



CHIEF COUNSEL

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

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CONEX-108850-16

4980H.00-00

Dear \_\_\_\_\_ :

I am responding to your letter of February 18, 2016, concerning your employer's policy restricting part-time and seasonal employees from working more than 29 hours of service in any week. You indicated that you are receiving Medicare but are included in this policy restricting part-time and seasonal employees from working more than 29 hours.

Section 4980H of the Internal Revenue Code, as added by the Affordable Care Act, provides that an employer may be required to pay an assessable payment if it does not offer health coverage to its full-time employees and at least one full-time employee purchases coverage through the Marketplace and receives the premium tax credit. An employee is a "full-time employee" for this purpose if the employee averages at least 30 hours of service per week during a given month.

Section 4980H provides for two alternative types of assessable payment, as described below. An employer could potentially owe one (but not both) of these payments in any given calendar month, if the conditions described below are satisfied:

- Section 4980H(a) may apply if the employer fails to offer minimum essential health coverage to at least 95% of its full-time employees and one of its full-time employees receives the premium tax credit for coverage purchased through the Marketplace. If this type of assessable payment is triggered, the annual amount of the payment is \$2000 (adjusted annually) multiplied by the total number of the employer's full-time employees.
- Section 4980H(b) may apply if the employer does offer minimum essential health coverage that is affordable and provides minimum value to at least 95% of its full-time employees, but one or more full-time employees purchases coverage

through the Marketplace and receives the premium tax credit. If this type of assessable payment is triggered, the annual amount of the payment is \$3000 (adjusted annually) multiplied by the total number of the employer's full-time employees who receive the premium tax credit.

You indicated that your employer has developed a new policy restricting part-time and seasonal employees from working more than 29 hours of service in any week. You asked whether the employer could in fact face potential liability under section 4980H if an employee in this category works more than 29 hours of service in a week. Assuming that your employer is subject to section 4980H (which generally applies to employers who employed an average of 50 or more full-time employees in the preceding calendar year), the amount of the employer's potential liability under section 4980H(a) is based on the number of employees who average 30 or more hours of service per week in a given month. Therefore an employee who works an average of 30 or more hours of service per week during any given month could potentially trigger (or increase the amount of) employer liability for an assessable payment under section 4980H(a) for that month. Note that all full-time employees are counted for purposes of determining the amount of the assessable payment under section 4980H(a), whether or not the employee is covered by Medicare or another source of coverage.

For purposes of section 4980H(b), an employee could potentially average 30 or more hours of service for a month and still not trigger (or increase the amount of) employer liability, provided that the employee does not purchase coverage on the Marketplace and receive the premium tax credit. An employee such as you who is covered by Medicare is ineligible to receive the premium tax credit, and therefore generally would not lead to any employer liability under section 4980H(b). As noted above, however, a full-time employee who is eligible for Medicare could potentially trigger or increase the amount of an employer's liability for an assessable payment under section 4980H(a).

I hope this information is helpful. If you have questions, please contact me at  
or at .

Sincerely,

Christine Ellison  
Acting Branch Chief, Health and Welfare  
Office of Associate Chief Counsel  
(Tax Exempt and Government Entities)