

114.5 CMR: DIVISION OF HEALTH CARE FINANCE AND POLICY

114.5 CMR 16.00 DETERMINATION OF EMPLOYER FAIR SHARE CONTRIBUTION

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16.01 General Provisions

(1) Scope and Purpose. 114.5 CMR 16.00 governs the determination of whether an Employer makes a Fair and Reasonable Premium Contribution to the health insurance cost of its Employees. Employers that make a Fair and Reasonable Premium Contribution are exempt from the Employer Fair Share Contribution under M.G.L. c. 149, § 188. 114.5 CMR 16.00 also governs the determination of the annual Fair Share Contribution Amount. The Fair Share Contribution is collected by the Department of Labor from Employers of eleven or more full time equivalent employees.

(2) Authority: 114.5 CMR 16.00 is adopted pursuant to M.G.L. c. 149, § 188 and M.G.L. c. 118G.

(3) Effective Date. 114.5 CMR 16.00 is effective on October 1, 2006.

16.02 Definitions

Meaning of Terms: As used in 114.5 CMR 16.00, unless the context otherwise requires, terms have the following meanings:

Client Company. A person, association, partnership, corporation or other entity that is a co-employer of workers provided by a Employee Leasing Company pursuant to a contract.

Commissioner. The Commissioner of the Division of Health Care Finance and Policy.

Commonwealth Care Trust Fund. The trust fund established pursuant to M.G.L. c. 29, § 2000.

Contributing Employer. An Employer that offers a Group Health Plan to which the Employer makes a fair and reasonable premium contribution as defined in 114.5 CMR 16.03.

Department. The Department of Labor established by M.G.L. c. 23.

Division. The Division of Health Care Finance and Policy established under M.G.L. c. 118G or its designated agent.

Employee Leasing Company. A sole proprietorship, partnership, corporation or other form of business entity whose business consists largely of leasing employees to one or more Client Companies under contractual arrangements that retain for such employee leasing companies a substantial portion of personnel management functions, such as payroll, direction and control of workers, and the right to hire and fire workers provided by the employee leasing company; provided, however, that the leasing arrangement is long term and not an arrangement to provide the client company temporary help services during seasonal or unusual conditions.

Employer. An Employing Unit subject to M.G.L. c. 151A, and the commonwealth, its instrumentalities, political subdivisions, an instrumentality of a political subdivision, including municipal hospitals, municipal electric companies, municipal water companies, regional school districts and any other instrumentalities as are financially independent and are created by statute. An entity is an Employing Unit whether or not the services performed are deemed employment under c. 151A.

Employing Unit. Any individual or type of organization including any partnership, firm, association, trust, trustee, estate, joint stock company, insurance company, corporation, whether domestic or foreign, or his or its legal representative, or the assignee, receiver, trustee in bankruptcy, trustee or successor of any of the foregoing or the legal representative of a deceased person who or which has or had one or more individuals performing services for him or it within the Commonwealth of Massachusetts.

Enrolled Employee: An employee who has accepted and is enrolled in the employer's sponsored Group Health Plan.

Group Health Plan. A group health plan, as defined in 26 U.S.C. § 5000(b), to provide Medical Care, whether insured or self-funded, that is (1) sponsored and paid for, in whole or in part, by an employer, or (2) sponsored by a self-employed person or an employee organization, for the purpose of providing health care (directly or otherwise) to the employees, former employees, self-employed individuals, or others associated or formerly associated with an employer or self-employed individual in a business relationship, or their families.

Independent Contractor. An individual that provides services not deemed to be employment under M.G.L. c. 151A, § 2 because

- (a) such individual has been and will continue to be free from control and direction in connection with the performance of such services, both under his contract for the performance of service and in fact; and
- (b) such service is performed either outside the usual course of the business for which the service is performed or is performed outside of all the places of business of the enterprise for which the service is performed; and
- (c) Such individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.

Medical Care. Medical services for the diagnosis, cure, treatment, or prevention of disease, as defined in Internal Revenue Code Sections 213(d)(1)(A) and (B).

Seasonal Employee. An individual hired to perform services for wages by a seasonal employer under M.G.L. c. 151A during the seasonal period in the employer's seasonal operations for a specific temporary seasonal period; that has been notified by the Division of Unemployment Assistance that the individual is performing services in seasonal employment for a seasonal employer; whose employment is limited to the beginning and ending dates of the employer's seasonal period; and whose employment does not exceed sixteen weeks.

Temporary Employee. An individual that works for an Employer on either a full or part time basis; whose employment is explicitly temporary in nature and does not exceed 12 consecutive weeks during the period from October 1 through September 30.

16.03 Determination of Fair and Reasonable Premium Contribution.

(1) General. An Employer that makes a Fair and Reasonable Premium Contribution is exempt from the Fair Share Contribution in accordance with the provisions of M.G.L. c. 149, § 188. In determining whether an Employer is exempt, the Employer shall include all Full Time Employees employed at Massachusetts locations, whether or not they are Massachusetts residents.

(a) Primary Test. An Employer will be determined to make a Fair and Reasonable Premium Contribution based on the percentage of Employees enrolled in the Employer's Group Health Plan. An Employer with at least 25% of Enrolled Employees, determined in accordance with the criteria below, is exempt from the Fair Share Contribution. 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.

1. Calculation of Percentage. Each Employer shall calculate its percentage of Enrolled Employees for the period from October 1 to September 30 each year. The percentage of Enrolled Employees is calculated by dividing the Total Payroll Hours of Enrolled Full Time Employees as defined below by Total Payroll Hours of Full time Employees.

a. Total Payroll Hours of Enrolled Employees. The Employer shall calculate the total payroll hours for which both wages were paid and the employee was enrolled in the health plan. The sum of the payroll hours for each Enrolled Employee is the total payroll hours of enrolled employees.

b. Total Payroll Hours of Full Time Employees. The Employer shall calculate the total payroll hours of all full time employees.

1. Full Time Employee. For purposes of determining the percentage of enrolled Full Time Employees, a Full Time Employee is an Employee that works at least 35 hours per week. If an Employee works both part time and full time during the year, the Employer shall include only the payroll hours of the period in which the employee worked full time.

2. Exceptions. Independent Contractors, Seasonal Employees, and Temporary Employees are not Full Time Employees.

(b) Secondary Test. If the percentage calculated in accordance with 114.5 CMR 16.03 (1) (a) is less than 25%, but the Employer offered to pay at least 33% of the premium cost of any Group Health Plan offered by the Employer to its Full Time Employees that were employed at least 90 days during the period from October 1, 2006 to September 30, 2007, said Employer shall be exempt from the Fair Share Contribution.

(2) Special Provisions.

(a) Employee Leasing Companies. If there is a co-employment arrangement between a Client Company and an Employee Leasing Company, the Employee Leasing Company shall be responsible for calculating and remitting the Fair Share Contribution on behalf of the Client Company.

(b) 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).

(c) Exempt Employees. An Employer may exclude a Full Time Employee from the denominator of the Primary Test percentage 114.5 CMR 16.03(1)(a) if the employee claims exemption from the requirements of M.G.L. c. 111M, § 2 because of sincerely held religious beliefs and has filed an affidavit in accordance with M.G.L. c. 111M, § 3. The employer must maintain documentation to verify that the employee has claimed such an exemption. The Employer is not subject to the Primary Test if such exemptions result in a Primary Test percentage of less than 25%.

16.04 Determination of Annual Fair Share Employer Contribution

(1) Determination of Contribution Amount. The Annual Fair Share Employer Contribution is the lower of (1) \$295 per employee or (2) the sum of the Fair Share Employer Contribution and the Per Employee Cost of Unreimbursed Physician Care as calculated in accordance with 114.5 CMR 16.04. The Fair Share Contribution amount shall be determined annually by the Department of Labor and the Division using the best available data.

(2) Fair Share Employer Contribution. The Division will determine the Annual Fair Share Employer Contribution as follows:

- (a) Determine the per user share of Private Sector Liability by dividing total Private Sector Liability for the Fiscal Year by the total number of users of the Uncompensated Care Pool or its successor in the most recent fiscal year.
- (b) Determine the number of employee users that received services funded by the Uncompensated Care Pool or its successor;
- (c) Multiply the total number of employee users by the percentage of employers that are non-Contributing Employers;
- (d) Determine the total cost of liability associated with employees of non-Contributing Employers by multiplying the number of users that are employees of non-Contributing Employers by the Per User Share of Private Sector Liability.
- (e) Divide the total liability for employees of non-Contributing Employers by the total number of employees of non-Contributing Employers as determined by the Division.
- (f) Adjust by medical inflation as determined by the Division.

(3) Per Employee Cost of Uncompensated Physician Care

- (a) The Division will determine the total amount of uncompensated health care services provided by physicians to non-elderly, uninsured residents of the Commonwealth. The Division will use the best available data, including survey data or other data source.
- (b) The Division will divide this amount by the number of employees of non-contributing Employers to determine the Per Employee Cost of Uncompensated Physician Care.

(4) The Sum of the Fair Share Employer Contribution and the Per Employee Cost of Uncompensated Physician Care is the Annual Fair Share Contribution.

16.05 Other Provisions.

(1) General. Each Employer shall file or make available information which is required or which the Division deems reasonably necessary for calculating and collecting the Employer Fair Share Contribution.

(2) Severability. The provisions of 114.5 CMR 16.00 are severable. If any provision or the application of any provision is held to be invalid or unconstitutional, such invalidity shall not be construed to affect the validity or constitutionality of any remaining provisions of 114.5 CMR 16.00 or the application of such provisions.

(3) Administrative Bulletins. The Division may issue administrative information bulletins to clarify policies, update administrative requirements and specify information and documentation necessary to implement 114.5 CMR 16.00.

REGULATORY AUTHORITY

114.5 CMR 16.00 M.G.L. c. 118G.