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Julie assists with a variety of compliance issues related to employee benefits and the ACA, ERISA and other federal and state regulations.

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Employee Benefits – Question of the Month

July 2019

Q: We hire seasonal workers every year to perform general lawn care and landscaping services for our customers. We have never offered health insurance because we've never had more than 50 employees in any month. However, we went over 50 full-time employees in March and expect to keep growing. My questions are:

- At what point do we need to offer health insurance to our employees or risk incurring a penalty?
- Do we have to offer insurance to our seasonal workers (and if so, when)?

A: Your question may seem simple but there is actually a lot going on here. Here are some of the high-level issues to consider:

Affordable Care Act. The ACA's "employer mandate" requires employers with 50 or more FT employees to either offer health insurance that meets certain requirements or run the risk of substantial penalties. Your obligation to offer such benefits is only triggered for the calendar year after a year in which you had, on average, 50 full-time employees per month. If you hit that mark this year, you will be subject to the employer mandate next year. We would want to examine your employee counts closely before making that determination.

Eligibility. Assuming you offer health benefits next year to avoid penalties, you will need to make a number of decisions that will determine eligibility for seasonal workers. These include:

1. What do you want your waiting period to be (the period of time a full-time employee must work for you before they can enroll in benefits)? Very generally, this can be no longer than 90 days. Unless you use a lookback measurement process (see #3), you will have to offer benefits to full-time seasonal workers at the end of your waiting period.
2. Are the workers properly classified as "seasonal?" This generally means someone whose job, by its nature, typically lasts less than six months
3. To offer them benefits, you will need to establish a "lookback measurement process," which is a designated period of time (often 12 months) over which you can determine whether seasonal employees work full-time

As you can probably tell, this is a complicated analysis, and we haven't even mentioned all the various wrinkles that need to be ironed out. I'm here to help when you're ready to move forward. plan regulations regarding an employee's ability to drop or add coverage outside of open enrollment are complicated, so it's better to be safe than sorry!

The tricky part about your scenario is that the regulations say coverage can be dropped only if:

- There is an order requiring another person (e.g., a spouse or former spouse) to cover the child; and
- Coverage is, in fact, provided for the child through a plan available to that other person.

I would start by asking the employee for a copy of the order allowing him to drop coverage for his child. If it's not clear from the order whether the child has coverage through another person (usually, the other parent), then I would recommend contacting the state agency (or court) that issued the order to see if they can verify coverage.

Feel free to contact me if you have any additional questions at juliea@millercares.com.