

CMR: DIVISION OF HEALTH CARE FINANCE AND POLICY

114.5 CMR 18.00 HEALTH INSURANCE RESPONSIBILITY DISCLOSURE

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18.01 General Provisions

(1) Scope and Purpose. 114.5 CMR 18.00 governs the filing requirements for the Health Insurance Responsibility Disclosure Form. Each Massachusetts employer is required to file information about health insurance it offers to employees. Each employee that declines an employer's offer of health insurance or the offer to arrange for the purchase of health insurance is required to sign an Employee HIRD form. Data from the Forms will be used to administer and enforce the Individual Insurance Mandate under M.G.L. c. 111M, the Employer Fair Share Contribution under M.G.L. c. 149, § 188 and the Employer Surcharge for State-Funded Health Costs under M.G.L. c. 118G, § 18B.

(2) Authority: 114.5 CMR 18.00 is adopted pursuant to M.G.L. c. 118G, §6C.

(3) Effective Date. 114.5 CMR 18.00 is effective on January 1, 2007.

18.02 Definitions

Meaning of Terms: As used in 114.5 CMR 18.00, unless the context otherwise requires, terms have the following meanings:

Client Company. A person, association, partnership, corporation or other entity that uses workers provided by an Employee Leasing Company pursuant to a contract.

Connector. The Commonwealth Health Insurance Connector established under M.G.L. c. 176Q.

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 M.G.L. 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.

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;
- (b) such service is performed either outside the usual course of 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.

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 16 weeks.

State-Funded Health Costs. The cost of health care paid on behalf of employees and their dependents for which an Employer may be liable under 114.5 CMR 17.00.

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.

#### 18.03 Employer HIRD Form

(1) Employer HIRD Form. Each Massachusetts Employer with more than ten employees shall report the following information in a HIRD Form specified by the Division.

- (a) An Employer has more than ten employees if the sum of total payroll hours for all employees for the period from October 1 through September 30 divided by 1,820 is greater than 10. Payroll Hours: Payroll hours include regular hours, vacation, sick, FMLA, short term disability, long term disability, overtime and holiday hours
- (b) Required information. Each Employer is required to report the following information:
  1. Employer Legal Name
  2. Employer DBA Name
  3. Employer FEIN
  4. Division of Unemployment Assistance Account Number

5. Number of full time Employees
6. Number of part time Employees
7. Whether the Employer offers subsidized insurance to full time employees
8. Whether Employer offers subsidized insurance to part time employees
9. Whether the Employer offers a section 125 cafeteria plan
10. Whether the Employer has complied with the requirements of M.G.L. c. 151F

(c) Other Requirements

1. The Employer shall report information effective as of September 30 of each reporting year.
2. In reporting the number of full time and part time employees, the Employer must include Seasonal and Temporary Employees employed as of September 30 of each year. The Employer shall not include Independent Contractors.

(d) If an Employee Leasing Company files the HIRD Form on behalf of its Client Companies, it shall file a separate form for each of its client companies.

(2) Required Filings

(a) Due Dates. Each Employer shall submit the Employer HIRD Form based on information as of September 30 of each year. The Employer HIRD Form is due on November 15 of each year.

(b) New Employers. New Employers must register with the Division upon registration with the Division of Unemployment Assistance.

(c) All Employer filings shall be made under the pains and penalties of perjury. An Employer must designate a responsible individual authorized to verify and certify the accuracy of the employer information submitted.

(d) The Division may change reporting requirements, including specified forms and filing deadlines by administrative bulletin.

(3) Data Verification:

(a) Each Employer must submit any additional documentation requested by the Division to verify the accuracy of the data submitted.

(b) Audit. The Division may, upon notice to the Employer, inspect and copy any records necessary to verify the accuracy of the information submitted.

(c) Data Matches. The Division will initiate data matches, as permitted by law, with the Division of Unemployment Assistance and the Department of Revenue to verify the accuracy of the data

18.04 Employee HIRD Form

(1) Each Employee of a Massachusetts Employer with ten or more employees that either declines employer sponsored insurance or the employer's offer to arrange for the purchase or the employers offer to arrange for a section 125 plan, is required to sign an Employee HIRD Form specified by the Division. Each Massachusetts Employer with more than ten employees must provide an Employee HIRD Form for the employee's signature to each employee that either declines employer-sponsored insurance or the employer's offer to arrange for the purchase of health insurance. The Employer must retain the signed HIRD form for a period of three years. If the employee does not comply with the employer's request to return the signed form, the employer must document diligent efforts to obtain such form and maintain the documentation for a period of three years.

(2) The Employee HIRD Form must contain the Employee name and Employer name. The Employee must also indicate whether he or she has alternative insurance coverage and sign an acknowledgement that the employee is aware of the individual mandate under M.G.L. c. 111M and the penalties for failure to comply with the individual mandate.

(3) Due Date.

(a) Employee HIRD. The Employer must require each employee that has either declined to enroll in employer sponsored health insurance or declined the employer's offer to arrange for the purchase of health insurance to sign an Employee HIRD Form. The Employer must obtain a signed Employee HIRD form for each such employee by the earlier of 15 days after the close of the open enrollment period for the employer's health insurance, or July 1 of the reporting year. If an employer's open enrollment period for 2007 ended prior to January 1, 2007, and an employee has signed an employer form acknowledging that he or she was offered and declined employer sponsored insurance, such employee is not required to sign an Employee HIRD until the next open enrollment period. The employer must retain the signed employer form until the employee signs a HIRD Form for 2008.

(b) If an employee enrolled in an Employer sponsored health insurance notifies the Employer that he or she has elected to terminate participation in the plan, the Employer must require the employee to sign a HIRD form within 15 days of the employee's election to terminate participation.

(c) New Hires. The Employer must obtain the signed Employee HIRD Form from each new employee that either declines employer sponsored health insurance or declines the employer's offer to arrange for the purchase of health insurance within 15 days of hire.

18.05 Other Provisions

(1) Information that identifies individual employees by name or health insurance status shall not be a public record, but such information may be exchanged with the Department of Revenue and the Health Care Access Bureau of the Division of Insurance under an Interagency Service Agreement.

(2) Penalties. An Employer that knowingly falsifies or fails to file any information required by the Division shall be punished by a fine of not less than \$1,000 or more than \$5,000.

(3) Severability. The provisions of 114.5 CMR 18.00 are severable. If any provision or the application of any provision is held to be invalid or unconstitutional, and such invalidity shall not be construed to affect the validity or constitutionality of any remaining provisions of 114.5 CMR 18.00 or the application of such provisions.

(2) Administrative Bulletins. The Division may issue administrative bulletins to clarify policies, update administrative requirements and specify information and documentation necessary to implement 114.5 CMR 18.00.

REGULATORY AUTHORITY  
114.5 CMR 18.00 M.G.L. c. 118G.