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EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION

ALERT

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Connector Delays Filing Requirement and Clarifies Part-Time Employee and Other Exceptions under the Massachusetts Health Care Reform Act's Section 125 Cafeteria Plan Mandate

The Massachusetts Health Care Reform Act generally requires each employer with more than 10 employees in the commonwealth to “adopt and maintain a cafeteria plan that satisfies 26 U.S.C. 125 and the rules and regulations promulgated by the [Massachusetts Health Insurance Connector Authority].” On June 25, 2007, the Connector issued a final regulation implementing this requirement, 956 CMR 4.00. In an administrative bulletin issued today, the Connector made the following changes to the final Section 125 cafeteria plan requirements:

Filing Section 125 Cafeteria Plan Documents

The filing requirement has been postponed to October 1, 2007 from July 1, 2007. Also, the Connector will not accept Section 125 cafeteria plan documents prior to September 1, 2007. During the period of postponement (*i.e.*, from July 1, 2007 to October 1, 2007), employers must furnish a copy of their Section 125 cafeteria plan to the Connector upon request.

Definition of “Employee”

Solely for purposes of establishing whether an employer is subject to the Section 125 cafeteria plan requirement, an “employee” is not counted as such until he or she has been employed for at least one month.

Defining Excludable, Part-Time Employees

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Under the final cafeteria plan regulation, employers who work “on average” less than 64 hours per month need not be covered. Under the bulletin, whether an employee works on average less than 64 hours per month is determined based on a 180-day look-back period. Special rules are provided for new hires.

Wait Staff Tips Exclusion

Under the final cafeteria plan regulation, employers may exclude from participation in a Section 125 plan those employees “who are considered wait staff, service employees or service bartenders (as defined in M.G.L. c. 149, section 152A) who earn, on average, less than \$400 in monthly payroll wages.” The bulletin clarifies that employers should not include tips when calculating whether an individual’s compensation exceeds the \$400 monthly payroll wage for purposes of determining whether employees fall within this exclusion.

64-Hour Part-Time Threshold

Employers are free to adopt an hourly threshold for part-time, excludable employees that falls below the standard of 64 hours per month (*e.g.*, 32 hours per month).

* * * * *

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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