

Watch out for the ACA employer mandate when hiring seasonal workers



Many employers hire seasonal workers this time of year. If your organization is one of them, you might worry about becoming subject to the Affordable Care Act's (ACA's) employer mandate — also known as the “play or pay” provision. To determine whether you may be at risk for triggering the mandate and, ultimately, penalties, you'll need to count all of your employees while factoring in the special rules for seasonal workers.

Determining ALE status

Under the play-or-pay provision, 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 their dependents).

An ALE is generally an employer that employed 50 or more full-time employees (including full-time equivalents) during the previous year. Although seasonal workers must be included when determining whether your workforce exceeds this threshold, you won't be considered an ALE if:

- You exceeded that threshold for 120 days or fewer during a calendar year, and
- The employees in excess of the threshold who were employed during that period were seasonal workers.

Employers are permitted to apply a reasonable, good-faith interpretation of the term “seasonal worker.” But the term generally applies to someone who performs labor and services on a seasonal basis, including workers employed exclusively during holiday seasons.

Noting the particulars

Let's say an employer has a regular full-time workforce of approximately 40 employees and, this year, it has hired about 80 additional full-time employees in November and December for the holiday shopping season.

Under these circumstances, the employer could likely apply the seasonal worker exception because its workforce has included 50 or more 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 annually by counting the number of employees during the *previous* year and measuring the number of days that seasonal workers were actually employed during that preceding year. Once the previous year ends, your ALE status (or lack thereof) is fixed for the current year.

Also be aware that there's a distinction between the terms “seasonal *worker*,” relevant when determining ALE status, and “seasonal *employee*,” relevant — for employers that are ALEs — when 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're not an ALE for a particular year, you don't need to identify full-time employees using the separate definition of seasonal employee.

Teetering on the edge

It's wise to determine now what the impact of seasonal workers is on whether you'll be subject to the play-or-pay provision in 2018. Companies that teeter on the edge of being an ALE are particularly at risk of facing ACA penalties. Please contact us for help.

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