Backgrounder: The STARS Act of 2014

The method to determine business size under the Affordable Care Act (ACA) is unnecessarily complicated, poorly explained and fails to address seasonal workforce practices across a wide variety of industries and climates. Rules to determine the full-time status of seasonal employees are confusing, creating obstacles to compliance for small seasonal businesses. Congress must reexamine and address the issue of seasonality to simplify compliance, to avoid significant workforce disruptions and to promote small business growth.

Current Seasonal Definitions

Current law contains two definitions of seasonal – Seasonal Worker and Seasonal Employee. The terms are not interchangeable, leading to confusion amongst small employers and consultants:

- The Seasonal Worker definition is used when calculating if the employer is an Applicable Large Employer and subject to the Employer Shared Responsibility, or so-called “employer mandate” (IRC §4980H), and Employer Reporting Requirements (IRC §6056). Employers are temporarily permitted to use a “reasonable, good-faith interpretation” to define Seasonal Worker.

- The Seasonal Employee definition is used by an Applicable Large Employer to determine which employees must be offered coverage under Employer Shared Responsibility (IRC §4980H). Seasonal Employees are those that are hired into a position for which the customary annual employment is six months or less.

Current Seasonal Compliance Methodologies

Under final regulations for IRC §4980H as prescribed by Treasury/IRS, seasonal employers may use the following methodologies for to determine their Applicable Large Employer size and to which employees coverage must be offered if determined to be a large employer:

- Applicable Large Employer Determination: Requires smaller employers to track hours of service performed by both full-time and part-time employees, including Seasonal Workers, to determine their status on a monthly basis. Next, employers aggregate those monthly calculations and average them over the course of a calendar year. If the resulting average is 50 full-time equivalents or more, the business is an Applicable Large Employer and subject to the employer mandate, unless the Seasonal Worker Exception applies.

A business may utilize the Seasonal Worker Exception if:

1. The total number of full-time equivalents exceed 50 for 120 days (four calendar months) or less, and;
2. The employees in excess of 50 during that period were Seasonal Workers.

If those two conditions are met, an employer may remove hours of service performed by both full-time and part-time Seasonal Workers from their initial calculation and recalculate their Applicable Large Employer size.
• **Full-Time Status Determination**: Requires *Applicable Large Employers* to measure the hours of service performed by individual employees to determine their eligibility for an offer of coverage that meets the ACA’s affordability and minimum value standards. The ACA’s definition of full-time employment: “*With respect to any month, an employee who is employed on average at least 30 hours of service per week.*”

Citing potential issues with coverage “churn” and difficulties with administering benefits plans to part-year employees, final regulations permit employers to use a *Look-Back Measurement Period* to determine the full-time status of new *Seasonal Employees*. An employer may select a period of between 3 and 12 months to determine if a *Seasonal Employee* worked on average at least 30 hours/week (130 hours per month). If using the *Look-Back* method, employers must also apply an associated *Stability Period* (matching the length of the look-back, but no less than 6 months) during which that *Seasonal Employee* will be treated as either full-time or part-time.

Alternatively, large employers may choose the *Monthly Measurement* methodology in which they would be required to offer ACA-compliant coverage to *Seasonal Employees* during the months that they are anticipated to work an average of 30 hours/week or more or face a potential tax penalty.

**The Issues**

• Seasonal businesses are different than other small businesses as they experience intensive bursts of profitability and payroll over a certain time of year.

• Smaller seasonal business, to whom the ALE determination would apply, do not typically employ HR experts in house. They also have finite resources from which they can contact/consult third-party experts.

• Under current law, a small seasonal business that employs 20 year-round, full-time employees and a number of seasonal workers for five months could be considered an *Applicable Large Employer*, while a larger business with 49 year-round, full-time employees would not.

• Many smaller employers do not understand the difference between the two seasonal definitions and the circumstances under which each must be used. Though the terms are often used as synonyms within their operations, under current law and for the purposes of the ACA, a hired individual can simultaneously be a *Seasonal Worker* but not a *Seasonal Employee*.

• In attempting to provide simplified compliance information, many “experts” have counseled that that the definition of a *Seasonal Worker* is 6 months or less, or that a *Seasonal Worker* is someone who works less than 120 days and do not have to be counted in an initial *Applicable Large Employer Determination*.

• These interpretations are incorrect. This confusion could lead to incorrect determinations of ALE status and potential penalties for employers not offering coverage to full-time employees, who believe they are small but in fact are large employers under the law.
• **Seasonal Employees** are not automatically exempt from receiving an offer of coverage from an **Applicable Large Employer**, despite Treasury's statement that: “Those in positions for which the customary annual employment is six months or less generally will not be considered full-time employees.”

• Only **Seasonal Employees** that do not average 30 hours of service/week over an employer’s selected period in the **Look-Back Measurement Method** will be treated as part-time employees during the associated **Stability Period**.

**The STARS Act of 2014**

Representatives Jim Renacci (R-OH), Kurt Schrader (D-OR), Lynn Jenkins (R-KS), and Jim Costa (D-CA) introduced the “Simplifying Technical Aspects Regarding Seasonality Act of 2014,” or the “STARS Act of 2014.” The STARS Act simplifies the seasonal rules of IRC §4980H to better enable small employer compliance. Specifically, the STARS Act would:

• Align and refine the separate definitions of “seasonal” found in statute and rulemaking to Treasury’s definition from the final regulation.

• Simplify methods for small employers to calculate their Applicable Large Employer size and determine the full-time status of their seasonal employees.

Under STARS, **Seasonal Employees** would be those that were “employed in a position for which the customary annual employment is not more than 6 months and which would require performing services at certain seasons or periods of the year.” That single definition would be applied to both the **Applicable Large Employer Determination** and the **Full-Time Status Determination**.

The methodologies for both determinations would also be simplified. Specifically, the STARS Act would:

• **Applicable Large Employer Determination**: STARS modifies the current **Seasonal Worker Exception** by applying the exception to qualifying **Seasonal Employees**, not certain seasonal businesses. Simply put, hours of service performed by full-time and part-time **Seasonal Employees** would not be included in an initial calculation to determine **Applicable Large Employer** size. The **Seasonal Worker Exception**, and need for seasonal employers to perform additional steps in their calculation, would be removed.

• **Full-Time Status Determination**: STARS codifies the treatment of **Seasonal Employees** from Treasury’s final regulation and clarifies that those meeting the definition in the legislation would not be full-time employees. Seasonal employers would no longer need to utilize the **Look-Back Measurement Period** methodology to determine a **Seasonal Employee’s** full-time status.

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