

Unemployment: What Your Municipality Needs to Know

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Your Panelists



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What You'll Walk Away With

- ✓ A baseline understanding of the Massachusetts unemployment landscape
- ✓ Ways to avoid unemployment pitfalls
- ✓ Best practices to maximize your Municipal Unemployment Program



The Massachusetts Unemployment Landscape

Background

- The unemployment system was created to provide benefits to those unemployed through “no fault of their own”.
- The system is financed entirely by employers.
 - Benefits paid to former employees must be reimbursed back to the state \$ for \$ under one of two methods.
 - Employees do not contribute.
- The maximum weekly benefit rate increased to \$1,033 in October, 2023.
 - Claimants are also entitled to weekly dependency allowances of \$25 per dependent.
- Claimants are entitled to 30 weeks of benefits, in most claims.

Discharges Where Benefits May Be Denied

- A knowing violation of a reasonable and uniformly enforced policy or rule
- Deliberate misconduct in willful disregard of the employer's interest

Unique Issues

- An employee who resigns in lieu of being discharged is considered to have been discharged for unemployment purposes.
 - The burden of proof is with the employer.
- Severance that requires a release of claims is not counted as wages and the claimant is eligible immediately.

Voluntary Quits

- Employees who resign for good cause attributable to the employer or for an urgent, compelling and necessitous personal reason are eligible for benefits.
- Employee must show they brought concerns to the employer's attention in an attempt to resolve prior to quitting.
 - Employers must document the reason given for the resignation.

The Appeal Process

- The first level is a determination by a local office adjudicator.
 - Present all facts and documentation, especially if reimbursable.
- The second level is a hearing before a Review Examiner with testimony and evidence taken.
- The third level is a review of the testimony and exhibits by The Board of Review.



Pitfalls to Avoid

Ways to Minimize Unemployment Costs

- Reduce liability in those claims that will be approved and charged to your municipality or governmental agency.
- Assist the state agency in having unwarranted claims denied and relieve your municipality or governmental agency of liability by providing sufficient facts and documentation to the state.

Reduce Liability in Allowable Claims

- Liability is calculated based on how long the claimant was employed and how much they earned.
 - The more a claimant has earned, the greater the liability will be.
- Identify and terminate employees guilty of poor performance, incompetence and poor judgment as early in employment as possible.

Watch for Charging Errors

- Employers should review each monthly bill or statement and the annual Notice of Contribution Rate.
- Common errors include charging fraudulent charges, in excess of statutory allowed, extended benefits, overpayments recovered and part-time employees who have lost employment elsewhere.
- Governmental tax rated employers must assure that the general solvency fund is charged rather than its own account for quits due to personal reasons, failure to return from LOA, separations due to alcohol, drug or mental health, etc.

Key Takeaways

- Limit your liability, where possible.
- Obtain and provide the state with detailed documentation for all separations.
- Audit all monthly charges and annual tax rates.
- Participate in all three levels of the appeal process and send firsthand witnesses to hearings.

A person is sitting on a blue exercise ball, looking at a laptop. The laptop screen shows a video conference with four participants in a grid layout. The background is a blurred indoor setting with a wooden floor and a white wall. A semi-transparent maroon banner is overlaid across the middle of the image, containing the title text.

Paying for Unemployment

The Governmental Tax and Reimbursable Methods

- Governmental entities have the option of choosing which method to operate under.
 - The Governmental Tax method
 - The Reimbursable method
- A request to change methods must be submitted by December 31st and employer must remain under the new method for two calendar years.

Governmental Tax Method

- Employer pays a quarterly tax based on a rating system.
- The employer is taxed at a rate of 1.0% of gross payroll for the first two years.
- The employer is then assigned a rate based on its experience and that of all governmental employers.
 - The minimum rate is .1% and there is no maximum rate.
 - Tax is on total gross payroll.

Reimbursable Method

- Self-insured method in which employer is billed monthly for all benefits paid to former employee, including re-qualifications, involuntary separations and dependency allowances.
- There is no option of being relieved of charges and having them assigned to solvency fund.

What's the Right Method For Your Municipality?

- Typically, the larger an organization, the more likely that the self-insured, reimbursable method is the correct one.
- The maximum amount of one unemployment claim in Massachusetts is now \$30,990 –the highest benefit in the country.



Unemployment Fraud

Unemployment Fraud

- Criminal organizations have been using stolen personal information obtained over the past two decades to file fraudulent claims across the country since the Covid pandemic began.
- States have been adamant that fraudulent claims are not the result of recent data breaches at the state or with employers.
- Massachusetts paid \$1.3 billion in fraudulent unemployment claims between April 1, 2020 and March 31, 2021, according to the USDOL.

Definition of Fraud

- A fraudulent claim is one where the claimant listed never filed a claim.
- Does not include unwarranted, contested or erroneous claims filed by current or past employees.

Why Municipalities?

- Municipalities and governmental entities have been targeted far more than any other group of employers.
- Attributed to the fact that much of the personal information of employees is public, the prevalence of high-wage earners and the lack of claims filed during the pandemic.

Responding to a Fraudulent Claim

- Verify with the employee that they have not filed a claim in the past year.
- Respond to the request for information by the deadline and indicate that the claim is fraudulent and that you have confirmed with the employee. Please do not ignore the request or fail to respond.
- Instruct the employee to file the Fraud Report at the link below and follow the recommendations listed there:
 - <https://www.mass.gov/forms/unemployment-fraud-reporting-form>
- Review your monthly reimbursable bill or charge statement and file a protest of any charges related to a fraudulent claim.

Reimbursing the State for Fraudulent Charges

- During the pandemic, the DUA granted unofficial approval for reimbursable employers to withhold payment for fraudulent claims.
- The DUA has recently indicated that all charges, including those suspected to be fraudulent, should be paid in order to avoid interest and penalties.
- The DUA has indicated that once a claim has been confirmed as fraudulent, the employer's account will be credited in full.



Employment Modernization and Transformation (EMT)

Employment Modernization Transformation

- The Massachusetts Department of Unemployment Assistance (DUA) is modernizing its unemployment insurance system.
 - Employment Modernization Transformation (EMT)
- Deploying in two phases:
 - Phase 1 started September 12, 2023
 - Phase 2 is planned for January 2025

Phase 1

- Unemployment Services for employers to:
 - File UI quarterly wage reports, submit contribution payments, and manage UI employer accounts (previously done on the UI Online website system).
- The filing of UI quarterly wage and hour reports and the submission of contribution payments are typically tasks performed by payroll companies.
- Those employers who do not use a payroll company need to perform these tasks in the new system beginning with the quarter ending 9/31/23.

UI Online System

- Employers will need to operate in both systems for approximately 18 months as benefits-related activities, such as separation requests, appeals, hearings and benefit charge protests will continue to be done in UI Online until Phase 2 in Jan. 2025.



Seasonal Certification Program

Seasonal Certification Program

- Seasonal status precludes employers from being liable for unemployment benefits directly associated with seasonal work.
 - The DUA will not use the wages earned in a seasonally certified occupation to establish an unemployment claim if all the criteria are met.
- Positions that are typically available for certification include:
 - Summer recreation programs, lifeguards/beach/pool attendants and coaches
 - Additional staff do not qualify
- The certification process is annual
 - Failure to reapply for seasonal certification each year will result in the use of all wages paid during the base period in the establishment of benefit claims.

Seasonal Certification Program

Employer Details

Employer
23000456
SOUND CLAM SHACK

Balance
\$0.00

- > [File an appeal](#)
- > [Request a rate review](#)
- > [Protest a charge](#)
- > [Request an intercept review](#)

[Attributes](#) [Contribution Rates](#) [Benefit Charges](#) [Determinations](#) [Wages](#) [Appeals](#) [Reviews](#) [Additional Actions](#)

Business transfers

Report business transfers and acquisitions.

- > [Report a business transfer](#)

Seasonal certification

Apply as a seasonal employer.

- > [Apply for seasonal certification](#)

Request 940 certification

Request a 940 certification for a given year.

- > [Request 940 certification](#)

Appeals

Appeal your unemployment benefits decision.

- > [File an appeal](#)

Rate review

Submit a review request for a specific Unemployment Insurance Tax year.

- > [Request a rate review](#)

Payment method

Change payment method.

- > [Request to change employer payment method](#)



Understanding Reasonable Assurance

Definition of Reasonable Assurance

- Reasonable assurance is a written, oral or implied offer that the employee will perform services in the same or similar capacity during the ensuing academic year, term, or remainder of term. The offer of employment must be a genuine offer, that is, an offer made by an individual with actual authority to offer employment.

Reasonable Assurance

- Employees who are hired on a temporary or seasonal basis are entitled to unemployment benefits, even when both parties acknowledge the nature of the employment.
 - These include private bus companies, ski resorts and golf clubs.
- The exception are employees of education institutions who have been given reasonable assurance of returning to an equal or better position after the vacation or summer recess.
- Reasonable assurance does not result in a disqualification, only a removal of the educational wages from the claim.

Methods of Providing Reasonable Assurance

- Contract/tenure
- Letter/email
- Signed memorandum
- Past practice

Exceptions to Reasonable Assurance

- Crossing guards under the authority of a Police Department are not educational employees for reasonable assurance.
- Long-term substitutes who are given Reasonable Assurance of returning as a day-to-day substitute do not have reasonable assurance, even if they were historically a day-to-day substitute.

A person is performing a yoga pose on a blue mat on a wooden floor. In the foreground, a laptop is open, displaying a video conference with four participants in a 2x2 grid. The text "Exempt Positions" is overlaid on the laptop screen.

Exempt Positions

Exempt Positions

Under Chapter 151A, Section 6A, the positions below are exempt for unemployment purposes.

(1) an elected official;

(5) an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency;

(6) an employee serving in a position which, under or pursuant to the laws of the commonwealth or tribal law, is appointed to either a nontenured policymaker or advisor, or in a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week;

(7) an election official or election workers if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than \$1,000.

Exempt Positions

- Many municipalities and governmental agencies incorrectly report **UI Gross Wages** for positions that are exempt from unemployment insurance.
- This inaccurate reporting has resulted in members being billed for unwarranted charges, members paying excessive UI contributions and has created undue hardship for the employees involved.

Exempt Positions

- To avoid this issue, the **UI Gross Wages** entry in the quarterly wage report should be reported as **ZERO** for employees in these positions. This will avoid those wages from being used in any claim filed and prevent the member from being taxed on those wages, if they pay the governmental tax.
- If you use a payroll service, please instruct them to report the **UI Gross Wages** paid to those positions as **ZERO**.
- If you receive a claim where **UI Gross Wages** were previously reported, you can manually adjust the wages.

A person is sitting on a blue exercise ball in a room. In the foreground, a laptop is open, displaying a video conference with four participants. The text "Unemployment Best Practices" is overlaid on the laptop screen.

Unemployment Best Practices

Best Practices

- Use HR resources that can assist you with ancillary unemployment issues.
- Ensure your unemployment administrators are up-to-date on unemployment issues and are communicating these to supervisors.
- Maintain a relationship with your Administrating State Agency – MA DUA.
- Consult with specialists with unemployment expertise on complicated claims.
- Review your state billing correspondence for errors and credits on a regular basis.

