of an opportunity to perform services is prevented because of the individual's own action which precludes his/her reemployment.
- (5) Whether or not an opportunity to perform services was offered to the individual will be based on the facts in each case.

4.97: Request for Retroactive Payment of Benefits

- (1) An individual shall make application for payment of retroactive benefits either in person or in writing no later than six weeks from the beginning of an academic year or term.
- (2) Notice of Claim Filed with request for information attached shall be mailed to the educational institution or educational service agency from which the individual was given reasonable assurance.
- (3) The Commissioner or his/her authorized representative shall promptly determine whether or not an opportunity to perform service was given to the individual. A determination shall be issued under the provisions of M.G.L. c. 151A, § 39 to all interested parties. Such determination shall inform all interested parties of their right to appeal under the provisions of M.G.L. c. 151A.

4.97: continued

(4) The local office will take signatures of claimants for weeks of unemployment occurring between the date of filing of the initial claim and the beginning of the succeeding academic year or term. These signatures shall constitute the filing of a timely claim for retroactive unemployment benefits.

4.98: Payments of Retroactive Benefits

(1) Retroactive Benefits shall be paid or denied in accordance with the determination or decision at each level of appeal provided in M.G.L. c. 151A. If it is redetermined that an individual received retroactive benefits to which he/she was not entitled, the recovery of such benefits will be determined in accordance with the provisions of M.G.L. c. 151A, § 69(c), and 430 CMR 6.00: *Waiver Regulations*.

(2) Retroactive payments of unemployment benefits may be paid to the individual prior to the fourth full week of school only upon written notice from the educational institution or educational service agency that the opportunity to perform services in the current academic year or term for that institution or agency will not be offered to that individual.

REGULATORY AUTHORITY

430 CMR 4.00: M.G.L. c. 23, § 9J; M.G.L. c. 29, § 9J; 151A, §§ 1, 22, 23, 24, 25, 28A(b), 37, 66 and 68.