

# **MA EMPLOYER OBLIGATION GUIDELINES PROVIDED BY:**

*Cristine Smith*

SMALL GROUP SPECIALIST

EMPLOYEE BENEFITS • FINANCIAL PLANNING • PROPERTY CASUALTY  
508/770-0714 ■ 800/367-2482 Ext. 201 ■ FAX 866/770-0698



*A division of The HealthConsultants Group and HealthSolutions Insurance Agency, LLC* [www.myhcg.com](http://www.myhcg.com)

## **Employers with fewer than 11 full-time-equivalent employees** ✦

- Are not required to offer health benefits or a Section 125 Plan.
- May still want to set up Section 125 Plan for their employees because it will reduce taxes for both the employer and the employees.

## **Employers with 11 or more full-time-equivalent employees** ✦

- Must offer a Section 125 Plan that meets Health Connector regulations.
- Could be required to pay the Free Rider Surcharge if they don't offer a Section 125 Plan and their employees (or their employees' dependents) get state-funded medical care.
- Must make a "fair and reasonable" contribution to their employees' health insurance or pay a Fair Share Contribution of up to \$295 per employee.
- Must submit an annual "Employer Fair Share Report" to the Division of Unemployment Assistance on or before November 15.
- Must collect an Employee HIRD Form when employees decline employer-sponsored health insurance or a Section 125 Plan.

## **Employers with more than 50 full-time employees**

- Are subject to all of the requirements listed above

### **✦ Calculating your full-time equivalent employees:**

Add up all of the payroll hours paid to your employees in the most recent quarter and divide them by 500 to come up with your FTE number. Include the hours for only those employees who were employed for at least one calendar month during the calendar year. Include paid leave, sick time, vacation time, jury duty time, etc. You could have 11 FTEs without having 11 full-time employees.

*Cristine Smith*

SMALL GROUP SPECIALIST

EMPLOYEE BENEFITS • FINANCIAL PLANNING • PROPERTY CASUALTY  
508/770-0714 ■ 800/367-2482 Ext. 201 ■ FAX 866/770-0698



*A division of The HealthConsultants Group and HealthSolutions Insurance Agency, LLC* [www.myhcg.com](http://www.myhcg.com)

## **SECTION 125 PLANS – RULES AND REGULATIONS**

As of July 1, 2007, employers with 11 or more full-time-equivalent employees must adopt and maintain a Section 125 Plan that meets IRS rules and Health Connector regulations ([956 CMR 4.00](#)). This is true for all employers of 11 or more employees – even if they already offer health insurance to their employees.

Section 125 Plans allow employees to pay for health coverage on a pre-tax basis. Premiums paid with pre-tax dollars are not subject to state and federal income taxes or federal FICA withholding taxes. This gives both the employer and employees real tax savings. Both will have lower payroll-related taxes.

Employers with 11 or more full-time-equivalent employees that do not offer a Section 125 Plan to qualified employees may be subject to the “Free Rider Surcharge.” The Free Rider Surcharge may be assessed against employers if employees who are not offered a Section 125 Plan receive state-funded health services.

State-funded services are emergency medical services that are paid for by the state out of the “Free Care Pool,” which reimburses hospitals and health centers for the care they provide to uninsured patients. Employers will be protected from the Free Rider Surcharge if they adopt and maintain Section 125 Plans that cover all employees.

We can have a Section 125 Plan created for your company for \$175, with renewal fee of \$75.

*Cristine Smith*

SMALL GROUP SPECIALIST

EMPLOYEE BENEFITS • FINANCIAL PLANNING • PROPERTY CASUALTY  
508/770-0714 ■ 800/367-2482 Ext. 201 ■ FAX 866/770-0698

**HCG**Services,LLC  
Insurance solutions that work.

[www.myhcg.com](http://www.myhcg.com)

*A division of The HealthConsultants Group and HealthSolutions Insurance Agency, LLC [www.hcg.com](http://www.hcg.com)*

## **FREE RIDER SURCHARGE (THE SECTION 125 PLAN RULE)**

The Free Rider Surcharge is assessed on certain employers that don't offer pre-tax savings on health insurance premiums through a Section 125 Plan.

People who aren't offered health insurance through work often go without it. The state maintains a "Free Care" or "Safety Net Care" fund to pay for care when uninsured people need care. That is where the Free Rider Surcharge comes in.

The amount of the Free Rider Surcharge will vary from employer to employer. It will be based on the number of employees, the amount of "free" or "safety net" care used, total state-funded costs, and the percentage of employees enrolled in the employer's health plan.

Health care can be expensive. Offer a Section 125 Plan. If you don't, you may face large, unplanned charges when your employees or their dependents use a large amount of state free care. We have the resources to create your Section 125 Plan

### **The Free Rider Surcharge *applies* to employers who:**

1. Have *11 or more* full-time-equivalent employees.
2. Do not offer a qualified Section 125 Plan to their employees.
3. Have employees who use a total of \$50,000 of state-funded "Free Care" for themselves or their dependents in a 12-month period.

### **How do you know if you have 11 or more full-time-equivalent employees for this rule?**

Add up all of the payroll hours paid to your employees in the most recent quarter and divide them by 500 to come up with your FTE number. Include the hours for only those employees who were employed for at least one calendar month during the calendar year. Include paid leave, sick time, vacation time, jury duty time, etc. You could have 11 FTEs without having 11 full-time employees. The Free Rider Surcharge does not apply to employers when: \*Certain collective bargaining agreements are in place \*Employees participate in the Massachusetts Insurance Partnership.

*Cristine Smith*

SMALL GROUP SPECIALIST

EMPLOYEE BENEFITS • FINANCIAL PLANNING • PROPERTY CASUALTY  
508/770-0714 ■ 800/367-2482 Ext. 201 ■ FAX 866/770-0698



*A division of The HealthConsultants Group and HealthSolutions Insurance Agency, LLC*

## **FAIR SHARE CONTRIBUTION**

Employers of 11 or more full-time-equivalent employees will pay an annual Fair Share Contribution of up to \$295 per employee if they do not make a “fair and reasonable” contribution to an employee health plan. Proceeds from the Fair Share Contribution go to health coverage for the uninsured.

**The “fair and reasonable” contribution tests for employers are:**

- **“Percentage of Full-Time Employees Enrolled”:** At least 25% of your full-time employees are enrolled in your health insurance plan, and you are making a financial contribution to that plan.
- **“Premium Contribution Standard”:** You provide at least 33% of the premium cost of the individual health insurance plan offered to your full-time employees.

Employers of 50 or fewer FTEs only need to meet one of these tests to avoid the Fair Share Contribution.

Employers of 50 or more FTEs must meet both tests.

Under the Health Care Reform law, the Fair Share Contribution rules are determined by the Division of Health Care Finance and Policy. .

### **Notes about counting employees**

1. Fair Share reporting is now quarterly, with reports due to the Division of Unemployment Assistance on or before the 15th of February, May, August and November.

Add up all of the payroll hours paid to your employees in a quarter and divide them by 500 to come up with your FTE number. Include the hours of only those employees who were employed for at least one calendar month during the calendar year. Include paid leave, sick time, vacation time, jury duty time, etc. You could have 11 FTEs without having 11 full-time employees.

2. A full-time employee is defined as someone who: Works 35 hours or more per week at a Massachusetts location, or works for the number of hours required per week to be eligible for your full-timers’ health benefits. If you have two different numbers, use the lower one.

It does not matter where the employee resides. A full-time employee is not an independent contractor, or a seasonal or temporary employee, as defined by the Division of Unemployment Assistance.

*Cristine Smith*

SMALL GROUP SPECIALIST

EMPLOYEE BENEFITS • FINANCIAL PLANNING • PROPERTY CASUALTY  
508/770-0714 ■ 800/367-2482 Ext. 201 ■ FAX 866/770-0698



*A division of The HealthConsultants Group and HealthSolutions Insurance Agency, LLC* [www.myhcg.com](http://www.myhcg.com)

## **HEALTH INSURANCE RESPONSIBILITY DISCLOSURE (HIRD)**

These forms confirm an employer's compliance with key parts of the Health Care Reform Law. They are administered by the Massachusetts Division of Health Care Finance & Policy (DHCFP).

### **The Employer Form**

- All Massachusetts employers with 11 or more full-time equivalent employees must complete the Employer HIRD Form.
- This form tells the state whether or not you offer a Section 125 Plan.
- Employer HIRD reporting is combined with "Fair Share Contribution" reporting for employers.
- The unified reporting is managed by the Division of Unemployment Assistance.
- Employers complete the unified reporting **on or before November 15** online

### **The Employee Form**

- Required as of July 1, 2007.
- Employers of 11 or more full-time equivalent employees must provide an Employee HIRD to their employees.
- Employees complete the form when they decline an employer-sponsored health plan or a Section 125 Cafeteria Plan.
- Employees report if they have other health coverage.
- Employers collect the forms and save them for 3 years.
- The Employee HIRD is now available online.