

November 6, 2017

HAVE YOU “HIRD”? A MASSACHUSETTS EMAC UPDATE

Pardon the play on words but you may not have heard about three very recent developments related to the revised Employer Medical Assistance Contribution (EMAC). They are:

- The MA Dept. of Unemployment Assistance (DUA) has released FAQs regarding the EMAC for 2018 – 2019 containing some interesting nuggets
- The Health Insurance Responsibility Disclosure (HIRD) form may rise once again in the context of the EMAC; this time by the Division of Medical Assistance
- Non-profit organizations in MA are subject to the quarterly EMAC even if using the Reimbursable Method to fund unemployment insurance

For those dwelling under the proverbial rock, the new/increased EMAC assessments in MA are effective January 1, 2018, remain in effect for 2018 and 2019 and then automatically sunset on December 31, 2019. The two-year EMAC assessment is expected to raise \$200 million in revenue in 2018 and another \$200 million in 2019. This assessment is to be offset by a decrease in future employer state unemployment insurance rates over the same two years, which is expected to save employers \$335 million over the two-year period.

NUGGETS FROM THE DUA REGARDING THE 2018-2019 EMAC; REGULATIONS TO FOLLOW

Thirteen FAQs from the MA Dept. of Unemployment Assistance (DUA) have appeared on its website without any fanfare. The document is not dated. Here is a brief summary of the major points:

- The 5% targeted EMAC assessment (up to \$750/employee receiving MA assistance) is referred to as the EMAC Supplement in the FAQs
- DUA expects to have draft EMAC regulations available in early November, followed by “listening sessions” in locations around the state before issuing final regulations
- Employees in the premium assistance program will not be considered an employee on MassHealth and, therefore, will not cause the employer to pay the EMAC Supplement for such employee
- Because the EMAC Supplement is based on wages paid and not hours worked, employers will pay the applicable EMAC Supplement, if applicable, **REGARDLESS OF WHETHER THE EMPLOYEE IS FULL-TIME OR PART-TIME**

[RAS Comment: This means employers will potentially pay the EMAC Supplement amount for affected employees – such as PT employees -- who are not eligible for the employer group health plan]

- Information will be available online for review by employers after DUA has calculated the employer’s EMAC Supplement

[RAS Comment: This cryptic entry infers that DUA will calculate each employer’s EMAC Supplement amount, but it is not clear if the employer will also be required to calculate its EMAC Supplement amount before the DUA]

POTENTIAL REAPPEARANCE OF THE HIRD FORM

On October 23, 2017, the Special Senate Committee on Health Care Cost Containment and Reform released a Health Care Report. Accompanying the Senate Healthcare Report was 100 pages of proposed legislative text. Section 92 of the bill proposes amendments to chapter 118E of the MA General Laws which are illuminating.

- The proposed new Section 78(a) to chapter 118E requires employers to provide, upon the request of the Division of Medical Assistance, “health insurance information about an employee who has applied for benefits from a state subsidized health insurance program”
- The proposed new Section 79(a) to chapter 118E requires the Division of Medical Assistance to create a Health Insurance Responsibility Disclosure (HIRD) form, which must be completed by employers of 6 or more and submitted annually by the employer, under oath. According to proposed new section 79(a):
 - The HIRD form “shall indicate whether the employer has offered to pay for or arrange for the purchase of health care insurance and information about such health care insurance including, but not limited to:
 - the premium cost
 - benefits offered
 - cost sharing details
 - eligibility criteria, and
 - any other information deemed necessary by the division. . .“
- Both new Sections 78(a) and 79(a) caution that an “employer receiving information that identifies or may be used to identify a MassHealth member or recipient of subsidized health insurance shall not use or disclose such information except as authorized by the division.”

The draft legislative text anticipates that employers will receive information to determine which employees are enrolled in MassHealth or one of the ConnectorCare plans. The source of this information apparently will be the Division of Medical Assistance and/or other state agencies.

Employers must treat this employee information as confidential/protected information. Clarification of this process in the draft DUA regulations would be helpful.

It appears the HIRD form is intended to be an annual reporting of employer offers of coverage -- in much greater detail than the HIRD forms of old; perhaps akin to a supercharged IRS Form 1095-C, without the monthly boxes.

NON-PROFIT ORGANIZATIONS AND GOVERNMENTAL EMPLOYERS ARE SUBJECT TO EMAC

DUA has just released a revised publication (Form 2024) bearing a revision date of 10-17. The publication is titled: *Financing Unemployment Insurance – Options for Non-Profit or Governmental Employers*. While the main focus of the publication is to help such employers make an informed decision about unemployment insurance funding options, the publication clearly indicates that non-profit organizations are subject to the quarterly EMAC even if using the Reimbursable Method to fund unemployment insurance. (Those employers using the Contributory Method are already making quarterly contributions.)

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Still waiting on regulations. Please contact me if you have any questions.

Richard A. Szczebak, Esq.
617-399-0441 | rszczebak@parkerbrown.com

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