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DEADLINE DELAYED FOR COMPLIANCE WITH NEW DATA SECURITY REGULATIONS AND NEW REQUIREMENTS UNDER THE MASSACHUSETTS HEALTH CARE REFORM ACT

MASSACHUSETTS OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION DELAYS DEADLINE FOR COMPLIANCE WITH NEW DATA SECURITY REGULATIONS

As you may know, the Massachusetts Office of Consumer Affairs and Business Regulation (OCABR) recently issued regulations regarding what businesses must do to protect their employees' personal information. The regulations were initially set to take effect on January 1, 2009. The effective date has now been extended to May 1, 2009. While the extension is a welcome reprieve, the fact remains that compliance with the new requirements will be onerous. We strongly recommend you begin addressing these requirements as soon as possible.

NEW REQUIREMENTS FOR EMPLOYERS UNDER THE MASSACHUSETTS HEALTH CARE REFORM ACT

Effective January 1, 2009, the test for whether an employer is required to make the fair share contribution payment will change and employers will be required to file their fair share contribution report on a quarterly basis as opposed to an annual basis.

Currently, an employer that employs 11 or more full-time equivalent employees is not liable for the fair share contribution if: (1) at least 25% of its full-time employees are enrolled in its group health plan or (2) the employer offers to make a premium contribution of at least 33% to the employer sponsored group health plan for all of its full-time employees. For employers with 50 or fewer employees this test will not change. However, starting January 1, 2009, employers with more than 50 full-time equivalent employees will have to meet both prongs of this test in order to avoid the fair share contribution liability. Depending upon the industry, employers may already meet

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both prongs of this test. Employers with more than 50 full-time employees will also be able to avoid the fair share contribution liability if the percentage of its full-time employees enrolled in its group health care plan is at least 75%. There is no required minimum premium contribution amount under this second option.

It should be also noted that starting on January 1, 2009, the definition of “full-time employee” for both large and small employers will change to “an Employee that works the lower of: (1) 35 or more hours per week or (2) the number of weekly payroll hours to be eligible for the Employer’s full-time health plan benefits.” Therefore, an employer who makes group health coverage available to part-time employees may be required to include those employees in the fair share contribution calculation.

Finally, as of January 1, 2009, the process for filing the Fair Share Contribution Report must be done on a quarterly basis as opposed to an annual basis. The first quarterly filing deadline will be February 15, 2009. All of the calculations, including the \$295 penalty for non-compliance, will be pro-rated by one fourth.

If you have any questions about the new security plan regulations or the new fair share contribution test, please contact any of the attorneys in our Employment Law Group. ♦

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