



ML Strategies Alert

2017-2018 Legislative Session: Employer Updates

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As the 2017-2018 legislative session continues to unfold on Beacon Hill, Massachusetts lawmakers are considering several policy proposals that have significant implications for employers across the Commonwealth. The FY2018 budgets proposed by the [House Ways and Means Committee](#) on April 10th and [Governor Charlie Baker](#) on January 25th both institute a fair share assessment on Massachusetts employers that aims to curb rising MassHealth costs. The legislature is debating several tax measures as part of the budget negotiations and considering legislation providing accommodations for pregnant workers, workplace violence prevention programs for health care employees, and protections against wage theft. It is also expected that lawmakers will debate legislation this fall limiting non-compete agreements in Massachusetts.

Fair Share Assessment Update

Attempting to address rising MassHealth spending, Governor Baker proposed in January instituting a “fair share assessment” that levies a \$2,000 per employee assessment on Massachusetts employers who do not contribute \$4,950 per full-time employee (FTE) annually or have an 80 percent uptake rate for all FTEs. The House proposed its own version of the assessment in the recently released House Ways and Means budget, but its version does not establish the same thresholds as the Baker Administration’s original proposal. Instead, the Ways and Means budget creates a six-month review process for the Administration, through the Department of Revenue (DOR), to develop an assessment.

Under the House plan, the Administration is instructed when developing the new assessment to consider factors such as employer size, employer contributions towards the minimum qualified offer, employer premium contributions and comparable uptake rates, employee access to other qualifying insurance (spouse, parents, etc.), employee utilization of MassHealth, types of employees (seasonal), and compliance with federal and state law. The House also instructs DOR, the Executive Office of Health and Human Services (EOHHS), and the Connector to coordinate and apply to the federal government for a waiver of the Affordable Care Act’s employer mandate and compelled enrollment (gate provision) in order to implement the assessment. The House assumes that the assessment will generate \$180 million in revenue, as opposed to \$300 million proposed by the Governor.

Providing additional context to the fair share assessment debate, the Center for Health Information and Analysis (CHIA) released [a new state report](#) in March finding that more Massachusetts employers offer health insurance but fewer employees enroll in plans offered by their companies. In 2016, 65 percent of Massachusetts employers offered health insurance compared to the national rate of 56 percent. Among employers with 100 or more workers, the offer rate was 100 percent compared to employers with between three and nine employees, where the offer rate was 48 percent. The take-up rate, which measures the share of employees eligible for their employer’s plan who chose to enroll in it, was 75 percent among Massachusetts employees compared to the national take-up rate

of 79 percent in 2016.

Tax Developments

The \$144.4 million supplemental FY2017 budget signed by Governor Baker on March 28 includes an outside section changing the tax filing deadlines for certain corporation types in order to mirror new federal deadlines. The new federal deadline requires filings for partnerships and S corporations to be submitted March 15, and individual and C corporation returns to be submitted on April 15. Currently, Massachusetts requires C corporations to file with S corporations on March 15 and is one of two states that does not conform to the new federal due dates. This change allows investors to have information from partnership filings before having to file individual or C corporation returns, which will be more accurate and more likely to be completed on time. Having fewer returns filed using estimated numbers will provide a clearer picture of revenue collection for the state. The change, which aims to eliminate uncertainty for taxpayers and tax collectors, will take effect on January 1, 2018.

Additionally, the House Ways and Means budget includes several tax provisions that will impact employers' tax burden in Massachusetts. These measures are as follows:

- To ensure that sales tax is collected and remitted daily, the House budget requires the Department of Revenue (DOR) to issue proposed regulations in order to implement methods to effectuate daily sales tax remittance by payment processors. Currently, the DOR receives one payment per month per retailer. The new tax modification would result in DOR receiving a daily payment from multiple payment processors for each retailer.
- Out-of-state Internet vendors who have significant sales in the Commonwealth, totaling over \$500,000 per year and more than 100 transactions, are required to collect and remit sales tax as instructed by DOR's Directive 17-1. Under existing federal law, companies cannot be forced to collect sales taxes unless they have a physical presence in a state. However, the new policy would interpret the use of software applications or invisible advertising-tracking code in web browsers as a physical presence, triggering tax collections.
- Eligible businesses that hire veterans for each of the first two years that a veteran is employed receive a \$2,000 tax credit.
- DOR is given the discretion to require additional reporting from credit card and third-party processor transactions on 1099-K forms, which is for reportable payment for such transactions.

Legislation

The Joint Committee on Labor and Workforce Development is currently weighing three pieces of legislation of particular interest to Massachusetts employers: the Pregnant Workers Fairness Act, An Act Requiring Health Care Employers to Develop and Implement Programs to Prevent Workplace Violence, and An Act to Prevent Wage Theft and Promote Employer Accountability.

Pregnant Workers

On Wednesday, April 5, the Joint Committee on Labor and Workforce Development held a hearing on the Pregnant Workers Fairness Act ([H. 1038/S.1023](#)). The bill offers pregnant women reasonable accommodations, including "more frequent or longer paid or unpaid breaks, time off to recover from childbirth with or without pay, acquisition or modification of equipment, seating, temporary transfer to a less strenuous or hazardous position, job restructuring, light duty, break time and private non-bathroom space for expressing breast milk, assistance with manual labor, or modified work schedules" as long as the accommodation "would not impose undue hardship on the employer."

Bill supporters testifying at the hearing commented that providing accommodations for pregnant workers is both a workplace equality and economic issue, as increased investment in the female workforce promotes economic growth. They argued that the accommodations listed in the bill are standard, inexpensive, and easily implemented. According to bill proponents, 18 states and the District of Columbia currently require employers to provide

accommodations for pregnant workers.

Last session, an earlier version of the bill was favorably received by the Committee, but opposed by business groups. The bill introduced this session represents a compromise among the Associated Industries of Massachusetts, the advocacy group MotherWoman, and other key stakeholders. Nearly 180 lawmakers, including a majority of the Senate, have signed onto the bill as co-sponsors.

Workplace Violence

The Labor and Workforce Development Committee hearing also included testimony on an act requiring health care employers to develop and implement programs to prevent workplace violence ([H.1007](#)). The bill, introduced by Representative Denise Garlick and cosponsored by over 80 representatives, seeks to implement specific workplace violence prevention plans for health care employers with more than five employees. The bill would require employers to offer seven days of paid leave for health care workers who have been assaulted on the job so that they may attend to any criminal justice or legal proceedings in response to the assaults. The bill, which is being promoted by the Massachusetts Nurses Association, received broad support at the hearing, with those testifying arguing that the legislation is necessary to protect health care workers from violence.

Wage Theft

Workers' rights advocates and labor leaders are pushing for the passage of An Act to prevent wage theft and promote employer accountability ([S.999/H.1033](#)). The bill, introduced by Senator Sal DiDomenico in the Senate and Representative Aaron Michlewitz in the House, seeks to prevent wage law violations by allowing the issuance of stop-work orders until wage violations are corrected. The legislation also gives the Attorney General the power to bring wage theft cases to court for civil damages. Proponents of the legislation argue that wage theft, or a businesses' underpayment, non-payment, or denial of benefits to a worker, hurts immigrants and presents a barrier to economic advancement for families. Last session, similar legislation passed the Senate by a 38-2 vote but failed to emerge out of the House Ways and Means Committee, with business groups opposing the bill. Business groups argued that the legislation went further than similar measures in other states and its goals could be accomplished through existing laws. 104 Representatives have co-sponsored the legislation this year, an increase from 76 last session.

Conclusion

The House budget will be debated this week, and members will consider the aforementioned proposals and over 1,200 proposed amendments. The Senate will finalize its version of the budget by May and the final budget will be signed into law by the beginning of the next fiscal year on July 1, 2017. ML Strategies will continue to monitor and report on legislation and budget provisions relevant to employers periodically throughout the session.

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