One Minute Memo®

Governor Patrick Seeks Fair Share of Relief for Employers

Governor Patrick proposed legislation on Tuesday, January 8, 2013 that would eliminate employer assessments under the Massachusetts Fair Share law after June 30, 2013. As described in our *Alert*, the Fair Share law requires most employers with Massachusetts employees to subsidize health care for certain of them or pay a per employee penalty of $295/year. Under the Fair Share statutory scheme, many employers were targeted through increased enforcement activity, and faced significant penalties that are burdensome to challenge. The Fair Share law has been subject to ERISA preemption challenges, such as employer plan sponsor arguments that the Act relates to, and thus is preempted by, ERISA because it directs the plan sponsor how to draft and implement its plan, when ERISA does not. To date, no court, to our knowledge, has ruled on the efficacy of this ERISA preemption argument but the argument certainly became more nuanced and fact-specific as implementation of components of federal health care reform (the "Affordable Care Act") looms. Indeed, because dealing with employer Fair Share obligations is not identical to complying with the employer mandate that the Affordable Care Act makes effective in 2014, and recent IRS guidance highlights some of the differences, Governor Patrick recognized the administrative and financial burdens, and potentially multiplied penalties, facing employers seeking to comply with both laws. Employers who, despite good faith efforts to comply with the Fair Share law, faced penalties or time-consuming, costly audits and appeals have welcomed the Governor's news. As quoted sources noted in the *press release*, employers "have been seeking for years more equitable enforcement of [Fair Share]" and "[t]he Governor's new plan will further protect employers from several unnecessary and burdensome regulations that are currently choking their growth."

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