



Massachusetts Tightens Employer Fair Share Contribution Testing and Filing Requirements

The Massachusetts Division of Health Care Finance and Policy has adopted new regulations that change the employer fair share contribution (FSC) requirements under the state's health care reform law. The state has also increased the frequency of required employer FSC filings, and the Massachusetts Division of Unemployment Assistance has issued new regulations on the filing requirements. Hearings were held on the minimum creditable coverage requirements scheduled to become effective January 1, 2009, with revised final regulations expected by October 17, 2008.

Background

While the Massachusetts health care reform law does not mandate that employers provide health coverage, it does require that an employer with 11 or more full-time equivalent employees in Massachusetts do the following –

- offer its employees a group health plan to which it makes a “fair and reasonable premium contribution” or pay an annual fair share contribution (FSC) of up to \$295 per employee to the state
- annually report required information to the state to determine whether an FSC will be assessed. This reporting is called the Employer Health Insurance Responsibility Disclosure (Employer HIRD).

In September 2007, Massachusetts issued guidance on these requirements. (See our October 18, 2007 [For Your Information](#)). [Revised regulations](#) were adopted on September 30, 2008 that make it more difficult for employers to satisfy the fair and reasonable contribution requirement. In addition, recently enacted legislation will require employers to file an Employer HIRD and pay any FSC assessments on a quarterly, rather than annual, basis.

Fair and Reasonable Premium Contribution Requirement

Under the prior regulations, an employer had to satisfy one of two tests in order to be exempt from the FSC –

- under the *primary* test, at least 25% of its full-time employees must have been enrolled in coverage
- under the *secondary* test, it must have offered to pay at least 33% of the premium cost for individual coverage for full-time employees working 90 days or more.

Under the new regulations, which become effective January 1, 2009, an employer with more than 50 full-time employees in Massachusetts will be exempt from the FSC assessment only if it satisfies *both* of these tests or, alternatively, at least 75% of its full-time employees are enrolled in the employer's plan. Employers with 50 or fewer Massachusetts employees will still only be required to satisfy either the primary test or the secondary test.

BUCK COMMENT. *Most large employer plans have had little difficulty meeting either the primary or secondary tests. However, the requirement that both tests be satisfied may present difficulties for employers with high turnover or waiting periods greater than 90 days.*

Employer Health Insurance Responsibility Disclosure

Under the law as initially enacted, employers were required to file an Employer HIRD by November 15 following the close of the applicable FSC fiscal year. The FSC fiscal year runs from October 1 through September 30. Thus, the Employer HIRD filing for the 2007-2008 FSC fiscal year is due by November 15, 2008. Due to the recent change, effective with the 2008-2009 FSC fiscal year, employers will have to file an Employer HIRD and pay any required FSC assessments on a quarterly basis. [Regulations](#) were recently released on this new requirement. The first quarterly filing (covering the period October 1, 2008 through December 31, 2008) will be due by February 15, 2009. Subsequent filings will be due on May 15, August 15, and November 15.

BUCK COMMENT. *The change to quarterly filing and payment was made to enable Massachusetts to collect employer assessments more quickly and will increase the administrative burden on employers.*

For employers who did not complete the 2006-2007 filing, the Division of Unemployment Assistance is collecting contributions due and assessing penalties. Thus, employers should make sure they complete the filing for the 2007-2008 fiscal year by November 15.

Minimum Creditable Coverage Requirements

The Massachusetts Connector held a hearing on the proposed regulations on the minimum creditable coverage (MCC) requirements on September 9, 2008. (See our August 4, 2008 [For Your Information](#).) In written comments to the Connector and in testimony at the hearing, Buck pointed out that many employer plans will not satisfy the MCC requirements, which would subject employees to significant tax penalties. Buck recommended that the requirements be modified, the effective date of the rules be delayed, and employers be allowed to satisfy the MCC requirements by demonstrating their use of actuarially equivalent plan designs. (See our August 28, 2008 [For Your Information](#).) It is anticipated that final regulations will be issued by October 17, 2008.

BUCK COMMENT. *While a delay of some or all of the MCC requirements is possible, employers should be prepared to react quickly once the final MCC regulations are issued to determine how their plans fare under those rules. It is also important to remember that the MCC requirements do not apply in determining whether an employer plan is subject to the FSC assessment.*

Conclusion

Buck's consultants are available to discuss these new Massachusetts requirements and to assist in your compliance efforts.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.