

Health care reform requires a plan for all seasons

Retailers, others seek changes on how full-time workers are calculated

[Beth Fitzgerald](#)

Employers want to see flexibility and predictability in the new federal rules that will define whether an employer has 50 or more full-time workers — and therefore must either provide health insurance or pay penalties in 2014 under the Affordable Care Act.

The issue is complicated because hourly workers are included in the arithmetic employers must use to determine whether or not they have 50 "full-time equivalent" workers. The law defines a full-timer as an employee who works at least 30 hours a week, or 130 hours per month. But for hourly workers, the employer totals all the hours they work in a month, and then divides by 120 to arrive at the number of full-time equivalents, who are then added to the full-time work force. Employers that depend on seasonal workers, or who staff up and down quickly as business conditions change, could face administrative headaches complying with the law, experts said.

Attorney **Frank T. Cannone**, chairman of the corporate department at **Gibbons**, predicted the over-50 rule will impact a wide range of New Jersey employers, including retail, manufacturing, services, technology, chemicals and pharmaceuticals. "The large multinationals have their HR departments that will implement this program, but it will be another expense item for medium-sized businesses," he said.

The Internal Revenue Service, the Labor Department and the Department of Health and Human Services are collaborating on the employer-size regulations, and have gotten more than 100 comments from business associations and human resources consultants. The government is expected to issue regulations by year's end, followed by another comment period.

Getting input from employers before regulations are issued "is a very positive step," said **Don Mallo**, vice president of human resources for **Extensis Group**, a professional employer organization. "It will provide clarity to a very hazy situation, and employers can now start planning their staff needs based on what the definition (of a full-time worker) is, and that is very critical." He said "the employer may have fewer than 50 workers during part of the year and then go back over 50 at another time — and how you determine their liability is a major issue." He said the law could discourage employers from hiring more workers and crossing the 50-worker threshold.

The government has proposed excluding seasonal workers entirely from the size

calculations, which has drawn support from retailers and other employers with large seasonal work forces. A proposed "look-back/stability" rule has also drawn favorable comment, because the employer could look back at least three months but no more than 12 months to calculate its full-time-equivalent work force. An employer who was exempt from the law during a six-month look-back period would also be exempt during the following six months.

Employers for Flexibility in Health Care — an umbrella group that includes **Wal-Mart**, **UPS**, the Associated Builders and Contractors, the National Retail Federation, the Food Marketing Association and the National Restaurant Association — said the look-back proposal "has the potential to provide the flexibility employers need to preserve flexible work arrangements, provide a stable source of coverage and allow for the practical administration of benefits."

Cannone said the problem for employers "is not so much the penalties, but the administrative burden of compliance." He said the look-back idea has merit, "because you want stability as a business owner; there is value in knowing what the cost will be. Stability is incredibly important because volatility hinders growth."

John Sarno, president of the Employers Association of New Jersey, said his members "really have to start planning for this now." Sarno said the government is taking "a very practical approach by asking for input before they publish the regulations."

Legal challenges to the Affordable Care Act are expected to come before the Supreme Court, and the 2012 election could impact the law if the balance of power shifts in Washington. But for the present, "it is clear that this law is (something) we have to deal with," Sarno said. "People are paying attention to the (Affordable Care Act), and we are starting to get into the nitty gritty" of compliance issues.

E-mail to: bfitzgerald@njbiz.com