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# Commonwealth Health Insurance Connector Authority

[Connector Home](#) [Mass.Gov Home](#) [State Agencies](#) [State Online Services](#)

## Search

[Home](#) › [Frequently Asked Questions \(FAQ\)](#) ›

## For Employers

### Does the new law require employers to offer employer-sponsored insurance?

No, but the law creates liabilities for employers with 11 or more full-time employees who do not make a "fair and reasonable" premium contribution.

### What are the new requirements for employers?

- All Massachusetts employers with more than 10 employees (full or part-time) employed in Massachusetts must adopt and maintain a Section 125 plan by July 1, 2007. This is a cost-effective way for employers to offer their employees a pre-tax way to buy insurance. Employers with more than 10 employees who fail to offer a Section 125 payroll deduction option to all their employees may be assessed a Free Rider Surcharge if their employees or dependents significantly utilize the state's Uncompensated Care Pool. Employers with 10 or fewer employees are not required to establish Section 125 plans, but they may if they choose.

- Employers with 11 or more full-time employees employed in Massachusetts must make a “fair and reasonable premium contribution” toward health insurance for employees. If they fail to do this, they will be subject to the Employer Fair Share Contribution of \$295 per employee per year.
- All Massachusetts employers with 11 or more employees must file an annual Health Insurance Responsibility Disclosure Form with the Division of Health Care Finance and Policy. The form will also be available on the Commonwealth Connector website.

## **What is the Employer Fair Share Contribution?**

An employer of 11 or more full-time equivalent employees who does not satisfy the requirements for a fair and reasonable premium contribution will owe a fair share contribution to the state of \$295 per full-time employee per year, plus the pro rata share of \$295 for part-time and seasonal employees.

## **What is a fair and reasonable premium contribution?**

Final regulations apply to employers with 11 or more full-time employees employed in Massachusetts and define this obligation as having been met, if:

Primary test: at least 25% of the employer's full time equivalent employees are enrolled in the employer-sponsored health insurance. If the employer passes this test, he or she is exempt from the Fair Share Contribution. or

Secondary test: the employer contributes at least 33% toward the cost of an individual health plan for its full-time employees. The employer obligation is based on the cost of an individual plan and not the cost of a family plan.

## **How does the Fair Share contribution apply to part-time employees of employers with 11 or more full-time equivalent employees?**

Payroll hours of part-time employees are not included in the Fair Share calculation test. If an employer does not pass the test, however, the employer must pay a pro-rated amount for part-time employees.

## **How does the Fair Share contribution apply to employees in the waiting period for employer-sponsored insurance?**

- All employees will be subject to the requirement that individuals purchase health insurance.
- Because the employer sets the time of the waiting period, employees will be included in the calculation for the Fair Share Contribution.

**If an employer offers more than a 33 percent premium contribution to one group, but less than 33 percent to another group, does it pass the**

## **secondary test?**

No. The employer must offer at least 33 percent to all full-time employees who have worked at least 90 days in order to pass the secondary test.

## **How will an employer with 11 or more employees document he or she has passed the secondary test for Fair Share contribution?**

The employer will be required to submit a Health Insurance Disclosure Form and collect Employee Health Insurance Disclosure forms from employees and file them as well. This process will be administered by the Division of Health Care Policy and Finance. If an employer does not meet the test, the employer must file a Fair Share Contribution form with the Division of Unemployment Assistance. The employer will be notified by the Division of Unemployment Assistance if this form is required.

## **What is the definition of a full-time equivalent employee?**

For purposes of the Fair Share contribution test, a full-time equivalent employee is one who works 35 or more payroll hours per week for one year.

## **If a part-time employee occasionally works more than 35 hours in one week, are those hours included in the calculation?**

Yes. The hours for the weeks in which the employee worked more than 35 hours should be included.

## **Does a 33 percent premium contribution to any type of group health plan, including a “mini med plan” satisfy the secondary test?**

Yes, provided that the plan meets the requirements of a group health plan. It is important to note, however, that the Connector will define what constitutes creditable coverage for purposes of the individual mandate. If mini-med plans don't meet this threshold, the employer's enrolled employees will be subject to penalties for failure to maintain creditable coverage.

## **What are the rules for multi-state employers with Massachusetts locations?**

The employer must perform the Fair Share tests for all employees at Massachusetts locations, whether or not they are Massachusetts residents.

## **What are the rules for seasonal employees?**

A seasonal employee is one who works for a designated seasonal employer for a duration of not more than 16 weeks during the seasonal period. If these conditions are met, these employees are not included in the calculation of the Fair

Share Contribution test.; however, if an employer fails to provide a Fair Share Contribution, a pro-rated contribution amount is due for seasonal employees.

## **What are the rules for temporary employees?**

A temporary employee is defined as one whose employment is specifically temporary in nature and does not exceed 12 consecutive weeks. If these conditions are met, these employees are not included in the calculation of the Fair Share Contribution test. However, if an employer fails to pass both the primary and secondary test, a pro-rated contribution amount is due for the temporary employee.

## **If an employer does not meet the Fair Share Assessment test, what happens?**

Employers who did not pass the Fair Share contribution test will have to file a web-based Fair Share Assessment form that will be developed by the Division of Unemployment Assistance. Employers will be notified by the Division that they must file this form. Once the form is complete, the employer's liability will be determined. Payment will be due to the Division of Unemployment Assistance.

## **What is the definition of payroll hours?**

Payroll hours include vacation, sick, FMLA, short-term disability, long-term disability and holiday hours.

## **How are employers based outside of Massachusetts to be treated with respect to employer requirements?**

DHCFP's regulations on determining the employer fair share contribution are quite clear on this. A special provision in the regulations states:

Multi State Employer. A multi-state employer with Massachusetts locations shall include all Full Time Employees employed at each Massachusetts location in calculating the Primary Test percentage in 114.5 CMR 16.03(1)(a).

## **How are employees who do not reside in Massachusetts to be treated with respect to employer requirements?**

DHCFP's regulations on determining the employer fair share contribution are also quite clear on this point.

The regulations state:

For purposes of the Primary Test percentage calculation, an Employer shall include all Full Time Employees employed at Massachusetts locations whether or not they are Massachusetts residents.

## **Can an employer opt out or escape their responsibilities under the law if all workers are independent contractors?**

DHCFP's regulations on the determination of the employer fair share contribution states: Independent Contractors, Seasonal Employees, and Temporary Employees are not Full Time Employees.

This means that independent contractors are not factored into the employer's fair share contribution calculation. This does not mean that employers can "escape their responsibilities" by converting full-time employees to independent contractor status. Any employer attempt to reclassify employees as independent contractors must abide by the Massachusetts definition of independent contractor in M.G.L. c. 151A, section 2. This definition is specifically referenced in the fair share contribution regulations.

## Where can I find the final regulations on the fair share contribution?

Those regulations are available on the web site of the Division of Health Care Finance and Policy (DHCFP). They can be downloaded at: [http://www.mass.gov/Eeohhs2/docs/dhcfp/g/regs/114\\_5\\_16.pdf](http://www.mass.gov/Eeohhs2/docs/dhcfp/g/regs/114_5_16.pdf) **PDF**

## What is the Free Rider Surcharge?

The Free Rider Surcharge would kick in if an employer with more than 10 (part- or full-time) employees fails to offer a Section 125 plan and:

- an employee or dependent receives free care with more than three state-funded hospital admissions or physician visits per year; or
- the company has five or more instances of employees or dependents receiving free care in a year.

In the first year, the surcharge will range from 10 percent to 55 percent of the cost of free care for employees, with an exemption on the first \$50,000 of state-funded cost per employer.

## Who determines what percent of the Free Rider Surcharge will be levied on an employer with 11 or more employees who has failed to offer a Section 125 plan?

Regulations are currently being created by the Division of Health Care Finance and Policy. The effective date of this requirement is July 1, 2007.

## Can an employer appeal a surcharge?

Yes, the Division will include an appeal process in its final regulations.

If my employees don't have health insurance, what consequences will they face as individuals?

Individuals who cannot show proof of health insurance coverage by Dec. 31, 2007, will lose their personal income tax exemption when filing their 2007 income taxes. The 2006 personal exemption is \$3,850 for an individual, which translates into a tax savings of approximately \$204 for an individual (5.3 percent of \$3,850). However, failure to meet the

requirement in 2008 will result in a fine for each month the individual does not have coverage. The fine will equal 50 percent of the least costly, available insurance premium that meets the standard for creditable coverage.

## **Who will oversee enforcement of the mandate?**

The Department of Revenue will enforce the individual mandate through the tax collection process.

## **Will employers be subject to penalties if their employees refuse health insurance?**

No. If employees refuse employer-sponsored health insurance, the employer will not be held responsible.

## **What will the employer be required to do if an employee declines employer-sponsored health insurance?**

Employers with 11 or more employees must file a Health Insurance Disclosure Form for employees. These forms will be distributed by the Division of Health Care Finance and Policy and will be available on the Connector's website.

## **Which employers must establish Section 125 plans?**

All Massachusetts employers with more than 10 employees (part- or full-time) employed in Massachusetts must adopt and maintain a Section 125 plan by July 1, 2007. Section 125 plans save employers FICA taxes and generally re-pay the administrative costs of set-up after the first employee signs up. A Section 125 plan allows employees to pay for health insurance coverage on a pre-tax basis that is not subject to state and federal taxes or federal FICA withholding taxes, which can effectively lower the cost of health insurance by 15 to over 50 percent.

## **Is an employer obligated to cover dependents if the health plan in which they participate is self-insured?**

Most private employer-sponsored health plans are governed by the Employee Retirement Income Security Act of 1974 – known as ERISA.

There are two types of health plans recognized by ERISA law:

1. insured plans – ERISA permits the states to regulate these, and
2. self-insured plans – ERISA “pre-empts” state regulations on these, so these are not subject to regulation by state law.

Self-insured plans do not need to cover employees' dependents consistent with Chapter 58.

