

Employee Benefits and Leave Mandates for Massachusetts Employers

Compliance Consulting

Updated September 2023

Not legal or financial advice

Nothing in this document should be construed as legal advice. Lockton may not be considered your legal counsel, and communication with Lockton's Compliance Consulting group is not privileged under the attorney-client privilege. Any and all financial projections are not intended or warranted, nor should they be relied upon, for determination of financial statement liabilities, such as claims reserve development and accruals, or compliance with Sarbanes-Oxley unless expressly certified by a member of Lockton's Actuarial Solutions practice



Summary of employers' health insurance-related obligations

The Commonwealth of Massachusetts imposes a number of obligations on employers related to its 2008 health reform law, as well as employer requirements related to uncompensated care. They include:

- **Individual mandate.** Massachusetts residents are required to have "creditable coverage," or will have to pay a penalty to the commonwealth. Many employer plans are likely creditable for that purpose. However, employers should review these standards with their broker/consultant to determine if their coverage meets the creditability standard.
- **HIRD disclosure.** Employers that reported six or more employees (includes all employment categories) in any Massachusetts unemployment wage report during the past 12 months must file the Health Insurance Reporting Disclosure (HIRD) form with the Massachusetts tax authorities. The disclosure is made during the filing period of Nov. 15 through Dec. 15 annually.
- **Issuance of forms 1099-HC.** By each Jan. 31, the employer must arrange with its health insurer or third-party administrator (TPA) to issue Forms 1099-HC to commonwealth residents who have creditable coverage under the employer's health plan for at least a portion of the prior calendar year.
- **Nondiscrimination requirements for health insurance.** When offering insured group coverage to full-time employees, coverage and employer contributions must be nondiscriminatory (where the coverage is issued or delivered in Massachusetts).
- **EMAC contribution.** An employer with more than five employees working in Massachusetts must pay an "employer medical assistance contribution" (EMAC) to help fund the commonwealth's public health insurance programs.

Summary of employers' leave obligations

The commonwealth also imposes a number of requirements on employers related to employee leaves of absence. They include:

- **Parental leave.** An employer with six or more employees must provide for up to eight weeks of unpaid leave for the birth of a child or for the placement of a child under the age of 18 (or under the age of 23 if mentally or physically disabled) for adoption. An eligible employee may take parental leave for each birth or adoption of a child. In the case of twins, the employee is entitled to 16 total weeks of parental leave. All employees appear to count, whether working in or outside Massachusetts, but the law is not clear. An employee may elect to use accrued vacation, sick or PTO for the unpaid leave, but may not be required to do so. Employees have the right to reinstatement to the same or similar position at their employer.
- **Paid sick leave.** An employer with 11 or more employees is to provide up to 40 hours of paid sick leave each calendar year. Employers with 10 or fewer employees must allow up to 40 hours of unpaid sick time each year. All employees, including full-time, part-time, seasonal, and temporary employees, whether working in or outside Massachusetts and regardless of their eligibility to accrue and use earned sick time, are counted for determining employer size. An employee is eligible to accrue and use earned sick time if the employee's primary place of work is in Massachusetts, regardless of the employer's location.
- **Paid family and medical leave.** All employers are covered but, in the absence of a private plan, the employer's level of contribution depends on employer size. Eligible employees may receive up to 12 weeks of paid family leave, up to 20 weeks of paid medical leave for their own serious health condition, and up to 26 weeks to care for a covered service member. The definition of "family member" is broader than that under the federal Family and Medical Leave Act (FMLA). The requirement will apply to any employee, and even some former employees, working in Massachusetts for a private employer.
- **Small necessities leave.** Massachusetts employees who qualify for FMLA are eligible for up to 24 hours of unpaid leave during a 12-month period for certain activities or appointments.
- **Domestic violence leave.** Employers with 50 or more employees in Massachusetts must provide up to 15 days off during a 12-month period to employees who are victims of domestic violence or whose family member is a victim. This leave may be paid or unpaid, at the employer's discretion. Employees must exhaust all available accrued vacation, sick or PTO before requesting or taking domestic violence leave, unless the employer waives this requirement.
- **Pregnancy leave.** An employer with six or more employees must provide unpaid time off to an employee for a pregnancy complication or to recover from childbirth.

Individual mandate

All residents of Massachusetts age 18 and older must obtain and maintain a minimum level of health insurance coverage — “creditable coverage” — as long as it is deemed affordable by the Health Insurance Connector.

Premiums may vary by age and geographic location. Where coverage is not available through an employer, it may be purchased through the Connector.

The coverage must be comprehensive coverage to be considered creditable coverage. Specific requirements include:

- Coverage of a broad range of medical benefits, including preventive and primary care, emergency services, maternity services (including for pregnancy of a dependent child), newborn care, hospitalization, prescription drugs and mental health/substance abuse services.

Note: In-network preventive care must be covered with no deductible. In contrast to the Affordable Care Act (ACA) rules, Massachusetts has no exemption for grandfathered plans.

- For 2024, in-network deductible cannot exceed \$2,950 (\$5,900 per family) and the prescription drug deductible cannot exceed \$360 (\$720 per family). For 2023, in-network deductible cannot exceed \$2,850 (\$5,700 per family) and the prescription drug deductible cannot exceed \$350 (\$700 per family).

Note: A plan with a separate deductible for prescriptions will be creditable only if the combination of the prescription drug deductible and the in-network deductible does not exceed the in-network dollar thresholds. Under ACA, only small-employer and individual insurance has limits on in-network deductibles; there are no limits for self-insured and large insured plans.

- For 2024, out-of-pocket (OOP) maximums for in-network care cannot exceed \$9,450 (\$18,900 per family). For 2023, out-of-pocket (OOP) maximums for in-network care cannot exceed \$9,100 (\$18,200 per family).

Employer plans that are actuarially equivalent to the lowest level of benefits available through the Connector will qualify as creditable coverage. The commonwealth has a specific procedure in place by which plans may seek certification of creditable status.

HSA-compatible high-deductible health plans continue to qualify as creditable coverage if the employer “facilitates access to the HSA” (allows for employee contributions to the HSA), and even if the coverage does not satisfy other Massachusetts requirements, such as deductible limits.

The commonwealth will subsidize the cost of coverage for low-income residents. Failure to maintain creditable coverage triggers a monthly fine against the individual, equal to 50% of the cost of the least expensive creditable coverage available.

Because an individual who cannot obtain creditable coverage from an employer will need to obtain it elsewhere or suffer a monetary sanction, *employers that offer group coverage will normally want the coverage to be creditable (otherwise, what’s the point?)*.

Coverage must be comprehensive to be considered creditable. Employer health plans that “deviate modestly” from the creditable coverage standards can apply to the Connector to be certified as creditable coverage (known as MCC Certification -- see our [Compliance alert](#) dated Dec. 19, 2008).

The Massachusetts Department of Insurance has indicated that commercial group insurers and self-insured plan sponsors must disclose to insureds and potential insureds whether the coverage being offered qualifies as creditable coverage. Specifically *excluded* as creditable coverage are dental and vision coverage, accident-only coverage, specified disease insurance, and hospital indemnity insurance providing a benefit of up to \$500 per day of hospitalization, adjusted for inflation.

The penalties for 2023 vary based on income and age are noted [here on mass.gov](#).

HIRD disclosure obligation

Any employer that reported six or more employees (includes all employment categories) in any Massachusetts unemployment wage report during the past 12 months must file the Health Insurance Reporting Disclosure (HIRD) form with the Massachusetts tax authorities. The disclosure is made during the filing period of Nov. 15 through Dec. 15, annually.

The HIRD reporting is administered by the state tax authorities (Massachusetts Department of Revenue or DOR) through its web portal, known as MassTaxConnect or MTC. Either the employer or its payroll vendor can file the HIRD form, although the employer is ultimately responsible for ensuring the information is provided in a timely and accurate manner.

The HIRD disclosure will help Massachusetts identify persons with access to employer health insurance that may qualify for premium assistance from the state. If a person qualifies for premium assistance, MassHealth will pay the subsidy directly to the employee.

To file the HIRD form, the employer must login to its MTC withholding account and select the "File health insurance responsibility disclosure" hyperlink under the account alerts. The website will ask questions about plan design and contribution information related to the employer plan, such as eligibility criteria for coverage, the employee monthly contribution, in-network deductible and in-network, out-of-pocket maximum.

See the [agency FAQs](#) for details.

Issuance of MA Forms 1099-HC

By each Jan. 31, the employer must arrange with its health insurer or TPA to issue Forms 1099-HC to commonwealth residents who have creditable coverage under the employer's health plan for at least a portion of the prior calendar year.

If the plan is insured and the contract is issued or delivered in Massachusetts, the carrier is required to issue the forms on the employer's behalf. Ultimately, it appears to be the employer's obligation to issue the forms and file electronic copies with the Department of Revenue (DOR) if a TPA or an out-of-state insurer will not do so.

Electronic copies of the forms must be filed with the Massachusetts DOR by Mar. 31.

Massachusetts residents must prove they had creditable coverage for the prior year when they file their state income tax returns for that year. The Form 1099-HC is used for this purpose. Failure to demonstrate creditable coverage results in penalties (subject to some narrow exceptions, including one for people who cannot afford coverage).

Nondiscrimination requirement for health insurance	<p>Fully insured coverage issued or delivered to an employer in Massachusetts must cover all the employer's full-time employees in the commonwealth. Retirees, temporary employees (12 weeks or less) and seasonal employees are excluded.</p> <p>In addition, the employer's contribution on behalf of an employee may not be less than the contribution the employer makes on behalf of any higher-paid employee. However, the following contribution schemes are acceptable:</p> <ul style="list-style-type: none"> • Fixed dollar amount regardless of salary. • Different percentage contributions for different plan designs or options. • Greater contributions for greater lengths of service, if bona fide. • Greater contributions for employees who participate in the employer's wellness program. • Contributions on behalf of dependents may be less than those made on behalf of employees. 	<p>This is really a law aimed at insurers and not employers <i>directly</i>. But fully insured employers will become indirectly subject to the requirements because the requirements will be reflected in the terms and conditions of the group contract. This requirement will have no application to self-insured plans or to insured plans where the contract is issued and delivered outside of Massachusetts.</p>
EMAC contribution	<p>An employer with more than five employees working in Massachusetts must pay an "employer medical assistance contribution" (EMAC) to help fund the commonwealth's public health insurance programs:</p>	<p>The EMAC is included in state unemployment insurance tax filings. The EMAC rate is up to 0.34%, up to the annual wage cap of \$15,000, with a potential maximum cost of \$51 per employee, per year. The tax does not apply to employers who have been subject to Massachusetts unemployment for less than four years and is phased in for years four through six.</p> <p>See the mass.gov website for details.</p>
Massachusetts parental leave	<p>The Massachusetts Parental Leave Act (MPLA) applies to employers with six or more employees. It provides for up to eight weeks of unpaid leave for the birth of a child or for the placement of a child under the age of 18 (or under the age of 23 if mentally or physically disabled) for adoption.</p>	<p>All employees appear to count, whether working in or outside Massachusetts, but the law is not clear. See the mass.gov website for more details.</p>
Massachusetts paid sick leave	<p>Employers with 11 or more employees must provide up to 40 hours of paid sick leave each calendar year. Employers with 10 or fewer employees must allow up to 40 hours of unpaid sick time each year. Workers earn at least one hour of sick leave for every 30 hours worked.</p> <p>Massachusetts employers must provide sick leave for the illness, injury and medical care of the employee, as well as the employee's legal spouse, child, parent, or parent of a spouse.</p> <p>Sick leave also applies to absences related to domestic violence on the employee and for attending routine medical appointments for the employee or the family members noted above. Employees are able to use accrued sick leave in one-hour increments or in the smallest increment allowed in the employer's payroll system.</p>	<p>All employees, including full-time, part-time, seasonal, and temporary employees, whether working in or outside Massachusetts and regardless of their eligibility to accrue and use earned sick time, shall be counted for determining employer size. See the mass.gov website for more details.</p>

Massachusetts paid family and medical leave	The law requires up to 12 weeks of paid family leave, up to 20 weeks of paid medical leave for an employee working in Massachusetts with a serious health condition, and up to 26 weeks to care for a covered service member. "Serious health condition" is defined similarly to the federal FMLA. In contrast, the definition of family member as it relates to "family leave" is broader than it is under the FMLA.	New payroll contributions to fund the paid leave began October 2019. All benefits became available effective July 1, 2021. Unlike the federal FMLA rules, the Massachusetts paid family and medical leave will apply to smaller employers with at least one employee working in the state. See mass.gov website for more details.
Massachusetts small necessities leave	Massachusetts employers that are subject to the FMLA must grant employees who are eligible for FMLA leave a total of 24 hours of unpaid leave during any 12-month period to: <ul style="list-style-type: none"> • Participate in school activities directly related to the educational advancement of a son or daughter. • Accompany a son or daughter to routine medical or dental appointments, such as check-ups or vaccinations. • Accompany an elderly relative to routine medical or dental appointments, or appointments for other professional services relating to the elder's care, such as interviewing at nursing or group homes. 	See mass.gov website for details for details.
Massachusetts domestic violence leave	Massachusetts private and public employers with 50 or more employees in Massachusetts must provide up to 15 days of leave in any 12-month period to employees who are victims of abusive behavior (e.g., domestic violence, stalking, sexual assault and kidnapping) or whose family member is a victim of abusive behavior.	See the Massachusetts Attorney General advisory letter on the law.
Massachusetts pregnancy leave	The Massachusetts Pregnant Workers Fairness Act requires an employer with six or more employees to provide unpaid time off to an employee for a pregnancy complication or to recover from childbirth as an accommodation.	See the mass.gov website for more details. Unpaid time off as a reasonable accommodation may be required absent an undue hardship.

Not legal or financial advice

Nothing in this document should be construed as legal advice. Lockton may not be considered your legal counsel, and communication with Lockton's Compliance Consulting group is not privileged under the attorney-client privilege. Any and all financial projections are not intended or warranted, nor should they be relied upon, for determination of financial statement liabilities, such as claims reserve development and accruals, or compliance with Sarbanes-Oxley unless expressly certified by a member of Lockton's Actuarial Solutions practice.



UNCOMMONLY INDEPENDENT