

# Client Alert

A report  
for clients  
and friends  
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## What Employers Need to Know About the Massachusetts Health Care Reform Act

In April of 2006, Massachusetts enacted the Act Providing Access to Affordable, Quality, Accountable Health Care (the "Act"). The health care reform includes three requirements that employers with 11 or more full-time employees (11 or more FTEs) working in Massachusetts must comply with by July 1, 2007.

It is important to note that the Division of Health Care, Finance and Policy (DCHFP) and the Division of Insurance have yet to issue many of the final regulations for the Act. The below discussion is based only on current regulations.

### The Fair Share Contribution

*Fair and Reasonable Premium Contribution:* An employer with 11 or more full-time-equivalent Massachusetts employees (i.e. employees who regularly work more than 35 hours a week) must make Fair and Reasonable Premium Contribution to the employer's group health plan.

The DCHFP provides two tests to determine if an employer has made a Fair and Reasonable Premium Contribution. If either test is satisfied the employer does not have to pay the Fair Share Contribution.

*Primary Test:* The primary test is met if 25% of the employer's full-time Massachusetts employees participate in the employer's group health plan. Seasonal employees, independent contractors and temporary employees are not considered full-time employees.

To determine if the test is satisfied the employer must divide the total payroll hours for all full-time *enrolled*

employees by the total payroll hours for all full-time employees. If that number exceeds 25% the primary test is met. The period of calculation is October 1 to September 30 and payroll hours include regular, vacation, sick, FMLA, short-term disability, long-term disability, overtime and holiday payroll hours.

*Secondary Test:* An employer that fails the primary test can still avoid the Fair Share Contribution by meeting a secondary test. The secondary test is met if the employer offered to contribute 33% or more of the premium cost of any employer sponsored group health plan, offered to full-time employees, employed for 90 or more days, during October 1 to September 30.

#### Meet the Primary Test if...

$$\frac{\text{Total Payroll Hours for Full-Time Enrolled Employees}}{\text{Total Payroll Hours for Full-Time Employees}} > 25\%$$

#### If an Employer Fails the Primary Test the Employer Can Pass the Secondary Test if...

$$\frac{\text{Employer's Offer to Contribute to the Premium Cost of any Employer Sponsored Group Health Plan}}{\text{of the Premium Costs}} \geq 33\%$$

*Fair Share Contribution:* If neither of the above tests are met the employer will be required to pay up to \$295 per employee to the Commonwealth Care Trust Fund. The director of labor has yet to determine the exact method of collection.

### Section 125 Plans

*What is a Section 125 Plan?* A Section 125 Plan allows employees to choose between receiving cash and certain benefits that may be paid for on a pre-tax basis.

*Requirements:* The Act requires an employer with 11 or more FTEs in Massachusetts to adopt and maintain a Section 125 Plan that allows employees to pay for their health care coverage on a pre-tax basis. The plan must

satisfy both the Internal Revenue Code §125 requirements and the rules and regulations promulgated by the Connector.

Although part-time and temporary workers are taken into account for determining the employer's total number of full-time-equivalent employees, the Act allows employers to exclude such employees from the plan. Specifically, the employer is not required to offer the plan to employees under 18, temporary, part-time employees who are scheduled to work less than 64 hours per month, wait staff employees, student interns or seasonal employees.

Employers that offer health insurance to their employees are not exempt from the Section 125 Plan requirement. However, newly proposed regulations exempt employers that pay the entire monthly costs of medical coverage for all non-excluded employees (as generally listed above) from the requirement.

The Connector has posted a model Section 125 Plan on its website to assist employers in meeting the deadline. Although the current regulations require the Section 125 Plan to be in place and effective July 1, 2007, employers may provide a special waiting period for eligibility that may extend to no later than September 1, 2007.

### **Free Rider Surcharge**

In an effort to recover a portion of state-funded health care costs, the Commonwealth has implemented a Free Rider Surcharge. An employer must pay the surcharge if Massachusetts pays for a single employee more than three times in a year, or for any combination of employees more than five times in a year. The first \$50,000 of state-funded health care costs will be exempted. The surcharge amount will vary depending on employer size and the frequency of the employees use of the system and will be reduced by the percentage of employees that the employer provides health coverage for.

The DCHFP has yet to issue the regulations with the exact calculations.

### **Disclosure Requirements**

*Employer Form:* The Act directs DHCFP to administer Health Insurance Responsibility Disclosure Forms (HIRD). Massachusetts employers with more than 10 employees are required to report information including: the number of full- and part-time employees, whether the employer met the Section 125 Plan requirements and other similar items. The DHCFP has yet to release the final disclosures required or the collection method for the forms.

The employer HIRD form is due on November 15 of each year. An employer that knowingly fails to file any information required by the DHCFP can be fined between \$1000 and \$5000.

*Employee Form:* If an employee declines either employer provided group health insurance or an employer's offer to arrange for the purchase of health insurance through the Connector, the employee must sign a HIRD Form. The employer must obtain signed employee HIRD forms by the earlier of 15 days after the close of the open enrollment period for the employer's health insurance, or July 1 of each year. For new employees that decline employer sponsored insurance, the employer must obtain an employee HIRD form within 15 days of hire.

If the employee terminates employer sponsored insurance, the employer must obtain an employee HIRD form within 15 days of termination.

The employer must retain these forms for three years.

### **Additional Reforms that Impact Employers:**

The Act also reformed the requirements for insurance providers to offer group health care plans in Massachusetts. Two of the mandates, the anti-discrimination provision and the expanded definition of dependents, effect employers.

*Expanded Dependent Coverage:* If an Employer purchases a health plan that provides family coverage, that plan must maintain coverage for dependents up to the earlier of the dependant's 26th birthday, or 2 year following the loss of dependent status under the provisions of the Tax Code.

*Anti-Discrimination:* The Act imposes two anti discrimination requirements on employers:

- Under the Act an employer must offer its health plan to all full-time employees.
- An employer must make the same health insurance premium contribution to all employees under the same health plan. If the employer offers different health plans, it may make different contributions to each plan.

These provisions do not prevent employers from establishing greater premium contributions levels for either length of service, or for employees that participate in a company-sponsored health and wellness program.

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