

102 CMR: OFFICE OF CHILD CARE SERVICES

102 CMR 12.00: MINIMUM STANDARDS FOR CHILD CARE TUITION ASSISTANCE AND ON-SITE OR NEAR-SITE SUBSIDIZED CHILD CARE PLACEMENTS

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12.01: Introduction

102 CMR 12.00, adopted in accordance with St. 1990, c. 521, § 7, as amended by St. 1991, c. 329, stress the commitment of state government to provide employees with affordable child care for the purpose of allowing employees to be gainfully employed. Pursuant to St. 1990, c. 521, § 7, as amended by St. 1991, c. 329, on and after July 1, 1992, no contract for goods and services of any type shall be awarded by the State or any of its authorities to an employer having 50 or more full-time employees unless the employer has established a dependent care assistance program ("DCAP") or cafeteria plan whose benefits include a DCAP. As alternatives to a cafeteria plan whose benefits include a DCAP, an employer may offer its employees child care tuition assistance or on-site or near-site subsidized child care placements. In fulfilling its mandate to develop minimum standards for child care tuition assistance and on-site or near-site subsidized child care placements, the Office for Children has developed 102 CMR 12.00.

12.02: Definitions

As used in 102 CMR 12.00, the following words shall have the following meaning unless the context otherwise requires:

Award. The notification to an employer of the State's decision to enter into a contract with said employer for the procurement of goods or services.

Child. A child of the employee under age 13 for whom the employee is entitled to claim an exemption on his or her federal income tax return; a dependent 13 years of age through 21 years of age inclusive for whom the employee is entitled to claim an exemption on his or her federal income tax return who is physically incapable of caring for himself or herself, and who regularly spends at least eight hours each day in the employee's household; or a child of the employee who is not a dependent but who regularly is in the employee's legal or physical custody for at least six months of the year.

Contract. A legally binding and enforceable written agreement to provide goods or services in consideration of compensation to be paid by the State. For the purposes 102 CMR 12.00, the term "Contract" shall not refer to:

- (a) grants-in-aid;
- (b) Provider Participation Agreements issued under the State's Medical Assistance (Medicaid) Program;
- (c) amendments, renewals, and extensions of contracts, as defined by applicable statutes and procurement regulations, awarded prior to July 1, 1992;
- (d) procurement of goods or services pursuant to 802 CMR 2.28 (PD); or
- (e) procurement in which funds are earmarked by law for a specifically identified contractor or class of contractors.

Exempt Employer. Any employer which certifies that it employs fewer than 50 full-time (35 hours per week) employees on the date of the award of the contract.

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Legal Child Care. Care and supervision of infants and children licensed pursuant to M.G.L. c. 28A or otherwise permitted by applicable law, arranged for the purpose of allowing the employee to be gainfully employed. Examples of such care and supervision include the following: in-home care providers, au pair services, care by relatives, homemaker services, family day care homes, group day care homes, day care centers, preschool programs, nursery schools, private kindergartens, before and after-school programs, temporary shelter care programs and programs which offer night care, and summer day camps for children.

Near-site. The child care facility is within three miles or 15 minutes travel time, whichever is less.

On-site. On the premises.

Placement. A reserved slot at a legal child care facility that meets the needs of the child(ren) of the employees.

Qualified Employer. An employer which certifies that it has established a dependent care assistance program which may be a cafeteria plan whose benefits include a dependent care assistance program, or child care tuition assistance, or on-site or near-site subsidized child care placements to its employees.

Qualifying Individual. A child of the employee under age 13 for whom the employee is entitled to claim an exemption on his or her federal income tax return; a dependent for whom the employee is entitled to claim an exemption on his or her federal income tax return who is physically or mentally incapable of caring for himself or herself, and who regularly spends at least eight hours each day in the employee's household; the employee's spouse who is physically or mentally incapable of self-care and who regularly spends at least eight hours each day in the employee's household; or a child of the employee who is not a dependent but who regularly is in the employee's legal or physical custody for at least six months of the year.

Secretary. The Secretary of the State's Executive Office for Administration and Finance or his or her designee.

State. The Commonwealth of Massachusetts and any authority established as a public instrumentality of the Commonwealth of Massachusetts.

Subsidized Child Care. Child care provided by an employer or another at less than the actual charge for child care at that particular child care facility.

Tuition Assistance. Monetary assistance by an employer to or on behalf of employees toward the cost of providing child care. Such assistance may include vouchers, cash assistance, or reimbursement.

12.03: General Rules

(1) General Rule. Except as provided in 102 CMR 12.03(2), the State shall not make an Award of any Contract to an employer unless said employer is a Qualified or Exempt Employer.

(2) Special Emergency. Notwithstanding the provisions of 102 CMR 12.03(1), the State may make an Award of a Contract to an employer which is neither Qualified nor Exempt upon certification by the procuring governmental unit and the Secretary that:

(a) failure to award a contract to the particular employer would pose a substantial threat to the life, health, safety, or welfare of persons or the protection of property;

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(b) there is only one employer which, by virtue of unique capabilities or circumstances, proprietary technology, exclusive copyrights, patents or licenses, monopoly status (including all cases in which the contractor is a public department or utility), is qualified to deliver the goods or perform the services specifically required and failure to deliver the goods or perform the services specifically required would involve the health or safety of the people or their property; or

(c) requiring compliance with 102 CMR 12.03 would violate federal law, contravene the orders of a court of competent jurisdiction or cause the loss of federal funds.

(3) Discrimination. Contributions or benefits provided pursuant to 102 CMR 12.04 shall not discriminate in favor of employees who are officers, owners, or highly compensated, or their dependents consistent with Internal Revenue Code Section 129. Discrimination will result in possible adverse action on the contract or a refusal to enter into a contract.

12.04: Minimum Standards

(1) Dependent care assistance program. A qualified employer which offers its employees a dependent care assistance program shall meet the requirements of Sections 125 or 129 of the Federal Internal Revenue Code of 1986 or any successor section, as amended and in effect for the taxable year.

(2) Minimum standard applicable to tuition assistance and on-site or near-site subsidized child care placements. A qualified employer which chooses to offer to its employees either tuition assistance or on-site or near-site subsidized child care placements shall contribute in cash or in kind a minimum amount equal to at least .25% of the employer's annual gross payroll. For the purposes of 102 CMR 12.04(2), employee is defined as any person who is regularly scheduled to work for an employer for at least 17½ hours per week.

REGULATORY AUTHORITY

St. 1990, c. 521, § 7.; St. 1991, c. 329

NON-TEXT PAGE