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EBIA Weekly Archives

How Are Seasonal Workers Treated When Determining Employer Size Under the Employer Shared Responsibility Rules?

From the February 04, 2016 EBIA Weekly

QUESTION: Our company has a regular full-time workforce of approximately 40 employees. Each year, we hire about 80 more full-time retail employees in November and December for the holiday shopping season. How do we determine whether we are a large enough employer for application of the employer shared responsibility rules?

ANSWER: For purposes of determining if your company is subject to employer shared responsibility, you must measure your workforce by counting all your employees—but, as explained below, there are special rules for seasonal workers. As background, starting in 2015, under the employer shared responsibility provisions of Code § 4980H, an “applicable large employer” (ALE) may be subject to penalties for failure to offer adequate health coverage to enough of its full-time employees (and dependents).

An ALE is generally an employer that employed 50 or more full-time employees (including full-time equivalents) during the prior year. Although seasonal workers must be included when determining whether your workforce exceeds 50 full-time employees (including full-time equivalents), you will not be considered an ALE if you passed that threshold for 120 days or fewer during a calendar year and the employees in excess of 50 who were employed during that period were seasonal workers. A “seasonal worker” is one who performs labor and services on a seasonal basis, including retail workers employed exclusively during holiday seasons. (Employers are permitted to apply a reasonable, good faith interpretation of the term “seasonal worker.”)

It appears you can apply the seasonal worker exception because your workforce exceeds 50 full-time employees for no more than 120 days, and the number of full-time employees would be less than 50 during those months if seasonal workers were disregarded. Note that you must determine your ALE status for each year by counting the number of employees during the prior year and measuring the number of days that seasonal workers were actually employed during the preceding year. Once the prior year ends, your status as an ALE (or not) is fixed for the current year.

Also be aware that there is a distinction between the terms “seasonal worker,” relevant for determining ALE status, and “seasonal employee,” relevant—for employers that are ALEs—for determining an employee’s status as a full-time employee under the look-back measurement method (one of the two permissible methods for determining full-time employee status). If you are not an ALE for a particular year, you do not need to identify full-time employees using the separate definition of seasonal employee.

For more information, see EBIA’s **Health Care Reform** manual at Sections XXVIII.B.5 (“Large Employers Are Potentially Subject to an Assessable Payment (Penalty Tax): Disregarding Seasonal Workers in Certain Cases”) and XXVIII.C.4 (“Look-Back Measurement Method for Determining Full-Time Employee Status”).

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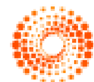

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