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Massachusetts Repeals Fair Share Contribution, HIRD Form Requirements

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Massachusetts has repealed two main components of its landmark 2006 heath care reform law. Effective July 1, 2013, employers are no longer required to make a "fair share" contribution (FSC) to employees' health insurance (M.G.L. chap. 188) or collect employee Health Insurance Responsibility Disclosure (HIRD) forms (M.G.L. chap. 176Q, § 17). These two parts of the Massachusetts health care reform law were repealed as part of the Commonwealth's 2014 fiscal year budget. On the other hand, the 2014 budget adds a new assessment on employers called the Employer Medical Assistance Contribution (EMAC).

Notably, not all requirements of Massachusetts health care reform law were repealed and, therefore, continue to remain in effect. These include the Massachusetts individual mandate, which requires Massachusetts citizens to obtain and maintain health insurance, and the requirement for employers to maintain a cafeteria plan for benefits-ineligible employees to use to pay for the cost of individual health insurance coverage on a pre-tax basis.

FAIR SHARE AND HIRD REPEAL

Under the "fair share" component of the Massachusetts health care reform law, passed in 2006, Massachusetts employers with 11 or more employees were required to make a "fair and reasonable premium contribution" to employees' health insurance costs, or pay an annual "fair share" contribution of up to $295 per full-time equivalent employee. Separately, the law required employers to collect HIRD forms from employees who declined their employer's offer of health insurance coverage or declined to use their employer's cafeteria plan to pay for the cost of coverage obtained through the Massachusetts Health Connector. The Connector is Massachusetts' version of the Health Insurance Marketplace, which the Affordable Care Act (ACA) requires each state to establish by 2014 (the federal government is required to establish a Marketplace in states that decline to do so). As noted, both the FSC and HIRD requirements have been repealed, as of July 1, 2013.

Initially, the timing of the FSC's repeal was meant to roughly coincide with the January 1, 2014 effective date of the ACA's employer shared responsibility provisions (a/k/a the "Play or Pay" mandate). However, the Obama administration recently announced that penalties under the Play or Pay mandate (along with certain reporting requirements) will be delayed until 2015. Despite this delay, Massachusetts has chosen to repeal the FSC effective July 1, 2013. Governor Deval Patrick warned in a State House report that the Massachusetts legislature would "act to re-implement the [FSC requirements] if employers in the Commonwealth dropped coverage during the [ACA] Play or Pay delay."

Notwithstanding the FSC's repeal, Massachusetts' Department of Unemployment Assistance (DUA) retains the authority to collect any outstanding FSC payments for obligations arising prior to July 1, 2013. This means that employers enmeshed in claims controversies with the DUA over FSC compliance will have to continue to defend themselves. It also means that the DUA can, and will, continue to audit employers for pre-July 1, 2013 compliance.

EMPLOYER MEDICAL ASSISTANCE CONTRIBUTION (EMAC)

Although the new budget removed the FSC and HIRD requirements, it also included a provision that will make the cost of doing business in the Commonwealth a bit more expensive, starting in 2014. The budget includes the EMAC, a new assessment on employers with more than five employees in Massachusetts. EMAC applies to affected employers regardless of whether they offer health coverage to their employees. The amount of the EMAC is .36% (i.e., .36 of 1%) on all wages up to the Massachusetts unemployment insurance taxable wage base, which is currently $14,000. This equates to approximately $50 per employee per year (e.g., $14,000 × .0036 = $50.40). The .36% assessment is reduced to .12% in the first year and .24% in the second year to employers newly subject to Massachusetts employment law (M.G.L. Chap. 151A). The EMAC is effective January 1, 2014.

The budget also adds a new notice requirement for Massachusetts employers. Employers with 11 or more full-time equivalent employees must notify all employees of the employer's compliance with the cafeteria plan requirement, and the right of eligible employees to enroll in the employer's group health plan or Connector coverage. It is expected that the Connector will develop a form for this purpose.

NEXT STEPS

The repeal of the FSC and HIRD requirements are part of the effort to ensure that Massachusetts employers will not be subject to two separate "fair share" regimes when the federal ACA Play or Pay requirements become effective. It remains to be seen whether and how Massachusetts will conform its individual mandate and the other parts of the Massachusetts health care law with federal law under the ACA. In the meantime, employers doing business in Massachusetts should watch for future developments, and review their FSC filing history to determine whether any filings are required for periods ending prior to July 1, 2013.

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