

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 Division of Unemployment Assistance from Employers of eleven or more full time equivalent employees in accordance with 430 CMR 15.00.

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

(3) Effective Date. 114.5 CMR 16.00 is effective on October 1, 2008.

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.

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.

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

Employee. An individual employed for at least one month during the twelve month period ending with the last day of the applicable reporting period by an Employer at a Massachusetts location subject to M.G.L. c. 149, § 188.

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.

Notwithstanding any arrangement between a client company and an Employee Leasing Company, the Client Company is the Employer for purposes of M.G.L.c. 149, s.188 and 114.5 CMR 16.00.

Employer. An employing unit as defined in section 1 of M.G.L. chapter 151A or chapter 152.

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

Full-Time Employee. A Full-Time Employee is an Employee that works the lower of (1) 35 or more hours per week or (2) the number of weekly payroll hours to be eligible for the Employer's Full-Time Health Plan Benefits.

Full-Time Health Plan Benefits. The level of employer contribution to the Group Health Plan that is equivalent to the contribution offered to Full-Time Employees.

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 to which the employer contributed.

Independent Contractor. An individual that provides services not deemed to be employment under M.G.L. c. 151A, § 2 or M.G.L. c. 152 in the case of services for employing units not subject to M.G.L. c.151A.

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

Multi-Employer Group Health Plan. A Multi-Employer Health Plan is a Group Health Plan to which more than one employer is required to contribute, and which is maintained pursuant to one or more collective bargaining agreements between employee organization(s) and the employers.

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.

### 16.03 Determination of Fair and Reasonable Premium Contribution.

- (1) General. An Employer that
  - (a) employs eleven or more full-time equivalent Employees in the Commonwealth, as determined under 114.5 CMR 16.03 (2); and
  - (b) is not a Contributing Employer as determined under 114.5 CMR 16.03 (3) shall pay a per Employee contribution in accordance with 430 CMR 15.00.

(2) Number of Employees. An Employer has eleven or more full time equivalent Employees if the sum of total payroll hours for all Employees for a calendar quarter, divided by 500, is greater than or equal to 11. In calculating total payroll hours:

(a) For each Employee with more than 500 payroll hours, the Employer shall include 500 payroll hours.

(b) Payroll hours include all hours for which an Employer paid wages to an Employee including, but not limited to, regular, vacation, sick, Federal Medical Leave of Absence, short term disability, long term disability, overtime and holiday payroll hours.

(c) An Employer that is determined to be a successor under M.G.L. c. 151A shall include the payroll hours of the predecessor's Employees during the applicable period.

(d) Payroll hours include hours for which an Employer paid wages to a Temporary Employee as defined in 430 CMR 4.04(8)(a) provided that the individual has worked for the Employer for at least 150 payroll hours during the twelve month period ending with the last day of the applicable reporting period.

(3) Liability Determination. A Contributing Employer that makes a Fair and Reasonable Premium Contribution is exempt from the Fair Share Contribution. A Contributing Employer is an Employer that meets both the Primary and the Secondary Tests. An Employer shall include all Full-Time Employees employed at Massachusetts locations, whether or not they are Massachusetts residents, to determine whether the Employer meets the criteria in the Primary and Secondary Tests. An Employer shall not include Seasonal Employees and Temporary Employees in the determination of compliance with the Primary and Secondary Test. For purposes of liability determination, a Temporary Employee is an employee 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.

(a) Primary Test. To meet the Primary Test, at least 25% of an Employer's Full-Time Employees must be enrolled in the Employer's Group Health Plan determined in accordance with the criteria below. A Full-Time Employee is an employee who worked "Full-Time" a majority of his/her time during the calendar quarter ending on the date indicated.

1. Calculation of Percentage. Each Employer shall calculate the average employee participation rate for each quarter.

a. The Employer shall identify and record the number of Full-Time Employees enrolled in the Group Health Plan on the last day of the calendar quarter.

b. The Employer shall identify and record the number of Full-Time Employees on the Employer's payroll on the last day of the calendar quarter.

c. The Employer shall calculate the employee participation rate for the quarter by dividing the number of Full-Time Employees enrolled in the Employer's health plan for the quarter by the number of Full-Time Employees for the quarter.

2. An Employer may include the following Employees in the calculation of Employees enrolled in the Group Health Plan:

a. Multi-Employer Health Plans. If the Employer makes premium contribution payments to a Multi-Employer Health Plan on behalf of an Employee, the Employer may include that Employee in the calculation of the Primary Test.

b. Federal Contracts. An Employer that makes an employee benefit contribution for a Full-Time Employee in accordance with federal requirements, the Employer may include that employee in the number of employees enrolled in the health plan.

c. Prevailing Wage. An Employer that makes an employee benefit contribution to a health and welfare plan for a Full-Time Employee in accordance with M.G.L. c. 149, § 27 may include that Employee in the number of Employees enrolled in the health plan.

d. 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.

(b) Secondary Test. An Employer must make a premium contribution of at least 33% to the cost of a Group Health Plan offered by the employer to its Full-Time Employees that were employed at least 90 days. Said Group Health Plan must be in effect and available to those Full-Time Employees for the entire quarter, or, where the Employer or its predecessor was not in operations during the entire quarter, for that portion of such quarter that the Employer or its predecessor was in operation

1. If an Employer that contributes to an employer sponsored Group Health Plan also contributes to a Multi-Employer Group Health Plan, or makes employee benefit contributions pursuant to federal contract requirements or M.G.L. c. 149, § 27, the Employer shall complete the Secondary Test information based on the Employer's contribution to the employer sponsored Group Health Plan.

2. If an Employer makes different percentage contributions for different employee groups, the employer shall report the lowest premium percentage contribution for purposes of the Secondary Test.

#### 16.04 Determination of Annual Fair Share Employer Contribution

(1) Determination of Contribution Amount. The Annual Fair Share Employer Contribution Rate 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 Employer Contribution Rate shall be determined annually by the Division in consultation with the Director of the Department of Workforce Development using the best available data. The Annual Fair Share Employer Contribution Rate shall be adjusted to reflect a quarterly rate based on 25 percent of the annual fair share contribution rate applicable to that quarterly period.

(2) Fair Share Employer Contribution Rate. The Division will determine the Annual Fair Share Employer Contribution Rate 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 Health Safety Net in the most recent fiscal year.
- (b) Determine the number of employee users that received services funded by the Health Safety Net;
- (c) Multiply the total number of employee Health Safety Net 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 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 Rate.

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 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 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.