

458 CMR 2.02: Emergency Regulations

EMERGENCY PREAMBLE

The Director finds that immediate adoption of these regulations is necessary for the preservation of the public health, safety and general welfare due to (a) the need to amend 458 CMR 2.02 to reflect statutory changes to definitional terms recently enacted by the Legislature; (b) the fact that eligibility for job-protected, paid leave will begin on January 1, 2021; and (c) the corresponding need to clarify these statutory changes for covered individuals, covered business entities, and employers prior to the start of eligibility for job-protected, paid leave.

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

2.02: Definitions: The following definitions in 458 CMR 2.02 are hereby deleted and replaced with the following:

Covered Individual, either:

- (a) an employee who meets the financial eligibility requirements of M.G.L. c. 151A, § 24 (a); provided, however, that all such employment shall have been with an employer in the Commonwealth;
- (b) a self-employed individual:
 - 1. who has elected coverage under M.G.L. c. 175M, § (2)(j);
 - 2. whose reported earnings to the Massachusetts Department of Revenue from self-employment meet the financial eligibility requirements of M.G.L. c. 151A, § 24(a) as if the individual were an employee;
 - 3. who has made contributions as required by M.G.L. c. 175M, § 6, for at least two of the previous four calendar quarters;
- (c) a covered contract worker:
 - 1. for whom at least one employer or covered business entity is required to remit contributions to the Family and Employment Security Trust Fund pursuant to M.G.L. c. 175M, § 6; and
 - 2. whose payments from such employer or covered business entity satisfy the financial eligibility requirements of said subsection of said M.G.L. c. 151A, § 24(a) as if the covered contract worker were an employee;
- (d) a former employee who has:

1. met the financial eligibility requirements of M.G.L. c. 151A, § 24 (a) at the time of the former employee's separation from employment; provided, however, that all such employment shall have been with an employer in the commonwealth; and
 2. been separated from employment for not more than 26 weeks at the start of the former employee's family or medical leave;
- (e) a personal care attendant, as defined in M.G.L. c. 118E, § 70, whose wages from working as a personal care attendant meet the financial eligibility requirements of M.G.L. c. 151A, § 24(a); or
- (f) a family child care provider, as defined in M.G.L. c.15D, § 17(a), whose payments from working as a family child care provider meet the financial eligibility requirements of M.G.L. c. 151A, § 24(a);

Employee, shall have the same meaning as provided in M.G.L. c. 151A, § 1(h); provided, however, that notwithstanding M.G.L. c. 151A, § 1(h); or any other special or general law to the contrary and solely for the purposes of M.G.L. c. 175M, § 6 and the notice provisions set forth in M.G.L. c. 175M, § 4 (a) and (b), Employee shall include (i) a family child care provider, as defined in M.G.L. c. 15D, § 17(a); and (ii) a personal care attendant, as defined in M.G.L. c. 118E, § 70.

Employer, shall have the same meaning as provided in M.G.L. c. 151A, § (1)(i); provided, however, that

- (a) an individual employer shall be determined by the Federal Employer Identification Number;
- (b) the Department of Early Education and Care shall be deemed the employer of family child care providers, as defined in M.G.L. c. 15D, § 17(a), solely for the purposes of M.G.L. c. 175M, § 6 the notice provisions set forth in M.G.L. c. 175M, § 4 (a) and (b), and § 8 (d);
- (c) any employer not subject to M.G.L. c. 175M may become a covered employer under M.G.L. c. 175M by notifying the Department of Family and Medical Leave and completing the procedure established by the Department;
- (d) a municipality, district, political subdivision or its instrumentalities shall not be subject to M.G.L. c. 175M unless it adopts M.G.L. c. 175M by majority vote of its authorized local legislative body or governing body and otherwise as provided by M.G.L. c. 175M, § 10; and
- (e) the PCA Quality Home Care Workforce Council established in M.G.L. c. 118E, § 71 shall be the employer of personal care attendants, as defined in M.G.L. c. 118E, § 70, solely for the purposes of M.G.L. c. 175M, § 6, and consumers, as defined in said M.G.L. c. 118E, § 70, shall be considered the employers of personal care attendants solely for the

purposes of the notice requirements set forth in M.G.L. c. 175M, § 4 (a) and (b), and § 8 (d);

- (f) Notwithstanding any general or special law to the contrary, for the purposes of M.G.L. c. 175M, § 6, the PCA Quality Home Care Workforce Council established in M.G.L. c. 118E, § 71 shall be the employer of personal care attendants, as defined in M.G.L. c. 118E, § 70, and the Department of Early Education and Care shall be the employer of family child care providers, as defined in M.G.L. c. 15D, § 17(a).