This issue’s topics are:

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- Paid Family and Medical Leave Under FMLA Proposed
- Massachusetts Issues More Guidance on Health Care Reform

**Payroll:**
- Revised Federal Minimum Wage Poster Released
- Florida Expands Electronic Child Support Payment Requirement

**FEDERAL PAID FAMILY AND MEDICAL LEAVE PROPOSED**

On June 21, 2007 Senators Chris Dodd (D-CT) and Ted Stevens (R-AK) introduced “The Family Leave Insurance Act of 2007.” Should this bill (S 1681) be enacted, certain employees needing time off due to the birth or adoption of a child, to care for a child, spouse or parent with a serious illness or to care for their own serious illness will be provided up to 8 weeks of paid leave.

According to Senator Dodd, “The Family Leave Insurance Act of 2007 will benefit both businesses and their employees by establishing a Family Leave Insurance Fund, through which employees, employers and the federal government share the cost of providing compensation during times of family crisis.”

Specifically, the proposed legislation would provide eligible employees with 8 weeks of paid leave over a 12-month period. The bill provides that eligible employees could take time off from work for reasons that would allow leave under the Family and Medical Leave Act (FMLA) including:

- Birth of a child;
- Placement of adopted or foster child;
- Care for a child, parent or spouse, who have a serious medical condition; or
- Because the employee has a serious medical condition that makes it impossible to perform his or her job functions.

Benefit payments would commence following a one week waiting period which would not be counted against the 8 week benefit limit. The amount of the benefits that are available under the proposed legislation is tiered based on the employee’s annual wages as follows:

- 100% of weekly earnings for employees earning up to $20,000.
• 75% of weekly earnings for employees earning over $20,000 up to $30,000.
• 55% of weekly earnings for employees earning over $30,000 up to $60,000.
• 40% of weekly earnings for employees earning over $60,000 up to $97,000.

Where an employee earns annual income of more than $97,000, the maximum benefit allowable is the amount equal to 40 percent of the daily earnings of an employee with an annual income of $97,000. These wage levels are to be indexed annually for inflation utilizing the Social Security Wage Index.

Under the proposed legislation, an eligible employee is an employee who (1) is an “eligible employee” under the FMLA and is not a federal government employee; and (2) has paid insurance premiums for 12 of the last 18 months prior to making an application for benefits. (Note that there are other eligibility criteria applicable for small employers and self-employed individuals). Participation in the program is mandatory for all businesses with more than 50 employees. However, companies with materially equivalent or better benefits that satisfy the statutory criteria can elect to self-insure rather than participate in the federal program. Businesses with fewer than 50 employees may choose to participate, with a 50% discount on the premiums required.

S 1681 proposes that the funding of the paid leave would be accomplished by the creation of the Family Leave Insurance Fund to be administered by the United States Department of Labor. Under this funding vehicle, the benefits costs will be shared by employees, employers, and the federal government. Both employees and employers would pay a small premium for the insurance, equivalent to 0.2 percent of each employee’s earnings. Employers with fewer than 50 employees may opt in to the Fund at a 50% discount, with premiums equivalent to 0.1 percent of earnings and the federal government paying administrative costs that are not covered by the Fund. The sponsors of the bill have stated their belief that this financing structure should allow the proposed program to pay for itself with little cost to the federal government and taxpayers.

For a copy of the proposed legislation, please click on the link provided below:

Senate Bill 1681

MASSACHUSETTS ISSUES MORE GUIDANCE ON HEALTH CARE REFORM

In the May 2007 Tech Flex (LINK) it was reported that the “Massachusetts Health Care Reform Act” (Act) was signed into law. The main goal of the new law is to ensure that all Massachusetts state residents over age 18 have affordable, comprehensive medical coverage. Residents who have access to affordable coverage but do not obtain the coverage, or do not obtain a waiver from the mandate, will face state tax penalties. The enacted legislation established a new entity known as the Connector to administer the provisions of the Act.

It was noted in the previous article that employers who are subject to the new law, specifically those employers with 11 or more employees working in Massachusetts are required to establish an Internal Revenue Code Section 125 (Section 125) for its employees and to meet certain reporting and recordkeeping obligations. The Section 125 plan must allow participants to pay health care premiums on a pre-tax basis. This type of Section 125 plan is commonly known as a premium only plan (POP). There is no requirement that employers provide flexible benefit
accounts (health care and dependent care benefit accounts) in the Section 125 plan. Massachusetts has now released updated guidance in relation to the employer POP establishment and reporting and recordkeeping mandates. It is important to note that the Massachusetts law only requires that an employer covered under the Act establish the POP.

**Section 125 Plan Establishment Update**

It was previously reported that employers subject to the Act, except those who pay 100% of the premium, must by July 1, 2007, establish a Section 125 plan to enable employees to pay their share of health care premiums on a pre-tax basis and that a copy of the Section 125 plan document must be filed with the Connector by July 1, 2007. On June 29, 2007, the Connector issued a postponement of that filing date. The Section 125 plan documents, initially due to be filed on or before July 1, 2007 are now required to be filed by **October 1, 2007**. Further, the Connector in its new guidance has stated it will not accept Section 125 plan documents prior to September 1, 2007.

However, it is important to note the requirement to establish a Section 125 plan by July 1, 2007 remains in effect.

For a copy for a copy of Administrative Bulletin Administrative Information Bulletin 02-07 released on June 29, 2007, addressing the filing requirement delay, please click on the link provided below:

[Information Bulletin 02-07](#)

**Reporting and Recordkeeping Update**

The previous Massachusetts Connector guidance had stated that a Health Insurance Responsibility Disclosure (HIRD) form must be filed for each employee that showed whether the employee was offered coverage, whether they accepted or declined, or whether the employee has access to alternative coverage such as through a spouse.

**Employee HIRD Forms:**

At the time of the May 2007 article, Massachusetts had not yet released the Employee HIRD form or the regulations governing the form. The form and the regulations, effective July 1, 2007 have now been released.

Under the regulations, employers must provide the form to any employee who declines to participate in the employer’s medical plan, Section 125 plan, or both. This requirement applies to employees who decline coverage as a new hire, at any open enrollment period or who elect and subsequently drop coverage. Employers are required to obtain a signed form from each such employee and retain it for a three year period. In the event that an employee declining coverage fails to complete a form despite an employer’s “diligent efforts”, the employer must maintain for the three year period a note signed by an authorized employee of the employer documenting the employee’s refusal to sign or return the form.

The form requests employer and employee identifying information and requires the employee to sign the form acknowledging certain statements in relation to declining the employer’s health insurance and/or Section 125 plan. The form asks the employer for “the dollar amount of the employee’s portion of the monthly premium cost of the least expensive individual health plan
offered by the employer to the employee” as means of determining whether the employee has “affordable” health coverage available. Employers should provide employees with a copy of the signed form, which employees must attach to their personal state income tax return.

Under the regulations, employers must obtain the signed HIRD forms from employees declining coverage within 30 days after open enrollment. Employers who have already conducted open enrollment for the 2007-2008 year and used their own forms to obtain signed waivers from workers declining health coverage can wait until the next open enrollment period occurring on or after July 1, 2007 to obtain signed state HIRD forms. In relation to the declining of coverage not in relation to an annual open enrollment (e.g. mid-year new hire), the employer must obtain the signed employee HIRD form within 30 days of the enrollment period for each new employee who declines either employer-sponsored health coverage or use of the employer’s Section 125 plan to pay for health insurance. Workers who terminate employer coverage must return the completed HIRD form to the employer within 30 days of terminating coverage.

Employers may use the state’s form or their own electronic or other media to collect the required information and acknowledgments. However, any version form must contain “the same wording and order, and the sequence and numbering of the questions must be exactly as it appears” on the official form. Employers must also provide employees copies of any alternative form used.

For a copy of the Employee HIRD Form, please click on the link provided below:

Employee HIRD Form

For a copy of the HIRD Form Regulations, please click on the link provided below:

HIRD Form Regulations

REVISED FEDERAL MINIMUM WAGE POSTER RELEASED

It was reported in the May 2007 Tech Flex that the federal minimum wage (currently $5.15 per hour) is being increased in three stages as follows:

• Effective July 24, 2007, the federal minimum wage will be $5.85 per hour.
• Effective July 24, 2008, the federal minimum wage will be $6.55 per hour.
• Effective July 24, 2009, the federal minimum wage will be $7.25 per hour.

The Department of Labor has now issued the revised “Fair Labor Standards Act (FLSA) Minimum Wage Poster” that every employer of employees subject to the FLSA minimum wage provisions must post, and keep posted “in a conspicuous place in all of their establishments so as to permit employees to readily read it.”

For a copy of the updated poster that employers must use for posting requirements, please click on the link provided below.

Revised Fair Labor Standards Act Minimum Wage Poster
Effective July 1, 2007, an employer who is required to withhold child support obligations from its employee’s wages must remit the child support payments by electronic means to the Florida State Disbursement Unit if the employer is required to remit taxes electronically to either the Florida Department of Revenue (DOR) or to the Agency for Workforce Innovation (AWI). Under the new legislation, the term “electronic means” is defined as “any one or more of the following methods of transmitting funds or data: electronic data interchange, electronic funds transfer, Internet, or any other technology designated by the Department.”

Previously the electronic submission requirement was limited to employers that had 10 or more employees in any quarter during the preceding state fiscal year or pay annually $30,000 or more to the DOR. The electronic submission requirements may be waived if the employer is unable to comply despite good faith or efforts or due to circumstances beyond the employer’s control. Section 12E-1.032 of the Florida Administrative Code states:

(7) Waiver From Electronic Filing Requirements. The Department is authorized to waive the requirement that an employer or employer's processor pay support and provide associated case data through electronic means, if the employer or employer's processor is issued a waiver by the Department from the requirement to electronically file tax returns… To request a waiver the employer or employer's processor must establish in writing the basis under which such waiver is requested. In this written request, the employer or employer's processor must explain how one or more of the factors discussed in paragraph (a) of this subsection affect the ability to file electronically. After the Department verifies the explanation submitted by the employer or employer’s processor, it will respond in writing regarding the decision to grant or deny such waiver.

(a) Grounds for approving a request for a waiver include, but are not limited to:

1. Any of the circumstances specified in Section 213.755(9)(a) or (b), F.S.; or,

2. The employer or the employer's processor does not have a modem; or,

3. The employer or the employer's processor does not have access to the Internet.

Please find below, a link to guidance in relation to electronic child support payment submission recently released by the Florida DOR:

Florida Electronic Submission of Child Support Guidance

Please contact ADP National Account Services for further information at:
21520 30th Drive SE Suite 200 Bothell, WA 98021
Phone: (425) 415-4800 Fax: (425) 482-4527

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