

**MASSACHUSETTS TEACHERS ASSOCIATION
UNEMPLOYMENT Q&A
(with supplemental COVID-19 related information¹)**

What is unemployment insurance?

Unemployment insurance (UI) provides temporary cash assistance to eligible displaced workers while they seek employment. The Department of Unemployment Assistance (DUA) administers the UI program for the Commonwealth of Massachusetts. The DUA determines and collects employer contributions to the UI program and processes requests for benefits. The DUA has a comprehensive guide on its website that you are strongly encouraged to review:

<https://www.mass.gov/doc/a-guide-to-benefits-and-employment-services-0/download>

Who is eligible for unemployment benefits?

There are two components to determining eligibility. First, generally you are eligible for unemployment benefits if you become unemployed or partially unemployed and:

- 1) You did not voluntarily quit without good cause;
- 2) You were not terminated for deliberate misconduct or willful disregard of the employer's interest or of the employer's uniformly enforced rules and policies; and/or
- 3) You were not terminated due to conviction of a crime.

You must be able, available, and actively searching for work during any period you receive unemployment benefits.

Second, you must have earned at least \$5100 during the 4 calendar quarters prior to the quarter in which you file for benefits. This is called your "base period."² Additionally, you must have earned at least 30 times the amount of benefits you would be eligible to receive on a weekly basis.

COVID-19 supplemental answer:

- If an employer's operations are temporarily shut down in whole or in part due to COVID-19 and workers are furloughed or laid off, then they may be eligible for unemployment benefits. Under DUA emergency regulations, these workers are considered in "standby" status and they are eligible for benefits for the first 4

¹ Emergency legislation has been passed at the state and federal level that expands eligibility and benefits in some circumstances. This Q&A provides supplemental answers where appropriate.

² If you have not earned enough during your base period, or if an "alternate base period" would result in receiving at least 10% more in weekly benefits, you may qualify using wages earned during the three most recently completed calendar quarters plus the period between the last completed quarter and effective date of claim.

weeks. This time may be extended. Workers in standby status must remain in contact with their employers and be available for any work their employer may have for them but they do not have the same requirement to be searching for alternate work.

- Workers who are quarantined and not receiving pay may be eligible for unemployment benefits with the expectation that they return to work when able to do so.
- Workers who need to care for a family member who is ill or quarantined due to COVID-19, or who needs to care for a child who is home because schools or day care centers are closed due to COVID-19, may be eligible for unemployment benefits. But if the worker is receiving sick leave or other pay, then they are not eligible for benefits. Also, a worker able to telework may not be eligible for benefits.

How much will my benefits be?

Generally, your weekly benefit is approximately 50% of your average weekly gross wages but it is capped at \$823 per week. There is an additional allowance of \$25 per dependent (dependent allowance not to exceed 50% of your weekly benefit amount). You may be eligible for up to 26 weeks of benefits. Unemployment benefits are subject to state and federal taxes. Here is the link to the DUA website page to help determine your benefits and duration:

<https://www.mass.gov/info-details/how-your-unemployment-benefits-are-determined#calculating-your-duration-of-benefits->

COVID-19 supplemental answer: The federal CARES Act expands unemployment benefits during the pandemic:

- Federal Pandemic Unemployment Compensation (FPUC) provides that \$600 will be added to state weekly unemployment benefits from March 29, 2020 through July 31, 2020.
- Pandemic Emergency Unemployment Compensation (PEUC) may extend state benefits for everyone by 13 weeks (for up to a total of 39 weeks of benefits).
- Pandemic Unemployment Assistance (PUA) provides unemployment benefits up to a maximum 39 weeks to workers who are not otherwise normally eligible but are fully or partially unemployed or unable/unavailable to work for one of the following reasons:
 - They have been diagnosed with COVID-19 or are experiencing symptoms and seeking a medical diagnosis;
 - A member of their household has been diagnosed with COVID-19;
 - They are providing care for a family member or member of their household who has been diagnosed with COVID-19;
 - A child or other person they have primary caregiving responsibilities for is unable to attend school or a caretaking facility because it is closed as a direct result of COVID-19;

- A quarantine prevents the individual from reaching their place of employment;
- A health care provider advised the individual to self-quarantine, thereby preventing them from reaching their place of employment;
- They were scheduled to commence employment but no longer have the job or are unable to reach it as a direct result of COVID-19;
- They became the breadwinner or major support for a household because the head of the household died as a direct result of COVID-19;
- They quit their job as a direct result of COVID-19;
- Their place of employment is closed as a direct result of COVID-19; or
- They meet any additional criteria established by the Secretary of Labor.

Recipients of PUA benefits also receive the additional \$600 per week between April 4, 2020 to July 25, 2020. However, workers who meet one of these criteria but receive paid leave or have the ability to telework are not eligible for PUA.

Here is a link to a flowchart for the different federal unemployment benefits administered by the DUA:

<https://www.mass.gov/doc/cares-act-unemployment-flowchart/download>

When and how do I apply for unemployment benefits?

You should file for unemployment benefits during your first week of total or partial unemployment. If you are eligible, your benefits will start the following week (i.e., there is a one-week waiting period before benefits begin).

The DUA has a video that explains the application process and what you need to apply:

<https://www.youtube.com/watch?v=Ny-eRM4igd0>

The fastest way to apply for benefits is on-line. Here is a link to the portal for applying on-line:

<https://uionline.detma.org/Claimant/Core/Login.ASPX>

If you need to apply by phone or if you need assistance with your claim, the DUA Teleclaim number is (617) 626-6800. Note that the you must call on the day associated with the last digit of your social security number: Monday 0, 1; Tuesday 2, 3; Wednesday 4, 5, 6; Thursday 7, 8, 9; Friday any digit.

COVID-19 supplemental answer: The one week waiting period has been temporarily waived for workers experiencing unemployment due to COVID-19. This waiver of the waiting period is in effect until 90 days after the end of the Massachusetts state of emergency. The DUA strongly recommends applying for unemployment on-line during this time.

The DUA has step-by-step directions for applying for benefits that has been updated to include COVID-19 related information:

<https://www.mass.gov/doc/filing-a-new-unemployment-claim-covid-19/download>

If you may be eligible for PUA, there is a different portal on the DUA website for applying:

<https://ui-cares-act.mass.gov/PUA/#1>

If you have COVID-19 related inquiries, the DUA has an on-line form you can use:

<https://www.mass.gov/forms/covid-19-department-of-unemployment-assistance-contact-request>

Note: The MTA has become aware of an issue in applying for PUA. At this time, the form requires you to answer if you received at least \$5100 in wages in the last 4 calendar quarters. That is not the relevant question for PUA and we have heard that some people have been rejected for answering yes. If that happens to you, please see the question below regarding appeals. Worker advocates are trying to get the DUA to fix this loophole.

What information should I have ready to apply for unemployment benefits?

Everyone needs:

- ✓ Social Security Number
- ✓ Date of birth (month, day, year)
- ✓ Home address, telephone number, email address (if available)
- ✓ The names, dates of birth, and Social Security Numbers of any dependent children that you plan to claim as a dependent
- ✓ The names and addresses of all employers you have worked for during the past 15 months, dates you worked for each employer
- ✓ Last day of employment
- ✓ The reason why you are no longer working or why your hours have been reduced
- ✓ Recall dates (if applicable)
- ✓ Verification that you were legally eligible to work in the U.S. or alien registration number
- ✓ Bank account number, and the routing or transit number of your bank (if you would like to receive your payment by direct deposit)

Adjunct professors also need:

- ✓ Offers of employment
- ✓ Documents relating to whether employment is in the same capacity
- ✓ Documents regarding the economic terms and conditions of the offer.
- ✓ Evidence relating to staffing levels

- ✓ Evidence relating to budget for school

How long will it take to receive unemployment benefits (money in hand)?

According to the DUA website, “[m]ost claims are processed within 21-28 days after filing. It may take longer if there is an issue with your claim.” If the claim is processed and you are awarded benefits, the benefits would be awarded retroactive to the effective date of your claim.

COVID-19 supplemental answer: It appears that the DUA is experiencing significant delays in processing the unprecedented numbers of applications for unemployment benefits so you should be prepared for a wait. However, once benefits are approved, they will be paid retroactive to the time you applied for benefits.

Am I eligible for unemployment benefits over the summer/between academic terms?

If an employee of an educational institution works one term and has a contract or reasonable assurance of performing substantially the same services in the next academic term, then generally no, unemployment benefits are not granted for the summer. “Professional” employees (defined as instructor, researcher, or in a principal administrative capacity) who do not get substantially similar work in the succeeding academic term may become eligible for unemployment benefits at the start of that term.

However, “nonprofessional” employees (e.g., teacher’s aides, bus drivers, cafeteria workers, etc.) who do not get substantially similar work despite prior reasonable assurance may be eligible not only for benefits at the start of the next term but also retroactive payment of benefits for each week over the summer for which they applied for, but were denied, benefits based on that reasonable assurance of work. *Therefore, if there is any doubt about being employed in the fall in a similar capacity, a “nonprofessional” employee should timely file claims for benefits every week over the summer.*

If you are eligible for unemployment over the summer based on your primary job but engage in summer work in different capacity than your primary job, that will not disqualify you from unemployment. However, you may be excluded from receiving benefits those weeks you do alternate summer work.

What does the DUA consider to be reasonable assurance?

According to the DUA, reasonable assurance is a written, oral or implied agreement that the worker will perform services in a similar capacity in the next academic period, including that the economic conditions are not considerably less (earning at least 90% of the same wages). An educator with tenure or professional teacher status will be presumed to have reasonable assurance of continued employment absent notice from the employer.

Adjunct faculty: Reasonable assurance issues come up often for adjunct faculty. The fact that courses have been offered contingent on funding or enrollment may not be enough to overcome a college's assertion there is a reasonable assurance of work the next term. However, funding uncertainty, enrollment vacillations, and bumping rights by day faculty may diminish the likelihood of work being available. And an offer of fewer courses the next term likely means there is no reasonable assurance because the offer probably is substantially less than the prior term. The burden is on the college to provide substantial evidence of reasonable reassurance of similar work.

COVID-19 Supplemental Answer: The uncertain budget situation for both K-12 and higher education due to the pandemic is a unique situation and should be taken into consideration by the DUA in determining if there is a reasonable assurance of work in the fall. The DUA should not accept an employer's mere assertion that there will be similar work available. However, if the employer credibly lays out plans to fully resume classes in the fall, then it is unlikely summer benefits will be granted.

If my hours are reduced, will I be eligible for unemployment benefits?

It depends. A person is in *partial unemployment* in any week in which the employee is (a) working less than full-time; (b) has earned less than the weekly unemployment benefit she would be entitled to if totally unemployed during that week; and (c) the failure to work full time is due to the employer's failure to provide full-time work and not due to the claimant's choice to work part-time. Generally, you must experience a reduction of at least 1/3 of your hours/wages in order to receive even a minimal benefit. Your actual eligibility, however, cannot be determined until you apply for benefits.

COVID-19 Supplemental Answer: If you receive partial unemployment benefits, you still will be eligible for the additional \$600 per week under the FPUC through July 31, 2020.

I still have my job but I've lost the overtime I usually work. Can I get unemployment benefits for the lost overtime wages?

No; unemployment eligibility is based on your regular (non-overtime) hours.

I usually work two or three jobs. If I am laid off, furloughed, or have my hours reduced in one of these supplemental jobs, can I get unemployment even though I am still working my normal hours at my primary job?

It depends. The DUA will calculate potential benefits by offsetting other sources of income. If the lost work paid relatively little compared to your primary job and you remain at or close to full-time employment, then the lost wages may not be enough to make you eligible for partial unemployment benefits. It does not hurt to apply, however, and see what the DUA determines.

COVID-19 Supplemental Answer: If you are eligible for benefits at any level, then you may receive the additional \$600 per week under the PUA.

I usually work over the summer but that employment is now closed or my offer has been rescinded. Can I get unemployment for the lost summer work?

Under normal conditions, it depends. See the above answers for reduced hours or loss of second job.

COVID-19 Supplemental Answer: If you lost your summer position due to COVID-19, you may be eligible under the PUA program, which extends unemployment benefits to workers who are not traditionally eligible for benefits. If it is a stipend position with your primary employer, that specific situation is not addressed in the law or cases. However, we believe there is a good argument that the loss of a summer stipend position due to COVID-19 falls within the categories of workers covered by PUA (e.g., people seeking part-time employment but whose search is affected by COVID-19). While we cannot guarantee you will be eligible for PUA benefits, it is worth applying.

Because of remote teaching, my stipend position for the spring is not happening. Can I get unemployment for that lost work?

Under normal conditions, it depends but seems unlikely. See the above answer for reduced hours.

COVID-19 Supplemental Answer: Unlike the argument for PUA benefits for lost summer stipend work, making a similar argument for stipend positions during the regular academic year seems less likely. It is more likely that the DUA will view it as a reduction in hours situation (see above). That said, there is no harm in filing.

I was furloughed and started receiving unemployment benefits but now my employer has me working some hours (still reduced hours) that fluctuate from week to week—how does that affect my benefits?

If you work part-time hours during any week for which you request unemployment benefits, you may still be paid benefits if your gross wages (total wages before taxes are deducted) are less than your determined weekly benefit amount. Any part-time earnings greater than 1/3 of your weekly benefit amount (known as your “earnings disregard”) will be deducted from your weekly benefit payment. But even if you have some weeks where your wages are enough that you do not receive a benefit payment, your unemployment claim is still open and your benefits will be adjusted each week.

This website has a helpful calculator to estimate the impact working part-time has on your benefits. <https://www.mass.gov/service-details/working-part-time-while-receiving-unemployment-benefits>.

I was laid off and received severance pay—does that affect when I get unemployment benefits?

It depends. Generally, a receipt of severance pay renders you ineligible for unemployment benefits for the period covered by the severance. Thus, if you receive six week's severance pay upon layoff, you are considered by the DUA to be employed over those six weeks. Your benefits will not start until the severance period ends but the period of severance pay does not count against your total duration of benefits. However, if severance pay is conditioned on signing a release of all claims against your employer, you may be able to receive unemployment benefits at the same time as the severance. You should therefore file a claim right away even if you receive severance pay.

If my employer solicits volunteers for a furlough or layoff and I volunteer, does that affect eligibility for unemployment?

It depends. The DUA will determine whether you had a reasonable fear that you would soon be furloughed or laid off, in which case your departure may be considered involuntary and thus you would be eligible for benefits. The law also allows benefits if you voluntarily leave for good cause attributable to your employer.

In contrast, if there is an announcement of layoffs but you have no reason to believe your position is at risk, then you likely will not be eligible for unemployment benefits if you volunteer for layoff. For example, there may be no evidence that your program will be cut or you may be covered by a collective bargaining agreement that provides bumping rights to another position if your position is eliminated. But if your employer leaves you to speculate whether your position is at risk, then you may still be eligible for unemployment if you volunteer for layoff. For example, your employer may request volunteers for layoff first but state that involuntary layoffs will follow and not give any information on who may be targeted for involuntary layoffs. Or, your manager may make statements that give you reason to reasonably fear you will be involuntarily laid off. You need to be careful, however, that the reason for accepting a voluntary layoff is due to a reasonable fear that a layoff is imminent and that you are not volunteering to be laid off for unrelated personal reasons.

If I do not feel it is safe for me or my family to work, can I refuse and still be eligible for unemployment?

Leaving work voluntarily usually means one is not eligible for unemployment *unless* you can establish by substantial and credible evidence that you left (a) for good cause attributable to your employer; or (b) for urgent and compelling personal reasons. Reasonable concerns about unsafe working conditions may be good cause for quitting. OSHA findings of safety violations will support finding good cause attributable to the employer but it is not necessary. It is important to note that *the DUA generally requires that you take reasonable steps to try to resolve the problem with your employer before quitting.*

COVID-19 Supplemental Answer: According to U.S. Department of Labor guidelines, deciding to voluntarily quit due to general concerns about exposure to COVID-19 is not sufficient to establish eligibility for unemployment benefits. However, the DUA will undertake a fact-specific analysis about your specific circumstances. For example, do you have an underlying health condition that renders you a poor risk for contracting COVID-19? Is a family member with whom you live a poor risk if you transmit the virus? Is your employer providing appropriate personal protective equipment and cleaning supplies for your job? Whether you have continued to physically report to work, or you have been working remotely and your employer is transitioning back to brick and mortar operations, you must have more than a general concern about your health and safety and you should attempt to resolve your specific concerns with your employer before contemplating quitting.

What do I do if DUA denies me unemployment benefits?

If you are disqualified from benefits, make an appeal request immediately. This does not require you to write a detailed letter or draft an argument. It is simply a notice that must be provided to the DUA to schedule an appeal hearing. **You must file the appeal request with the DUA within 10 days of the date the denial was mailed or sent to you, *not* the date you receive it. If you receive more than one notice of denial of benefits, it is important to appeal each notice separately.** Late appeals may be allowed for good cause, meaning circumstances beyond your control, but it is always better to timely file. Contact your union to see if you are eligible for legal assistance with your appeal but do not wait to file the appeal itself.

COVID-19 Supplemental Answer: Under DUA emergency regulations, the DUA may consider a missed deadline to be for good cause if it is COVID-19 related, for example if you or your immediate family or household member is ill with confirmed or suspected case of COVID-19 or are subject to quarantine due to COVID-19. However, it remains better to file your appeal timely if at all possible.

What do I do if DUA determines that it has overpaid me?

If you are paid unemployment benefits to which DUA later determines you were not entitled, you will be required to pay them back except in very narrow circumstances. If DUA determines that you received an overpayment due to your own fault or misrepresentations, you are subject to additional fines and penalties. If any of this happens, it is vital to file a timely appeal of DUA's determination (as described above) and to seek assistance from your union.

COVID-19 Supplemental Answer: Because of the unprecedented demand for unemployment benefits and the resulting strain on the system, mistakes such as overpayment are more likely to occur. In order to protect yourself, make certain that your application contains only accurate information, and be vigilant for any subsequent notices of disqualification.

Disclaimer

The MTA cannot guarantee eligibility for unemployment benefits. The information contained in this advisory is provided for general informational purposes only based on the law at the time it was written. It is not intended to be legal advice and should not be taken as such. The principles discussed herein do not necessarily apply to all fact situations and issuance of this advisory does not establish an attorney-client relationship. You should not act or refrain from acting on the basis of the advisory without seeking appropriate legal advice on the particular facts and circumstances of your case. If you have questions, please contact your local MTA affiliate or MTA field representative.

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