

Employee Benefits Alert: November 15, 2008 “Fair Share Contribution” Filing Deadline Approaches

10/21/2008

Under the Massachusetts health care reform act, employers with 11 or more full-time-equivalent employees at Massachusetts locations are subject to (among other mandates) a “fair share contribution” (or “FSC”) requirement. Covered employers must make a fair share premium contribution to a group health plan or pay an annual assessment of \$295 per full-time-equivalent employee. We explain the recent changes to the FSC requirement in our [October 3, 2008 advisory](#). Please see *An Employer’s Guide to the 2006 Massachusetts Health Care Reform Act* for a comprehensive explanation of the provisions of the act affecting employers with employees at Massachusetts locations.

Jurisdiction over the FSC requirement is split between the Massachusetts Division of Health Care Finance and Policy (DHCFP) and the Division of Unemployment Assistance (DUA). DHCFP promulgates the regulations related to the determination of an employer’s liability for the FSC requirement; DUA is responsible for collection and enforcement. Until recently, the reporting period for FSC compliance was the fiscal year beginning October 1st and ending September 30th. But commencing October 1, 2008, FSC reporting will be on a quarterly basis. (The DUA has not yet issued any guidance under the new quarterly reporting rules.)

The DUA has recently mailed to Massachusetts employers its 2008 FSC Filing Instructions, which are similar in most respects to the 2007 instructions but with a few important differences. These include the following:

In connection with the determination of total payroll hours (under Question 1), there is a reference to the definition of “Temporary Employee” under 430 CMR 4.04(8)(a). The instructions clarify that a “temporary” employee is considered to have satisfied the one-month threshold once he or she has worked 150 payroll hours. This is a welcome clarification. Under applicable guidance (*i.e.*, 114.5 CMR 16.03(3)(a)2) temporary employment must be “explicitly temporary in nature” and last for no more than 12 weeks. The 12-week standard is pretty clear; the “explicitly temporary” requirement is not, resulting in confusion for employers and leading many to simply ignore it.

A new question (Question 3C) directs filers to provide “the full name of your health plan insurer and the associated group health plan number.” The question says nothing about self-funded plans, with respect to which there are no health plan insurers, nor are there any associated group health plan numbers. It is not clear how these employers ought to respond. Some might provide the name and contract number of their third-party administrator, particularly where the third-party administrator is an insurance company. But this is not technically accurate. The concern is that sponsors of self-funded arrangements will be unable to respond to this question accurately, thereby making it impossible for them to timely complete the filing.

The filing deadline is November 15, 2008. The DUA will assess penalties on employers who fail to pay required contributions at the rate of 12% per annum on unpaid contribution amounts. Additionally, continued failure of the employer to file and/or pay the required contribution may result in legal enforcement actions by DUA, such as bank levies and property liens.

If you have any questions concerning the information discussed in this alert or any other employee benefits topic, please contact one of the attorneys listed below or your primary contact with the firm who can direct you to the right person. We would be delighted to work with you.

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