

Find Insurance: *Employers*

Frequently Asked Questions

The information on this page may change. Please check back often.

What are the main employer requirements under Health Care Reform?

There are 5. One applies to employers of all sizes. The rest apply to employers of 11 or more full-time-equivalent employees. Please download our [Employer Handbook](#) for more details.

For employers of 11 or more full-time-equivalent employees:

Fair Share Assessment – Employers with 11 or more full-time-equivalent employees have a choice: make a “fair and reasonable” premium contribution toward a health insurance plan for their employees; or make a payment to the state up to \$295 per employee, per year.

Section 125 Plan – Employers with 11 or more full-time-equivalent employees must adopt and maintain a Section 125 Plan that meets Health Connector regulations. If they do not, they may be charged for part of the “free care” used by their employees or their employees’ dependents at hospitals and health centers. This is called the “Free Rider Surcharge.”

Health Insurance Responsibility Disclosure (HIRD) for Employers – Employers with *11 or more* full-time-equivalent employees must complete the Employer Health Insurance Responsibility Disclosure (HIRD) Form. It reports whether or not they offer a Section 125 Plan and health benefits. The Employer HIRD form is due to the state by **November 15, 2007**. It is still under development by the [Division of Unemployment Assistance](#).

Health Insurance Responsibility Disclosure (HIRD) for Employees - There is also an Employee HIRD. Employers of *11 or more* full-time-equivalent employees collect this form when an employee declines to use a Section 125 Plan or enroll in employer-sponsored health insurance. The Employee HIRD Form is [now available](#) from the Mass. Division of Health Care Finance and Policy.

For employers of any size:

Non-discrimination – Insurance plans are not permitted to contract with employers who discriminate against lower-wage employees by contributing less toward their health insurance benefits. All full time employees must have the option of enrolling in any of the health plans offered by the employer. *NOTE: This rule does not apply to self-insured employers.*

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How do I know if I have 11 or more full-time-equivalent employees?

Right now there are 2 calculations. One is for the “Fair Share Assessment” rules. The other is for the Section 125 Plan rules. Next year, the same 12-month period will be used for both.

Calculating the number of employees for the Fair Share Contribution and the HIRD Form:

- Take the payroll year from **October 1, 2006 to September 30, 2007**. Include all paid hours such as paid leave, sick time, vacation time, jury duty time, etc.
- Only count the payroll hours of employees who worked at least a month.
- Count a maximum of 2000 hours for any one employee.

- Divide the total by 2000 to get your number of full-time-equivalent employees for the Fair Share Contribution. If you get 11 or more, this rule applies to you.

Calculating the number of employees for the Section 125 Plan rules:

- Same as above, *BUT* use the payroll year from **April 1, 2006 to March 31, 2007**.
- *NOTE:* After this year, the 12-month period will change to align with the period used for the Fair Share Contribution and the HIRD Form.

If you have 11 or more full-time-equivalent employees under either of these rules, you must file an Employer HIRD form and maintain Employer HIRD forms.

The Employer HIRD Form is **now available**.

The Employer HIRD information is due to the state by November 15, 2007. The Mass. Division of Unemployment Assistance will collect it as part of an employer Fair Share Contribution worksheet. It is still in development.

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What is a “fair and reasonable” contribution to health insurance benefits?

There are 2 tests under the “fair and reasonable” contribution rules under the “Fair Share Assessment.” The tests are based on a 12-month period from October 1, 2006 to September 30, 2007:

- **Primary Test:** At least 25% of full-time employees are enrolled in the employer’s health insurance plan and the employer is making a financial contribution to that plan. [NOTE: full-time = at least 35 hours per week. Temporary and seasonal employees are not included.]
- **Secondary Test:** The employer offers to pay at least 33% of the premium cost of an individual health insurance plan that is offered to all full-time employees. The rule applies for employees who are employed for at least 90 days during the 12-month period. [NOTE: for the Secondary Test, full-time employees are defined by an employer’s contract with a health insurer.]

An employer of 11 or more full-time-equivalent employees can pass at least one of these tests or pay up to \$295 per employee, including temporary and seasonal employees.

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How do I establish a Section 125 Plan?

The Health Connector has a special area on our website to help employers with Section 125 Plans. **Please take a look.** We strongly encourage employers to consult their broker, benefits lawyer, payroll vendor and/or accountant.

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Can my employees enroll in Commonwealth Care?

Commonwealth Care is not a replacement for employer-sponsored insurance. It is a subsidized health insurance program available to uninsured Massachusetts adults and families who meet certain income and eligibility guidelines.

Employees are not eligible for Commonwealth Care if they have access to your health plan and you offer to contribute at least 33% toward the cost of the individual premium and at least 20% toward the premium for a family plan.

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Can my employees enroll in Commonwealth Choice?

Yes, they may – in most cases.

Commonwealth Choice is not subsidized. It offers commercial insurance plans from 6 major carriers. Through Commonwealth Choice, the public gets new choices and the power to compare.

For all employers:

Your employees may purchase Commonwealth Choice plan-

- If they are in a waiting period for your health insurance benefits. Or,
- if you do not contribute at least 33% toward the cost of the premium for an individual health insurance policy for your employees. Or,
- if you do not offer employer-subsidized health insurance that meets the minimum standards established by the Health Connector (“**Minimum Creditable Coverage.**”)
- If they do not get health insurance because of sincerely-held religious beliefs, they can file a statement with their state tax return.

You may establish a Section 125 Plan so that employees who are ineligible for your employer-subsidized health insurance benefits can buy health insurance using pre-tax dollars. Any employee who is ineligible for your subsidized health insurance benefits may enroll on their own in a Commonwealth Choice health plan using after-tax dollars.

For employers of 50 or fewer full-time employees:

Even if you offer subsidized health insurance benefits, your employees may decline them and enroll on their own in a Commonwealth Choice health plan using after-tax dollars

In the future, you will have the option of offering health plans to your employees through the Health Connector. These plans from 6 major insurance companies all carry the Health Connector’s Seal of Approval. You will be able to choose a “benchmark” health plan from the Health Connector’s many offerings. You will then base your employer contribution toward health benefits on the premium of that “benchmark” plan.

Your employees may then shop for any of the plans that are available within the benefit level of your benchmark plan. The Health Connector provides you with uniform billing and handles payments to your employees’ health insurance plans.

For employers of 51 or more full-time employees:

Employees are not allowed to purchase Commonwealth Choice health plans IF–

- they work for employers with 51 or more full-time employees, AND
- are eligible for employer-subsidized health insurance benefits.

The Health Care Reform Law does not permit employers of 51 or more full-time employees to offer employer-subsidized health plans through the Health Connector.

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What happens to employees who don't have health insurance?

As of July 1, 2007:

- With few exceptions, Massachusetts residents age 18 and older must carry health insurance. This is known as the "Individual Mandate."
- That insurance must provide benefits that meet the "Minimum Creditable Coverage" standards set by the Health Connector. Any plan that is licensed for sale in Massachusetts will meet the standards in 2007.
- People who can't afford health insurance won't be penalized. State rules determine whether a person is considered able to afford health insurance. It depends on income and family size.
- There's an "Affordability Tool" in the "For Individuals and Families" area of this website to help people figure out if they fall within the state's official affordability standards. The 2007 Massachusetts income tax form will provide additional guidance.
- Adults who face special circumstances or hardships can also apply to the Health Connector for a waiver. The waiver process is currently in development.

As of December 31, 2007:

- Adults who do not obtain insurance by December 31, 2007 and who do not qualify for a waiver or exemption will lose their 2007 state personal income tax exemption. This exemption is worth approximately \$219.
- The penalty can be appealed. The 2007 Massachusetts tax form will include a method for filing appeals. The penalty will not be collected while an appeal is pending.
- People who believe that they cannot afford insurance can also apply to the Health Connector for an exemption. Information on this exemption will be available shortly.
- People who do not get health insurance because of sincerely-held religious beliefs can file a statement with their state tax return and get an exemption.

By January 1, 2008:

- In 2008, the penalties on adults who do not carry health insurance will increase. Uninsured adults will be fined for each month that they do not have health insurance. That fine will equal 1/2 of the monthly premium cost of the most affordable health plan available to them, as certified by the Health Connector.

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Will employers be penalized if their employees refuse health insurance?

No. If employees refuse health insurance, the employer is not responsible.

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How is the Individual Mandate enforced?

By the Massachusetts Department of Revenue, through the process of collecting state personal income taxes.

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What impact will the Individual Mandate have on my business?

There is no direct impact. The Individual Mandate to carry health insurance applies to Massachusetts adults, as tax filers. An employer will not be penalized if an employee decides to be uninsured.

Employees who declined your health benefits may now want enroll. If the annual open enrollment period for your health plan has ended, check with your health insurance plan. Many insurers are now holding special open enrollment periods to give employees a new opportunity to enroll in employer-subsidized health insurance for the rest of the plan year.

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What impact will the Minimum Creditable Coverage standards have on my business?

There is no direct impact. Minimum Creditable Coverage is the standard that a Massachusetts adult's health insurance must meet to conform with Health Care Reform. Employers are not required to offer benefits that meet Minimum Creditable Coverage.

But employees who take your health insurance benefit will want to know if it meets the Minimum Creditable Coverage standards. Under rules adopted by the Health Connector, any plan that is licensed for sale in Massachusetts qualifies as Minimum Creditable Coverage – *until* January 1, 2009.

Why January 1, 2009? To allow employers time to decide how or whether to reflect the Minimum Creditable Coverage standards in their health plan offerings. Employers with plan years that begin as soon as February 1, 2008 may want to consider the **Minimum Creditable Coverage** standards that begin on January 1, 2009.

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What do employers do when an employee declines employer-sponsored health insurance?

Employers with 11 or more full-time-equivalent employees collect the Employee Health Insurance Responsibility Disclosure (HIRD) Form for each employee who declines to participate in the employer-sponsored health plan and/or Section 125 Plan. Employers retain this form for 3 years. The Employee HIRD Form is **now available** from the Mass. Division of Health Care Finance and Policy (DHCFP).

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Focus on Section 125 Plans

What is a Section 125 Plan?

It is a benefit plan that employers may offer under federal tax law that allows employees to pay for health care coverage (and other qualified benefits) on a pre-tax basis. Participating employees'

premium contributions are not subject to state, federal or federal FICA withholding taxes. The resulting tax savings could be as much as 40% of the premium cost. Employers also save on FICA taxes.

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Am I required to offer a Section 125 Plan?

Under the Massachusetts Health Care Reform Law, employers with 11 or more full-time equivalent employees must offer one. Full-time-equivalent is determined by:

- **Step 1** - Calculating the total payroll hours for all of your employees during the 12 months beginning on April 1, 2006.
- **Step 2** - Dividing that total by 2,000.

For more information, see the Mass Health Care Reform [Section 125 Plan Regulations](#).

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What types of employers may establish a Section 125 Plan?

Section 125 Plans are available to:

- C Corporations
- Partnerships
- S Corporations
- Limited Liability Corporations
- Sole Proprietorships
- Professional Corporations
- Non Profit Organizations

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What is a Premium-Only Plan?

Under federal law, a range of benefits may be offered through a Section 125 Plan. A premium-only plan is a very basic cafeteria plan option that employers may offer. It allows eligible employees to contribute to the cost of health care coverage on a pre-tax basis. A premium-only plan provides no other benefits to employees, and is the minimum plan allowed under Health Care Reform regulations.

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How do employers establish Section 125 Plans?

Employers should consult their broker, benefits lawyer, payroll vendor and/or accountant and are encouraged to use the sample documents, forms and tools offered by the Health Connector.

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When must a Section 125 Plan Document be adopted?

Employers must adopt the written Plan Document on or before the effective date of the plan.

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May employers exclude any classes of employees from their Section 125 Plan and still comply with the Mass Health Care Reform Law?

Yes. Employers may exclude one or more of the following classes of employees:

- Employees under age 18
- Temporary employees
- Part-time employees who average fewer than 64 hours per month
- Wait staff, service employees or service bartenders (as defined in M.G.L. c. 149, Section 152A) who earn, on average, less than \$400 in monthly payroll wages;
- Students who are employed as interns or as cooperative education student workers
- Seasonal Employees under a U.S. J-1 student visa or a U.S. H2B visa, and who are enrolled in travel health insurance

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Under a Section 125 Plan, how do employees elect to pay for health care coverage on a pre-tax basis?

An employee must enter into a salary reduction agreement with their employer, confirming that they wish to pay for health care coverage on a pre-tax basis.

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When do employees enroll in the Section 125 Plan?

Federal regulations say that employee elections must be made:

- during an annual open enrollment period
- within a specified period of time following date of hire; or
- the date an employee first becomes eligible under the plan

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Is an employee required to participate in his/her employer's Section 125 Plan?

No. However, if an employee chooses not to participate any premium contributions they make toward health care coverage will be on an after-tax basis.

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Are employers required to contribute toward the coverage offered through its Section 125 Plan?

No. Contributions may be made solely by the employee. But employers may want to see if it makes sense to offer a contribution, based on other requirements of the Health Reform Law.

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What happens if an eligible employee works for two or more employers?

Employees may only participate in one Section 125 Plan. Employees working for two or more employers must select one employer's plan.

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Are employers that currently offer access to health care coverage through a Section 125 Plan required to establish a separate Plan for employees who are not currently eligible?

These employers are not required to establish a second plan, but may now need to offer a plan to new classes of employees. A separate plan for new classes of employees may make administrative or legal sense for some employers. Employers should consult with their tax or legal advisor.

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Must employers adopt their own Section 125 Plan if they participate in the Plan of a parent, subsidiary or affiliated company?

No. The Mass Law allows Plans to cover employees of two or more employers if those employers are affiliated or related. The Plan Document should clearly identify all participating employers.

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Must employers file Section 125 Plan Documents with the IRS?

No.

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Which agency is responsible for the Section 125 Plan requirement under Mass Health Care Reform?

The Commonwealth Health Insurance Connector Authority (the Health Connector). Section 125 Plan rules and regulations established by the Health Connector are separate from, and in addition to, federal Section 125 Plan rules and regulations.

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Must employers file Section 125 Plan Documents with the Commonwealth?

Yes. The Mass Law requires employers with employees working at Massachusetts locations to file their plan document with the Health Connector. Multi-state and/or international employers with Massachusetts locations should file only those plan documents covering participants working at Massachusetts locations.

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Do the Mass Law regulations require Section 125 Plans to follow a particular plan year?

No.

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Under the Mass Law, are employers that pay 100% of the monthly cost for health care coverage for all employees required to offer a Section 125 Plan?

No.

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How are premiums collected from participating employees who purchase health care coverage through the Health Connector?

Employers will withhold contributions from employee paychecks and remit contributions monthly to the Health Connector. The Health Connector tracks those employees through a census of participating employees submitted by the employer.

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Which employees should be listed on the census?

Only those employees who are eligible to purchase coverage through the Connector should be included.

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What if an employee's earnings can't cover a premium payment?

The employer is not responsible for any shortfall amount. The employee must make immediate arrangements to pay any shortfall on an after-tax basis in accordance with procedures specified by the employer. For example, some employers may choose to take the shortfall from the employee and submit it to the Health Connector. Others may direct the employee to send a personal check directly to the Health Connector to cover the shortfall.