new jersey department of community affairs
people.places.progress
division of local government services dlgs

LFN 2010-12

May 18, 2010

Local Finance Notice

Chris Christie, Governor | Kim Guadagno, Lt. Governor | Lori Grifa, Acting Commissioner | Marc Pfeiffer, Acting Director

The Impact of Chapter 2, P.L. 2010 on Local Unit Health Benefits Programs

Governor Christie recently signed into law Chapter 2, P.L. 2010. This new law changes various provisions of the State Health Benefits Program and the School Employees Health Benefits Program (together, SHBP). Certain of its provisions, but not all, also affect municipalities, counties, local authorities and districts, county colleges, and other local units that provide employee health benefits outside of the State Health Benefits Program. This includes local units that provide employee health benefits through an insurance fund, a joint health insurance fund or in any other manner.

Attached to this Notice is a Frequently Asked Questions (FAQs) document about the new law and its impact on both SHBP and non-SHBP participating local units. The answers provide general guidance for complying with c.2. While based on materials issued previously by the Division of Pensions and Benefits for SHBP participants, the FAQs have been revised to include guidance to non-SHBP local employers, as well as address additional implementation issues for all affected local employers. The full text of Chapter.2, P.L. 2010 is available online. You are encouraged to review it carefully in light of your specific circumstances.

The following highlights important elements of the law the FAQs address:

A. Minimum Employee Contribution for Medical Benefits

On May 21, 2010, or on the expiration of any applicable labor agreement in force on that date, all employees must contribute a minimum of 1.5% of current base salary towards their health benefits cost. This contribution is required of all employees who are members of any state or locally administered retirement system. This applies to all SBHP and non-SHBP local units.

B. Impact on Retirees

Chapter 2 is prospective regarding retirees. It does not affect current retirees or current employees who are already members of a state or locally administered retirement system. Employees who become members of a state or locally administered retirement system on or after May 21, 2010 will be required to pay 1.5% of their retirement allowance towards health benefits costs.

Contact Information

Director's Office
V. 609.292.6613
F. 609.292.9073

Local Government Research
V. 609.292.6110
F. 609.292.9073

Financial Regulation and Assistance
V. 609.292.4806
F. 609.984.7388

Local Finance Board
V. 609.292.0479
F. 609.633.6243

Local Management Services
V. 609.292.7842
F. 609.633.6243

Authority Regulation
V. 609.984.0132
F. 609.984.7388

Mail and Delivery
101 South Broad St.
PO Box 803
Trenton, New Jersey
08625-0803
Web: www.nj.gov/dca/lgs
E-mail: dlgs@dca.state.nj.us

Distribution

Municipal and Freeholder Clerks
Municipal and County Chief Financial Officers
Fire District Boards of Commissioners
Local Authority Boards of Commissioners

C. SHBP Multiple Coverage Restrictions (SHBP Employers Only)

The law prohibits an employee, dependent, or retiree who is a member of the SHBP from being a member of SHBP or receiving benefits from more than one employer.

D. Reduction in Waiver Amount

The law reduces the maximum amount of any payment for the waiver of employer provided health benefits coverage to 25% or $5,000, whichever is less, of the amount saved by the employer because of the waiver of coverage. This applies only to new waiver requests filed or approved after May 21, 2010. It does not affect any waivers already approved.

E. Employee Eligibility (SHBP Members Only)

Effective May 21, 2010, to be eligible for health benefits coverage under the SHBP, a full-time employee will be required to work a minimum of 25 hours per week, rather than the current 20 hours, to qualify for employer provided health benefits. Full-time elected and appointed officers elected or appointed on or after May 21, must work a minimum of 35 hours per week to qualify for employer provided health benefits.

Appointed or elected officers who were appointed or elected prior to May 21st do not need to meet the 35 hour per week minimum provided they remain in their elected or appointed position continuously after May 21st.

The State Health Benefits Commission will soon provide guidance about the meaning of "full-time" and certification of time worked for elected officials.

F. Collective Negotiation Agreements (Labor Contracts)

Chapter 2 takes effect on May 21, 2010 except for employees covered by an existing collective negotiations agreement on that date. Upon expiration of those agreements after May 21, 2010, c. 2, P.L. 2010 will then apply to them.

G. Non-Aligned (non-union or management) Employees

The law affects non-SHBP and SHBP employers differently. For non-SHBP employers, employees not aligned with a union become subject to the 1.5% contribution as of May 21, 2010. For SHBP employers, at the employer's discretion, non-aligned employees may be required to pay the 1.5% contribution when the union they are most "closely aligned with" begins paying the contribution.

H. Miscellaneous Questions

The FAQ provides guidance on leaves of absence, both paid and unpaid, and suspensions or other absences from work. It also covers policies to account for the 1.5% contribution for units under the jurisdiction of the Division of Local Government Services.

Chapter 2 raises many issues that will challenge local officials as they work to implement its provisions. The N.J. Division of Pensions and Benefits assists local units participating in the SHBP through its website. The DLGS will do its best to assist non-SHBP municipalities and local units with compliance. Please forward any questions via e-mail to dlgs@dca.state.nj.us.

Approved: Marc Pfeiffer, Acting Director

Table of Web Links

Page	Shortcut text	Internet Address
1	Chapter.2, P.L. 2010 is available online	http://www.state.nj.us/treasury/pensions/pdf/laws/chapt2-2010.pdf
2	website	http://www.state.nj.us/treasury/pensions/employer-home.shtml

Division of Local Government Services

Public Employee Health Benefits Reform Law: P.L. 2010, c. 2
Frequently Asked Questions Guidance to Local Units

Governor Christie recently enacted Chapter 2 of the Laws of 2010 (Chapter 2). This new law makes changes to the way public employers administer their employee health benefits programs: through the State Health Benefits Program, the School Employees Health Benefits Program, commercial insurance programs, self insurance funds, joint health insurance funds, or through any other approach. The law affects all government agencies that are members of either of the State programs, as well as all local government units, public and charter schools, and county colleges.

These Frequently Asked Questions offer general guidance on compliance with Chapter 2. This information is not legal advice. For such advice, local officials should consult with their local attorneys, labor counsel and other advisors, as appropriate.

Throughout this document, references to the State Health Benefits Program and the School Employee Health Benefits Program are abbreviated to SHBP. The term "local employer" describes the government agency that is a member of a pension system, or is otherwise a contracting unit pursuant to N.J.S.A. 40A:11-2.

Local units that participate in the State Health Benefits Program may also contact the NJ Division of Pensions and Benefits for assistance. The statutes and regulations regarding the SHBP are on the website of the Division of Pensions and Benefits. The statutes for non-participating local government employers are found in N.J.S.A. 40A:10.

Sections of the new law affect employers and individuals participating in the SHBP differently than non-participating employers and individuals. The text highlights where an action or change in law applies solely to non-SHBP. The guidance specifically applies to local employers that are members of a State pension system. It does not apply to State agency employers in all cases.

The FAQs are based on a document originally issued by the Division of Pensions and Benefits, and modified in consultation with the Division of Law to provide specific guidance and to reflect application to all public employers regardless of participation in the SHBP.

If a local practice is inconsistent with the guidance in this Notice, readers should review the statutory language for the context of these changes and to ensure full understanding of their impact on a specific factual circumstance. The full text of P.L. 2010, c. 2 is available online.

Local officials should also be aware that legal challenges to the law have been filed. The Division will release information as necessary regarding the impact of the litigation on local units.

Public Employee Health Benefits Reform Law

Frequently Asked Questions for all Local Units

P.L. 2010, Chapter 2, Effective May 21, 2010

A. Minimum Employee Contribution for Medical Benefits

General statutory principle: Commencing on May 21, 2010 and upon the expiration of any applicable binding collective negotiations agreement in force on that date, employees shall pay 1.5 percent of base salary, through the withholding of the contribution for health benefits coverage notwithstanding any other amount that may be required additionally by means of a binding collective negotiations agreement or the modification of payment obligations. (Source: P.L. 2010, c.2, s.5 and s.14)

1. Q. What government employers are covered by the law?

A. It covers all government employers : the State of New Jersey, its agencies and instrumentalities, municipalities, counties, and any boards, agencies, commissions, authorities or instrumentalities thereof, including county colleges.

2. What "health insurance" is the contribution based on?

For SHPB employers, the coverage is for Medical and/or prescription drug plan. The 1.5% contribution does not apply to dental, vision, or, if provided locally, other health related coverage.

For non-SHBP employers, the full range of health benefits is covered (N.J.S.A. 40A:10-17), major medical, prescription, dental, vision, etc.

3. Our collective negotiations agreement (agreement) expired last year and has not been settled. Will these employees be required to contribute the 1.5% contribution after May 21st?

If the new agreement is not ratified by May 21st, those employees will be required to pay the 1.5% contribution for health coverage. If the new agreement is ratified before May 21st, those employees will not be required to pay the 1.5% contribution until the expiration of the agreement. Employers in this situation should consult with labor

counsel to review the implications of this provision in their circumstances, and pay specific attention to agreements that already include employee contributions to health benefit costs.

4. Is the 1.5% of base salary contribution in addition to previously negotiated premium contributions?

No. The 1.5% contribution is intended to be a floor, or minimum, contribution that an employee will make toward their health coverage. If another contribution arrangement has been negotiated, the higher of the two will prevail, as long as all employees contribute an amount equivalent to at least 1.5% of the employee's base salary.

5. A local unit is currently in contract negotiations. Employees currently contribute only 10% of any dependent premium – how would the 1.5% be applied?

If the 10% of dependent premium is greater than 1.5% of the employee's base salary, then no additional contribution is required of that employee. The collective negotiations agreement should provide that to the extent the premium percentage is less than 1.5%, the contribution shall be equal to 1.5% of base salary. This does not affect any previously established policies requiring employee health insurance contributions. New agreements should include language that clearly identifies any additional contributions reflecting the impact of Chapter 2.

6. What is the "base salary" on which the 1.5% contribution is calculated?

The salary on which pension contribution or equivalent Defined Contribution Retirement Program (DCRP) salary is based (or would be if the employee was enrolled). However, for employees hired after July of 2007 for whom pensionable salary is limited to the salary on which social security contributions are based, the employee's total, pension plus DCRP eligible base salary would be used. It would also be equal to the annualized amount on which an hourly rate-based salary is based.

7. How much is deducted the first year; a total of 1.5% of the salary, or a prorated amount based on when the law takes effect?

For the first year the amount of deduction is prorated; 1.5% of the base salary remaining for the year.

8. When should the deduction begin?

Deduction of the 1.5% can begin with the first full pay period after May 21, 2010 for employees who are required to contribute. If a pay period ends on May 28th, the employer would begin withholding the 1.5% deduction with the next pay period. It is permissible, but not mandatory to apply withholding retroactively to May 21st.

9. Is the 1.5% contribution paid before or after taxes?

If the employer offers a Section 125 plan, then the employer could deduct the contribution from the employees' salary on a pre-tax basis. The IRS has basic information on Section 125 Plans (Cafeteria Plans) on its website.

B. Impact of Chapter 2 on Retirees

General Statutory Principle: Upon their retirement, employees who join a state or locally administered retirement system on or after May 21, 2010 will be required to contribute to their health benefit costs a minimum of 1.5% of their monthly retirement allowance, including any future cost of living adjustments. **It does not affect current retirees or current employees** who are already members of a state or locally administered retirement system. (Source: P.L. 2010, c. 2, s2, s.3, s.4, s.5, s.15)

10. Will current retirees who are receiving employer or State-paid medical coverage be required to pay the 1.5% minimum contribution?

No, current retirees will not be required to make a minimum contribution for health coverage if they are currently receiving employer or State-paid coverage, This does not affect previously established local policies requiring post-retirement employee/ retiree health insurance contributions.

11. Will current employees be required to pay the 1.5% minimum contribution when they retire?

No, only employees who become members of a State or locally administered retirement system on or after May 21, 2010 will be required to contribute 1.5% of their monthly retirement allowance towards health benefits. This does not affect previously established local policies requiring post-retirement employee/retiree health insurance contributions.

12. What impact does the 1.5% contribution have on the Medicare Part B reimbursement?

There is no impact on the reimbursement of Medicare Part B premiums for those employers who reimburse retirees for those premiums.

13. What impact does this legislation have on municipalities who have adopted Chapter 88 and/or Chapter 48 (NJSA 52:14-17.38)?

Chapter 2 only requires a minimum contribution in retirement for those individuals who become members of a State or locally administered retirement system on or after May 21st. Therefore, an employee who becomes a member of a retirement system after May 21st will be required to pay 1.5% of his or her retirement allowance even though their employer has adopted Chapters 88 and/or 48.

This is applicable to only State Health Benefits Plan or School Employees Health Benefits Plan participants) provisions for retiree health benefits.

14. Should the 1.5% contribution be collected if a retired person comes back to work at local unit as an elected official or in another capacity?

This question must be considered on a case-by-case basis given individual circumstances and the differences in how State or local retirement policies affect the individual.

C. State Health Benefits Program Multiple Coverage Restrictions

(SHBP Member Employers Only)

General Statutory Principle: Multiple coverage in the State Health Benefits Program (or School Employees Health Benefits Program) as an employee, dependent, or retiree shall be prohibited and the prohibition shall be implemented in accordance with the rules and regulations promulgated by the State Health Benefits Commission. The provisions of this paragraph shall be applicable to the State Health Benefits Program and to the School Employees' Health Benefits Program. The law also deleted existing law related to permissible forms of multiple coverage. (Source: P.L. 2010, c.2, s.12).

15. An employee works for a municipality and is enrolled in the SHBP. The employee's spouse works for the State or a Board of Education and is enrolled in an SHBP plan. Does this mean the family may only chose one plan for coverage?

If the employee is covered as a dependent under a spouse's SHBP coverage, the employee is not eligible for coverage as an employee. The employee may choose single coverage, provided the spouse terminates the employee's dependent coverage; or the spouse could waive coverage, and the employee could cover the spouse as a dependent as well as any other eligible dependents previously covered under the spouse.

16. Can each choose single coverage and remain enrolled separately?

Yes. Each may choose single coverage. If both employees choose single coverage, they are each subject to the 1.5% deduction.

D. Reduction in Waiver Amount

General Statutory Principle (new text underlined): A local employer may pay annually to the employee an amount, to be established in the sole discretion of the contracting unit, which shall not exceed 50% of the amount saved by the contracting unit because of the employee's waiver of coverage, and<u>, for a waiver filed on or after May 21, 2010, which shall not exceed 25%, or $5,000, whichever is less,</u> of the amount saved by the local employer because of the employee's waiver of coverage. (Source: P.L. 2010, c. 2, s.11, s.18)

17. Will employees who waive coverage have to pay 1.5% towards health benefit costs as all local employees and then receive waiver incentive based on the reduced employer cost?

No. An employee who waives coverage is not required to pay the 1.5% contribution.

18. If the law does not allow SHBP multiple coverage, (and therefore no cost to the local unit) and that employee has been receiving a waiver incentive, does the waiver stop because there is no longer a cost to the local unit?

Employees who have multiple SHBP coverage (See Section C) will be asked to choose one coverage and terminate all other SHBP coverage. Therefore only employees with non-SHBP coverage will be eligible for the waiver incentive.

19. Does the reduced waiver incentive amount only apply to new employees?

The waiver maximum applies to all new employees and also to any existing employee who submits or renews a waiver on or after May 21, 2010.

20. What if an employee waives a portion of their benefits (i.e., waives health benefits but opts for prescription coverage only)? Are they still required to pay the full 1.5% contribution?

The legislative intent leads to a requirement that the full 1.5% should be deducted regardless of the employee's specific coverage. Under no circumstances should the 1.5% contribution exceed the cost of the selected coverage.

E. Employee Eligibility (SHBP Members Only)

General statutory principle: Effective May 21, 2010, to be eligible for health benefits coverage under the SHBP, full-time appointive or elective officers are considered an "employee." In this case, the law defines an employee as (P.L.2010, c.2, s.9):

(i) a full-time appointive or elective officer whose hours of work are fixed at 35 or more per week, a full-time employee of the State, or a full-time employee of an employer other than the State who appears on a regular payroll and receives a salary or wages for an average of the number of hours per week as prescribed by the governing body of the participating employer which number of hours worked shall be considered full-time, determined by resolution, and not less than 25,

Appointive or elective officials who were appointed or elected prior to May 21, 2010 do not need to meet the 35 hours per week minimum provided they remain in their elected or appointed position continuously after May 21, 2010.

Individuals who are reelected or appointed to the same position are considered to be continuously employed. A change in elected office is considered election to a new position, and they are subject to the minimum 35-hour workweek rule. If there is a break in service, such individuals are considered "newly" appointed or elected and subject to the 35 hour per week minimum.

A full-time employee of a SHBP participating local unit employer must now work a minimum of 25 hours per week (raised from the previous 20 hours per week minimum) to qualify for employer provided health benefits. (Source: P.L. 2010, c. 2, s.9)

The law appears intended to limit SHBP benefits to elected and appointed individuals to those whose primary employment (i.e., minimum 35 hours/week) is their government position. This is a new concept and raises questions, especially regarding elected officials, concerning how the 35 hours minimum is calculated; what activities count as "work hours."

The State Health Benefits Commission will need to address the multitude of different circumstances presented by the requirement. As the law is new, the Commission will address the issue in the near future. In the meantime, local officials should review the law with their legal advisors, and if decisions need to be made in advance of Commission guidance, carefully consider the law and its intent to make reasonable decisions.

These provisions DO NOT APPLY TO employers not participating in the SHBP. Nonparticipating employers continue to establish their own minimum hours of work to qualify for employer provided health benefits coverage. Coverage for elected officials is also discretionary for nonparticipating local unit employers.

21. Are elected officials covered by the SHBP who are eligible for health benefits coverage subject to the 1.5% contributions? If they waive their salary, do they still pay?

Current (in office prior to May 21, 2010) elected or appointed officials are subject to the 1.5% contribution. In addition, they do not need to meet the minimum work hours of 35 hours per week provided they remain in the elected or appointed position continuously after May 21st.

Elected or appointed officials in SHBP employers who are elected or appointed **on or after May 21st** must work a minimum of 35 hours per week to be eligible for health benefit coverage. The State Health Benefits Commission will provide guidance on what will qualify as "work" for an elected or appointed official to meet the 35-hour requirement.

The new law does not change the current requirement for SHBP local employers to make the benefit available to eligible elected officials.

The law is unclear about how the 1.5% contribution affects an elected or appointed official that waives all or part of their otherwise authorized salary. The State Health Benefits Commission will also review and provide guidance on this matter.

22. For elected officials taking office after May 21, 2010, is any kind of certification required as proof of an elected official working 35 hours per week? Does the CFO or some other official have to certify the hours worked and, if so, does that present a conflict of interest?

Pending formal guidance from the State Health Benefits Commission, as a full time employee, individuals would be subject to the same timekeeping records as all other management employees, with appropriate to the organization approval of timesheets or records.

23. An employee hired before May 21, 2010 currently works 22 hours per week and is eligible for SHBP coverage because the employer recognizes 20 hours per week as "full-time." Will this employee be eligible for SHBP coverage after May 21st when the minimum hours per week for local employer coverage rises to 25 hours per week?

Yes. Any current SHBP employee who meets the employer's requirement for coverage will continue to be eligible for coverage provided they are continuously employed and their hours are not reduced below the employer's former minimum. Any employee hired after May 21st will be required to meet the 25 hour minimum or the employer's minimum, whichever is higher.

24. If an SHBP employee is employed by several municipalities and is eligible for coverage from all employers, is the 1.5% based on the total of all salaries?

If more than one of the employers provide SHBP coverage, after May 21st, such an employee will no longer be eligible for health benefit coverage from more than one SHBP participating employer (this provision applies to all employees, not just those hired after May 21, 2010) and will have to adjust his benefits accordingly.

However, if the employee also works for a nonparticipating employer and was eligible for coverage at that employer, the employee would be required to pay the minimum 1.5% contribution at all employers where eligible *and the benefit is not waived.*

F. Collective Negotiations Agreements (Labor Contracts)

General Statutory Principle: The changes required by Chapter 2 are effective May 21, 2010 except for those employees covered by existing collective negotiations agreements as of that date. Upon expiration of those collective negotiations agreements after May 21, 2010, the provisions of c. 2, P.L. 2010 will then apply to such employees. (Source, P.L.2010, c.2, s.1, s.6, s.10, s.13, s.14, s. 16)

25. A collective negotiations agreement (agreement) expired last year and is still in negotiations. Will those employees be required to pay the 1.5% contribution?

If the new agreement is **not ratified** on or before May 21st, the covered employees **will be required** to contribute a minimum of 1.5% of their annual base salary effective May 22nd. If the new agreement **is ratified** on or before May 21st, the covered employees **would not be subject** to the minimum contribution until the expiration of that agreement.

This same principle covers negotiations with police and/or fire unions that have proceeded to interest arbitration. Unless an interest arbitration award has actually been issued, and the time for appeal has expired (with no appeal being taken), on or before May 21, 2010, the covered employees **will be required** to contribute a minimum of 1.5% of their annual base salary effective May 22, 2010.

If an interest arbitration award has issued, no appeal has been taken, and the time for appeal expires on or before May 21, 2010, the collective negotiations agreement will no longer be deemed to be expired as a successor agreement will have been awarded and the terms of that agreement will govern.

26. A collective negotiations agreement (agreement) is set to expire prior to May 21st but the parties want to extend the agreement for one year. Will those employees be required to pay the 1.5% contribution?

The 1.5% withholding will not apply during the term of any extended agreement that was ratified on or before May 21, 2010. It would apply to any extension agreed upon after May 21, 2010. Subsequent to May 21, 2010, any successor collective negotiations agreement, or extension of a collective negotiations agreement, will be subject to the 1.5% contribution.

G. Impact on Non-Aligned (non-union or management) Employees

General Statutory Principle: The law differs in its treatment of "non-aligned employees;" an employee whose title is not included in a negotiation unit or who is not permitted to join a union or be represented by collective negotiations for wages, benefits, and terms and conditions of employment:

1) For non-SHBP employers, non-aligned employees become subject to the 1.5% contribution as of May 21, 2010.

2) For SHBP employers, non-aligned employees should begin paying the 1.5% contribution when the labor organization they are most "closely aligned with" begins paying the contribution. (Source: P.L. 2010, c. 2, s.5).

27. An SHBP employer has employees who are not affiliated (not aligned) with a labor group. When do they start paying the 1.5% contribution?

Employees not aligned with a labor group of SHBP employers are governed by Sections 5 (SHBP) and 6 (School Employees Plan) of Chapter 2. These employees begin paying the 1.5% contribution on May 21, 2010 unless the employer **exercises discretion** to apply the terms of a collective bargaining agreement in force on May 21, 2010 to them.

The grant of discretion is in N.J.S.A. 52:14-17.38 (highlighted below).

For example, if the employer exercises its discretion to apply a labor agreement, a non-aligned police chief would begin paying the 1.5% contribution at the same time as the aligned police officers, i.e. upon expiration of an agreement in force on May 21, 2010.

If the employer does not approve the application of the contract to a non-aligned individual, that person begins contributing 1.5% effective May 21, 2010.

Note: if the non-aligned employee has an individual employment contract those provisions must be examined as discussed in Question 30.

a. …Notwithstanding the provisions of any other law to the contrary, the obligations of a participating employer other than the State to pay the premium or periodic charges for health benefits coverage provided under P.L.1961, c.49 (C.52:14-17.25 et seq.) may be determined by means of a binding collective negotiations agreement. With respect to employees for whom there is no majority representative for collective negotiations purposes, the employer **may, in its sole discretion**, modify the respective payment obligations set forth in law for the employer and such employees **in a manner consistent with the terms of any collective negotiations agreement binding on the employer.** Commencing on [May 21, 2010] and upon the expiration of any applicable binding collective negotiations agreement in force on that date, employees of an employer other than the State shall pay 1.5 percent of base salary, through the withholding of the contribution, for health benefits coverage provided under P.L.1961, c.49 (C.52:14-17.25 et seq.), notwithstanding any other amount that may be required additionally pursuant to this paragraph by means of a binding collective negotiations agreement or the modification of payment obligations.

28. How are non-aligned employees in non-SHBP employers affected?

For employers not in the SHBP, the provisions of N.J.S.A. 40A: 10-21 (as amended by Section 14 of Chapter 2) control. This section does not include the "manner consistent" or discretionary text in the SHBP law cited above and thus does not give the employer authority to delay the imposition of the deduction. Non-aligned employees not in the SHBP must begin payment of the 1.5% as of the May 21st effective date of the legislation.

29. How are officials or employees whose titles are not included in a negotiation unit or who are not in a union, and have their own employment agreements affected? (Applicable to both SHBP and non-SHBP employers.)

Employees with individual employment contracts with the employer (such as a Municipal Administrator or Manager), such agreements must be reviewed on a case-by-case basis with legal counsel. There are two issues to address.

The first is to determine whether the agreement's terms make any collective negotiation agreement's provisions applicable as an individual employee. That is, does the agreement include language that the employee also receives the raises or other benefits awarded to those covered by a collective negotiation agreement? If so, the employee would be considered aligned with the employees covered by that agreement and would begin paying the contribution amount at the expiration of that collective negotiation agreement or on May 21, 2010 if the agreement had expired.

The second issue comes into play if an agreement does not reflect a relationship to a collective negotiation agreement. In this case, it must be determined whether there might be any constitutional impairment of contract issue if the 1.5% payment were imposed, under the facts and circumstances of the particular individual employment agreement. This must be done on an individual basis and is outside the scope of these FAQs. Local officials should consult appropriate legal counsel to determine how this should be resolved.

30. Our SHBP organization does not have any employees represented by labor groups. When do they begin the health contribution?

If the employer has no employees represented by a majority representative for collective negotiations purposes, their employees would begin paying the contribution effective May 21st.

31. Who makes the decision as to which bargaining unit a non-aligned employee is most closely associated? If a decision is challenged; who resolves the dispute?

The employer makes this decision as the decision to extend the benefit is within the employer's discretion. Challenges or disputes would be resolved through the judicial process.

H. Miscellaneous Questions

32. **(Leaves of absence) How are employees on Family Leave paid and unpaid status handled with regard to the 1.5% payment? What about employees who are on long term suspension or personal leave?**

    If the employee is on paid leave, the 1.5% is deducted from pay.

    If on unpaid leave (Family Leave or other), the amount of contribution is based on employee salary before the leave began. The employee is responsible for remitting their contribution to employer by check**.**

    It is recommended that arrangements for ongoing or advance payments be made prior to commencement of the leave. Local policies should dictate how to handle continuation of benefits if the payment is not made.

33. **(Employer recording keeping and budgets) How should the employer deal with collecting/withholding the employees' contributions and remitting them to the appropriate provider?**

    (This following only affects local employers that fall under the jurisdiction of the Division of Local Government Services.)

    For Calendar Year 2010 operating budgets, local employers may either reflect the net payroll contribution and treat the payment as a routine payroll deduction; or budget the full amount of the health benefit cost and anticipate the employee contribution as a revenue.

    Commencing in FY 2011, all local employers will be required to treat the employee contribution as a payroll deduction and show the net amount as a budget appropriation. A separate schedule employee contribution will be required in a form to be determined.