

## 458 CMR 3.00: COVID 19 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 clarify the treatment of leave applications submitted after M.G.L. c. 175M's effective date of January 1, 2021 that seek family leave for bonding related to births, adoptions, and foster care placements that occurred in calendar year 2020; (b) the need for the department to account for accrued eligibility for family leave to bond with an individual's child based on qualifying circumstances occurring both in 2020 and 2021; and (c) the continuing danger to public health and welfare presented by the COVID-19 pandemic emergency and the corresponding need to maximize staffing capacity for acute care hospitals in the Commonwealth.

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

3.01: Purpose of Regulations: The purpose of 458 CMR 3.00 is (a) to clarify that births, adoptions, and foster care placements occurring during 2020 shall be treated as qualifying events for family leave under M.G.L. c. 175M, provided that the covered individual is otherwise qualified for such leave, and provided further that such leave must be taken during the first 12 months after the child's birth, adoption, or foster care placement with the covered individual, and must be completed within calendar year 2021; and (b) to establish procedures that will permit acute care hospitals to maintain maximum capacity for delivery of health care services during the COVID-19 pandemic emergency by reducing the risk of unmanageable reductions in staffing caused by the one-time need to accommodate accrued eligibility for family leave for bonding with an individual's child based on qualifying circumstances occurring both in 2020 and 2021.

3.02: Family Leave for births, adoptions, and foster care placements occurring in calendar year 2020:

- (1) A covered individual may be eligible for family leave to bond with the covered individual's child for births, adoptions, and foster care placements that occurred in 2020.
- (2) The leave must be completed during the first 12 months after the child's birth, adoption, or foster care placement with the covered individual.
- (3) Such leave must be completed during calendar year 2021.

3.03: Definition: For the purposes of 458 CMR 3.00, the following term shall have the following meaning:

Acute Care Hospital, a hospital licensed under M.G.L. c. 111, § 51 and the teaching hospital of the University of Massachusetts Medical School.

3.04: Special provisions relating to family leave by an employee of an acute care hospital for purposes of bonding with the employee's child during the first 12 months after the child's birth, adoption, or foster care placement with the employee:

- (1) An employee of an acute care hospital who is eligible for family leave for bonding in connection with a birth, adoption, or foster care placement that occurred during calendar year 2020 may request, and the employer may grant, a period of family leave for bonding that extends beyond the 12 month period specified in 3.02(2), provided that such leave shall not extend beyond December 31, 2021.
- (2) Any extension of the period for family leave for bonding allowed pursuant to 3.04(1) shall not affect the total amount of leave available to the employee.
- (3) Employers that are acute care hospitals may initiate discussions with employees eligible for the extension permitted in 3.04(1) to determine if they intend to request the allowable extension.
- (4) An employer's decision to deny an employee's request to extend a period of family leave for bonding beyond the period specified in 3.02(2) pursuant to these regulations shall not constitute retaliation pursuant to M.G.L. c. 175M, § 9 or 458 CMR 2.16. An employee whose leave is extended beyond the period specified in 3.02(2) pursuant to these regulations, shall be afforded all protections conferred by M.G.L. c. 175M, § 9 or 458 CMR 2.16 during any period of extension.
- (5) These regulations shall apply to all acute care hospital employers, regardless of whether the employer provides family leave benefits through contributions to the Family and Employment Security Trust Fund as provided in M.G.L. c. 175M, § 6 or through an approved private plan as provided in M.G.L. c. 175M, § 11.
- (6) The allowance provided in these emergency regulations shall have no effect on the availability of medical leave pursuant to M.G.L. c. 175M, § 2(b) or to other leave that may be available pursuant to M.G.L. c. 149, § 105D, 29 U.S.C. 2601, et. seq., or under any other State or Federal law.

3.05: The Department may enact provisions to assist other classes of covered individuals, covered business entities, and employers in moderating the effect of accommodating accrued family bonding leave for 2020 births, adoptions, and foster care placements if the Director determines that the effect of the accrual presents an unmanageable risk of disruption to operations that presents a risk to public health and safety or is otherwise contrary to the public interest. An employer or covered business entity that is not an acute care hospital seeking to extend the period in which an employee may schedule family bonding leave in the manner provided in these regulations shall submit a written request to the Director who, in his discretion, shall grant or deny any such request after considering likely effects on public health and safety and the public interest.