



Benefits Alert

Legal developments affecting employee benefits

A publication of Nixon Peabody LLP

AUGUST 30, 2012

Massachusetts relaxes rules for employer health care reform contributions

By *Thomas J. McCord*

Over six years ago, the state of Massachusetts enacted the Massachusetts Healthcare Reform Act, aimed at achieving universal health care coverage for residents of Massachusetts. The Act contains provisions creating certain employer responsibilities for making health care coverage available to employees. Massachusetts has now slightly relaxed the rules regarding employer requirements to maintain and contribute to health insurance plans. These changes may be a relief for Massachusetts employers that have encountered difficulty in satisfying the rules.

Under the Massachusetts Healthcare Reform Act (the “Act”), an employer that does not make a “fair and reasonable” premium contribution toward the health insurance costs of its Massachusetts employees must pay a “Fair Share Contribution” to the Massachusetts Department of Labor. The “Fair Share” assessments can range up to \$295 per employee and apply to employers of 11 or more full-time equivalent employees who are employed in Massachusetts.

Massachusetts regulations provide that an employer is deemed to have made a “fair and reasonable” premium contribution (and is therefore exempt from the Fair Share Contribution assessment) only if the following conditions are satisfied:

- A. For an employer with 50 or fewer full-time equivalent employees:
 - (i) at least 25% of its full-time employees are enrolled in a health plan sponsored or contributed to by the employer; OR
 - (ii) the employer offers to pay at least 33% of the premium cost toward an individual health plan for full-time employees after no more than 90 days of employment.
- B. For an employer with more than 50 full-time equivalent employees:
 - (i) at least 75% of its full-time employees are enrolled in a health plan sponsored or contributed to by the employer; OR
 - (ii) at least 25% of its full-time employees are enrolled in a health plan sponsored or contributed to by the employer AND the employer offers to pay at least 33% of the

premium cost toward an individual health plan for full-time employees after no more than 90 days of employment.

For purposes of the Fair Share Contribution calculations, a full-time employee is one who works the lower of (i) 35 hours per week, or (ii) the number of weekly payroll hours to be eligible for the level of employer contribution that is equivalent to the contribution offered to full-time employees. An employee of a seasonal employer who has been registered with the Department of Unemployment Assistance as a seasonal employee and works less than 16 weeks during the year is not a full-time employee. In addition, an employee whose employment is explicitly temporary is not a full-time employee if he or she works less than twelve consecutive weeks during the year.

New legislation in Massachusetts relaxes these rules in two important ways. First, effective July 1, 2013, the threshold for being subject to the Fair Share Contribution has been raised from 11 to 21 or more full-time equivalent employees. Second, also effective July 1, 2013, for purposes of determining the percentages of Massachusetts employees that need to be covered, an employer may exclude from consideration employees who have qualifying health insurance coverage from a spouse, parent, veteran's plan, Medicare, or a plan due to disability or retirement. To take advantage of this exclusion, an employer will have to have employees provide proof of their insurance status in a manner to be defined by regulations.

Massachusetts employers must file a Fair Share Contribution report electronically each year with the state Department of Unemployment Assistance demonstrating compliance with the Massachusetts Health Care Reform Act. Employers who have found no trouble in satisfying the tests will probably not be affected by the changes in the Act. But Massachusetts employers who have found the Fair Share Contribution reporting and testing to be problematic will want to review forthcoming guidance on the changes in order to determine if they may find some relief beginning in July 2013.

For more information, please contact your Nixon Peabody attorney or:

- Thomas J. McCord at 617-345-1337 or tmccord@nixonpeabody.com