



## Massachusetts Fair Share Contribution

This *Bulletin* describes recent changes to the Massachusetts Fair Share Contribution regulations.

The Massachusetts Division of Health Care Finance and Policy (DHCFP) made changes to the Fair Share Contribution regulations in October 2009. These regulations apply only to those employers with 11 or more full-time equivalent employees who work at Massachusetts locations.

### Background

Massachusetts state health insurance legislation (Chapter 58 of the Acts of 2006) was enacted in April of 2006, and introduced the concept of a “Fair Share Contribution” (“FSC”) by certain employers with employees working in the state. Whether an employer is liable for an FSC depends on several variables: how many full-time equivalent (FTE) employees work at locations in Massachusetts, the percentage of FTEs enrolled in the plan, and the amount the employer contributes to the cost of the plan.

Employers who are subject to M.G. L c.151A § 1 (the Massachusetts unemployment insurance law) and who employ eleven (11) or more full-time equivalent employees must file quarterly Fair Share Contribution reports as well as the Employer Health Insurance Responsibility Disclosure (HIRD) reports with the Division of Unemployment Assistance.

Specific filing details may be obtained via DUA’s website at <https://fsc.detma.org/>. Type in the company DUA number, verify employer information, select the appropriate filing period, and click on “Filing Instructions.” The DUA will instruct you to print and read the instructions prior to filing FSC.

The filing deadline for the current quarter (October 1 – December 31, 2009) is February 15, 2010.

**For help, Fair Share Contribution Representatives are available at (617) 626-6080, option 3, Monday through Friday, 8:30a.m. - 4:30 p.m. EST.**

### Group Health Plan Documentation Requirement

Under the new rule, an employer is required to maintain documentation about its group health plan and premium contributions as follows:

REGULATORY REQUIREMENT	APPLICABLE DOCUMENTS
Written plan description, including a description of benefits, eligibility requirements and the amount of the employer contribution	<ul style="list-style-type: none"> <li>Fully executed Plan Document</li> <li>Fully executed Plan amendments</li> <li>Records/communications that show total plan cost minus employee contributions</li> </ul>
Evidence that the Plan was in place during the quarter	<ul style="list-style-type: none"> <li>Documents listed above</li> <li>Group Contract</li> </ul>
Copies of the employee handbook or other written communications to employees about the plan or plans, including plan benefits, eligibility requirements and the employer contributions	<ul style="list-style-type: none"> <li>Fully executed Plan Document</li> <li>Fully executed Plan amendments</li> <li>Initial eligibility materials</li> <li>Annual Open Enrollment materials, with benefit and cost changes, and showing the employer’s contribution toward coverage</li> </ul>

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**HEALTH PLANS' ANALYSIS:** Our clients should be well-positioned to satisfy these requirements without additional documentation. To stay on track, however, all clients should:

- Be sure to promptly execute all Plan documents, including amendments, and distribute them (or an updated *Summary of Benefits*) to employees upon adoption – this will satisfy the requirements of ERISA as well as the Massachusetts Fair Share Contribution regulations with regard to written plan descriptions.
- Promptly sign Administrative Services Agreement and Schedule A. This will provide supporting evidence that the Plan was in place.
- Keep a file of all employee communications regarding health plan eligibility, benefits and cost: initial eligibility material and Open Enrollment material, and include information about the company contribution in the material distributed to employees.
- Be prepared to document your company's contribution to the cost of providing coverage under your group health plan.

## **Removal of Majority of Time Rule**

In 2007, the Division of Health Care Finance and Policy (DHCFP) issued the Majority of Time rule to help employers classify employees as full-time or part-time for quarterly testing purposes when the employees had varied hours during the quarter. With the enactment of the latest regulations, that rule has been removed.

In determining whether an employer is subject to the FSC, the DUA will divide the number of full-time employees reported by the Plan as enrolled in the group health plan for the quarter by the number of full-time employees reported by the employer for the quarter. A full-time employee is defined as one who works the lower of 35 hours per week or the minimum hours required to be eligible for coverage under the employer's health plan.

**HEALTH PLANS' ANALYSIS:** Because the issues regarding full-time status are unique to each employing organization, clients should consult with the Fair Share Contribution Representatives for questions about how to count their employees.

## **Premium Reimbursement Arrangements as Group Health Plans**

A Premium Reimbursement Arrangement (PRA) is an approach under which an employee purchases individual health coverage and is reimbursed some or all of the premium by the employer on a pre-tax basis. Beginning October 1, 2009, PRAs may qualify as group health plans for FSC testing purposes if the employer:

- Designates a specific plan or plans for employee enrollment
- Communicates the designation(s) in writing to employees
- Satisfies the other written requirements for plans under the regulation (see *Group Health Plan Documentation Requirement* above)

Employers would also need to process employee contributions for coverage through their Section 125 plans so that employees would be paying their portion on a pre-tax basis.

**HEALTH PLANS' ANALYSIS:** For those employers with plans currently in place, a PRA may be an unnecessary extra. However, PRAs may be attractive to small employers who currently do not offer group health plans in order to help pass the FSC premium contribution standard.

*None of the information contained in this Bulletin should be construed as specific legal advice or legal opinion. The contents are for general informational purposes only, and should not be considered a substitute for the advice of legal counsel.*