



Employer Handbook



This handbook can also be found on the Connector's website at: www.mass.gov/connector



The Commonwealth Connector



The Commonwealth Connector is an independent authority created under the 2006 Health Care Reform Law. The Connector's mission is to serve individuals and employers in Massachusetts by increasing access to health insurance.

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Introduction

The primary goal of the Massachusetts Health Care Reform Law is to increase access to health insurance for both individuals and employers. The guiding principle behind this reform is one of shared responsibilities: individuals, employers, health plans and state agencies all have new responsibilities under the law.

The purpose of this handbook is to highlight the key issues for employers and to make it easier for you to understand your obligations. While some aspects of the Massachusetts Health Care Reform Law affect all Massachusetts employers, many employers may be exempt from some or most of the new provisions. For example, employers who contribute to the cost of health insurance for their employees may be exempt from the Fair Share Contribution provision. Employers who offer a Section 125 plan may be exempt from the Free Rider Surcharge provision. In addition, many of the employer requirements do not apply to employers with 10 or fewer employees.

Employers who provide their employees with access to health insurance are able to recruit and retain good workers, enhance employee loyalty and improve the productivity of their businesses. The Commonwealth Connector has been created to help connect employers and their employees with a choice of good health plans and the tools to help them choose the plan that is right for them. We encourage you to read this handbook and to visit our web site at www.mass.gov/connector to learn more.

Fair Share Contribution

What is it? The Fair Share Contribution is a fee that an employer will pay if he/she does not make a “fair and reasonable” premium contribution to the health insurance of his/her employees.

These fees will be used to help fund the health plans that are subsidized by the state and are available to people who do not have access to employer-sponsored health insurance.

Who does it apply to? An employer is subject to pay the Fair Share Contribution if he/she meets **BOTH** these criteria:

1. The employer has 11 or more full-time equivalent employees¹ who are employed at Massachusetts locations **AND ...**
2. The employer does not make a “fair and reasonable” premium contribution towards health insurance for his/her employees.

An employer makes a “fair and reasonable” premium contribution if **EITHER**:

- There is at least 25% participation by full-time employees in the employer’s group health plan,²

OR ...

- The employer offers to contribute at least 33% of the premium cost of its health plan to all full-time employees employed more than 90 days during the period from October 1, 2006 to September 30, 2007.³

Notes:

- A full-time employee is an employee who works 35 hours or more per week.
- Independent contractors, seasonal employees,⁴ and temporary employees⁵ are not considered full-time employees.
- Full-time employees who are not Massachusetts residents but work at Massachusetts locations are included in the number of full-time employees.
- A worker who comes from a “temp agency” is not considered to be an employee of the client company.

How much? The Fair Share Contribution will be no more than \$295 per employee per year.⁶ This amount is pro-rated for part-time employees.

When? Liability for the Fair Share Contribution is based on data from October 1, 2006 to September 30, 2007.

The exact due dates for employers to pay the Fair Share Contribution will be determined by the Division of Unemployment Assistance (DUA).

Note: The footnotes for the above table are shown on the next page.

Fair Share Contribution

The following footnotes apply to the preceding page:

¹ The regulations that describe how to calculate the number of full-time equivalent employees will be published by the Division of Unemployment Assistance (DUA).

² **The Primary Test:** The Employer passes the Primary Test if there is at least 25% participation in the Employer's Group Health Plan.

For more details, see: 114.5 CMR 16.03(1)(a) which can be found at: www.mass.gov/Eeohhs2/docs/dhcfp/g/regs/114_5_16.pdf

• This percentage of participation (also called the percentage of Enrolled Employees) is calculated by:

$$\frac{\text{Total Annual Payroll Hours of Enrolled Full Time Employees}}{\text{Total Annual Payroll Hours of all Full Time Employees}} \times 100$$

• The numerator does not include employees who receive health care from other parties (e.g. a spouse's health plan, or a government program such as MassHealth or Commonwealth Care).

• The numerator includes the total payroll hours for which both wages were paid and the employee was enrolled in the plan. 114.5 CMR 16.03(1)(a)1.a

• Calculate the above percentage for the period from October 1 to September 30 of each year. 114.5 CMR 16.03(1)(a)1

• If an employee works both part-time and full-time during the year, then the employer shall include only the payroll hours of the period in which the employee worked full-time. 114.5 CMR 16.03(1)(a)1.b.1

³ **The Secondary Test:**

The Employer passes the Secondary Test if he/she offers to contribute at least 33% of the premium cost of any Group Health Plan offered by the Employer to its Full Time Employees who were employed at least 90 days during the period from October 1, 2006 to September 30, 2007. 114.5 CMR 16.03(1)(b)

If: the Employer passes **EITHER** the Primary Test, **OR** the Secondary Test,

Then: the Employer is exempt, and does not have to pay the Fair Share Contribution.

⁴ A seasonal employee is an employee whose employment does not exceed 16 weeks.

⁵ A temporary employee in an employee who works either full-time or part-time, whose employment is explicitly temporary in nature, and who does not work for more than 12 consecutive weeks during the period from October 1 through September 30. For the complete definition of a seasonal employee and a temporary employee, see DHCFP regulation 114.5 CMR, which can be found at: www.mass.gov/Eeohhs2/docs/dhcfp/g/regs/114_5_16.pdf

⁶ The exact amount will be determined by the Director of Workforce Development and the Division of Health Care Finance & Policy (DHCFP), and will be collected by the Division of Unemployment Assistance (DUA).

Section 125 Plans

What is a Section 125 Plan?	<p>A Section 125 plan allows employees to pay for health insurance coverage on a pre-tax basis and is not subject to state and federal income taxes or federal FICA withholding taxes.</p> <p>A Section 125 plan can benefit both the employer and the employee, since they both will have lower payroll-related taxes.</p>
Who does it apply to?	<p>An employer with more than 10 employees¹ must adopt and maintain a Section 125 plan that meets the regulations of the Commonwealth Connector. This is true regardless of whether the employer offers health insurance to his/her employees.</p> <p>If: an employer does not offer a Section 125 plan that meets the regulations of the Commonwealth Connector ...</p> <p>Then: the employer may be subject to the Free Rider Surcharge, under certain situations.</p> <p>The Commonwealth Connector is scheduled to publish regulations related to the Section 125 plan requirements by April 2007.</p>
When does it go into effect?	<p>The requirement goes into effect on July 1, 2007.</p>
How does an employer adopt a Section 125 plan?	<p>Template Section 125 plan documents will be available through the Commonwealth Connector. They will also be available through the commercial market.</p> <p>An employer may also consult one or more of the following: a broker, an ERISA lawyer, a payroll vendor, or an accountant.</p>

¹ *The rules for calculating the number of employees for purposes of the Section 125 plan requirement will be addressed in the Commonwealth Connector regulations, which are scheduled to be published by April 2007.*

Free Rider Surcharge

(Formally known as the “Employer Surcharge for State-Funded Health Costs”)

<p>What is it?</p>	<p>The Free Rider Surcharge is a surcharge on employers who do not comply with the requirement to establish a Section 125 plan that meets the regulations of the Commonwealth Connector.</p> <p>The surcharge is assessed for “state-funded health services”¹ that are incurred by employees and/or their dependents.</p>
<p>Who does it apply to?</p>	<p>An employer may be subject to the Free Rider Surcharge if he/she meets all these criteria:</p> <ul style="list-style-type: none"> • The employer has more than 10 employees,² AND ... • Employees or their dependents received “state-funded health services”³ AND ... • These employees⁴ were not offered a Section 125 plan that meets the regulations of the Connector, AND ... • These “state-funded health services” are at least \$50,000 in one hospital fiscal year. <p>If an employer adopts and maintains a Section 125 plan that covers all his/her employees, and meets the rules of the Connector, then the employer is not subject to the Free Rider Surcharge.</p> <p>An employer is not subject to the Free Rider Surcharge for those employees who are covered by certain collective bargaining agreements, nor for those employees who participate in the state’s Insurance Partnership program.</p>
<p>When?</p>	<p>The Free Rider Surcharge goes into effect on July 1, 2007.</p> <p>When will an employer need to pay the Free Rider Surcharge if it applies to him/her?</p> <p>The dates by which an employer will need to pay the Free Rider Surcharge have not yet been determined by the Division of Health Care Finance & Policy (DHCFP).</p>
<p>How much is the surcharge?</p>	<p>The amount of the Free Rider Surcharge will vary based upon the number of employees, the utilization of the “free care pool” or the Health Care Safety Net, total state-funded costs and the percentage of employees enrolled in the employer’s health plan.⁵</p>

¹ “state-funded health services” are health services that are paid for by the state through the Uncompensated Care Trust Fund (also known as the “free care pool”) or the Health Safety Net Trust Fund.

² The regulations that describe how to calculate the number of employees will be published by DHCFP before July 1, 2007.

³ Here, “received health care services” means that within one hospital fiscal year, **EITHER:**
 (1) the total number of visits to hospitals or clinics made by a single employee and his/her dependent(s) is more than 3. **OR ..**
 (2) the total number of visits to hospitals or clinics made by ALL the employees and their dependents is 5 or more.

In this definition, “visits to hospitals or clinics” are admissions or visits made to hospitals or community health centers.

⁴ “these employees” refers to employees who themselves or their dependents received health care services paid by the state through the Uncompensated Care Trust Fund (also known as the “free care pool”) or the Health Safety Net Trust Fund.

⁵ The exact amount will be calculated by the Division of Health Care Finance & Policy (DHCFP). DHCFP will notify employers who are subject to the Free Rider Surcharge at the end of each hospital fiscal year.

The hospital fiscal year runs from October 1 through September 30.

Health Insurance Responsibility Disclosure (HIRD)

What is it?

There are two HIRD forms: the Employer HIRD Form, and the Employee HIRD Form.

Employer HIRD Form:

- The Employer HIRD Form is to be completed by all Massachusetts employers who have more than 10 employees.¹
- The Employer HIRD Form is currently being developed. It will likely ask for information such as:
 - ❖ Employer’s legal name
 - ❖ Employer’s Doing Business As (DBA) name
 - ❖ Employer’s Federal Employer Identification Number (FEIN)
 - ❖ Division of Unemployment Assistance (DUA) Account Number
 - ❖ Number of full-time employees
 - ❖ Number of part-time employees
 - ❖ Whether the employer offers subsidized health insurance to full-time employees
 - ❖ Whether the employer offers subsidized health insurance to part-time employees
 - ❖ Whether the employer offers a Section 125 plan that meets the regulations of the Connector

Employee HIRD Form:

Each employee of a Massachusetts employer with more than 10 employees must sign an Employee HIRD Form **if:**

- ❖ that employee declined to enroll in an employer-sponsored health plan that is offered, **AND / OR ...**
- ❖ that employee declined to participate in the employer’s Section 125 plan.
- When completing an Employee HIRD Form, the employee must indicate whether he/she has an alternative source of coverage.
- The Employee HIRD Form is given by the employer to the employee. It is signed by the employee, and then collected by the employer.
- The Employer collects the signed Employee HIRD Forms from the employees, and retains them for a period of 3 years.

Who does it apply to?

All Massachusetts employers who have more than 10 employees must submit an Employer HIRD Form at a time and in a manner to be specified in regulation by the Division of Health Care Finance & Policy (DHCFP).

When?

The Division of Health Care Finance & Policy (DHCFP) will issue regulations about the HIRD form, to be effective on July 1, 2007.

When do the HIRD forms need to be completed?

The dates by which the HIRD forms need to be completed have not yet been determined by DHCFP.

Where to get HIRD Forms?

The Employer HIRD Form, and the Employee HIRD Form are not yet available.

Once the HIRD forms are published by DHCFP, they will be available at the Commonwealth Connector’s website.

¹ The regulations that describe how to calculate the number of employees will be published by DHCFP before July 1, 2007.

Insurance Partnership

What is it?	<p>The Insurance Partnership (IP) is a program that helps small employers pay for health insurance in the employer's health insurance plan.</p> <p>For each employee who participates in the program, the IP gives a subsidy to both the employer, and a separate subsidy to the employee.</p>
Who does it apply to?	<p>Employer Criteria: An employer is eligible for the IP program if he/she meets all these criteria:</p> <ul style="list-style-type: none"> • The employer has 50 or fewer full-time employees, or is self-employed, AND • The employer offers (or plans to offer) comprehensive health insurance to his/her employees, AND ... • The employer contributes (or is willing to contribute) at least 50% of the cost of employer-sponsored health insurance that is purchased by the employee. <p>Employee Criteria: An employee may be determined eligible for the IP program if he/she meets all these criteria:</p> <ul style="list-style-type: none"> • The employee is between the ages of 19 and 64. • The employee is a resident of Massachusetts and meets certain citizenship requirements. • The employee has not been offered health insurance by his/her current employer in the past 6 months, and has not been eligible for health insurance through his/her spouse's employer in the past 6 months. • The employee has a family income that is at or below 300% of the Federal Poverty Level. (For 2006: 300% of the Federal Poverty Level is \$29,412 for 1 person, and \$60,012 for 4 persons).
When?	<p>Although the IP has been in operation since 1999, the Health Care Reform Law made 3 changes:</p> <ul style="list-style-type: none"> • Starting October 1, 2006: The income limit was expanded to include employees with a family income at or below 300% of the Federal Poverty Level. • Starting October 1, 2006: The following eligibility criteria was added: An employee can only participate in the IP if he/she has not been offered health insurance by his/her current employer in the past 6 months, and has not been eligible for health insurance through his/her spouse's employer in the past 6 months. • Starting July 1, 2007: Self-employed individuals and self-employed couples can continue to participate in the IP and receive one subsidy as an employee. However, they are no longer eligible to receive two subsidies for being both an employee and an employer.
How much does the IP give to employers?	<p>In order to decrease the employer's share of the premium cost for an employee's health plan, the IP provides a subsidy to the employer. The exact amount of the subsidy depends on what type of plan the employee is enrolled in.</p> <p>For example, the IP provides the following subsidy to the employer:</p> <ul style="list-style-type: none"> For an individual plan up to \$400 per employee per year For a two-person plan up to \$800 per employee per year For a family plan up to \$1,000 per employee per year
How much does the IP give to employees?	<p>The IP also provides the following subsidy to the employee:</p> <ul style="list-style-type: none"> For an individual plan up to \$150 per month For a two-person plan up to an additional \$150 per month for a spouse covered by the policy For a family plan up to an additional \$210 per month per child covered by the policy
For more information	<p>Contact the IP at 1-800-399-8285 or visit their website: www.insurancepartnership.org</p>

FAQs For Employers

Note: The information below is subject to revision as health care reform implementation continues and new regulations are promulgated. Please check back often.

What are the new requirements for employers?

Fair Share Contribution

Employers with 11 or more full-time equivalent employees who do not make a “fair and reasonable” premium contribution for their employees’ health insurance will be subject to pay a Fair Share Contribution. The Fair Share Contribution will be no more than \$295 per employee per year. This amount is pro-rated for part-time employees. Liability for the Fair Share Contribution is based on data from October 1, 2006 to September 30, 2007.

Section 125 Plan/Free Rider Surcharge

Employers with more than 10 employees must adopt and maintain a Section 125 plan that meets the regulations of the Connector. A Section 125 plan allows employees to pay for health insurance coverage on a pre-tax basis, and is not subject to state and federal taxes or federal FICA withholding taxes. A Section 125 plan can benefit both the employer and the employee since they both will have lower payroll-related taxes. The requirement goes into effect on July 1, 2007.

Employers with more than 10 employees who do not offer a Section 125 plan that meets the regulations of the Connector to all employees and who have employees or dependents who receive “state-funded health services” may be subject to the Free Rider Surcharge. Here, “state-funded health services” refers to health services that are paid for by the state through the Uncompensated Care Trust Fund (also known as the “free care pool”) or the Health Safety Net Trust Fund. The amount of the Free Rider Surcharge will vary based upon the number of employees, the utilization of the “free care pool” or the Health Care Safety Net, total state-funded costs, and the percentage of employees enrolled in the employer’s health plan. The Free Rider Surcharge goes into effect on July 1, 2007.

Health Insurance Responsibility Disclosure (HIRD)

Employers with more than 10 employees are required to complete an Employer Health Insurance Responsibility Disclosure (HIRD) Form. On this form, employers will report information such as: does the employer offer its employees a Section 125 plan that meets the regulations of the Commonwealth Connector? The Division of Health Care Finance & Policy (DHCFP) will issue regulations about the HIRD form, to be effective on July 1, 2007.

FAQs For Employers

What is a “fair and reasonable” premium contribution for the purposes of determining the Fair Share contribution?

An employer will make a “fair and reasonable” premium contribution if he/she passes either of the following tests:

Primary test: at least 25% of full-time (35 hours or more per week) employees are enrolled in the employer’s health insurance plan and the employer is making a financial contribution to it.

Secondary test: the employer offered to pay at least 33% of the premium cost of its health insurance plan offered to all full-time employees who are employed at least 90 days during the period of October 1, 2006 to September 30, 2007.

If an employer offers more than a 33 percent premium contribution to one group of full-time employees, but less than 33 percent to another group of full-time employees, does it pass the secondary test?

No. The employer must offer at least 33 percent to all full-time employees who were employed at least 90 days during the period from October 1, 2006 to September 30, 2007 in order to pass the secondary test.

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

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

If an employer does not make a “fair and reasonable” contribution to its employees’ health insurance premiums, what happens?

The employer must pay an assessment of up to \$295 per employee, per year. The Division of Unemployment Assistance (DUA) will issue rules about the determination of the contribution, as well as how to make required payments.

FAQs For Employers

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

The health care reform law created a requirement that all Massachusetts residents age 18 and over (with some exceptions) obtain and maintain health insurance that meets minimum coverage requirements beginning July 1, 2007. This is known as the individual mandate.

With some exceptions, individuals who cannot show proof of health insurance coverage that meets the standard of minimum creditable coverage by Dec. 31, 2007, will lose their personal income tax exemption when filing their 2007 income taxes.

Failure to meet the individual mandate 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 minimum creditable coverage.

Who will oversee enforcement of the individual mandate?

The Department of Revenue will enforce the individual mandate through the state personal income 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 an employer be required to do if an employee declines employer-sponsored health insurance?

Employers with more than 10 employees must collect and retain for three years an Employee Health Insurance Responsibility Disclosure Form (HIRD) for each employee who declines the employer-sponsored health plan. These forms will be developed by the Division of Health Care Finance and Policy (DHCFP) and, once developed, will be available on the Connector's website.

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