

114.5 CMR: DIVISION OF HEALTH CARE FINANCE AND POLICY

114.5 CMR 16.00 DETERMINATION OF EMPLOYER FAIR SHARE CONTRIBUTION

- 16.01 General Provisions
- 16.02 Definitions
- 16.03 Determination of Fair and Reasonable Premium Contribution
- 16.04 Determination of Fair Share Contribution
- 16.05 Other Provisions

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 Department of Labor from Employers of eleven or more full-time equivalent employees.
- (2) Authority: 114.5 CMR 16.00 is adopted pursuant to M.G.L. c. 149, § 188 and M.G.L. c. 118G.
- (3) Effective Date. 114.5 CMR 16.00 is effective on October 1, 2006.

16.02 Definitions

Meaning of Terms: As used in 114.5 CMR 16.00, unless the context otherwise requires, terms have the following meanings:

Commissioner. The Commissioner of the Division of Health Care Finance and Policy.

Commonwealth Care Trust Fund. The trust fund established pursuant to M.G.L. c. 29, § 2000.

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.

Department. The Department of Labor established by M.G.L. c. 23.

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

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.

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.

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

Group Health Plan. A health plan for medical services, as defined in 26 U.S.C. § 5000(b), of an employer, including self-insured plans, or contributed to by an employer, including a self-employed person, or employee organization to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with an employer in a business relationship, or their families.

Independent Contractor. An individual that provides services not deemed to be employment under M.G.L. c. 151, § 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; and

(b) such service is performed either outside the usual course of the 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; and whose employment is limited to the beginning and ending dates of the employer's seasonal period.

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 90 days during the period from October 1 through September 30.

16.03 Determination of Fair and Reasonable Premium Contribution.

(1) General. An Employer that makes a Fair and Reasonable Premium Contribution is exempt from the Fair Share Contribution in accordance with the provisions of M.G.L. c. 149, § 188.

(a) Primary Test. An Employer will be determined to make a Fair and Reasonable Premium Contribution based on the percentage of Employees enrolled in the Employer's Group Health Plan. An Employer with at least 25% of Enrolled Employees, determined in accordance with the criteria below, is exempt from the Fair Share Contribution.

1. Calculation of Percentage. Each Employer shall calculate its percentage of Enrolled Employees for the period from October 1 to September 30 each year. The percentage of Enrolled Employees is calculated by dividing the Total Payroll Hours of Enrolled Full Time Employees as defined below by Total Payroll Hours of Full time Employees

a. Total Payroll Hours of Enrolled Employees. The Employer shall calculate the total payroll hours for which both wages were paid and the employee was enrolled in the health plan. The sum of the payroll hours for each Enrolled Employee is the total payroll hours of enrolled employees.

b. Total Payroll Hours of Full Time Employees. The Employer shall calculate the total payroll hours of all full time employees.

1. For purposes of determining the percentage of enrolled full time employees, a Full Time Employee is an Employee that works at least 35 hours per week.. If an Employee works both part-time and full-time during the year, only the payroll hours of the period in which the employee was full-time should be included.

2. A Seasonal Employee is not a Full Time Employee unless the Seasonal Employee works for the Employer more than sixteen weeks the during the year.

3. A Temporary Employee is not a Full Time Employee unless the Temporary Employee works for the Employer more than 90 days during the year.

4. An Independent Contractor is not a Full Time Employee.

(b) Secondary Test. If the percentage calculated in accordance with 114.5 CMR 16.03 (1) (a) is less than 25%, but the Employer offered to pay at least 33% of the premium cost toward an Individual Health Plan for Employees that were employed at least 90 days during the period from October 1, 2006 to September 30, 2007, said Employer shall be exempt from the Fair Share Contribution.

16.04 Determination of Annual Fair Share Employer Contribution

(1) Determination of Contribution Amount. The Annual Fair Share Employer Contribution 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 Contribution amount shall be determined annually by the Department of Labor and the Division using the best available data.

(2) Fair Share Employer Contribution. The Division will determine the Annual Fair Share Employer Contribution 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 Uncompensated Care Pool or its successor in the most recent fiscal year

(b) Determine the number of employee users that received services funded by the Uncompensated Care Pool or its successor;

(c) Multiply the total number of employee 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.

(d) Adjust by Medical Inflation as determined by the Division.

(3) Per Employee Cost of Uncompensated Physician Care

- (a) Determine the total amount of uncompensated health care services provided by physicians to non-elderly, uninsured residents of the Commonwealth. Calculate by survey or other data source.
- (b) Divide by number of employees of Contributing Employers.

(4) The Sum of the Fair Share Employer Contribution and the Per Employee Cost of Uncompensated Physician Care is the Annual Fair Share Contribution.

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 and collecting 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, and 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 information 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.