

**Administrative Information Bulletin 02-07:**  
**Guidance Regarding M.G.L. c. 151F, as implemented by 956 CMR 4.00**  
**June 29, 2007**

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Pursuant to 956 CMR 4.08(4), the Commonwealth Health Insurance Connector Authority (the “Connector”) is issuing this Administrative Information Bulletin (“Bulletin”) to provide guidance in connection with the section 125 cafeteria plan requirement set forth in M.G.L. c. 151F and 956 CMR 4.00. The Bulletin provides (a) administrative information concerning the filing of employer-maintained section 125 cafeteria plan documents with the Connector under 956 CMR 4.07; and (b) clarification related to certain classes of employees that are excludable from participation in an employer’s section 125 cafeteria plan in accordance with 956 CMR 4.06.

(1) Filing Section 125 Cafeteria Plan Documents

- (a) Postponement of Filing Deadline. Pursuant to M.G.L. c. 151F and 956 CMR 4.07, an employer is required to file a copy of its section 125 cafeteria plan(s) with the Connector, or its designee, on or before the effective date of the employer’s status as a 151F Employer. For employers with 11 or more full-time equivalent employees during the initial determination period ending March 31, 2007, who qualify as 151F Employers, the filing deadline has been set at July 1, 2007. In accordance with 956 CMR 4.07 (2)(c), by this administrative bulletin the Connector is postponing the filing deadline for those section 125 cafeteria plan documents due to be filed on or before July 1, 2007 until **October 1, 2007**. Further, the Connector will not accept section 125 cafeteria plan documents prior to September 1, 2007.
- (b) Filing Upon Request of the Connector. During the period of postponement between July 1, 2007 and October 1, 2007, a 151F Employer shall, upon request of the Connector, submit a copy of its section 125 cafeteria plan(s) to the Connector in the time and manner specified by the Connector.

(2) Definition of Employee. An employee, as defined in 956 CMR 4.04, is revised as follows: An individual employed by any Employer at a Massachusetts location, whether or not the individual is a Massachusetts resident. **For purposes of counting the number of employees in 956 CMR 4.05(2), an employee referred to in 956 CMR 4.05(2)(b) shall not include an individual employed for less than one month.**

(3) Defining Excludable, Part-time Employees. In accordance with 956 CMR 4.06 (3)(b), a 151F Employer may, at its option, specifically exclude from eligibility to participate in its section 125 cafeteria plan one, none, or any combination of the specified employee classes and still be compliant with M.G.L. c. 151F with respect to such excluded employees. When determining whether employees qualify as excludable, part-time employees on the basis of their having worked, on average, fewer than 64 hours per month, an employer shall make a reasonable, good faith effort to identify, determine, and document those employees excluded by this classification using the following procedures:

- a. Determining Hours On Average for Existing Employees. Other than for new employees described in subparagraph b. below, an employer will have made a reasonable, good faith effort with regard to the exclusion of an existing employee under this classification if the employer determines that the employee has worked an average of 63 or fewer hours per calendar month for the 180 days immediately preceding the first day of any open or special enrollment period under the section 125 cafeteria plan for which the employee is eligible (including eligibility subject to a waiting period). Average hours will be determined by dividing the employee's gross payroll hours during the 180 day period by 6.
- b. Determining Hours On Average for New Employees. A new employee is an employee whose first day of employment commences on or after (A) July 1, 2007 AND (B) the effective date of the employer's section 125 cafeteria plan for which the employee is eligible (including eligibility subject to a waiting period). The employer will have made a reasonable, good faith effort with regard to the exclusion of a new employee under this classification if the employer reasonably determines that, as of the employee's date of hire, the employee will be scheduled or will be expected to work an average of 63 or fewer hours per calendar month during the first 180 days following commencement of employment. An employee will be considered a new employee, so long as he/she remains employed, until (X) the 180th day following commencement of employment or (Y) if later, until the date immediately preceding the first day of the next open or special enrollment period under the section 125 cafeteria plan.
- c. Example. Paul is hired as a part-time employee and commences employment on September 15, 2007. His employer's section 125 plan excludes from eligibility part-time employees working, on average, less than 64 hours per month. At the time of hire, Paul's employer reasonably anticipates that Paul will work an average of at least 65 hours per month; making Paul eligible for the employer's section 125 plan which operates on a July 1 fiscal year and facilitates the purchase of Connector seal of approval policies from the Connector on a pre- tax basis. Open enrollment for the section 125 plan will begin May 1, 2008 for the next plan year beginning July 1, 2008.
  - Assuming he is employed for the duration, Paul will be considered a new hire until April 30, 2008 (the later of X and Y in subparagraph b. above) and any election made by Paul when hired will remain in effect until the end of the plan year (June 30, 2008), regardless of actual hours worked per month during that period.
  - If Paul wishes to re-enroll for pre-tax benefits for the new plan year, his employer can redetermine his eligibility by averaging Paul's hours worked during the 180 days preceding May 1, 2008.

(4) Wait staff tips exclusion: Employers may exclude from participation in a Section 125 plan those employees who are considered wait staff, service employees or service bartenders (as defined in M.G.L. c. 149, section 152A) who earn, on average, less than \$400 in monthly payroll wages. Employers should not include tips when calculating whether an individual's wages exceed \$400 monthly for purposes of determining whether employees fall within this exclusion. Tips mean a sum of money, including any amount designated by a credit card patron, a gift or a gratuity, given as an acknowledgment of any service performed by a wait staff employee, service employee, or service bartender.

(5) 64 Hour Part-time Threshold. If an employer excludes part-time employees based on an hours per month classification, as permitted in 956 CMR 4.00, that employer may not exclude from eligibility part-time employees working, on average, 64 or more hours per month. An employer may, however, adopt an hourly threshold for part-time, excludable employees that fall below the standard of 64 hours per month (e.g., 32 hours per month).

This Administrative Bulletin takes effect immediately.