

## Unemployment Benefits in Massachusetts

If you are out of work, you might be eligible for unemployment benefits.

Unemployment insurance is a joint federal-state program that provides temporary benefit payments to employees who are out of work, through no fault of their own, until they can find another job or are able to return to work with their employer (in the case of a furlough).

The basic structure of the unemployment system is the same from state to state. However, each state sets its own rules for eligibility, benefit amounts, filing procedures, and more.

You must meet the following three eligibility requirements to collect unemployment benefits in Massachusetts:

1. You must be unemployed through no fault of your own, as defined by Massachusetts law.
  - a. If you were laid off, lost your job in a reduction-in-force (RIF), or got “downsized” for economic reasons, you will meet this requirement.
2. You must have earned at least a minimum amount in wages before you were unemployed.
3. You must be able and available to work, and you must be actively seeking employment.

“Worksearch” requirements have been relaxed to appropriately permit claimants affected by COVID-19 to collect benefits.

The following conditions apply to temporary shutdowns:

- Workers must remain in contact with their employers during the shutdown.
- Workers must be available for any work their employer may have for them that they are able to do.

In general, **benefits** are based on a percentage of your earnings over a recent 52-week period, and each state sets a maximum amount. Massachusetts looks at your recent work history and earnings during a one-year “base period” to determine your eligibility for unemployment. In Massachusetts, the base period is the last four complete calendar quarters before you filed your benefits claim. For example, if you file your claim in March 2020, the base period would be from January 1, 2019, through December 31, 2019.

To qualify for benefits in Massachusetts, you must meet both of the following criteria:

- You must have earned at least \$5,100 during the base period.
- Your total base period earnings must be at least 30 times your weekly benefit amount.

If you are eligible to receive unemployment benefits, you will receive a weekly benefit amount of approximately 50% of your average weekly wage, up to the maximum set by law. As of October 2019, the maximum weekly benefit amount is \$823 per week (<https://www.mass.gov/info-details/how-your-unemployment-benefits-are-determined>).

You can also receive an allowance of \$25 per week for each dependent, up to a maximum of one-half of your weekly benefit amount. You may receive benefits for a maximum of 30 weeks. (In times of very high unemployment, federal and state programs may make additional weeks of benefits available.)

Your unemployment benefits are taxable. If you want taxes withheld from your weekly benefit payments, you must tell unemployment this when you file your claim

The quickest way to file for unemployment benefits is through the online portal at <https://www.mass.gov/applying-for-unemployment-benefits>.

In most cases, self-employed workers, independent contractors, and freelance workers who lose their income are not eligible for unemployment benefits. If you were paid as an independent contractor and receive a 1099 form, you were not considered an employee and would not be eligible for unemployment.

Business owners can qualify for unemployment insurance benefits if they pay themselves a salary or wages reported on a W2 form in addition to receiving dividends.

If you structure your business as an S corporation and put yourself on the payroll as a salaried employee, you'll be eligible for unemployment in most states.

If you are the sole proprietor of a business, you are not required to pay unemployment insurance tax on yourself and as such, because you do not contribute to your state's unemployment insurance fund, you are not eligible to receive unemployment benefits in the event the business shuts down. Sole proprietors are however required to pay state unemployment insurance tax on employees.

Claimants who are collecting Unemployment Insurance (UI) and find new employment have a duty to report these earnings in their weekly certification. Claimants are entitled to disregard a portion of their gross earnings (or net earning from self-employment), such that that portion is not deducted from their weekly UI benefit. The disregard is equal to one-third of their weekly benefit rate (excluding any dependency allowance). Any weekly earnings above that one-third disregard cause a dollar-for-dollar reduction in the weekly UI benefit.

It can take up to three weeks to process your claim (possibly longer in a time like this when many claims are being filed). During these three weeks, you should request your weekly benefit payments. Unlike some states, Massachusetts will pay benefits retroactively from the date you filed as long as you requested payments during the weeks that your claim is being processed.

**Once you have filed a claim, you must request benefits for each week during which you are in partial or total unemployment. No payment will be issued for any week that you fail to certify your eligibility.** Sunday is the first day of the week that you can request benefits for the prior week. You may request benefits for the prior week at any time beginning Sunday through Saturday of the current week.

Every time you request weekly benefits, you'll be asked questions about your unemployment status during the previous week.

## **IMPORTANT NOTE FOR EMPLOYERS**

Before laying off or furloughing staff, employers should make sure to know their business' Unemployment Insurance (UI) login information or otherwise obtain it from their payroll person/business manager. An email should come through from the UI system to the designated individual informing them of a furloughed or laid-off employee's unemployment claim filing. The individual who receives the email will then be required to log in and respond to the Department of Unemployment Assistance's (DUA) information requests.

In the process of closing an office, the dentist should change that designated person to himself or herself so as to receive timely notification of any claims. The DUA has said that it will be more flexible with missed deadlines on account of COVID-19 as being for good cause shown, but untimely filed paperwork may possibly delay claims processing. Alternatively, the employee is required to include information concerning his/her most recent wage payments and hours worked. It is possible that the DUA will use those amounts as a guide to preliminary benefits, but that is only a possibility.

### **Questions from Members**

1. Do we need to lay off or furlough hourly employees to allow them to apply for unemployment or are the rules laxer at the DUA now?

Although certain UI rules are more relaxed, employees still need to suffer an employment loss or reduction in hours to qualify for benefits.

2. I am a part-time dentist at a community health center that is being paid by the hours worked. Can I file for unemployment if the health center decides to close the dental section for two weeks?

Yes

3. Will normal penalties to the employer's unemployment insurance apply and is it true that employers will not be penalized for an increase in unemployment tax rates for employees collecting during COVID-19 closures?

Likely, although we are hopeful that some sort of relief will be provided for this at the state level.

### **Questions Specific to Unemployment for Employers/Business Owners**

1. Can employers also apply for unemployment?

As a business owner, you can qualify for unemployment insurance benefits if you pay yourself a salary or wages in addition to receiving dividends.

2. Can a dentist submit for unemployment? I don't understand the comment that if you get W2, you can collect. Basically, I earn whatever's left over after all my bills are paid.

You are eligible to apply for unemployment based on your W2 base wages. If you are a contractor (i.e., you pay yourself and take a 1099) or only pay yourself dividends, you are not eligible.

3. We are an S corp—my husband is the dentist and owns 100% of the shares. I've seen and been told contradicting information as to if he (and I as the spouse who works full time for the practice) can file for unemployment. We both get W2s. Additionally, if we can collect at this point in time, will it affect the tax credit that is presumed to pass for lost revenue? It would seem that credit may be more than what he would collect from UI in the short term.

If you both receive a W2 from the practice, you both should be eligible to apply. Unfortunately, we cannot dispense tax advice relating to any credit.

4. I am an employer/owner dentist and take a base salary as a W2 employee. I get a W2 at the end of the year, and I also receive distributions that are shown as pass-through income on my personal income tax returns. Am I eligible to apply for unemployment based on my W2 base wages?

You are eligible to apply for unemployment based on your W2 base wages.

5. Can the 100% owner/doctor of the S corp practice who pays themselves as an employee and receives a W2 file for unemployment?

Yes, see above.

6. Wondering that since I'm considered an employee of my private practice (PC), can I file for unemployment??

Yes, see above.

Answer for the above questions:

It depends on the structure of your business. If you structure your business as an S corporation and put yourself on the payroll as a salaried employee, you'll be eligible for unemployment in most states.

Generally, if you are the sole proprietor of a business, you are not required to pay unemployment insurance tax on yourself. If you do not contribute to your state's unemployment insurance fund, you are not eligible to receive unemployment benefits in the event your business shuts down. Sole proprietors are required to pay state unemployment insurance tax on employees.

Talk with your accountant regarding eligibility for a tax credit for lost revenue.

### Questions Specific to the Completion of the Unemployment Claim

1. If a staff member who might be furloughed is filing an unemployment claim, what box should they check? These both seem like possible choices:

- Still working – working part-time or on call

- Discharged – your employer ended your employment for a reason other a layoff

The DUA has since published a guide relating to COVID-19. If your claim filing is a result of the COVID-19 emergency, the DUA instructs employees to select LAYOFF in all instances as the Reason for Separation.

2. On the Massachusetts unemployment website, my staff did not see furlough as an option and they all picked laid off. They did mention leave of absence was an option. Can you provide any clarity as to which option they should pick?

The DUA has since published a guide relating to COVID-19. If your claim filing is a result of the COVID-19 emergency, the DUA instructs employees to select LAYOFF in all instances as the Reason for Separation.

3. Which answer should our employees choose?

- **Quit:** You decided to leave your employment for reasons including: another job; moved; to avoid being fired; work related, personal, or medical reasons.
- **Discharged:** Your employer ended your employment for a reason other than a layoff.
- **Leave of Absence:** You and your employer have an agreement that you will take some time off work and you anticipate that you will return to work with this employer in the future.
- **Suspension:** Your employer will not allow you to work pending an investigation or as a disciplinary action.
- **School Employee:** You are on a semester/term break from school-related employment.
- **Strike:** You are not working due to a strike.
- **Lockout:** You are not working as a result of a lockout.
- **Conviction:** You were discharged by your employer or quit your job due to a conviction of a felony or misdemeanor.

The DUA has since published a guide relating to COVID-19. If your claim filing is a result of the COVID-19 emergency, the DUA instructs employees to select LAYOFF in all instances as the Reason for Separation.

CHECK the following box on the form:

**Layoff:** Your employment ended due to: lack of work; temporary layoff; your position being eliminated; employer's business closed

4. If my staff fills out the unemployment application incorrectly, can it be corrected?

We are not in a position to advise on how to make corrections to incorrectly submitted applications. Please contact the DUA directly.

5. If employees have already applied for “this is not an option” unemployment, but we never used the furlough term, can this still be adjusted? And how do we adjust it?

We are not in a position to advise on how to make corrections to incorrectly submitted applications. Please contact the DUA directly.

### **Question Related to the Timing of Filing a Claim**

1. If my staff is being paid for the entire week through Friday, do they have to wait for the end of the pay period before they can apply to collect unemployment?

No, the employee can file for unemployment as soon as they are notified of their layoff or furlough. Their benefit period will begin after they no longer receive wages.

### **Questions Specific to the Amount of the Unemployment Benefit**

1. Is there a difference in qualifying for UI between part-time and full-time employees?

No, so long as you have \$5,100 during the base period and your total base period earnings must be at least 30 times your weekly benefit amount.

2. I heard employees only can receive up to \$823 per week of pay through unemployment. If they make less than that (e.g., \$500/week), will they receive 100% of that through their unemployment benefit? In this instance, for example, do they get \$500/week or is it more like \$400/week, which is 80%? Or to simplify, what percent of their weekly wage do they receive?

You will receive a weekly benefit amount of approximately 50% of your average weekly wage, up to the maximum of \$823/week.

3. If they only receive a percent of their pay, can the employer make up the difference? For the above example, can we pay them \$100 to make up the difference? (Note, this would not be applicable if they are receiving this as an after-tax benefit, but I don't believe that is the case.)

Any amounts that your employer pays to you may serve to reduce the amount of benefit that you are receiving.

4. Does the employee receive this money as taxable or after-tax income?

UI is considered taxable income. You should have an option to instruct the DUA to withhold from your benefit, or you will be responsible for paying taxes on the benefit.

5. You noted that employees can work reduced hours and still collect unemployment benefits to make up the difference in hours that would have been worked. This is straightforward for an administrator that was working 40 hours a week and now is going to work 20 hours a week. But let's what about a dental assistant that is only coming in to cover emergencies? Again, assuming they normally work 40 hours per week, but once furloughed, they have no regular hours in the office. So if this week, the assistant works for 1 hour to cover an emergency and they next week they do 12 hours of emergency coverage, how will their benefits be affected?

You are required to report your work status each week. Any amounts that your employer pays to you may serve to reduce the amount of benefit that you are receiving for that week.

6. Is it true that unemployment only pays 80% of a team member's hourly rate? If not, how much does this service cover?

You will receive a weekly benefit amount of approximately 50% of your average weekly wage, up to the maximum of \$823/week.

7. One of my full-time dental assistants also has a part-time job (11 hours) at a coffee shop that she is currently working at. Would she be eligible to file for unemployment for the dental assistant position as she continues to work at the coffee shop?

Yes.

8. Can we know the exact percentage and amount of unemployment benefits that employees are entitled to?

You will receive a weekly benefit amount of approximately 50% of your average weekly wage, up to the maximum of \$823/week.

9. If employees are asked to work on an "on-call" basis and are paid for this time, does that negate their unemployment benefits?

Any compensation paid to your employees may serve to reduce the amount of UI benefit they can collect.

10. Assuming I furlough my staff while closed and have them file for unemployment, can I provide financial support to staff who are receiving unemployment benefits and not working? For example, can I make up the shortfall from unemployment benefits to full pay even though they are not working at all?

Any compensation paid to your employees may serve to reduce the amount of UI benefit they can collect.

11. Employees are still collecting monies from procedures performed before the furlough and will be receiving a check—although probably drastically reduced—while they are not working. They could potentially be receiving small checks for three months if they are paid monthly on collection. I'm not familiar with the unemployment system, so I don't know how this is handled. You can't be getting a check and receive unemployment too, correct?

It is not clear to me how amounts that you subsequently receive for prior services will impact your benefits during weeks for which you perform little or no work.

If you are eligible to receive unemployment benefits, you will receive a weekly benefit amount of approximately 50% of your average weekly wage, up to the maximum set by law. As of October 2019, the maximum weekly benefit amount is \$823 per week (<https://www.mass.gov/info-details/how-your-unemployment-benefits-are-determined>).

The unemployment benefit is calculation based on wages earned over the "base" period. The calculation is completed the same way whether or not you are a full-time or part-time employee.

Unemployment benefits are taxable. If you want taxes withheld from your weekly benefit payments, you must tell unemployment this when you file your claim

Any wages received will factor into the unemployment benefit calculation. Once an individual has filed an unemployment claim, they must request benefits for each week during which they are in partial or total unemployment. Every time the claimant requests weekly benefits, they will be asked questions about their unemployment status and wages paid during the previous week.

If an employer is paying “the difference” to an employee who has been furloughed or on layoff, it will reduce their unemployment benefit.

Claimants who are collecting UI and find some new employment have a duty to report these earnings in their weekly certification. Claimants are entitled to a disregard of a portion of their gross earnings (or net earnings from self-employment), such that that portion is not deducted from their weekly UI benefit. The disregard is equal to one-third of their weekly benefit rate (excluding any dependency allowance). Any weekly earnings above that one-third disregard cause a dollar-for-dollar reduction in the weekly UI benefit.

### **Question Regarding How Long It Will Take to Receive Unemployment Benefits**

1. I know there is no longer a waiting period to apply for unemployment benefits, but do we have any idea how long it will take before they should expect to receive a check? Obviously, I’m just trying to get an idea here and I know it will take as long as it will take.

It can take up to three weeks to process an unemployment claim (possibly longer in a time like this when many claims are being filed). During these three weeks, the claimant should request their weekly benefit payments. Unlike some states, Massachusetts will pay benefits retroactively from the date the claim was filed as long as the claimant requested payments during the weeks that their claim is being processed.

The DUA website says to expect processing times of between 21 and 28 days.

### **Questions Regarding Sick Leave and Unemployment Benefits**

1. For those employees that file for unemployment, will they then be not eligible for the 14 days of paid sick time that may pass the senate upcoming?

2. How will the federal law on mandatory sick leave and family leave pay affect UI benefits?

Sick time, if passed by the legislature, will only apply to individuals who are out of work because they are sick. You will be ineligible for this time if you already are laid off or you are on furlough.



### **Question Related to Independent Contractors**

1. I am a dental specialist who is compensated as an independent contractor and my pay is calculated as a percentage of the collections. Am I eligible for unemployment benefits while the offices I work at are being shut down?

In most cases, self-employed workers, independent contractors, and freelance workers who lose their income are not eligible for unemployment benefits. If you were paid as an independent contractor and receive a 1099 form, you were not considered an employee and would not be eligible for unemployment.

### **Other Questions**

1. If an employee is placed on furlough and collects unemployment, what happens when they go back to work? Who notifies the state that they are back to work?

Claimants who are collecting UI have a duty to report their earnings in their weekly certification, so the claimant would notify unemployment that they are back to work in their weekly certification.

2. Would I be able to extend my furlough and claim for more unemployment if we end up needing to keep our office closed beyond three weeks?

Furlough would extend until you are able to reopen the business and employees may extend their DUA applications; the DUA will determine the length of time for which employees are eligible for benefits.

3. I have worked weekly for RDH Temps and now Stynt in the last year. Obviously, no jobs are coming in now. Can I collect unemployment?

This all depends on whether you are paid as an employee (wages reported on a W2) or as an independent contractor (earnings reported on a 1099). See above for answers.