

Legal News Alert: Employee Benefits is part of our ongoing commitment to providing up-to-the minute information about pressing concerns or industry issues affecting our clients and our colleagues.

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## Massachusetts Universal Health Care Law's Section 125 Plan Requirement

An employer having 11 or more full-time equivalent employees anywhere in Massachusetts (whether or not they are resident there) during the period of April 1, 2006, through March 31, 2007, is required to have a Section 125 Cafeteria Plan (Section 125 Plan) in effect on July 1, 2007, that offers eligible employees access to one or more health care options. A copy of this Section 125 Plan is to be filed by July 1, 2007, with the agency administering the Massachusetts universal health care laws, the Commonwealth Health Insurance Connector (the Connector). The very helpful Web site of the Connector is <http://www.mahealthconnector.org>.

The Section 125 Plan must meet the requirements of Section 125 of the federal Internal Revenue Code and must contain six items required by the Connector. Employers that satisfy the Section 125 Plan requirements are exempt from the "Free Rider Surcharge" in the Massachusetts law that may be assessed against employers that do not satisfy this requirement. What distinguishes the Section 125 Plan required by the new Massachusetts law from the typical Section 125 Plan already established and maintained by most employers is the coverage requirement.

Massachusetts law permits the exclusion only of the following groups of employees:

- Employees who are less than 18 years of age
- Temporary employees
- Part-time employees working fewer than 64 hours per month
- Student interns and co-op students
- Wait staff, service employees, or bartenders earning less than \$400 per month in payroll wages
- International seasonal employees with J-1 or H2B visas and who have travel health insurance

## ABOUT FOLEY

The Employee Benefits attorneys of Foley & Lardner LLP counsel employers on employee benefits and executive compensation matters to reduce exposure to employee complaints, governmental agency actions, and union-related problems. We counsel on health, dental, disability, life insurance, severance, cafeteria, and flexible benefits plans. Our counsel also extends to Medicare and Social Security benefits, COBRA compliance, and post-retirement benefits issues. We also advise clients in resolving benefits issues arising in mergers and acquisitions. We work closely with Foley trial lawyers who represent corporations and their benefit plans in litigation involving employment benefits and other obligations under ERISA.

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It is not required that all of these exclusions be adopted. If a covered employer does not have a Section 125 Plan or does not have a Section 125 Plan that complies with the new law already, a logical response to the law's requirements would be to adopt a separate Section 125 Plan just for the purposes of this law, with appropriate eligibility provisions, that provides for access only to those health plans given the seal of approval of the Connector. Such plans generally are referred to as the "Commonwealth Choice Plans." The separate Section 125 Plan would be the only document required to

be filed with the Connector. As an alternative, the eligibility rules of an existing Section 125 Plan could be broadened to meet the new requirements and then that plan, in its entirety, would need to be filed with the Connector. Sample documents and other helpful tools are available from the Connector at the Web site address provided on the first page of this alert. Employers also should establish an account with the Connector and provide a census of employees who will be purchasing health care coverage through the Connector. As always, we are available to help if you have any questions.