

## Fraudulent and Improper Unemployment Claims

### *DUA Issues Guidance for Employers*

December 7, 2020

Unemployment claims have increased significantly with the onset of the COVID-19 pandemic, due in part to the economic impacts of the pandemic, and state and federal expansions of unemployment benefit coverage to address those economic impacts. In recent months, there has been an influx of potentially fraudulent or improper unemployment claims throughout the country, which situation has been highlighted in both local and national media coverage. In some cases, the illegitimacy of these claims is obvious, such as where an employee's social security number is "hacked" and used to file a false claim. In other cases, based upon the limited information available to it through the Department of Unemployment Assistance's (DUA) electronic claims filing and processing system, it is not readily apparent to the employer that the claim is fraudulent.

In light of the reported increase in fraudulent unemployment claims, the DUA has provided specific information on its website addressing unemployment fraud (<https://www.mass.gov/info-details/report-unemployment-benefits-fraud>). Additionally, the DUA recently issued guidance, attached hereto, explaining the appropriate manner in which employers should contest apparently improper or illegitimate claims.

Unemployment claims are filed by the former employee directly with the DUA, which then confirms the facts with the claimant's former employer. DUA sends several types of confirmation letters to employers when a person claims their employment has been discontinued or that their hours have been reduced. These documents include a Confirmation of Employment Letter, Lack of Work Letter, Fact Finding Letter, or Monetary Determination Letter. The DUA also sends Benefit Charge Statements to employers.

All of these letters and notices may be contested as fraudulent. To maintain a uniform system for processing these claims, DUA's recent guidance explains the proper mechanisms for employers to dispute unemployment claims. Of note, employers are encouraged to:

- 1. Use the online form whenever available.** This is the easiest and most expeditious manner of contesting a letter or claim.
- 2. Fill out the form as designed.** Do not write across the form or letter or submit a supplementary or separate letter to DUA.
- 3. Report the Employee's Current Status:** If the employee is employed in a reduced capacity (i.e. full-time employee reduced to part-time), indicate the employee is "Still Employed-Part Time." If the claimant was never employed, select "The claimant did not work for me during the time period stated."

- 4. Encourage Employees to Report the Fraud.** Employees that have had a fraudulent claim filed in their name can file a fraud report here: <https://www.mass.gov/info-details/report-unemployment-benefits-fraud>.

There does not appear to be clear or consistent advice from the DUA as to whether the employer is obligated to pay allegedly fraudulent claims while simultaneously protesting them. Should a municipality or agency believe that improper or fraudulent claims are being charged, the municipality or agency should immediately confer with unemployment insurance counsel and/or third-party administrator to ensure that: (1) the appropriate claim dispute process is being pursued; (2) required employee notifications are being sent; and , (3) whether the municipality or agency should pay claims, whether such claims are under protest or otherwise.

Please contact any member of the firm’s Labor and Employment Practice Group at 617.556.0007 with any questions.

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THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT  
DEPARTMENT OF UNEMPLOYMENT ASSISTANCE

CHARLES D. BAKER  
GOVERNOR

KARYN E. POLITO  
LIEUTENANT GOVERNOR

ROSALIN ACOSTA  
SECRETARY

RICHARD A. JEFFERS  
DIRECTOR

**Instructions to Employers**  
**Proper Handling for Reporting Fraudulent or Improper Unemployment Claims**

In recent months the Massachusetts Department of Unemployment Assistance has been receiving notifications from employers protesting claims in bulk and reporting likely fraudulent or improper unemployment claims. These notifications have been coming in various forms ranging from letters being written to the Department, employers writing "Fraud" across Department letters and forms and sending them back, and other mechanisms that are inhibiting or preventing the Department from handling these issues in a timely and accurate manner. The purpose of this notice is to provide clear guidance on how each of these situations where there is a questionable claim against an employer should be handled.

**If an employer has received a "Confirmation of Employment" letter:**

1. The most effective and efficient way is to complete the form online.
2. When filling out the form (online or in paper) please fill in the form as intended and do not write across the form, do not write notes outside of the specific questions, checkboxes, or other data entry areas.
3. If the person still works for you please select "Still Employed-Part Time". You make this selection even if the person is a full-time employee.
4. If the person never worked for you, please select "The claimant did not work for me during the time period stated."
5. The employer should encourage the employee to file a fraud report and follow the guidance at: <https://www.mass.gov/info-details/report-unemployment-benefits-fraud>

**If an employer has received a "Lack of Work" letter for an employee who either has never worked for your company or is employed by your company without any break in service for the past year:**

1. The most effective and efficient way is to complete the form online.

2. When filling out the form (online or in paper) please fill in the form as intended and do not write across the form, do not write notes outside of the specific questions, checkboxes, or other data entry areas.
3. If the person still works for you, please select “Still Employed-Part Time”. You make this selection even if the person is a full-time employee.
4. If the person never worked for you, please select “The claimant did not work for me during the time period stated.”
5. The employer should encourage the employee to file a fraud report and follow the guidance at: <https://www.mass.gov/info-details/report-unemployment-benefits-fraud>

**If the employer or employee is responding to a “Fact Finding Letter”**

1. Complete the form as provided. Do not write across the form, simply fill in the form as requested.
2. Employers should inform employees who had a claim filed without their permission to go to: <https://www.mass.gov/info-details/report-unemployment-benefits-fraud> to report the fraudulent claim and find information and advice on other things they should do to protect their identity.

**If an employer has received a “Monetary Determination” they are in disagreement with:**

The employer should encourage the employee to file a fraud report and follow the guidance at: <https://www.mass.gov/info-details/report-unemployment-benefits-fraud>

**If an employer is protesting a claim a result of a “Benefit Charge Statement” they are in disagreement with:**

1. Protests can only be filed online and not by any other mechanisms.
2. On the online form, enter a comment saying “Fraudulent Claim” and then provide information why you believe the claim was fraudulent (e.g. The claimant still works for our company and when we spoke to the claimant they said they never filed a claim).
3. In a case where both the employer and the employee acknowledged that they claim was not filed by the employee, the employer should fill in the protest form in using their UI Online account and the employee should be directed to file a fraud report and follow the guidance at: <https://www.mass.gov/info-details/report-unemployment-benefits-fraud>