



Massachusetts Package Stores Association, Inc.

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**Written Testimony of the Massachusetts Package Stores Association
Submitted to
Department of Unemployment Assistance
19 Staniford Street, First Floor
Boston, Massachusetts 02114**

**For the Hearing on Record about the Proposed Hardship Waiver Regulations to EMAC Assessments
Monday, September 17, 2018**

Dear Department of Unemployment Assistance Representative,

Thank you for holding a public hearing on the proposed hardship waiver regulations to EMAC assessments. Below are the written comments and concerns of the more than 800 members of the Massachusetts Package Stores Association (MPSA). MPSA has a material stake in the outcome of these hearings as it represents an industry that generates 140,000 MA jobs, \$1 billion in state taxes and fees and \$20 billion in economic activity.

Essentially MPSA's concerns mirror those of many other small business employers in Massachusetts. Small retailers, such as package stores, continue to receive their Employer Medical Assistance Contribution (EMAC) Supplement assessments with little to no relief. Please recognize that small businesses such as Massachusetts package stores have been particularly hard hit in 2018 when the EMAC fees are combined with other MA only expenses such as employer paid sick leave, the recent increases to the minimum wage, another increase to unemployment insurance and the highest electricity costs in the continental United States. Added to this burden will be the impacts in 2019 of Employer Paid Family and Medical Insurance and a \$15 Minimum Wage.

The EMAC assessment is particularly burdensome and a point of contention because employers are without viable remedies in determining who elects to use an employer provided health insurance plan or one offered by MassHealth. Adding to insult is that the Connector frequently entices through outreach lesser wage-earning employees to purchase their products. Therefore, an objective and reasonable waiver process is essential.

In reviewing the DUA's proposed regulations there appears to be two fundamental problems.

1. The determination process within the proposed regulations of "hardship," on its face, appears to be subjective. A major problem applicable to all employers (including retailers of alcoholic beverages) is that the proposed rule is devoid of specific, objective criteria for determining what is a hardship. Without such criteria, no employer can possibly know what standard will be used by the Commissioner to determine eligibility for a waiver and what evidence it will need to succeed in obtaining a waiver. Moreover, it is arguably not in the interests for the DUA to make fair and consistent eligibility determination. This makes the process potentially arbitrary and lacking objective due process. Hence, the final rules must not only contain specific, objective tests for determining hardship, but they also must include an appeal process so that employers can challenge waiver determinations that fail to properly apply the tests based on the specific facts and circumstances. Any waiver process that does not include these essential legal elements will not satisfy fundamental due process standards.

The Massachusetts Package Stores Association (MPSA) is a non-profit trade organization representing the interests of the thousands of independently-owned retail liquor stores across Massachusetts. The Board of Directors of MassPack are primarily comprised of owner/operators of liquor stores. Contact MassPack with any questions at (800) 322-1383, or email info@masspack.org. Visit the MassPack website at: www.masspack.org



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2. The insolvency of a business is not an appropriate test of for a reasonable employer's hardship waiver and loss of employment is too vague. The problem here is that the proposed rule (Section 11.03) states "termination of an employer's business" or the "loss of employment" as the tests of hardship. Loss of a business is an unacceptably draconian test. An employer should not be required to show that they are shutting down their business to demonstrate qualification for a financial hardship. Frankly, this standard brings into question the sincerity of the proposed waiver process. Loss of employment is more reasonable, but the rule does not offer any objective criteria regarding the degree of job loss. Consequently, this rule is not likely workable in practice.

Thank you in advance for accepting and reviewing the feedback of the Massachusetts Package Stores Association. It is our sincere desire that the final rules will be promulgated in a manner that can offer employers more objectivity, layers of due process and possess more reasonable standards of review.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert A. Mellion".

Robert A. Mellion, Esq.
Executive Director / General Counsel

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