

EMPLOYER MEDICAL ASSISTANCE CONTRIBUTION SUPPLEMENT

430 CMR 21.11 Hardship Waiver

21.11 Hardship waiver

11.01: Purpose of Regulations: The purpose of 430 CMR 21.11 is to establish procedures and interpret the standards for granting of a hardship waiver in accordance with St. 2017 c. 63 § 14A..

11.02 Scope and Applicability. Any employer liable for the EMAC Supplement under G.L. c.149, § 189A, may submit an application for a hardship waiver. The Director may give special consideration to the following classes of employers:

- (a) employers with variable or limited revenue;
- (b) employers with fewer than 50 employees;
- (c) employers who report 65% or more of their annual gross wages in two consecutive quarters;
- (d) employers whose employees are mostly temporary;
- (e) employers that serve the public interest by providing human services or long-term care services and that receive a significant share of revenues from governmental programs.

11.03 Definitions:

Application. An application for a hardship waiver of the EMAC supplement in the form published by the Director. The application for a hardship waiver applies only to the quarter in which it is filed with the Department. A separate application must be filed for each quarter.

Applicant. An employer applying for a hardship waiver under the provisions of these regulations.

Application period. The period, as determined by the Director, during which applications for a hardship waiver may be submitted for consideration for a particular quarter.

EMAC Supplement. The contribution provided for in M.G.L. c. 149, § 189A.

Employer Shared Responsibility Payment. A payment made by an employer under Section 4980H of the Internal Revenue Code.

Hardship waiver. A discretionary grant of a waiver of liability for an employer's EMAC Supplement for the quarter for which a waiver application is granted.

11.04 Burden of Proof. At all times, the applicant shall have the burden of demonstrating financial hardship and eligibility for the hardship waiver.

11.05 Procedure. If the Director determines that hardship waivers will be considered for a particular quarter, the Director shall:

- (a) make an announcement via the Department's website;
- (b) post the application; and
- (c) specify the application period during which applications for the hardship waiver will be reviewed.

11.06 Consideration of Applications. The department will consider applications for the hardship waiver if:

- (a) the employer submits, in the manner prescribed by the Director, a complete application;
- (b) the application is timely; and
- (c) the application relates to the quarter during which it is submitted.

11.07 Determination of Hardship Waivers. The Director may grant a full or partial waiver of liability for the EMAC Supplement where the Applicant:

- (a) provides evidence that it has acted in good faith in all its relations with the Department, and certifies that it is current on state taxes and assessments, including, where applicable, the nursing facility user fee assessment; and
- (b) provides evidence of one or more of the following:
 - (1) the Applicant is unable to pay the EMAC Supplement because of financial hardship and failure to obtain a hardship waiver is likely to result in a substantial reduction in services, or termination of the employer's business, or in substantial loss of employment;
 - (2) the Applicant has paid an Employer Shared Responsibility Payment and been assessed an EMAC Supplement in the same calendar year; or
 - (3) the Applicant experienced a turnover rate of at least 250% over the four quarters immediately preceding the application.

The Director shall give priority to the classes of employers listed in 430 CMR 11.02. Applicants shall be notified by electronic mail of the Director's decision prior to the date upon which payment of the EMAC Supplement is due.

11.08 Effect of Granting of a Hardship Waiver. The hardship waiver relieves the employer from some or all of its EMAC Supplement liability only for the quarter in which it is granted.

11.09 Effect of Denial of a Hardship Waiver. Denial of a hardship waiver shall not extend the time for paying the EMAC Supplement.

11.10 Finality of Decision. The decision of the Director shall be final, and the employer shall not have the right to appeal the decision.

11.11 Revocation of a Hardship Waiver. The Director may revoke a hardship waiver if she finds that an employer or an officer or an agent of the employer submitted false information on the application. The waiver shall be revoked upon notice to the employer, and the employer shall be liable for the amount waived pursuant to the hardship waiver, plus applicable penalties and interest.