

# 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.

### 1. General Provisions

**(1) Purpose.** These regulations implement the standards for determining when an employer is subject to and liable for payment of the employer medical assistance contribution supplement (EMAC Supplement) pursuant to M.G.L. c. 149, § 189A; prescribe payment procedures for the EMAC Supplement; and otherwise define how the Department of Unemployment Assistance (DUA) will administer M.G.L. c. 149, § 189A. The EMAC Supplement supports the provision of health insurance coverage through the MassHealth agency and subsidized health care insurance through the Commonwealth Health Insurance Connector Authority (Connector).

**(2) Scope and Applicability.** These regulations apply to any employer subject to M.G.L. c. 151A, §§ 14, 14A 14C, except those who employ not more than five employees, as defined below.

**(3) Use of Electronic Communications (E-Mail).** Any written communication required or permitted under M.G.L. c. 149, § 189A or under these regulations shall be made and transmitted in the manner and form prescribed by the DUA Director, which may include by means of electronic communication. The DUA Director shall establish procedures allowing the use of the United States Postal Service (regular mail) for those employers lacking reasonable access to, or the ability to use, electronic communication.

## 2. General Definitions

**Connector** means the Commonwealth Health Insurance Connector Authority, established pursuant to M.G.L. c. 176Q, § 2.

**ConnectorCare** is a program of health insurance using state subsidies that is run by the Connector and provided to individuals with household incomes of less than 300 percent of the Federal Poverty Limit who meet the eligibility criteria set out at 956 CMR 12.03.

**DUA** means the Department of Unemployment Assistance, established pursuant to M.G.L. c. 23, § 1.

**DUA Director** means the Director of the Department of Unemployment Assistance or the Director's designee.

**DMA** means the Division of Medical Assistance within the Executive Office of Health and Human Services.

**Employee**, for purposes of determining liability for the EMAC Supplement and for determining wages under these regulations, has the same meaning as is provided in M.G.L. c. 151A, § 1(h).

**Employer** has the same meaning as is provided in M.G.L. c. 151A, § 1(i).

**Employing unit** has the same meaning as is provided in M.G.L. c. 151A, § 1(j).

**Employment** has the same meaning as is provided in M.G.L. c. 151A, § 1(k). The classes of employment exempt from coverage for purposes of paying the EMAC supplement are the same as set forth in M.G. L. c. 151A. Non-exempt service performed by an individual shall be deemed to be employment subject to M.G.L. c. 149, § 189A, unless and until it is shown to the satisfaction of the DUA Director that all of the provisions of G. L. c. 151A, § 2, have been established.

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

**MassHealth agency**, or DMA, means the Office of Medicaid within the Executive Office of Health and Human Services, the single state agency responsible for the

administration of programs of medical assistance and medical benefits established pursuant to M.G.L. c. 6A, § 16, and c. 118E.

**Remuneration** has the same meaning as in M.G.L. c. 151A, and shall include remuneration paid to an individual during the calendar year with respect to employment with a transferring employer.

**Wages**, means remuneration paid by or on behalf of an employer to or for one of its employees up to the amount of the Unemployment Insurance Taxable Wage Base for each employee, as defined in M.G.L. c. 151A, §14(a)(4). For purposes of the EMAC Supplement, wages are deemed paid at the time that they are or should have been paid.

### 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 12<sup>th</sup> 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.

### 4. Non-profit Organizations and Governmental Employers

All non-profit organizations and governmental employers subject to the provisions of M.G.L. c. 151A are subject to and liable for payment of the EMAC Supplement pursuant to the provisions of section 3.0 regardless of whether they choose the contributory method or the reimbursement method to finance the payment of unemployment insurance benefits to their employees; provided, however, that cities,

towns, regional school districts, and educational collaboratives organized under G. L. c. 40, § 4E, shall not be subject to or liable for payment of the EMAC Supplement unless they have accepted liability pursuant to M.G.L. c. 29, § 27C.

## **5. Companies Involved in Ownership Changes.**

For employers involved in a change of ownership, including, without limitation, changes occurring due to acquisition, consolidation, partial transfer, or whole successorship, during a calendar quarter, any employing unit reporting quarterly wages for employees who received health insurance coverage through the MassHealth agency or through ConnectorCare for a continuous period of at least fifty-six days during that quarter shall be liable for the EMAC Supplement for that quarter, consistent with the provisions of section 3.0. The acquiring employer is not allowed credit for any EMAC Supplement contributions paid by the acquired employer on employee wages prior to the acquisition.

## **6. Appeals**

### **(1) Administrative appeals from determinations of liability.**

(a) Whenever the DUA Director issues a determination that an employer is liable for the EMAC Supplement or regarding the amount of such liability, the employer may request a hearing on such determination. The request for a hearing shall be filed not more than 10 days after the employer's receipt of notice of the determination. This 10 day filing period may be extended by the DUA Director, for good cause shown, as set forth in 430 CMR 21.06(2). The conduct of such hearing shall be in accordance with the procedures prescribed by M.G.L. c. 151A, § 39(b). The DUA Director will issue a written decision affirming, modifying, or revoking the initial determination.

(b) When a notice of a determination by the DUA Director is transmitted by means of an electronic communication, it shall be presumed received on the date it is sent, except that any notice transmitted after 5:00 p.m. or on a state or federal holiday, Saturday, or Sunday, shall be presumed received on the next business day. When notice of a determination is sent by regular mail, it shall be presumed received three days after it is mailed, except that if the third day falls on a state or federal holiday, Saturday, or Sunday, the notice shall be presumed received on the next business day. However the notice is transmitted, the presumption may be rebutted by substantial and credible evidence satisfactory to the DUA Director that the notice actually was received on an earlier or later date.

(c) A request shall be deemed filed on the postmark date if sent by regular mail and otherwise when actually received by DUA. A request received after 5:00 p.m. shall be deemed filed on the next business day.

(2) The DUA Director may extend the 10 day filing period where an employer establishes to the satisfaction of the DUA Director that circumstances beyond the

employer's control prevented the filing of a request for a hearing within the prescribed 10 day filing period.

(a) The DUA Director shall not find good cause if an employer fails to request a hearing within 30 calendar days after the receipt of the determination.

(b) The 30 day limitation on filing a request for a hearing shall not apply where the employer establishes:

(i) That a DUA employee directly discouraged the employer from timely requesting a hearing and such discouragement results in the party believing that a hearing is futile or that no further steps are necessary to file a request for a hearing;

(ii) That it received the DUA Director's determination beyond the 30 day extended filing period and thereafter promptly filed a request for a hearing;

(iii) That it did not receive the DUA Director's determination but promptly filed a request for a hearing after learning a determination was issued.

(3) A party aggrieved by the DUA Director's decision, issued following the hearing described in subsection 6.1, may appeal the decision to the superior court for the county (a) where the party resides or has its principal place of business within the commonwealth, or (b) where DUA has its principal office, or (c) of Suffolk. Such an action must be commenced within thirty days of the date such decision is received by the party.

## **7. Payment Requirements**

For employers liable under M.G.L. c. 149, § 189A, and section 3.0 above, payment of the EMAC Supplement is required quarterly, and is due and payable on or before the last day of the first month succeeding the quarter in which wages were paid and reported.

## **8. No Commingling with the Unemployment Insurance Program**

(1) DUA shall administer the calculation and collection of the EMAC Supplement independent of its responsibility under the state-federal partnership to administer the Massachusetts unemployment insurance program. No funds from the federal grant for the administration of the unemployment insurance program under M.G.L. c. 151A shall be used for the administration of the EMAC Supplement, and payment of any EMAC Supplement shall not be placed in any account used for the administration of the unemployment insurance program.

(2) EMAC Supplement payments, credits, interest, and penalties associated with an employer's liability under M.G.L. c. 149, § 189A, after collection by DUA, shall not be credited or charged to that employer's unemployment insurance account or the solvency account established by M.G.L. c. 151A, §14.

(3) Employer payments, credits, contributions, interest, and penalties associated with employer unemployment insurance contributions shall be credited or charged to the employer's unemployment insurance account or solvency account, whichever is applicable.

## 9. Collections and Penalties

### (1) Collections.

**General:** Except as specifically provided in these regulations, the terms and conditions of M.G.L. c. 151A applicable to the payment and collection of contributions or payments in lieu of contributions shall apply to the payment and collection of the EMAC Supplement.

**(a) Assessment of Interest.** If an employer fails to pay any portion of contributions due under M.G.L. c. 149, § 189A, the overdue amount shall carry an interest charge which shall be calculated using the same rate and in the same manner as interest charges for overdue unemployment insurance contributions under M.G.L. c. 151A, §15(a).

**(b) Collections Against Delinquent Accounts.** The DUA Director shall collect overdue contributions, interest charges, and penalties under M.G.L. c. 149, § 189A, under the same terms and conditions as those provided for the collection of delinquent unemployment insurance contributions under M.G.L. c. 151A, §§ 15 through 19, including use of such remedies as dunning, property liens, and levies upon employer accounts maintained in any bank or depository in the Commonwealth.

**(2) Refunds.** If an employer pays contributions in excess of the amount due under M.G.L. c. 149, § 189A, the employer shall be eligible for a refund or a credit of the excess amount against any liability for the EMAC Supplement. Any excess payment shall not carry interest. Applications for refunds must be filed within three years of the date of payment of contributions, interest, penalty, or fine, as provided for under M.G.L. c. 151A, § 18.

### (3) Penalties.

**(a) Failure to Comply.** The provisions in c. 151A applicable to non-payment of UI contributions also apply to the non-payment of the EMAC Supplement.

**(b) Application of M.G.L. c. 151A, § 47.** An employer who does any of the following shall be subject to the penalties provided under M.G.L. c. 151A, § 47, including fines and imprisonment:

1. willfully attempts to evade or defeat any contribution, interest, or penalty payment; or

2. knowingly makes any false statement or misrepresentation to avoid or reduce any financial liabilities under M.G.L. c. 149, § 189A; or
3. knowingly fails or refuses to pay any such contribution, interest charge, or penalty under § 189A; or
4. attempts to coerce any worker to misrepresent his or her circumstances so that the employer may evade payment of contributions.

## **10. Disclosure of Information to Administer EMAC; Confidentiality**

### **(a) Disclosure of Member Information to Administer the EMAC Supplement.**

The MassHealth Agency and the Connector shall provide DUA with such information as DUA determines necessary to determine liability for the EMAC Supplement and otherwise administer M.G.L. c. 149, § 189A including, without limitation, information pertaining to MassHealth and ConnectorCare beneficiaries (Member Information), at such times and in such manner as agreed by the MassHealth Agency, the Connector and DUA. The Member Information determined necessary by DUA for such purposes and the related terms and conditions upon which Member Information shall be provided to DUA shall be documented in an Interdepartmental Service Agreement among DUA, the MassHealth Agency and the Connector (ISA).

### **(b) Confidentiality.**

- (i) DUA shall protect the confidentiality of Member Information provided by the MassHealth Agency and the Connector pursuant to subsection (a), above, in accordance with its obligations under applicable privacy and security laws and regulations including, without limitation, M.G.L. c. 66A and M.G.L. c. 118E, § 49, and any additional terms and conditions as the MassHealth Agency and the Connector may reasonably require to comply with their respective legal obligations, as set forth in the ISA.
- (ii) DUA may provide an employer that it determines is liable for the EMAC Supplement under M.G.L. c. 149, § 189A, with access to Member Information for purposes of reviewing and/or appealing such liability. Access shall be provided in accordance with procedures established by DUA. Any employer that receives Member Information shall be required to maintain the confidentiality of such Information in accordance with MGL 118, § 49, and any other legal obligation to which the employer is subject, and shall limit its use and disclosure of such information as necessary to review and/or appeal the amount of the employer's liability.
- (iii) Without limiting the generality of the foregoing, no employer shall use or disclose Member Information to disparage or retaliate against any employee or other individual to whom it pertains. Prior to the receipt of Member

Information, employers shall be required to sign a written acknowledgement of their obligations to maintain the confidentiality of such Information, in such form and pursuant to such procedures established by DUA.

#### REGULATORY AUTHORITY

\_\_ CMR \_\_.00: M.G.L. c. 149, § 189A.