

Employee Benefits Update

An informational newsletter from Goodwin Procter's ERISA/Employee Benefits Practice

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1. Massachusetts Department of Revenue Issues Guidance on Imputed Income for Coverage of Non-Tax Dependents

As discussed in the [August 2007 Employee Benefits Update](#), beginning January 1, 2007, the Mass Health Law requires all insured health contracts providing dependent coverage to extend coverage to individuals through the earlier of their 26th birthday or two years following loss of dependent status (the "Extended Coverage"). For this purpose, loss of dependent status occurs on December 31 of the last federal tax year for which the individual is claimed as a dependent on the employee's federal tax return. Many insurers and employers held special open enrollment periods to accommodate this extension of coverage in 2007. In addition, in some cases employers with self-insured health plans voluntarily added Extended Coverage.

Also as discussed in the [August 2007 Employee Benefits Update](#), if the Extended Coverage is provided to a child who both (1) cannot be claimed as a dependent on the employee's federal income tax return and (2) receives less than half of his support for the calendar year from the employee, additional amounts must be reported on the employee's Form W-2 as taxable wages for federal and Massachusetts income tax purposes and are subject to withholding and employment taxes. The amount of such additional taxable wages is equal to the fair market value of the child's coverage to the extent that it exceeds any amount paid by the employee for such coverage on an after-tax basis.

In late November 2007 the Massachusetts legislature passed a technical correction bill providing that the value of Extended Coverage mandated by law is NOT taxable wages for Massachusetts state income tax purposes. This change is effective January 1, 2007. Thus, Extended Coverage may result in additional reportable wages only for federal income tax purposes.

In addition, at the end of December 2007 the Massachusetts Department of Revenue issued a technical information release explaining that there are no reportable wages attributable to the value of Extended Coverage for personal Massachusetts income tax purposes (and thus an employee's Massachusetts

wages for the year, as reflected on his Form W-2, will be lower than his federal wages). Technical Information Release 07-16 provides examples and can be accessed at www.mass.gov using the search term *tir 07-16*. The TIR interprets the technical correction enacted by the Massachusetts legislature as also applying to a self-insured plan that voluntarily provides Extended Coverage.

For 2007 and subsequent years, employers must identify which employees are receiving Extended Coverage and obtain from them the information needed to determine whether the value of such Extended Coverage must be reported as taxable federal wages on Form W-2 and included in employment tax calculations. Employers should also take steps to determine how they will administer deductions for wage withholding and the employee portion of employment taxes if the value of Extended Coverage is required to be included in taxable federal wages. The value of Extended Coverage is determined in the same manner as is done currently for coverage provided to non-tax dependent same-sex spouses or domestic partners. In addition, employers will need to explain to affected employees why they have taxable wages due to Extended Coverage.

If you would like additional information on determining the amount of such Extended Coverage includible in taxable wages, identifying employees subject to Extended Coverage taxable wage reporting, or what information is needed from employees to make such identification, please contact a member of the Employee Benefits Practice Area listed below.

2. Forms 1099-HC Must be Issued by January 31, 2008

Form 1099-HC was established to help the Massachusetts Department of Revenue identify which Massachusetts residents have health insurance coverage and to assist Massachusetts residents in completing the new state income tax schedule regarding health coverage (Schedule HC). Form 1099-HC must be issued to each employee who had coverage in 2007 under an employer's health plan (whether insured or self-insured), no later than January 31, 2008. Although the employer is responsible for issuing the form, the form can instead be issued by the insurance carrier or third-party administrator (TPA). Thus employers should verify with their health insurers/TPAs whether the insurers/TPAs will issue the Forms 1099-HC. Forms 1099-HC due by January 31, 2008 need only be prepared for employees covered under the employer's health plan on December 31, 2007. Forms 1099-HC are filed with the Massachusetts Department of Revenue electronically, and instructions for electronic filing can be found at <http://www.mass.gov> using the search term *Form 1099-HC*. Copies of Forms 1099-HC should be retained by employers to the same extent as employers retain copies of Forms W-2 or other Forms 1099.

If you would like additional information about the issues addressed in this update or have other questions regarding benefit plans or executive compensation, please contact:

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