Massachusetts repeals its employer health care mandate

By Thomas J. McCord

Massachusetts has repealed its health care “Fair Share Contribution” requirement for employers. This contribution requirement was the model for the employer “play or pay” mandate under federal health care reform legislation. Massachusetts employers will, however, be subject to a per-employee assessment to fund the provision of subsidized health care by the state to its uninsured residents.

Under Massachusetts health care reform enacted in 2006, an employer that did not make a minimum premium contribution toward the health insurance costs of its Massachusetts employees was required to pay a “Fair Share Contribution” to the Massachusetts Department of Labor. The “Fair Share” assessment ranged up to $295 per employee. The repeal of the Fair Share Contribution is intended to avoid duplication of the similar (although not identical) requirements of the federal Affordable Care Act (“ACA”). The repeal is effective July 1, 2013, notwithstanding the announcement that the federal employer “play or pay” mandate under the ACA has been deferred until January 1, 2015.

The legislation repealing the Massachusetts Fair Share Contribution enacts a separate Employer Medical Assistance Contribution to be used to fund a state trust for uninsured residents. The assessment is equal to 0.36% of the same wage base that applies for Massachusetts unemployment taxation purposes (currently $14,000). This approximately $50 annual assessment applies to employers that have more than five employees for a calendar year, regardless of whether or not the employer provides health insurance. Special reduced rates apply for the first two years in which new employers exceed the threshold. This Employer Medical Assistance Contribution replaces a prior assessment used to fund hospitals and other providers of uncompensated health care. The new assessment is effective January 1, 2014, and will be collected through the Massachusetts state unemployment tax system.

Massachusetts employers will still need to complete filings for the Fair Share Contribution for periods before July 1, 2013. In addition, Massachusetts employers must continue to make available to their employees who are not eligible for employer health coverage a cafeteria plan, which the ineligible employees may use to purchase coverage on a pre-tax basis through the Massachusetts state
health care exchange. Employers should also continue their preparation for complying with the upcoming federal health care reform mandates.

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