



Maine Municipal Employees Health Trust

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To: Health Trust Participating Employers
From: Anne Wright, Assistant Director, MMEHT
Date: April 11, 2014
Re: The Affordable Care Act and Health Care Reform -
Who Is An Employee - and Who Is Not?

Please note: Copies of these Health Care Reform updates may be found on the Health Trust website, at www.mmeht.org. Click on the link for Health Care Reform. Updates are at the bottom of the page; simply click on the link for the update you wish to read.

Last week's update focused on how to count your employees - how to determine if you meet the 50-employee threshold above which an employer is subject to the Employer Shared Responsibility provision of the federal Affordable Care Act. We talked about full-time employees and full-time equivalent employees, and how to calculate hours of service. You know that your "regular" employees - that is, those who come in each week and perform their duties for a set number of hours, whether full-time or part-time, on a regular basis - should be included as you make your calculations. But what about those people who don't necessarily fit the general definition of a "full-time" or "part-time" employee? Should they all be included in your calculations?

The final regulations issued in February 2014 provided clarification on when certain individuals should (and should not) be included when an employer is counting its full-time equivalent employees. We will address two of these categories (seasonal employees and "bona fide volunteers") today.

Seasonal employees. Seasonal workers are taken into account when determining the number of full-time equivalent employees. However, if the employer's workforce exceeds 50 full-time employees (including full-time equivalents) for 120 days or fewer during a calendar year, **and** if the employees in excess of 50 who were employed during that 120-day period were seasonal employees, the employer is not considered to be a large employer, and the Employer Shared Responsibility provision will not apply.

Say, for example, that Anytown generally employs 35 full-time / full-time equivalent employees. For the months of June, July, and August each year they bring on 30 seasonal employees, each of whom works more than 30 hours per week. Even though Anytown averages over 50 full-time / full-time equivalent employees during those three months, this will not make Anytown a large employer. As a result, Anytown will not be subject to the Employer Shared Responsibility provision of the ACA.

“Bona fide” volunteers. The final regulations issued in February 2014 stated that “hours of service” (to be counted in determining the number of full-time / full-time equivalent employees) do not include hours worked as a “bona fide volunteer”.

Although much of the discussion around whether or not employees classified as “volunteer” has revolved around volunteer firefighters and volunteer emergency personnel, the final rules included the following language:

*For purposes of section 4980H, however, bona fide volunteers are not limited to volunteer firefighters and emergency medical providers. Rather, bona fide volunteers include any volunteer who is an employee of a government entity or an organization described in section 501(c) that is exempt from taxation under section 501(a) **whose only compensation from that entity or organization is in the form of (i) reimbursement for (or reasonable allowance for) reasonable expenses incurred in the performance of services by volunteers, or (ii) reasonable benefits (including length of service awards), and nominal fees, customarily paid by similar entities in connection with the performance of services by volunteers.** [emphasis added]*

Depending on the amount they are paid, it appears that this “bona fide volunteer” classification could also be extended to include members of Select Boards and Planning Boards, City Council members, and other similar positions receiving only nominal compensation or fees.

Although these “bona fide volunteer” hours do not need to be counted when calculating the number of employees, there has been some discussion as to whether or not this exclusion applies to “on call” firefighters and emergency personnel. If an employee who is classified as either a “volunteer” or “on call” firefighter receives compensation that is more than nominal – even if the amount is less than that paid to regular firefighters – that individual may need to be included in the calculation of employees. We recommend that individual municipalities contact their attorneys for further clarification on this issue.

Please note that the Maine Municipal Association and the Maine Municipal Employees Health Trust are sharing this information to assist you with your compliance planning. We recommend that you contact your legal counsel with specific questions relating to this law.