



October 9, 2018

Department of Unemployment Assistance
Commonwealth of Massachusetts
Charles F. Hurley Building
19 Staniford Street
Boston, MA 02114
TRANSMITTED VIA EMAIL TO EMACQuestions@massmail.state.ma.us

RE: EMAC Supplement Regulations

To Whom It May Concern:

I am writing to you on behalf of the Building Trades Employers' Association (BTEA), the National Electrical Contractors Association (NECA) of Greater Boston, the New England Mechanical Contractors Association (NEMCA), and the Greater Boston Plumbing Contractors Association. Collectively, we represent hundreds of union signatory construction subcontractors in the Commonwealth of Massachusetts who employ almost all the members of New England's fifteen different building trades unions.

Our contractors' pride themselves on their decision to provide their employees, the union members, some of the best healthcare and retirement benefits available. Unfortunately, the 2017 law that temporarily changes the existing Employer Medical Assistance Contribution (EMAC) program is penalizing union contractors that already provide health insurance for their employees. More specifically, the Employer Medical Assistance Contribution (EMAC) supplemental contribution is being imposed on the contractors that already contribute to a multiemployer health plan on behalf of their union employees as stipulated in their respective collective bargaining agreements.

The system of multiemployer health insurance is unlike that of most other private employers. Union health plans are governed by trust documents and a board of labor and management trustees who make decisions regarding the types of coverage and eligibility requirements for the plan. These eligibility requirements vary for each trade, but none of the trades we represent allow members to gain health coverage on their first day of work. Instead, employers are required to make health insurance

contributions on a per hour basis for each union employee until they gain coverage. In most cases, once a union member has gained coverage, they are provided that coverage for a certain number of months or the calendar year. In addition, there are a number of options available to them to maintain their eligibility even when they are laid off for an extended period including bridge coverage available through the plan and COBRA coverage offered to participants during a long term period of unemployment.

The first unintended issue with the EMAC Supplemental contribution for union construction employers arises during the time following the initial hiring of union employees. Whether it is a new union apprentice or a union member reentering the workforce, employers begin making healthcare contributions as soon as that individual begins working. However, during this period, a union member may be on existing health coverage until they earn coverage under their union health plan. This means that there is a chance that they may be covered through MassHealth or ConnectorCare depending on their previous situation. In this case, the employer is liable to trigger the EMAC Supplemental tax despite the fact that they are technically paying for healthcare coverage although the plan is not yet covering the employee. We believe that this causes the employer to be paying for health coverage twice and is not what the spirit of what the EMAC law intended.

As noted, union construction employers are paying a dollar amount per hour for their union employees. The second issue arises when the union employee fails to enroll in the health plan on their own for whatever reason. In the event the employee doesn't actively enroll or if they stay on MassHealth, the employer will be hit with the EMAC supplemental tax even though they are paying for and offering their employee's health coverage. We believe this was an unintended consequence of the 2017 changes to the law. In fact, the hardship waiver aims to address these unintended consequences. Unfortunately, the requirements for the waiver are not clear and do not address these specific scenarios.

Therefore, we are asking the Department of Unemployment Assistance (DUA) to reconsider how they assess the EMAC Supplement on union signatory construction employers recognizing that these employers are making best faith efforts to provide health insurance for their employees and that the multiemployer healthcare plans which offer exemplary levels of coverage must be cautious in how quickly they offer coverage to new hires. This issue is of great concern to our members, some of which have already found that they have triggered an assessment of the EMAC Supplement. In most cases they have appealed the decisions only to be routinely denied through the electronic appeals process which we also feel is far too opaque on how decisions are rendered.

Thank you for your consideration to this matter. Please do not hesitate to contact me with any questions or comments you may have.