

IMPORTANT LEGAL UPDATE PUBLIC ACT 152 OF 2011/SENATE BILL 7 AND COMMON QUESTIONS

Prepared by Cohl, Stoker and Toskey, P.C.
601 North Capitol Avenue
Lansing, Michigan 48823
(517) 372-9000

OVERVIEW

On September 28, 2011, Public Act 152 (formerly Senate Bill 7) became law. PA 152 would prohibit the state, local governments, public schools, colleges and universities from paying more for employee health insurance benefits than the total cost (individually or in aggregate) of \$5,500 for a single person, \$11,000 for a couple and \$15,000 for a family plan (indexed annually to the "medical price index"), or alternatively, require municipal employees (individually or in aggregate) and elected officials to contribute at least 20 percent of the total cost of healthcare. Only local governmental bodies as defined by the Act could waive the requirements annually with a two-thirds vote of their governing body.

PA 152 is intricate and, as of yet, not legally tested. However, there are a number of issues which need be addressed in the near future by public employers to comply with PA 152. Further, we have received a number of questions relating to PA 152. To assist our clients, we have provided the more common questions below:

Question:

1. How does a public employer decide and designate which of the options will be utilized?

Answer:

Unless a different decision is made by the governing body or bodies of a public employer, all public employees default to the hard cap limit. However, with a simple majority vote, a governing body or bodies of a public employer may opt to satisfy the Act with the "at least" 20% employee contribution option.

Question:

2. Can an employer choose a different option for different types/classifications of employees, or is one option applicable to all employees?

Answer:

This question has not been decided by a court, and the language of PA 152 on this topic is subject to challenge. Consequently, it is our recommendation at this point that a single option should be chosen.

Question:

3. What entities have the option to opt-out; and what entities do not have such an option?

Answer:

Certain, but not all, public employers (i.e., cities, villages, counties, municipal electric utilities, airport authorities and metropolitan park authorities) MAY elect to opt-out if the governing body or bodies pass such a motion by a 2/3 vote. Such opt-out must be made and passed by the governing body/bodies each medical plan year. Entities with a strong mayor or county executive must concur in this decision. However, all other public employers (other than those listed above) do NOT have the ability to opt-out. This would include, but is not limited to schools, colleges or universities, road commissions, mental health authorities or community health authorities.

Question:

4. When does PA 152 take effect, and when would the employees need to comply with any cap or co-payment requirements?

Answer:

PA 152 has immediate effect as of September 28, 2011. However, the requirement for employees to begin contributing (either based upon excess over the hard cap, if this option is elected, or "at least" 20% employee contribution if the 80/20 option is elected) would not commence until the first medical plan coverage year beginning on or after January 1, 2012.

Question:

5. Is there any discretion by the public body in determining how the employee contributions are to be attributed and distributed among employees?

Answer:

Yes. Under either option (i.e the hard cap or 80/20) a public employer can, but is not required to, aggregate the total employer costs for health care and distribute the employee share "as it sees fit" so long as the aggregate total employer cost does not exceed the method elected. However, this discretion to allocate to an employee a lesser share does not, as set forth in question 7, apply to elected officials where the "at least" 20% employee contribution option is utilized.

Question:

6. How are the employer caps or employee contributions calculated?

Answer:

Premiums or illustrative rates and all employer paid reimbursements for health care (not including dental and vision) are included in the total annual cost of medical benefit plans. As such, the cap or employer/employee percentage of the costs under the "at least" 20% employee contribution option is not limited only to

premiums or illustrative rates charged by the carrier or plan. The public body must include sums equal to the total healthcare costs paid by the employer which would include all employer payments into health savings account or into flexible spending accounts, and reimbursements made by the employer or plan to the employee (such as prescription/co-pay or deductible reimbursements).

Further, where a plan is partially or fully self insured, it would be prudent for a public body not merely to utilize the illustrative rates based upon, as traditionally calculated, prior experience but should either make monthly adjustments based upon actual cost experience or should work with the plan administrator to build in a sufficient surplus to insure meeting the hard cap/employer 80% contribution cap of PA 152.

Question:

7. How does PA 152 apply to elected officials?

Answer:

Elected officials are covered by PA 152. However, where the public body chooses to utilize the "at least" 20% employee contribution option, all elected officials MUST pay at least 20% of the total health care costs. Unlike the discretion given to a public employer in allocating a lower employee contribution to certain employees (so long as aggregate employer contribution targets are met), there is no discretion to allocate to/permit elected officials to pay less than 20% of the total health care costs. However, there is discretion for the public body to require an elected official pay more than 20% of the total healthcare costs.

Question:

8. How does PA 152 affect existing union or employment contracts?

Answer:

It depends. The Act does not effect existing labor contracts until the contract expires or is modified. If an expired collective bargaining agreement is ratified AND signed on or before September 14, 2011, the public employer and union are bound by the terms contained in the collective bargaining agreement, but only for the remaining duration of the collective bargaining agreement. However, any collective bargaining agreement (including extensions or renewals) signed on or after September 15, 2011, MUST contain the provisions required by, and fully comply with, PA 152.

Individual employment agreements are not subject to this labor contract exemption from compliance, and must be modified to comply with PA 152.

Question:

9. What, if any, role does a union play in the decision, or the timing of the implementation of the governing body's decision on which option to utilize?

Answer:

Again, this issue has not been definitively decided by a Court or the Michigan Employment Relations Commission (MERC). However, our reading of PA 152 leads us to the conclusion that the decision as to what option (hard cap, the "at least" 20% employee contribution option, or for some entities, opt-out) is solely within the legislative discretion of the governing bodies of a public employer. Thus, it is our current opinion that such legislative decisions are not mandatory subjects of bargaining which a union may demand to bargain over to impasse.

Question:

10. What are the financial ramifications for a failure to comply with PA 152?

Answer:

PA 152 penalizes public employers that do not comply with the Act in that they are subject to the penalty of reducing by 10% school aid payments or 10% of economic vitality payments that were included in statutory revenue sharing in 2011. Public employers that operate under the hard-cap, operate under the 80/20 or who OPT-OUT legally are NOT subject to penalty.

Further, even if the public body is not impacted by the above penalty, this would not mean that the public body has the option not to comply with PA 152. All laws must be complied with, and there are other legal remedies which could be used to enforce and/or other liability imposed by a court for a failure to comply with PA 152.

If you have any questions or concerns, please feel free to contact us.

Peter A. Cohl
Richard D McNulty
Cohl, Stoker & Toskey, P.C.
601 North Capitol Avenue
Lansing, Michigan 48933
pcohl@cstmlaw.com
(517) 372-9000

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