

## EMPLOYMENT ALERT

### Massachusetts Adopts Emergency Regulations for Unemployment Insurance to Address the Impact of COVID-19

**March 2020**

Due to the widespread economic impact of COVID-19 on Massachusetts businesses and employees alike, the Massachusetts Department of Unemployment Assistance (DUA) published emergency regulations to address the onslaught of new claims for unemployment insurance (UI) benefits. The purpose of these regulations is to ensure more flexibility in providing prompt financial assistance to employees unable to work due to COVID-19 and to extend the time period during which employers must file reports and remit payments to the DUA. Below is a highlight of important changes to the UI scheme in Massachusetts during the COVID-19 state of emergency.

#### **WAIVER OF ONE-WEEK WAITING PERIOD**

Ordinarily, UI claimants must wait one week before qualifying for benefits. On March 18, 2020, Governor Baker signed into law a bill that waived this one-week waiting period. Assuming they qualify for benefits, claimants for UI benefits due to the COVID-19 outbreak or the Governor's declaration of a state of emergency will be immediately entitled to UI benefits without delay once they apply.

#### **ALL CLAIMANTS ON "STANDBY" DUE TO TEMPORARY LAYOFF OR FURLOUGH ARE ELIGIBLE FOR UI BENEFITS**

All employees who temporarily lose their jobs due to COVID-19 are deemed to be on "standby status" and are eligible for UI benefits, provided they meet certain criteria. Under the emergency regulations, a claimant is on "standby" if he or she "is

temporarily unemployed because of a lack of work due to COVID-19, with an expected return-to-work date.” To be eligible for UI benefits, the claimant must:

1. take reasonable measures to maintain contact with the employer; and
2. be available for all hours of suitable work offered by the claimant’s employer.

Suitability will depend on whether the claimant or a family/household member has COVID-19 or is isolated or quarantined because of COVID-19.

The emergency regulations eliminate the requirement that claimants must search for new employment to be eligible for UI benefits. In addition, the requirement that UI claimants must attend career center seminars has been suspended.

## **EXISTING EMPLOYER AND EMPLOYEE OPPORTUNITIES UNDER DUA**

Under the DUA’s “earnings disregard” policy, a claimant receiving UI benefits can earn a gross amount of up to one-third of his or her individual weekly benefit rate from part-time work without a corresponding reduction in the claimant’s weekly benefit rate. The purpose of this policy is to incentivize claimants engaging in part-time work in the interim while searching for permanent work.

Employers searching for an alternative to temporary layoffs should consider developing a WorkShare plan and applying for approval with the DUA. WorkShare allows employers to reduce the hours of a group of its employees or its entire workforce by between 10% - 60% for up to 52 weeks due to a downturn in business. Affected employees receive UI benefits to offset the reduction in income from their reduced hours. The employer must maintain employees on their health insurance and retirement plans and must be current with all contributions owed to the DUA to be eligible for WorkShare participation.

## **REGULATIONS PERTAINING TO EMPLOYERS**

Employers directly impacted by COVID-19 may request an extension of up to 60 days from the DUA to file reports, pay contributions or make payments in lieu of contributions. The employer must submit a written request for the extension within 60 days of the original due date to be eligible for the extension.

The DUA will contact employers to verify that its employees are on standby status and ask for an expected return date. An employer can request to place an employee on standby status for up to eight weeks, with the DUA authorized to grant any request that it deems reasonable. If the employer's place of business is anticipated to close or have operations severely curtailed for longer than eight weeks, then the DUA may grant standby status for longer than eight weeks. If an employer fails to respond, the DUA will automatically place the employee on standby status for four weeks.

Employers whose business operations are severely impacted by COVID-19 will satisfy the good cause standard for meeting any time deadline.

## **SELF-EMPLOYED INDIVIDUALS AND INDEPENDENT CONTRACTORS**

Currently, self-employed individuals and independent contractors are not eligible for unemployment insurance benefits (except those who pay into the unemployment insurance system themselves and receive a Form W-2). The DUA has noted the possibility that it will cover self-employed individuals and independent contractors if President Trump makes a disaster unemployment declaration.

## **INSTRUCTIONS FOR FILING UI CLAIMS**

The DUA has published step-by-step instructions to file UI claims that can be accessed online [here](#) by claimants.

## **CONTACT**

Please contact a member of our [Employment Law Practice](#) to discuss unemployment insurance benefits or compliance with Massachusetts wage and hour obligations.