

## **Summary of Seasonal Certification Program for Employers**

Seasonal status gives you, as an employer, the opportunity to be relieved of some unemployment benefit charges that may be incurred because of your regular seasonal operations. Please note that nothing in the laws or regulations regarding seasonal determinations shall be construed as relieving any employer from paying the contributions required by law on all wages paid for employment. Nor does it relieve an employer from filing reports required by law or regulations connected with an individual's rights to claim benefits.

### **REPORTING AND NOTIFICATION REQUIREMENTS:**

As a certified seasonal employer, you must adhere to the following reporting and notification requirements:

1. A certified seasonal employer shall display notices of its seasonal status available conspicuously on its premises in a sufficient number of places to be for inspection by its employees. Such notices are enclosed in this package.
2. An employer, who is certified as a seasonal employer, must notify each seasonal employee in writing (using Form 1876) prior to hire, or immediately following the seasonal determination by DUA of the following:
  - a. The employee will be or has been hired for a specific seasonal period as certified by the Department of Employment and Training.
  - b. The employee will be performing services in seasonal employment for a certified seasonal employer.
  - c. Employment is limited to the beginning and ending dates of the seasonal period or periods as certified by the Commissioner.
  - d. If a claim for unemployment benefits is filed and denied or the amount of benefits is reduced because of a seasonal determination, the affected employee may appeal his or her designation as a seasonal employee under M. G. L. c. 151 s.s. 39 - 42.
3. A seasonal employer shall give written notice to the Commissioner if the certified seasonal employment equals or exceeds twenty (20) weeks in a calendar year. such notice shall be filed within five (5) days after completion of the twentieth week of employment.

### **BENEFIT ELIGIBILITY INFORMATION:**

For benefit years beginning after January 1, 1993, benefits based on seasonal employment may be paid to an otherwise eligible individual only:

- a. Following a non-disqualifying separation which occurs during the seasonal period for which the individual was hired; or
- b. during the next regularly recurring seasonal period following the seasonal period in which the individual earned his wage credits.

Please be aware that if a claim for benefits is filed outside the operating period of seasonal employment, benefits may be paid on the basis of non-seasonal wages only. A seasonal determination shall not affect the benefit rights of seasonal workers to collect unemployment benefits with respect to non-seasonal employment.

When there is a transfer either from seasonal to non-seasonal work or from non-seasonal to seasonal work for the same employer without break or intermission, the claimant's benefits shall be based on all wages paid by the employer.

THE MASSACHUSETTS EMPLOYMENT AND TRAINING LAW PROVIDES AS FOLLOWS:

Section 1 of Chapter 151A of the General Laws, as amended by Section 6 of Chapter 26 of the acts of 1992, is hereby further amended by adding the following subsections: -

(z) "Seasonal employer", an employer that, because of climatic conditions or the nature of the product or service, customarily operates all or a functionally distinct occupation within its business only during a regularly recurring period or periods of less than twenty weeks for all seasonal periods during a calendar year and only includes an employer who voluntarily submits a written application to the commissioner. Such application shall be submitted at least sixty days prior to the beginning of the season.

(aa) "Seasonal employment", services performed for wages for a seasonal employer during the seasonal period in the employer's seasonal operations, after the effective date of a seasonal determination with respect to the seasonal employer.

(bb) "Seasonal employee", an individual who:

(1) has been employed by a seasonal employer in seasonal employment during a regularly recurring period or periods of less than twenty weeks in a calendar year for all seasonal periods, as determined by the commissioner, and

(2) has been hired for a specific temporary seasonal period as determined by the commissioner; and

(3) has been notified in writing at the time hired, or immediately following the seasonal determination by the department, whichever is later:

(A) that the individual is performing services in seasonal employment for a seasonal employer; and

(B) that the individual's employment is limited to the beginning and ending dates of the employer's seasonal period as determined by the department.

(cc) "Seasonal determination", a determination made by the commissioner, as to the seasonal nature of the employer, the normal seasonal period or periods of the employer, and the seasonal operations of the employer covered by such determination.

Section 24A. (a) No waiting period shall be allowed and no benefits shall be paid to an individual on the basis of service performed in seasonal employment as defined by subsection (aa) of section one unless the claim is filed within the operating period of the seasonal employment. If the claim is filed outside the operating period of the seasonal employment, benefits may be paid on the basis of nonseasonal wages only.

(b) An employer shall provide the commissioner with such information necessary to make a seasonal determination defined by subsection (cc) of section one. Until the commissioner makes a seasonal determination, no employer or employee may be considered seasonal.

(c) Any employer notified of a seasonal determination may file an appeal regarding a seasonal determination and obtain review of the determination. Such appeal and review shall be in accordance with sections thirty-nine through forty-two, inclusive.

(d) Whenever an employer is determined to be a seasonal employer, the following provisions apply:

(1) The seasonal determination becomes effective the first day of the calendar quarter commencing after the date of the seasonal determination.

(2) The seasonal determination does not affect any benefit rights of seasonal workers with respect to employment before the effective date of the seasonal determination.

(e) If a seasonal employer, after the date of its seasonal determination, operates its business or its seasonal operation during a period or periods of twenty weeks or more in a calendar year, the employer shall be redetermined by the commissioner to have lost its seasonal status with respect to that business or operation effective at the end of the then current calendar quarter. The redetermination shall be reported in writing to the employer. An employer notified of a redetermination may file an appeal of the redetermination and obtain review of the redetermination in accordance with sections thirty-nine through forty-two, inclusive.

(f) Seasonal employers shall keep account of wages paid to seasonal workers within the seasonal period as determined by the commissioner, and shall report these wages on a special seasonal quarterly report form as prescribed by the commissioner.

Section 39(b) Any interested party notified of a determination may request a hearing within ten days after delivery in hand by the commissioner's authorized representative, or mailing of said notice, unless it is determined in accordance with procedures prescribed by the commissioner that the party had good cause for failing to request a hearing within such time. In no event shall good cause be considered if the party fails to request a hearing within thirty days after such delivery or mailing of said notice. If a hearing is so requested, the commissioner or his authorized representative, except when the alternative provided in subsection (d) is invoked, shall afford all interested parties a reasonable opportunity for a fair hearing before an impartial hearing officer designated by the commissioner.

The manner in which disputed claims shall be presented, and the conduct of the hearings, shall be in accordance with chapter thirty A, and such other procedures as prescribed by the commissioner which are not inconsistent with chapter thirty A. Such procedures shall include provisions for the following:

- (1) reasonable notice of the time and place of the hearing to all parties in order to permit adequate preparation;
- (2) notice of the issues to be considered thereat;
- (3) the right of representation by an agent, counsel, or advocate;
- (4) the right to produce evidence and offer testimony, examine and cross-examine witnesses; and
- (5) making available to a party, upon request and within a reasonable time prior to a hearing, written information and documents in the possession of the commissioner to the extent necessary for the proper presentation of its case.