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# Distant Cousins, not Twins: Some Key Differences between the Massachusetts and Federal Health Care Reform Laws

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On January 1, 2015, the *Affordable Care Act*'s (ACA) employer shared responsibility mandate took effect. Up until July 1, 2013, most employers doing business in Massachusetts were required to comply with an employer mandate commonly known as the Fair Share law. In very general terms, both laws require employers to provide health care coverage to employees or face the prospect of a monetary penalty. But beyond that, the two rules have more differences than commonalities, not unlike cousins who, while sharing some common ancestors, bear little resemblance to each other in appearance and behavior.

Some employers in Massachusetts continue to believe (mistakenly) that practices that led to compliance with the now repealed Fair Share law will also work under the ACA. The following are some of the key ways that the two laws differ.

- **Employers Subject to the Laws.** Under the ACA, employers with at least 50 full-time and full-time equivalent employees are subject to the law, and employers in the same IRS "controlled group" (e.g. certain companies related by common ownership) are aggregated for determining the employee count. Under the fair Share law, employers with at 11-50 full-time equivalent employees in Massachusetts had to either make a good "offer" of coverage or satisfy a "take-up" requirement, employers with 50 or more employees had to meet both tests; however, in spite of the lower compliance threshold, the Fair Share Law did not require controlled group aggregation.

- **The Role of the Health Insurance Exchanges.** Under the ACA, an employer is penalized only if one or more full-time employee purchases subsidized coverage from a health insurance exchange. The Fair Share law had no similar rule.

- **The Mechanics of the Offer.** In order to avoid Fair Share penalties, Massachusetts employers were required to offer group health coverage to all full-time employees within 90 days of hire with a 33% or more employer premium contribution. To avoid ACA penalties altogether, employers must make an offer of health coverage to 95% of full-time employees that is "affordable" and provides "minimum value", and the coverage must take effect immediately following the first full three months of employment.

- **Concepts of "Affordability" and "Minimum Value."** Under the ACA, a plan is "affordable" if the employee's required contribution to the plan does not exceed 9.5 percent of the applicable taxpayer's household income. A plan provides "minimum value" if the plan's share of the total allowed costs of benefits provided under the plan is less than 60 percent of such costs. The Fair Share law required only that an employer offer a group health plan with a 33% premium contribution, and did not otherwise require any specific levels of benefits or peg the employer's required contribution to an employee's income.

- **Documenting the Offer.** The Fair Share law required that the offer be documented in writing, and the agency enforcing the law required on audit that an employer produce a signed, dated waiver from each employee who had declined the offer. The IRS has not yet set forth any specific requirements for the offer (although we think it is a good practice for employers to do this anyway).

- **The "Take-up" Requirement.** Under the Fair Share law, larger Massachusetts employers (50+ employees) needed to not only make a good "offer" of coverage, but also had to enroll at least 25% their full-time employees in group health coverage. The ACA has no similar "take-up" requirement.

- **Full-Time Standard.** Both laws require that an "offer" of coverage be made to full-time employees in order to avoid penalties. But while the Fair Share law generally used a 35 hour per week "full-time" standard, the ACA uses a 30 hour per week standard.

- **Categorical Exclusions from "Full-Time".** The Fair Share law allowed employers to exclude certain classes of employees from the definition of "full-time" (temporary employees, seasonal employees) and allowed some concessions for employees receiving benefits through a multiemployer plan or a prevailing wage contract. The ACA contains no similar exclusions or concessions; however, under the ACA, certain hours of service need not be counted towards full-time status (specifically: hours performed outside of the United States, under a Federal work-study program, by bona-fide volunteers, and by individuals who have taken a vow of poverty through a religious order).

- **Filing requirements.** The Fair Share law required a fairly simple quarterly filing, and no penalties were imposed for late filings. The ACA will require a behemoth, complicated annual filing and late filers will face severe penalties.

Employers who structured their medical benefits and offer practices to comply with the Fair Share law and who have not yet reviewed and their practices in light of the ACA are advised to do so immediately.



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