S T A T E O F N E W Y O R K

3948

2009-2010 Regular Sessions

I N S E N A T E

April 7, 2009

Introduced by Sen. OPPENHEIMER -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law and the state finance law, in relation to creating the "fair share health act"

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This act shall be known and may be cited as the "fair share health act".

S 2. The labor law is amended by adding a new section 211-b to read as follows:

S 211-B. THE FAIR SHARE HEALTH PROGRAM. 1. DEFINITIONS. FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "EMPLOYEE" MEANS ALL INDIVIDUALS EMPLOYED FULL-TIME OR PART-TIME DIRECTLY BY AN EMPLOYER.

(B) "EMPLOYER" MEANS EITHER A NOT-FOR-PROFIT CORPORATION, AS DEFINED IN SECTION ONE HUNDRED TWO OF THE NOT-FOR-PROFIT CORPORATION LAW, OR A FOR-PROFIT CORPORATION, AS DEFINED IN SECTION ONE HUNDRED TWO OF THE BUSINESS CORPORATION LAW, EMPLOYING TEN THOUSAND OR MORE EMPLOYEES IN NEW YORK STATE; PROVIDED, HOWEVER, THAT THE FEDERAL GOVERNMENT, THE STATE OR ANOTHER STATE, OR A POLITICAL SUBDIVISION OF THE STATE OR ANOTHER STATE ARE NOT INCLUDED IN THE DEFINITION OF EMPLOYER.

(C) "HEALTH INSURANCE BENEFITS" SHALL INCLUDE AMOUNTS PAID BY THE EMPLOYER FOR MEDICAL CARE, PRESCRIPTION DRUGS, VISION CARE, MEDICAL SAVINGS ACCOUNTS, AND ANY OTHER PAYMENTS MADE TO PROVIDE HEALTH BENEFITS AS DEFINED IN SECTION 213(D) OF THE INTERNAL REVENUE CODE.

(D) "OFFICE" MEANS THE STATE DEPARTMENT OF LABOR OFFICE LOCATED IN ALBANY.

(E) "PROGRAM" MEANS THE FAIR SHARE HEALTH PROGRAM.

2. DATA COLLECTION. (A) ON OR BEFORE APRIL FIRST OF EACH YEAR, ALL EMPLOYERS WITH TEN THOUSAND OR MORE EMPLOYEES IN NEW YORK STATE SHALL PREPARE AND SUBMIT AN AFFIDAVIT REVIEWED AND SIGNED BY THE PRINCIPAL

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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EXECUTIVE OFFICER OR INDIVIDUAL PERFORMING A SIMILAR FUNCTION THAT STATES UNDER PENALTY OF PERJURY THAT THE INFORMATION REQUIRED UNDER PARAGRAPH (B) OF THIS SUBDIVISION WAS REVIEWED BY SUCH OFFICER AND IS TRUE TO THE BEST OF THE SIGNING OFFICER'S KNOWLEDGE, INFORMATION AND BELIEF.

(B) THE PRINCIPAL EXECUTIVE OFFICER, AS PROVIDED IN PARAGRAPH (A) OF THIS SUBDIVISION, SHALL PROVIDE THE OFFICE WITH THE FOLLOWING INFORMATION:

(I) THE NUMBER OF EMPLOYEES AS OF A DATE TO BE SET ANNUALLY BY THE COMMISSIONER OR HIS OR HER DESIGNEE;

(II) THE AMOUNT SPENT BY THE EMPLOYER IN THE IMMEDIATELY PRECEDING YEAR ON HEALTH INSURANCE BENEFITS FOR ALL EMPLOYEES WORKING WITHIN THE STATE;

(III) THE PERCENTAGE OF TOTAL WAGES PAID THAT WAS SPENT BY THE EMPLOYER IN THE IMMEDIATELY PRECEDING YEAR ON HEALTH INSURANCE BENEFITS FOR EMPLOYEES IN THE STATE; AND

(IV) ANY OTHER INFORMATION THE COMMISSIONER DEEMS NECESSARY TO IMPLEMENT THIS SECTION.

(C) WHEN CALCULATING THE PERCENTAGE OF TOTAL WAGES PAID, THE EMPLOYER MAY EXEMPT THE FOLLOWING:

(I) WAGES PAID TO ANY EMPLOYEE IN EXCESS OF THE MEDIAN HOUSEHOLD INCOME IN THE STATE AS PROVIDED BY THE UNITED STATES CENSUS BUREAU; AND

(II) WAGES PAID TO AN EMPLOYEE WHO IS ENROLLED IN OR ELIGIBLE FOR MEDICARE, OR ITS SUCCESSOR PROGRAM.

3. REQUIREMENTS. ALL EMPLOYERS WITH TEN THOUSAND OR MORE EMPLOYEES IN NEW YORK STATE SHALL CONTRIBUTE TO THE INCREASING COST OF HEALTH CARE BENEFITS TO PERSONS IN THE STATE.

(A) FOR-PROFIT EMPLOYERS WHO DO NOT SPEND EIGHT PERCENT OF THE TOTAL WAGES PAID TO EMPLOYEES IN THE STATE ON HEALTH CARE BENEFITS SHALL CONTRIBUTE THE DIFFERENCE BETWEEN THE AMOUNT SUCH EMPLOYER ACTUALLY SPENDS ON HEALTH CARE BENEFITS FOR EMPLOYEES AND THE AMOUNT EQUAL TO EIGHT PERCENT OF THE TOTAL WAGES PAID TO SUCH EMPLOYEES.

(B) NOT-FOR-PROFIT EMPLOYERS WHO DO NOT SPEND SIX PERCENT OF THE TOTAL WAGES PAID TO EMPLOYEES IN THE STATE ON HEALTH CARE BENEFITS SHALL CONTRIBUTE THE DIFFERENCE BETWEEN THE AMOUNT THE EMPLOYER ACTUALLY SPENDS ON HEALTH CARE BENEFITS FOR EMPLOYEES AND THE AMOUNT EQUAL TO SIX PERCENT OF THE TOTAL WAGES PAID TO EMPLOYEES.

(C) SUCH PAYMENTS SHALL BE MADE AS DETERMINED BY THE COMMISSIONER AND SHALL BE FORWARDED TO THE FAIR SHARE HEALTH FUND, AS PROVIDED IN SECTION NINETY-SEVEN-M OF THE STATE FINANCE LAW. AN EMPLOYER MAY NOT DEDUCT ANY PAYMENT MADE TO THE STATE UNDER THIS SECTION FROM THE WAGES PAID TO AN EMPLOYEE.

4. DUTIES OF THE DEPARTMENT. THE COMMISSIONER SHALL DESIGNATE MEMBERS OF THE DEPARTMENT TO BE RESPONSIBLE FOR THE FOLLOWING:

(A) COLLECTION OF THE EMPLOYER DATA REQUIRED IN SUBDIVISION TWO OF THIS SECTION;

(B) VERIFICATION OF EMPLOYERS THAT HAVE TEN THOUSAND OR MORE EMPLOYEES IN THE STATE;

(C) VERIFICATION THAT ALL EMPLOYERS WITH TEN THOUSAND OR MORE EMPLOYEES IN THE STATE HAVE MADE THE REQUIRED REPORT UNDER SUBDIVISION TWO OF THIS SECTION;

(D) COLLECTION OF EACH EMPLOYER'S CONTRIBUTIONS TO THE FUND;

(E) COLLECTION OF THE FINES AND PENALTIES AS PROVIDED IN SUBDIVISION FIVE OF THIS SECTION;

(F) PREPARATION OF AN ANNUAL REPORT TO BE FORWARDED TO THE GOVERNOR AND THE LEGISLATURE; AND

(G) ANY OTHER DUTIES DEEMED NECESSARY BY THE COMMISSIONER TO IMPLEMENT THE PROGRAM.

5. PENALTIES. (A) FAILURE TO FILE AN AFFIDAVIT AS REQUIRED BY SUBDIVISION TWO OF THIS SECTION SHALL RESULT IN THE IMPOSITION BY THE COMMISSIONER OF A CIVIL PENALTY OF NOT MORE THAN TWO HUNDRED FIFTY DOLLARS FOR EACH DAY THAT THE AFFIDAVIT IS NOT TIMELY FILED.

(B) FAILURE TO MAKE THE PAYMENT REQUIRED UNDER SUBDIVISION THREE OF THIS SECTION SHALL RESULT IN THE IMPOSITION BY THE COMMISSIONER OF A CIVIL PENALTY OF NOT MORE THAN TWO HUNDRED FIFTY THOUSAND DOLLARS.

(C) ALL PENALTIES AND FINES COLLECTED BY THE DEPARTMENT SHALL BE USED TO OFFSET THE COST OF ADMINISTRATION AND ENFORCEMENT OF THE PROGRAM.

S 3. The state finance law is amended by adding a new section 97-m to read as follows:

S 97-M. THE FAIR SHARE HEALTH FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE COMMISSIONER OF TAXATION AND FINANCE A SPECIAL REVENUE FUND TO BE KNOWN AS THE FAIR SHARE HEALTH FUND.

2. THE FAIR SHARE HEALTH FUND SHALL CONSIST OF MONEYS RECEIVED BY THE STATE PURSUANT TO SECTION TWO HUNDRED ELEVEN-B OF THE LABOR LAW, MONEYS DONATED OR GIVEN TO THE STATE, AND ALL OTHER MONEYS APPROPRIATED, CREDITED OR TRANSFERRED THERETO FROM ANY OTHER FUND OR SOURCE.

3. MONEYS OF THE FAIR SHARE HEALTH FUND SHALL BE USED TO PROVIDE HEALTH CARE AND/OR HEALTH COVERAGE TO EMPLOYEES WHO (A) ARE EMPLOYED BY EMPLOYERS THAT ARE REQUIRED TO MAKE PAYMENTS TO THE FUND AND (B) DO NOT OTHERWISE HAVE HEALTH COVERAGE. FOLLOWING APPROPRIATION BY THE LEGISLATURE AND ALLOCATION BY THE DIRECTOR OF THE BUDGET, MONEYS OF THE FAIR SHARE HEALTH FUND SHALL BE MADE AVAILABLE TO THE COMMISSIONER OF THE DEPARTMENT OF HEALTH TO FUND THE CARE OR COVERAGE AS REQUIRED HEREIN, IN ANY MANNER DEEMED APPROPRIATE BY THE COMMISSIONER.

4. THE OFFICE OF CHILDREN AND FAMILY SERVICES AND THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE SHALL SUBMIT A REPORT TO THE GOVERNOR AND THE LEGISLATURE BY JUNE FIRST NEXT SUCCEEDING THE FIRST YEAR OF FAIR SHARE HEALTH PROGRAM IMPLEMENTATION AND ANNUALLY THEREAFTER DETAILING ALL EXPENDITURES MADE FROM THE FAIR SHARE HEALTH FUND DURING THE PREVIOUS YEAR, THE STATUS OF ANY DEMONSTRATION PROJECTS FUNDED BY THE FUND, AND THE OFFICE'S PRIORITIES FOR ALLOCATING MONEY FROM THE FUND FOR THE CURRENT YEAR.

S 4. The commissioner of the department of labor shall report to the governor, the speaker of the assembly and the temporary president of the senate regarding the administration, implementation, and enforcement of the fair share health program and fund, including recommendations, within one year of the effective date of this act, and annually, thereafter. 1. Such report shall include, but not be limited to:

(a) The name of each not-for-profit and for-profit employer with ten thousand or more employees in the state;

(b) The employer's definition of full-time employee and part-time employee;

(c) The number of full-time employees;

(d) The number of full-time employees eligible to receive health insurance benefits;

(e) The number of full-time employees receiving health insurance benefits from the employer;

(f) The source of health insurance benefits for those eligible full-time employees not receiving health insurance benefits through an employer subject to reporting under this act;

(g) The number of part-time employees;

(h) The number of part-time employees eligible to receive health insurance benefits;

(i) The number of part-time employees receiving health insurance benefits from the employer; and

(j) The source of health insurance benefits for those eligible part-time employees not receiving health insurance benefits through an employer subject to reporting under this act.

2. The information required in subdivision one of this section shall be reported by the employers on the same date as of the date set by the commissioner of the department of labor in paragraph (b) of subdivision 2 of section 211-b of the labor law.

S 5. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided, however, that effective immediately, the collection of data, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.