CLIENT ALERT: New Regulations Impact Employer Fair Share Contribution Under Massachusetts Health Care Law

The Massachusetts Health Care Reform Act provides that employers with 11 or more full-time equivalent employees employed at locations in Massachusetts who do not make a "fair and reasonable" premium contribution to the health insurance costs of its employees are subject to a fee called the "Fair Share Contribution" in the amount of up to $295.00 annually per full-time equivalent employee. Last month, the Massachusetts Division of Health Care Finance and Policy ("DHCFP") announced that it adopted revised regulations regarding the Fair Share Contribution. The revised regulations will make it more difficult for larger employers to be found to have made a fair and reasonable contribution, which will therefore result in more employers having to pay the Fair Share Contribution. Indeed, the DHCFP estimates that the new regulations will generate an additional $22.5 million in revenue.

The original regulations provided that an employer was deemed to have made a fair and reasonable contribution if: (1) at least 25% of its full-time employees were enrolled in its group health plan or (2) it contributed at least 33% toward the premium cost for a group health plan offered to all of its full-time employees that had worked at least 90 days.

The new revised regulations, which are effective on January 1, 2009, provide that an employer with 50 or fewer full-time equivalent employees will still be deemed to have made a fair and reasonable contribution, and therefore be exempt from the Fair Share Contribution, if it passes either test. Employers with more than 50 full-time equivalent employees, however, will be required to meet *both* tests in order for their contribution to be deemed fair and reasonable such that they are exempt from the Fair Share Contribution. If, however, an employer with more than 50 full-time equivalent employees has more than 75% of its full time employees enrolled in its group health care plan, it will be deemed a Contributing Employer without regard to premium contribution.

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