



# **Massachusetts Requires Cafeteria Plan For Certain Employees By July 1, 2007**

Insights

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One of the provisions of the Massachusetts Health Care Reform Law taking effect on July 1, 2007 is that an employer with 11 or more full-time equivalent employees employed in the State, must adopt a written Section 125 cafeteria plan in order to be exempt from the Free Rider Surcharge.

Employers must adopt a plan that allows certain employees to purchase medical insurance on a pre-tax basis, either under the employer-sponsored group health plan or from the Connector (aka "Commonwealth Choice").

Only the following MA employees may be excluded from participation in the employer's Section 125 cafeteria plan:

- Employees under age 18;
- Temporary employees (who work no more than 12 weeks in any 12 month period);
- Part-time employees who average fewer than 64 hours per month;
- Wait staff, service employees or bartenders who earn less than \$400 per month in 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.

In addition, the Section 125 cafeteria plan may not have a waiting period longer than 2 months. This means that employers whose plans have eligibility requirements that exclude certain employees (for example, a medical plan with a service requirement of 30 hours per week for eligibility) or that have waiting periods longer than 2 months, must offer a non-excludable employee the ability to pay for his or her Commonwealth Choice insurance via a Section 125 cafeteria plan.

Affected employers must file their Section 125 cafeteria plan documents with the State. In addition, employers must distribute, collect and retain (for 3 years) Massachusetts employee waivers of participation in its Section 125 cafeteria plan.

If you have employees in Massachusetts, you must have a Section 125 plan in place and you need to discern whether your employer-sponsored group medical plan eligibility rules require you to offer

participation in your Section 125 plan to non-excludable MA employees. If you would like help determining whether this law affects you, or in complying with it, let us know.