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September 30, 2012

CC:PA:LPD:PR (Notice 2012-58)
Room 5203, Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Submitted electronically: Notice.comments@irscounsel.treas.gov

Re: IRS Notice 2012-58: *Determining Full-Time Employees for Purposes of Shared Responsibility for Employers Regarding Health Coverage (§ 4980H)*

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 Internal Revenue Service's Notice 2012-58, *Determining Full-Time Employees for Purposes of Shared Responsibility for Employers Regarding Health Coverage (§ 4980H)* ("Notice 2012-58"):

Measurement/Stability
IAAPA applauds the IRS for granting employers up to 12 months to determine the status of variable-hour employees.

As we said in our comments on the *Request for Comments on Shared Responsibility for Employers Regarding Health Coverage*, and 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,* IAAPA strongly supports an up to 12-month measurement/stability period process for purposes of determining the status of employees who are not hired as full-time.

IAAPA would like to obtain additional clarifaction that if a variable-hour employee separates from an employer (completely severing the employment relationship), and then returns at some point in the future, also in a variable-hour position, the re-hired employee would be considered a "new employee" for purposes of the measurement/stability period process. The number of hours worked by an employee during the first employment period may not be indicative of the hours he or she can expect to work in future employment periods.

Definition of Seasonal Employee
IAAPA 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 from their full-time permanent employee counterparts. 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).

IAAPA appreciates the ability for employers to use a "reasonable, good faith interpretation" of the term "seasonal worker" for the purposes of this notice, and through 2014.

IAAPA supports the IRS establishing a permanent definiton of seasonal workers under § 4980H. IAAPA supports using existing legal definitons such as the safe harbor for seasonal employees in the final sentence of Treas. Reg. § 1.105-11(c)(2)(iii)(C)), "Nothwithstanding the preceding sentence, any employee whose customary weekly employment is less than 25 hours or any employee whose customary annual employment is less than 7 months may be considered as a part-time or seasonal employee."

We view Example 11 in IRS Notice 2012-58 as demonstrating that the IRS thinks seasonal workers would be exempt, and employers would not be responsible for tracking and averaging their hours since they will not be employed throughout the entire measurement period. We support this concept, as it would reduce the administrative burden on employers with large numbers of seasonal workers. We would appreciate IRS clarification that this is its intent.

Some IAAPA members indicate that, at the end of a season, some seasonal employees are kept in their human resources system, but in dormant status, to be reactivated if they return the following season. We would like a clarification that this would not affect the employee's status as "seasonal".

Specific Exclusion for Minors, etc.
If an exemption for seasonal employees (as discussed above) is not adopted, we urge adoption of exceptions to the definition of "full-time employee" that are consistent with the Patient Protection and Affordable Care Act's goal of making coverage available without creating additional costs and administrative challenges associated with offering coverage to specific types of employees who don't need or expect it:

- Medicare and TRICARE beneficiaries.
- Non-resident aliens.
- Minors and young adults.

In almost all cases, children aged 18 and under have health coverage through some source already – a safe harbor should be created for not offering it to variable-hour employees under age 18. The PPACA requires group health plans to allow a primary insured's natural, adopted, step- and foster-children to remain on the parent's health plan until age 26; so seasonal employers should not have to offer those aged 19 to 26 coverage (or alternatively, only to those who indicate they don't have access to other coverage).

The practical impact, absent such exceptions, would be to track and average hours through measurement/stability, and perhaps make an offer of coverage that would more often than not be refused. The administrative burden and cost of tracking these employees would be high, relative to these workers' wages; employers may need to manage these costs by hiring fewer workers.

90-day Waiting Period
IAAPA is pleased with the guidance on the 90-day administrative waiting period. We would like to obtain additional clarifaction that if an employee separates from an employer (completely severing the employment relationship), and then returns at some point in the future, the employer is still entitled to the 90-day administrative waiting period.

Future Regulatory Activity
IAAPA members appreciate the IRS's efforts to announce this notice as early as possible, giving employers adequate time to adapt to the new guidelines. Changes to current benefit structures may have budgetary impacts of varying degrees for businesses in the United States. As the IRS is undoubtedly aware, preliminary budgeting for 2014 begins in early-to-mid 2013, if not sooner. Some IAAPA members report they are already involved in the budget process for 2014, especially with respect to significant capital investments with long lead times.

As this notice is only valid through 2014, IAAPA requests future regulary activity on the issue be completed as early as possible.

IAAPA applauds the IRS for seeking input from stakeholders and promulgating the forthcoming rules in a timely and transparent fashion, and thanks them for the opportunity to offer comments on the Notice.

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

Respectfully,

Randy Davis

Randall Davis
Senior Vice President, Safety & Advocacy