

August 8, 2012

Changes to MA Fair Share Contribution Requirement Enacted

One wonders what the long term shelf life of the MA Fair Share Contribution (FSC) requirement will be. Beginning in 2014 PPACA provides its own form of FSC, known as the employer mandate, or employer responsibility provision, which carries either a \$2,000 or \$3,000 annual penalty per full time employee for employers with 51 or more full-time equivalent (FTE) employees. The MA FSC requirement currently applies to employers with 11 or more FTE employees in MA. However, a number of changes to the MA FSC requirement have been signed into law by Governor Patrick in the past week, including an increase in the 11+ FTE benchmark used in MA.

CHANGES TO MA FSC

On Wednesday, August 1, 2012, Governor Patrick signed into law the health care bill known as [*S2400 An Act improving the quality of health care and reducing costs through increased transparency, efficiency, and innovation.*](#) While this legislation affects a wide range of health care issues in MA, it also changes the MA FSC statute in 3 important ways; particularly to the benefit of smaller employers:

- Regulatory authority for FSC will be transferred to the Health Connector from the Division of Health Care Finance and Policy (which is being phased out and replaced by other entities). The Division of Unemployment Assistance (DUA) will continue to be responsible for the quarterly testing and penalty collection component of the FSC law, however.
- Effective July 1, 2013, the 11 or more FTE benchmark to determine if an employer is subject to the MA FSC will be **INCREASED** to 21 or more FTEs. (see Section 141 of S2400)
- Finally, in calculating the fair share assessment, employees who have qualifying health insurance coverage from a spouse, parent, veteran's plan, Medicare, or a plan or plans due to disability or retirement will be excluded from both the numerator and the denominator of the Primary Test (a/k/a the Percentage Enrollment test). Employers will need to maintain proof of their employees' insurance status, as required by guidance to be issued by the Health Connector. (see Section 142 of S2400)

BUT WAIT, HERE ARE MORE CHANGES TO MA FSC

Yesterday, August 7, 2012, Governor Patrick signed into law a comprehensive economic development bill known as [H4352 An Act relative to infrastructure investment, enhanced competitiveness and economic growth in the Commonwealth](#). This comprehensive economic legislation contains a number of changes to the MA FSC statute intended to address several questionable practices engaged in by the DUA in its administration of the quarterly testing and penalty collection component of the MA FSC law.

Section 51 of H4352 amends the MA FSC statute to add a number of new provisions affecting administration of the FSC review and repeal process. The current administrative practices they address are self evident from the following new subsections added to the MA FSC statute:

- (f) The DUA and the division of health care finance and policy (soon to be the Health Connector) may waive or mitigate an employer's fair share contributions, fines, interest and related fees.
- (g) Pending an appeal decision, the DUA shall not continue to accrue or collect interest, penalties or fees on the fair share contribution.
- (h) The DUA or any entity of the commonwealth shall not take any funds out of an employer's bank account if the employer has filed a fair share contributions appeal or is in the process of mediation and is awaiting a decision.
- (i) The DUA help center staff shall not request identifying information from an employer that is seeking assistance from the DUA helpline, nor shall the staff share customer information with the audit department staff. No information recorded by the helpline may be used in an audit proceeding or be used to initiate an audit.
- (j) An employer aggrieved by a determination of the DUA with respect to its liability for the fair share employer contribution or with respect to the amount it is required to pay may appeal such determination within 60 days, in the form and manner specified by the DUA.
- (k) Upon completion of a hearing on an appeal with respect to an employer's liability for the fair share employer contribution or to the amount it is required to pay, the DUA shall render a written decision within 90 days for an employer with more than 50 full-time equivalent employees and within 30 days for an employer with 50 or fewer full-time equivalent employees.



All of these changes will benefit employers in MA who are subject to the MA FSC requirement. They are welcome relief in the interim while policy decisions are made as to the future of the MA FSC requirement given that similar PPACA requirements roll out in 2014.

Please contact me if you have any questions.

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