

# The Clock Is Ticking

## Employers' Healthcare Reform Compliance Deadline Looms

By *KEVIN MALTBY*

Starting July 1, 2007, the Massachusetts Health Care Reform Law takes full effect, and all businesses will have to comply with it.

The law affects various-sized businesses in different ways and will have a significant impact upon the health care benefits employers must offer their employees. The goal of the legislation is to create an opportunity for access to health care coverage for a larger range of employees. While some elements of the Mass. Health Care Reform Law took effect in 2006, there are certain aspects of the law slated to take effect this summer.

The Mass. Health Care Reform Law is far reaching, and there are numerous requirements for employers of different sizes. For example, the law will require an employer with 11 or more full-time employees to ensure that least 25% of those full-time employees are covered by an employer-sponsored plan or some other qualified plan (such as a spouse's), or pay at least 33% of employees' premiums for health coverage. The law requires employers to offer a Section 125 plan that uses pre-tax dollars for health insurance premiums and also permits employees with dependents up to age 26, or for two years after the dependent loses IRS dependent status (whichever comes first), to access employer-sponsored plans, regardless of their "student status." Finally, the law mandates that employer contributions to the health insurance premiums do not discriminate in favor of highly compensated employees.

The law imposes three new

employer responsibilities. The first requires employers to permit employees to pay for health care coverage with pre-tax dollars. Known as a Section 125 plan, or cafeteria plan, this responsibility does not require employers to provide health care coverage to employees, but it does require

coverage. This third responsibility applies to employers with 10 or more employees, and employers will be required to keep the forms for three years.

The law also provides for an employer surcharge for state-funded health care costs. The 'employer surcharge' or 'free

gain access to health care benefits. Under a program called the Commonwealth Health Insurance Connector Authority, businesses with fewer than 50 employees will be able to purchase health insurance from the Authority for their employees. Employees will also be able to purchase affordable health care coverage through the Authority using pre-tax dollars.

In addition, employers will be able to take advantage of the expanded Insurance Partnership Program under the reform law. As in the past, the Insurance Partnership Program provides incentives to small businesses with less than fifty employees that pay at least 50% of the cost of employer-sponsored health care coverage. The Insurance Partnership provides subsidies to employers and employees depending on the type of plan the employer is sponsoring. Under the reform law, the eligibility requirement has been increased to 300% of the federal poverty level for a household of three.

The law also added several new restrictions, including double-dipping the subsidies from the employer and employee side. The measure essentially closed a loophole that in some cases permitted sole proprietors to receive subsidies as the employee and the employer.

Finally, it is worth noting that there are subtle differences in the language of the Mass. Health Care Reform Law. Do not confuse 'providing' and 'non-providing' with 'contributing' and 'non-contributing' when referring to an employer's role in health care coverage. 'Non-providing' employers may be subject to a

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employers to disclose their Section 125 plan with the Commonwealth Health Insurance Connector. The cafeteria plan requirement takes effect July 1, and applies to employers with more than 11 employees.

The second responsibility requires employers to distribute information statements with health care coverage information. Also known as a 'coverage statement,' this is similar to tax form 1099 because employers are required to distribute it when necessary, and employees are required to file the form with their income tax returns. The coverage statement requirement takes effect July 1, and it is suggested that employers prepare to distribute the forms in early January 2008 for tax year 2007.

Finally, employers are also responsible for distributing a health insurance responsibility disclosure form to employees who refuse their company's health

rider surcharge' requires employers with more than 10 employees to pay a portion of the costs incurred by employees who receive health care benefits from the Commonwealth's Free Health Care Pool. The surcharge will be imposed if all employees seek free health care five times in one year or one employee seeks health care three times in one year.

The cost of the surcharge will vary between 10% or 100% depending upon the extent of free care. Additionally, it is worth noting that employers are also exempt up to \$50,000 before the surcharge is imposed. They may be exempt from the surcharge if they participate in a partnership insurance plan, if they comply with Section 125, or if there is a collectively bargained contract that covers an employee who sought free coverage.

The Mass. Health Care Reform Law also creates greater opportunity for employees to

free rider surcharge whereas 'non-contributing' employers are not exempt from the fair share requirement.

The new health care law's goal is to ensure that each and every resident in Massachusetts has health insurance. The burden of accounting for this goal falls on

the shoulders of employers who are now required to keep track of whether their employees are covered by health insurance. Unfortunately, this social goal has fiscal consequences that may result in penalties and surcharges if the law is not properly followed.

Since the last provisions of the

Mass. Health Care Law are about to become required on July 1, it is advisable that employers consult with an attorney regarding their obligations.❖

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