



OCTOBER 12, 2018 DEADLINE FOR SUBMISSION OF FIRST DUA HARDSHIP WAIVER APPLICATION FOR EMAC SUPPLEMENT RELIEF

Last month's Member's Only Bulletin discussed the proposed hardship waiver regulations. The Massachusetts DUA has since issued a hardship waiver application for businesses and emergency hardship waiver regulations reflecting comments and suggestions made by various stakeholders during the listening sessions held by DUA and the brief comment period.

The good news is DUA should be commended for its efforts in finalizing hardship waiver regulations in a very short time and getting the hardship waiver process in play. The not so good news is that the deadline for the very first quarterly hardship application is October 12, 2018 (don't be surprised if this date is extended, but don't count on it either). The current timeline for Q3 looks like this, per DUA:

- 10/1- Q3 wage filing begins and hardship waiver applications accepted
- 10/12- Deadline for filing Q3 hardship waiver applications
- 10/31- Q3 wage filing completed (Waiver determinations will issue before 10/31)

EMAC SUPPLEMENT HARDSHIP WAIVER APPLICATION FOR BUSINESSES

The hardship waiver application can be found [here](#). The application is eight pages long and requests some very detailed information about the business seeking the waiver and its assets, liabilities, income, expenses, etc. The completed, signed application and all attachments must be sent via email to EMACHardshipwaiver@mass.gov. Presently, the deadline for filing submissions for the 3rd quarter is October 12, 2018.

Speaking of attachments, the following information must be attached to the application, as applicable:

- A current Profit and Loss statement covering at least the most recent 12 month period, if appropriate
- Copies of the six most recent bank statements for each business account and copies of the three most recent statements for each investment and retirement accounts
- Copies of the most recent statement of outstanding notes receivable

- Copies of the most recent statements from lenders on loans, mortgages (including second mortgages), monthly payments, loan payoffs, and balances
- Copies of reimbursements from the state
- Copy of ESR bill (IRS letter 226J) if applicable
- Proof of payment to the IRS for ESR bill
- EMAC Supplement Turnover Rate Worksheet, if applicable and supporting documentation listed as required on the Worksheet
- Power of Attorney, if an attorney, CPA or authorized agent will represent the business (make sure the PoA includes the current tax year)

All application questions must be answered; if a question does not apply, “N/A” must be entered. A determination will be issued to the business by email, using the same business email address used to submit the application on behalf of the business.

The application for a hardship waiver applies only to the quarter in which it is filed with the DUA. Thus, a separate application must be filed for each quarter. At all times businesses will have the burden of demonstrating financial hardship and eligibility for the hardship waiver.

Remember: DUA exercises a great deal of discretion over the process and waiver decisions -- DUA’s decision to deny a hardship waiver request is final and may not be appealed by the employer.

HARDSHIP WAIVER ELIGIBILITY / DETERMINATION

The DUA may grant a full or partial waiver of liability for the EMAC Supplement where the business applying:

- Has acted in good faith in all its relations with the DUA, and certifies that it is current on state taxes and assessments, including, where applicable, the nursing facility user fee assessment; and
- Provides evidence of one or more of the following:
 - the business is unable to pay the EMAC Supplement because of financial hardship and failure to obtain a hardship waiver is likely to result in

termination of the employer's business or in substantial loss of employment

- the business has paid an Employer Shared Responsibility Payment and been assessed an EMAC Supplement in the same calendar year or
- the business experienced a turnover rate of at least 300% over the four quarters immediately preceding its hardship waiver application.

Note: There is a Turnover Rate Worksheet that must be used if claiming a 300% or more turnover rate. The Worksheet can be found [here](#).

The DUA is permitted to give special consideration to the following classes of employers seeking a hardship waiver:

- Staffing companies
- Small Employers with fewer than 50 employees
- Employers billed by the IRS for Affordable Care Act Employer Shared Responsibility (ESR) taxes under Code section 4980H
- Seasonal Employers reporting 90% of their annual total UI gross wages in two consecutive quarters
- 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

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Employers seeking an EMAC Supplement Hardship Waiver for Q3 will need to begin the process immediately in order to have time to submit the application in time – by October 12, 2018.

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