Health Insurance Reform: A Guide for Massachusetts Municipalities and School Districts

Introduction

In 2006, health insurance reform legislation was passed in Massachusetts. This legislation (also known as "RomneyCare") was the state's precursor to the federal Affordable Care Act (also known as "ACA" or "ObamaCare"). Much of the state law has been superseded by the ACA. However, the Massachusetts Health Connector continues to exist and now serves as the state's insurance marketplace, or exchange, for purposes of the ACA. [1]

The purpose of the ACA is to ensure that every American has health insurance coverage. One of the ways the law attempts to meet this goal is to impose a penalty payment on employers who do not offer health insurance to their full-time employees. The ACA defines full-time employees as those who work 30 hours per week/130 hours per month.

ACA and M.G.L. c. 32B

Pursuant to state law, Massachusetts public employers must offer health insurance to employees whose duties "require not less than 20 hours, regularly, in the service of the governmental unit during the regular work week of permanent or temporary employment." (M.G.L. c. 32B, § 2). In general, the ACA will not have significant impacts on Massachusetts public employers because health insurance is already offered to most employees who would be affected by the ACA (20 hours per week vs. 30 hours per week). However, the term "regularly" in the state law has never been defined by legislation or case law. This has led to some employees – such as substitute teachers or those with variable hours – not being offered health insurance. Some public employers have passed local regulations in which they attempt to define what "regularly working 20 hours" actually means. The bottom line is that some public employees in Massachusetts may meet the definition of a full-time worker under the ACA while at the same time not receiving health insurance under M.G.L. c. 32B.

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[1] Within this marketplace, individuals who do not receive health insurance coverage through their employers may select health insurance plans. Selection depends on income and individual needs/preferences. There are different tiers which plans are placed into: bronze, silver, gold and platinum. Those plans are run by various providers such as BC/BS, Harvard-Pilgrim, etc. The plan for low-income individuals is called MassHealth. It has very low premiums and co-pays.

The Employer Shared Responsibility Payment – sometimes referred to as “pay or play”

- If an employer does not offer health insurance to some or all of its full-time employees (30 hours per week/130 hours per month) *and* at least one full-time employee (who was not offered health insurance by the employer) purchases health insurance coverage through the state’s marketplace (the Health Connector), *and* that employee receives a tax credit for his/her purchase, then the employer will be responsible for a penalty payment to the IRS called the Employer Shared Responsibility Payment (ESRP).

- If no full-time employee purchases coverage through the Health Connector or does not receive a tax credit (based on income), for the purchase, then the employer will not be subject to an ESRP, regardless of whether health insurance is offered to the employee.

- To receive the tax credit and trigger an ESRP, a full-time employee must not have been offered municipal-sponsored coverage and: 1) be within 400% of the federal poverty level, 2) enroll in a health insurance plan through the Health Connector, and 3) be ineligible for a government-sponsored health insurance plan like Medicare or Medicaid. The poverty level requirement would not necessarily be difficult to meet. For instance, a single person earning $46,000 annually or a family of four earning $94,000 annually would be within 400% of the poverty level.

- Another way a full-time employee could be eligible for a tax credit on a Health Connector plan is if the municipal-sponsored plan he/she is offered is <u>unaffordable</u> or if it does not provide <u>minimum value</u>. The insurance offered is affordable under the ACA as long as an employee’s share of the annual premium payment does not cost more than 9.5% of the employee’s annual household income. The insurance offered provides minimum value if it covers at least 60% of the total allowed cost of benefits that are expected to be incurred under the plan. There are safe harbors available to employers to help meet the affordability criteria. The IRS has created a minimum value calculation and other methods for employers to test whether their plans provide minimum value.

- <u>The A Penalty</u>. There are two ESRP penalties, sometimes referred to as the ‘A’ and ‘B’ penalties. The A penalty is severe. Fortunately, it will likely never apply to a Massachusetts public employer. Under this penalty, if an employer fails to offer minimum essential [health insurance] coverage to at least 95% of its full-time employees and even one employee purchases coverage through the Health Connector (and receives a tax credit for the purchase) then the ESRP would equal

$2000 annually, multiplied by the number of all full-time employees (paid on a pro-rated monthly basis). It is very unlikely that a Massachusetts public employer would not be offering minimum essential coverage to at least 95% of its full-time employees. Minimum essential coverage is a very low standard and includes all basic health insurance plans.

- The B Penalty. The B penalty is much less severe. This is the penalty that could apply to a Massachusetts public employer. If a full-time employee (under the ACA) is not offered health insurance coverage (for instance, a substitute teacher), and the employee purchases health insurance coverage through the Health Connector, and that employee receives a tax credit for his/her purchase, then the employer will be responsible for an ESRP (B penalty). In this situation, the ESRP would equal $3000 annually per affected employee. The payment would be prorated and paid each month ($250 per employee per month) to the IRS, until municipal-sponsored health insurance was offered to the employee.

Avoiding liability for an ESRP: the look-back measurement method

- Tracking employee hours of service is mandatory. Tracking, or measuring, an employee's hours of service is how an employer can determine if an employee is full-time under the ACA, and, therefore, whether it must offer health insurance coverage to that employee.

- Employers may select a measurement period from 3 to 12 months long. If no period is selected, then an employer would have to track hours on a monthly basis. For most, if not all, Massachusetts employers, a 6-month measurement period is optimal.

- In addition to the 6-month look-back measurement period, employers should employ an "administrative" period of up to 3 months, and a "stability" period of 6 months. During the administrative period an employer determines if any employee from the previous 6-month measurement period qualifies as a full-time employee under the ACA. During the 6-month stability period, any employees determined to be full-time should be offered municipal-sponsored health insurance. Of course, during the stability period, measurement of employee hours of service begins again. This yearly cycle then repeats.

- The calculation during the administrative period is simple. An employee's total hours of service for the 6-month period are divided by 6. If that number is equal to or greater than 130 hours per month, then the employee should be offered municipal-sponsored health insurance for the following 6-month stability period.

- When measuring an employee's hours of service, all time for which the employee is paid, or entitled to be paid, should be counted. This includes paid time off due to vacation, holiday, illness, incapacity, layoff, jury duty, military duty or leave of absence. Generally, unpaid time off will not count toward the 130 hours of service.

- Certain periods of unpaid time off are not included when calculating employee hours. These include: summer months for school employees, FMLA leave, military leave, jury duty. For these special periods of unpaid time off, the average hours of service should be calculated excluding the special unpaid leave period. The resulting average would then be considered the average for the entire measurement period.