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SEASONAL WORKERS AND OBAMACARE: WHAT YOU NEED TO KNOW

This summer, many of you will be adding temporary employees to assist with your business operations as seasonal demands increase. This year, particularly, we want to make you aware of the possible impact that The Patient Protection and Affordable Care Act ("Obamacare") may have on your requirement to provide health insurance for your seasonal employees and their dependents.

In this regard, we believe it is crucial that you are aware of the following information.

Summary Overview

Obamacare requires that large employers cover their full-time employees, identified as those who work 30 hours or more per week.

However, the final regulations provide that seasonal employees do not qualify as full-time employees, under certain circumstances, even if they work 30 hours or more per week.

Therefore, with proper structuring, employers will not be required to provide health insurance coverage for, or face fines relating to, seasonal employees, even though they may work 30 hours or more per week.

The Basics: What You Need To Determine First

Q: Under Obamacare, are you a large employer?

A: If you employed 50 or more full-time employees on business days during the previous calendar year, you are a large employer. However, this begs another question:

Q: As an employer, must you include seasonal employees when determining large employer status?

A: It depends. An employer with more than 50 employees is not considered a large employer if those employees in excess of 50 (in number) do not work more than 120 days total (consecutive or not) during the year. Essentially, employees in this category are classified as seasonal workers, not as full-time employees, when determining your status as a large employer.

Q: How is a seasonal worker defined?

A: One who provides services on a seasonal basis, including retail workers employed exclusively during the holiday season.

First Key Takeaway

Based on existing guidance, if an employer can take a good faith position that its employees whose positions exist only during the summer months are seasonal workers, then those workers can be excluded from the 50 full-time employee calculations.

What Else Do You Need To Know?

- Important changes have been made to Large Employer Mandates for Seasonal Employees:

The employer mandate that companies with 50 or more full-time employees provide health insurance coverage was originally scheduled to take effect on January 1, 2014, but IRS Notice 2013-45 postponed its implementation until January 1, 2015.

- Due to the look-back measurement system discussed below, which is used in determining full-time employee status, it is important to take steps now to avoid possible penalties in 2015.

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The Look-Back Measurement System

For individuals who are employed only during the 2014 summer months, the regulations permit employers to adopt a look-back measurement system for determining whether variable-hour employees are full-time employees who must be offered health insurance.

This system permits employers to implement an "initial measurement period" of up to 12 months to determine whether a seasonal employee has averaged 30 or more hours of work per week during that period. The look-back system can apply to temporary employees (as long as they are hired on a variable-hour basis) and to seasonal employees. The regulations require employers to treat seasonal employees as variable-hour employees even if the seasonal employees work full-time hours during their seasonal employment.

> *The regulations include the example of a ski instructor hired to work from November 15 to March 15 and expected to work 50 hours per week. The example notes that, even though the worker would be expected to work in excess of full-time hours during this 4-month period of employment, he/she would not be expected to average over 30 hours per week over a 12-month measurement period and thus would not have to be offered health insurance.*

Please note that, concerning the "full-time employee vs. seasonal worker" determinations, the look-back measurement is different from the determination of employee status which corresponds to determining the large employer designation. The look-back regulations do not place a limit of 120 work days annually for an employee to be considered "seasonal".

- The regulations for the look-back measurement provide that a "seasonal employee" is in a position (job) for which the customary annual employment is six months or less.

> In this context, "customary" means that, by the nature of the position, an employee typically works for a period of six months or less, and that period should begin each calendar year in the same part of the year (e.g., summer or winter). In certain unusual circumstances, the employee can still qualify as a "seasonal employee" even if the seasonal employment is extended in a particular year beyond its customary duration (e.g., a ski instructor who customarily works six months each year but works an additional month in one year because of an unusually long snow season).

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Second Key Takeaway

• By applying a 12-month "initial measurement period" to determine whether seasonal employees are considered full-time, the key is that seasonal workers cannot work an average of 30 hours or more per week when measured over the 12-month period.

For example, if a seasonal worker provides 50 hours of service per week for 16 consecutive weeks, but is not reasonably expected to average 30 hours per week for the 12-month initial measurement period, then the seasonal worker's employer is not required to offer the employee health insurance coverage under its group health plan.

• It is also important that each seasonal employee have more than 26 consecutive weeks between the end of one year's seasonal work and the beginning of the next year's seasonal work.

• In conclusion, updated regulations allow workers to be classified as "seasonal" even if they work as many as six or seven months of the year. Therefore, if employers can take a good faith position that any workers hired during the summer months qualify as "seasonal," then those employers are not obligated to provide health insurance to those summer workers.

As you have seen, under Obamacare, determining which workers are considered full-time employees is critical for two reasons:

1. To determine whether you are a large employer, and therefore subject to the employer mandate which requires you to provide health care insurance to your full-time employees, and their dependents, or face penalties; and,

2. If you are a large employer, to determine which of your workers must be offered health care insurance.

As you consider this information and its effect on your requirements as an employer, we are here to help. We invite your specific questions and encourage you to contact Jason Luter at jluter@grayreed.com or 469-320-6076.

It is always our pleasure to serve you in any way we can.

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