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Agency of Administration

MEMORANDUM

TO: Appointing Authorities and Department Heads
FROM: Maribeth Spellman, DHR Commissioner
DATE: July 23, 2015
RE: Temporary Employees and the Affordable Care Act

The Affordable Care Act (ACA) includes several new requirements for employers and their group health plans. Most notably is the Employer Shared Responsibility (ESR) mandate which requires that employers with 50 or more full-time employees offer affordable health insurance to their employees. In order to ensure the State complies with this requirement, avoiding the potential of hundreds of thousands of dollars in penalties, the Department of Human Resources (DHR) will be closely managing temporary employee usage.

As you may recall 3 VSA § 331 limits the number of hours each temporary employee can work during the calendar year to 1280 hours. The cap applies to all temporary employees (seasonal, fill-in, emergency, etc.) unless an employee receives a waiver from DHR. The ERS mandate sets a Federal cap of 1,560 hours and includes penalties for non-compliance that will impact your department or agency if temporary employee hours are not managed appropriately. **For each temporary employee who works 1,560 or more hours during any 12 month period, you may be charged a \$3,000.00 penalty or more.**

The DHR is making several policy and procedural changes to minimize the State's financial liability under the ESR mandate. These changes will primarily focus on the temporary employee hiring request and waiver processes. Specifically, DHR will soon implement the following requirements for departments and agencies:

- In line with current practice, a "Temporary Position Request" form will need to be completed prior to hiring a temporary employee.
- A "Request for Waiver of Temporary Employee Hours" will need to be completed prior to allowing temporary employees to work more than 1,280 hours in a calendar year.
- Vacant temporary positions will be required to be posted through VTHR unless there is an MOU between DHR and the hiring department or agency allowing decentralized recruitment.
- Departments and agencies who have temporary employees (with appropriate waivers) working a total of 1,560 hours or more for the State in a 12 month consecutive period will be liable for any ACA related penalties assessed for that employee. Note that for temporary employees working in more than one department or agency, coordination will be required to ensure an employee does not reach the 1,560 hour threshold.
- DHR will also be providing more detailed supporting materials, instructions and queries to help departments and agencies to monitor their temporary workforce.

Attached you will find the above forms as well as the draft changes to the policy governing the temporary hiring process. We welcome your input. Please be in touch with Tom Cheney (Thomas.S.Cheney@state.vt.us) by Wednesday, July 29th should you have any questions, suggestions or comments. DHR General Counsel, Michelle Anderson (Michelle.Anderson@state.vt.us) is also available to discuss this issue.