

101 CMR: EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

101 CMR 28.00: DISABILITY EMPLOYMENT TAX CREDIT

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28.01: Applicability and Effective Date

- (1) Scope. 101 CMR 28.00 applies to individuals applying for certification as a qualified employee with a disability for the purposes of the Disability Employment Tax Credit and Massachusetts employers seeking to receive the Disability Employment Tax Credit.
- (2) Effective Date. 101 CMR 28.00 is effective as of July 8, 2022.

28.02: Purpose

101 CMR 28.00 establishes the procedures and requirements to implement the Disability Employment Tax Credit established in M.G.L. c. 62, § 6(z) and c. 63, § 38JJ. 101 CMR 28.00 defines the application process conducted by the Massachusetts Rehabilitation Commission (MRC) to certify individuals as qualified employees with disabilities for the purpose of the DETC, and the eligibility requirements for employers claiming the DETC.

28.03: Definitions

As used in 101 CMR 28.00, unless the context requires otherwise, terms have the meanings in 101 CMR 28.03.

Competitive Employment Setting. A job opportunity or position in which the employee is compensated at the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities.

DETC. The Disability Employment Tax Credit as set forth in M.G.L. c. 62, § 6(z) and c. 63, § 38JJ.

DETC Certification. The written certification issued by MRC certifying that an applicant is a qualified employee with a disability.

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Employer. An individual or organization that employs people and pays them for their work.

EOHHS. The Executive Office of Health and Human Services established under M.G.L. c. 6A.

Qualified Employee with a Disability or Qualified Employee. An individual, hired after July 1, 2021, who is eligible for purposes of the Disability Employment Tax Credit by having met the following requirements.

(1) An individual with a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment, as defined by the Americans with Disabilities Act, 42 U.S.C. 12102 (ADA).

(2) The individual is capable of working independently. An individual will be determined capable of working independently when they are employed in a competitive employment setting.

(3) The individual is physically or mentally impaired in a manner that constitutes or results in a substantial impediment to employment.

Primary Place of Employment in Massachusetts. The employee is primarily located in Massachusetts when working for the employer.

Primary Place of Residence in Massachusetts. The person is living in Massachusetts, with the intention of making their home in Massachusetts, with no plans to return to a former home in another state. A fixed or permanent address in Massachusetts is not required so long as the person is living and intends to live in Massachusetts.

28.04: DETC General Requirements

- (1) For tax years beginning on or after January 1, 2023, an employer may claim the DETC where:
- (a) the employer hires a qualified employee with a disability after July 1, 2021, for a position in a competitive employment setting;
  - (b) the employer timely receives a copy of the qualified employee's DETC certification consistent with the requirements in 101 CMR 28.06(1);
  - (c) the qualified employee is employed for at least 12 consecutive months *prior to and in the* taxable year in which the credit is claimed. For example, if the qualified employee is employed on July 1, 2022, through June 30, 2023, the employer is entitled to claim the credit for wages paid in 2023 because the employee has been employed for 12 consecutive months both prior to and in the taxable year in which the credit is claimed;
  - (d) the qualified employee's primary place of employment and primary place of residence were in Massachusetts during the 12 consecutive months supporting eligibility for the DETC; and
  - (e) the employer meets the additional employer eligibility requirements set forth in 101 CMR 28.00.

- (2) The DETC is a tax credit equal to \$5,000 or 30% of the wages paid to the qualified employee with a disability in the first taxable year of employment, whichever is less.

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- (3) For each subsequent taxable year of employment, the DETC is \$2,000 or 30% of the wages paid to the qualified employee with a disability, whichever is less.
- (4) There is no limit to the number of years the DETC is available to an employer who is otherwise eligible for the credit under 101 CMR 28.00.
- (5) An individual with a disability(ies) who seeks to be certified as a qualified employee with a disability may apply to MRC for DETC certification as set forth in 101 CMR 28.05. If certified, the qualified employee may present the DETC certification to prospective employers as part of an application for employment.

28.05: Application Process to Be Certified by MRC as a Qualified Employee with a Disability

- (1) An applicant seeking certification as a qualified employee with a disability for the DETC must submit an application in the format specified by MRC, which must include the following:
  - (a) proof the applicant meets the requirements to be a qualified employee with a disability;
    - 1. MRC will deem an applicant a qualified employee with a disability if the applicant is receiving benefits or was determined eligible for one of the following government programs based upon the applicant's disability:
      - a. Vocational Rehabilitation Services, provided by MRC or the Massachusetts Commission for the Blind;
      - b. 504 Plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et. seq.*, with additional documentation showing substantial impairment to employment;
      - c. Individualized Education Plan under the Individuals with Disabilities in Education Act of 1990, 20 U.S.C. §1400 *et. seq.*, with additional documentation showing substantial impairment to employment;
      - d. Comprehensive coverage under MassHealth as a disabled adult as defined under 130 CMR 501.000: *Health Care Reform: MassHealth: General Policies*;
      - e. Emergency Aid to the Elderly, Disabled and Children (EAEDC) benefits, under 106 CMR 703.190: *TAFDC Disability Exemption Process*;
      - f. Veteran Readiness and Employment program, provided by the Veterans' Administration;
      - g. Supplemental Security Income (SSI) or Social Security Disability Income (SSDI);  
or
      - h. Such other government programs as EOHHS may identify that establish disability sufficient to allow MRC to deem an applicant a qualified employee with a disability under the DETC. EOHHS will issue guidance in accordance with 101 CMR 28.08 as appropriate; or
    - 2. The applicant has been certified by the United States Department of Veterans Affairs as having been discharged or released from active duty in the armed forces of the United States for a service-connected disability; and
  - (b) proof the applicant's primary place of residence is in Massachusetts.
- (2) MRC may make supplemental requests for information as necessary to complete the application.

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- (3) If MRC determines the applicant meets the requirements for DETC certification as a qualified employee, MRC will issue a DETC certification to the applicant. If MRC determines the applicant does not meet the requirements for DETC certification, MRC will issue written notice of this determination within 30 days of a complete DETC certification application.
- (4) The DETC certification may be provided to any prospective employer to demonstrate qualified employee status for a period of three years from the date the certification is issued. After three years, the employee must request recertification from MRC by resubmitting the application described in 101 CMR 28.05 in order for the new employer to claim the DETC.
- (5) At the request of the applicant, MRC will send a copy of the DETC certification to the applicant's employer.

28.06: Eligibility Requirements

- (1) Receipt of DETC Certification.
  - (a) General Guidelines. A copy of the DETC certification for the qualified employee must be received by the employer no later than the day the qualified employee begins work, unless an exception in 101 CMR 28.06(1)(b) applies.
  - (b) Exceptions. An employer who receives the DETC certification after the employee begins work remains eligible for the DETC in the following circumstances.
    1. MRC issued a DETC certification prior to the employment start date.
    2. The employee submitted an application to MRC prior to the employment start date, and MRC certifies the employee as a qualified employee with a disability based upon the application (even if the determination is made after the employment start date).
    3. The employer hired the employee after July 1, 2021, and the application for DETC certification is submitted to MRC within 90 days of the effective date of 101 CMR 28.00.
    4. Upon a showing of good cause, the employee provided the application for certification within 90 days from the date the employee begins work.
- (2) Documentation Requirements. An employer claiming the DETC must maintain the following documentation to support eligibility for the DETC:
  - (a) the copy of DETC certification and proof of receipt consistent with 101 CMR 28.06(1);
  - (b) employment records sufficient to show the qualified employee was employed in a competitive employment setting;
  - (c) employment records sufficient to show a qualified employee began work after July 1, 2021, and was employed for 12 consecutive months prior to, and in the taxable year, in which the credit is claimed; and
  - (d) records sufficient to demonstrate the qualified employee's primary place of employment and primary place of residence were in Massachusetts during the 12 consecutive months supporting eligibility for the DETC.

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28.07: Verification of Primary Place of Residence for the DETC Credit

- (1) The primary place of residence of the qualified employee may be verified by MRC or the employer with any of the following documents:
  - (a) copy of a deed or mortgage payment;
  - (b) utility bill or work order;
  - (c) copy of lease, letter from landlord specifying the rental arrangement, or rental assistance agreement (i.e., Section 8 agreement);
  - (d) homeowner's insurance agreement;
  - (e) postal service records;
  - (f) statement from homeless shelter or homeless service providers;
  - (g) school records (if school is private, additional documentation may be requested);
  - (h) nursery school or daycare records (if school is private, additional documentation may be requested);
  - (i) proof of enrollment of custodial dependent in public school;
  - (j) voter registration records;
  - (k) motor vehicle license or registration;
  - (l) other government-issued identification card reflecting current address, a photograph, or information such as name, date of birth, height, eye color, or other identifying information; or
  - (m) a written statement, signed by the employee, declaring where the employee lives or intends to live within Massachusetts. A written statement may only be used if the employee has no fixed address and is unable to provide proof of residence through other documentation listed in 101 CMR 28.07(1).
  
- (2) If the employee's primary place of residence changed during the 12 months of employment supporting the DETC, MRC or the employer may rely on such documents as needed to establish the employee's primary place of residence in Massachusetts for the full 12-month period.

28.08: Review of MRC Agency Decision

- (1) An applicant seeking certification as a qualified employee with a disability may appeal the following agency decisions:
  - (a) certification under 101 CMR 28.05; and
  - (b) timeliness of the DETC certification application under 101 CMR 28.06(2).
  
- (2) All appeals must be made in writing to the Commissioner of MRC, or their designee, within 30 calendar days from the date notice is issued.

28.09: Implementation and Clarification

- (1) Policies and Procedures. EOHHS may, in consultation with MRC and the Massachusetts Department of Revenue (DOR), establish policies and procedures to implement the DETC.
  
- (2) Administrative Bulletins. EOHHS may issue administrative bulletins to clarify substantive provisions of 101 CMR 28.00.

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(3) Implementation Guidance. EOHHS may develop policies, guidance, or memoranda to implement 101 CMR 28.00, including identification of government programs that establish disability sufficient to deem an individual a qualified employee with a disability under the DETC.

28.10: Interagency Agreement

The Secretary of EOHHS, in consultation with MRC, may establish interagency agreements among EOHHS, MRC, and the DOR in order to verify certifications of qualified employees as necessary to ensure employer compliance with DETC requirements.

28.11: Severability

The provisions of 101 CMR 28.00 are severable. If any provisions of 101 CMR 28.00 or the applications of such provisions to any person or circumstance are held invalid or unconstitutional, the other provisions of 101 CMR 28.00, or the application of such provisions to any person or circumstance other than that as to which it is held invalid or unconstitutional, will not be affected thereby.

REGULATORY AUTHORITY

101 CMR 28.00: M.G.L. c. 62 § 6; M.G.L. c. 63, § 38JJ