

EMPLOYER MEDICAL ASSISTANCE CONTRIBUTION SUPPLEMENT

430 CMR 21.00

Emergency Preamble

The EMAC Supplement, as defined below, was inserted into the General Laws, as M.G.L. c. 149, § 189A (the statute), by St. 2017 c. 63, § 9, which was approved on August 1, 2017. The liability of subject employers for the EMAC Supplement commenced on January 1, 2018, pursuant to St. 2017, c. 63, § 15.

The statute requires the Department of Unemployment Assistance, in consultation with the Division of Medical Assistance and the Commonwealth Health Insurance Connector Authority, to promulgate regulations to implement the assessment and collection of the EMAC Supplement, including specifying the number of days that an individual shall be required to receive subsidized health coverage to cause the assessment. The regulations were promulgated, initially on an emergency basis, effective January 1, 2018, and were made permanent on March 3, 2018.

Now that the regulations have become effective, the Director of the Department of Unemployment Assistance finds that immediate adoption of a change to the regulations is necessary to ameliorate an unintended consequence of the currently effective version. Under the current rules, employers are assessed the EMAC Supplement for *all* nondisabled employees on MassHealth or ConnectorCare, including employees who are minors. In order to exclude minors from the assessment of the EMAC Supplement, the proposed change to 430 CMR 21.03 (2) must be adopted prior to the end of the current filing period, which is April 30, 2018. Thus, compliance with the requirements for promulgating regulations in the normal course is not possible.

The Director, therefore, also finds that observance of requirements of notice and a public hearing would be contrary to the public interest.

3. Employer Liability

(1) Conditions under Which the Employer Becomes Subject to the Employer Medical Assistance Contribution Supplement.

(a) Beginning with the first calendar quarter of 2018, any employer who employs six or more employees in any quarter is subject to the EMAC Supplement for each such quarter.

(b) An employer's number of employees in a calendar quarter is calculated by dividing the sum of the employer's three monthly employment levels for the quarter by three. An employer's employment level for each month of the quarter is the

number of employees who worked or received wages for any part of the pay period that includes the 12th of the month as reportable to DUA, pursuant to G.L. c. 151A, § 14P.

(2) Liability for Employer Medical Assistance Contribution Supplement. An employer subject to the EMAC Supplement for a quarter is liable for payment of the EMAC Supplement applicable to that quarter if one or more of its employees received health insurance coverage either through the MassHealth agency or through ConnectorCare for a continuous period of at least fifty-six days commencing on or after the employee's eighteenth birthday; provided, however, that an employer shall not be liable for the EMAC Supplement in a quarter for any of its employees who in that quarter have health insurance coverage through the MassHealth agency either on the basis of permanent and total disability as defined under Title XVI of the Social Security Act or under applicable state laws or as a secondary payer because such employees are enrolled in employer-sponsored insurance.