

## Massachusetts Health Care Reform Gets New Fair Share Contribution Regulations

On September 30, 2008, the Massachusetts Division of Health Care Finance and Policy issued revised regulations that modified the employer “fair and reasonable” premium contribution requirements of the Massachusetts Health Care Reform Act. The revised regulations will make it more difficult for many employers to be a “Contributing Employer” (and therefore more difficult for employers to be exempt from making the “fair share contribution”).

Additional information about the new regulations is set forth below:

**“Fair and reasonable” premium contributions:** When first issued in 2006, the regulations required employers with 11 or more full-time equivalent employees who did not make a fair and reasonable premium contribution—and therefore did not meet the definition of “Contributing Employer”—to make an annual “fair share contribution” payment to the Commonwealth of Massachusetts of up to \$295 per full-time equivalent employee per year. An employer was deemed to be a Contributing Employer if it passed one of two tests. It passed the primary test if 25% of its full-time employees were enrolled in its group health plan. It passed the secondary test if it contributed at least 33% toward the cost of health care coverage for its full-time employees no more than 90 days after their date of hire.

**“Contributing Employer”:** The revised regulations, which the Division projects could generate up to \$30 million in additional state revenue, will make it more difficult for many employers to be a Contributing Employer (and therefore more difficult for employers to be exempt from making the “fair share contribution”). While an employer with 50 or fewer full-time equivalent employees will still be considered to be a Contributing Employer if it passes either the primary or secondary test, those with more than 50 full-time equivalent employees must pass both the primary test (now called the “percentage of full-time employees enrolled”) and the secondary test (now called the “premium contribution standard”). The regulations provide, however, that employers with more than 50 full-time equivalent employees who have more than 75% of their full-time employees enrolled in their group health plan will be deemed to be a Contributing Employer regardless of their premium contribution.

The new definition of a Contributing Employer takes effect on January 1, 2009. Other changes are effective October 1, 2008. These changes include:

- **Who is a Full-Time Employee.** Under the prior regulations, anyone who worked 35 or more hours per week was a full-time employee for purposes of determining who is a Contributing Employer. The revised regulations define a full-time employee as anyone that works the lower of (1) 35 or more hours per week or (2) the number of weekly payroll hours required to be eligible for the employer’s full-time health benefits.
- **Calculation of Percentage of Full-Time Employees Enrolled.** Previously, employers calculated and reported compliance with the primary test on an annual basis. Now they are required to calculate the percentage of full-time employees enrolled on a quarterly basis.

**Definition of “Employer”:** The regulations also amend the definition of “Employer” to be consistent with the changes made to the Act earlier this year. Prior to the Act’s amendment, only employers who were subject to the unemployment insurance provisions of Massachusetts law were required to comply with the fair share contribution regulations. Now employers who are subject to the worker’s compensation provisions of Massachusetts law are also required to comply with them. This change will require the expanded group of employers, which includes many religious organizations, to submit fair share contribution filings for the period October 1, 2007-September 30, 2008, which are due by November 15, 2008.

These regulations have no other bearing on the November 15, 2008 filing. If you have any questions about that filing or about how these new regulations impact you, please contact your Ropes & Gray attorney or benefits consultant.

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