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April 9, 2012

Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
Room N-5653
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Submitted electronically: e-ohpsca-er.ebsa@dol.gov

Re: DOL Technical Release No. 2012-01

The International Association of Amusement Parks and Attractions (IAAPA) is the largest trade association for permanently situated amusement facilities and attractions. IAAPA represents more than 4,000 facility, supplier, and individual members in the U.S. Member facilities include amusement and theme parks, waterparks, attractions, family-entertainment centers, arcades, zoos, aquariums, museums, science centers, resorts, and casinos. Our membership ranges from very large, multi-location facilities to small, single-site, family-owned operations.

IAAPA appreciates the opportunity to comment on the Departments of Labor, Health and Human Services, and the Treasury's *Frequently-Asked-Questions from Employers Regarding Automatic Enrollment, Employer Shared Responsibility, and Waiting Periods* document ("FAQ document"):

Seasonal Employees

Our members rely heavily on seasonal employees, as many of their facilities only operate during part of the year. Each full-time, permanent position within an amusement park or attraction is augmented by approximately ten temporary seasonal positions during peak summer months. These temporary seasonal employees are often young people in their first jobs, retirees, school teachers, or others who enjoy supplementing their income during the summer months.

While integral to our members' operations, for the most part, our industry's seasonal workers are hired for a short, temporary period of time with a very different set of expectations and responsibilities than their full-time permanent employees. While some may change their status to become full-time permanent employees, for the vast majority, the expectation of both the employee and employer is that the employment situation is temporary and will end when the season ends. We are proud of the employment opportunities that the attractions industry provides but it is important for the Administration to recognize that a seasonal workforce is accompanied by unique administrative challenges which cannot be ignored in the implementation of the Patient Protection and Affordable Care Act (PPACA).

The definition of “full-time” employee under PPACA is of particular interest to IAAPA, given the number of seasonal workers that the industry employs every year and the variable nature of their hours and schedules.

Reducing Administrative Burden

IAAPA appreciates the proposal’s sensitivity to the administrative burden on employers, especially smaller employers that may not be small enough to be exempt from the requirements of PPACA, but still have senior management wearing multiple hats.

In seasonal businesses like those found in the attractions industry, employee tenures are not long, which in itself creates quite a workload for human resources staff. Streamlining the administrative burden is important to the attractions industry. IAAPA offers the following suggestions for streamlining administrative burden:

- **Quarterly review.** As we will discuss, IAAPA supports the direction the agencies are heading with the look-back/stability concept. To the extent that the look-back period can be a fixed quarterly (or even annual) exercise, as opposed to going through the process on a monthly basis, administrative burden on employers, especially smaller employers, would be greatly reduced.
- **Specific Exclusion for Minors under 18.** Nearly all children aged 18 and under have health coverage through some source already – a safe harbor should be created for not having to offer them coverage, and subsequently not having to review these employees for the look-back stability purposes.

In addition to these general comments, IAAPA has responses to specific questions and answers provided in the FAQ document:

Proposal for determining if an employee (other than a newly-hired employee) is a full-time employee (A4)

As we said in our comment to the IRS on the *Request for Comments on Shared Responsibility for Employers Regarding Health Coverage* (attached), IAAPA supports the concept of look-back/stability proposal for determining an employee’s full time status for purposes of the employer responsibility provisions (Section 4980H). In order to get an accurate assessment of an employee’s relationship with the company, a look-back period of up to 12 months should be allowed for employees who are not hired as full-time.

Proposal for determining if a newly-hired employee is a full-time employee (A5)

As previously mentioned, IAAPA supports the concept of look-back/stability proposal for determining an employee’s full time status for purposes of the employer responsibility provisions (Section 4980H). A look back/stability period will provide businesses with the predictability they need to make employment decisions and continue to employ a large and fluctuating number of seasonal employees. However, as stated in our comments to the IRS, a look-back/stability period for new hires should extend beyond six months. It would not be unusual for a seasonal employee at an attractions facility to appear to be “full time” during a six-month look-back period, especially for employees at businesses with active “shoulder seasons” (specifically, Halloween or holiday season festivities), but on an annual basis fall well short of the 1,560 annual hours required to be a full time employee (30 hours/week x 52 weeks). The reasonable expectation and look-back period should extend up to 12 months for all employees.

Affordability Safe Harbor (A2)

IAAPA supports the proposal to allow employers to use wages from the previous year's W-2 **as one option** for meeting the affordability safe harbor. However, as the attractions industry faces high turnover of its seasonal employees from year to year, we do not want this to be the only option available to satisfy the safe harbor requirements. The ability to look at an employee's current wages would also be helpful, especially in the case of new hires, or promoted employees. Some of our facilities, for logistical or other reasons, others would prefer to use the general rule which states an employee's premium contribution for self-only coverage cannot exceed 9.5% of the employee's household income. IAAPA requests the agencies grant employers the flexibility to determine which method is appropriate for their businesses.

IAAPA applauds the Departments of Labor, Health and Human Services, and the Treasury for seeking input from stakeholders and promulgating the forthcoming rules in a transparent fashion, and thanks them for the opportunity to offer comments on the FAQ document.

If you need additional information, or if I can answer any questions, please do not hesitate to contact me.

Respectfully,

A handwritten signature in black ink that reads "Randy Davis". The signature is written in a cursive, flowing style.

Randall Davis
Senior Vice President, Safety & Advocacy

Attachment (1): IAAPA Response to IRS Notice 2011-36