

**CITY OF BUFFALO
DEPARTMENT OF AUDIT AND CONTROL**

**AUDIT REPORT
SEASONAL EMPLOYEES ELIGIBILITY FOR
BENEFITS**

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NOVEMBER 2017

Preface

In accordance with the goals set forth in the Annual Audit Plan, we conducted an audit of City of Buffalo (the City) seasonal employees' eligibility for health insurance and retirement benefits. The audit was conducted in conformance with the International Standards for the Professional Practice of Internal Auditing issued by the Institute of Internal Auditors.

The City has approximately 3,200 employees (2,800 full-time and 400 seasonal or part-time). The City participates in the New York State and Local Employees' Retirement System (NYS Pension Plan). Full-time employees of the City are members of the NYS Pension Plan. Seasonal and part-time employees have the option to become members of NYS Pension Plan or to decline membership by signing a waiver.

Full-time employees and their dependents are offered the option to enroll in the City sponsored health insurance plan. Seasonal employees are not considered full-time and are not offered the option to enroll in the City sponsored health insurance plan.

The City employed 396 seasonal employees during fiscal year 2017, of which 94 were selected for audit testing.

Audit Summary

The Human Resources Department, Division of Compensation and Benefits (HR) has an inadequate process to ensure compliance with laws related to health insurance and retirement benefits for seasonal employees. Improvements can be made to strengthen the internal controls over the process, which will significantly reduce the risk of the City being out of compliance.

The main shortcomings of the process include the following:

- It cannot be determined if 45% of the seasonal employees tested were offered membership into the NYS Pension Plan, as required by law.
- Prior to the audit, HR did not consider or quantify the potential penalty under the Affordable Care Act (ACA) as a result of not offering seasonal employees health insurance.
- Documented policies and procedures related to offering seasonal employees health insurance and retirement benefits do not exist.

Background

NYS Pension Plan - Section 45 of NYS Retirement & Social Security laws of 1986

The City of Buffalo is a participating employer in the NYS Pension Plan. Membership is mandatory in the NYS Pension Plan for full-time employees and for all police officers and firefighters of a participating employer.

Membership is optional for the following employees of a participating employer:

1. Temporary or provisional positions (under Civil Service Law);

2. Employment of less than 30 hours per week,
3. Duration of employment expected to be less than one year,
4. Annual compensation less than the State's minimum hourly wage multiplied by 2,000 hours (\$9.70 per hour x 2,000 hours = \$19,400).

As a participating employer, HR must ensure all employees have been given the opportunity to join the NYS Pension Plan. Section 45 of the NYS Retirement & Social Security laws of 1986, requires:

1. Employers notify new employees, in writing, of their right to join the NYS Pension Plan.
2. Employees verify they were given notice by signing an acknowledgement and filing it with their employer.
3. Employers keep signed Section 45 acknowledgements on file.

This law is applicable to all employees, including seasonal and temporary employees. For details on this law see the [NYS Comptroller Website](http://www.osc.state.ny.us) (www.osc.state.ny.us).

Affordable Care Act (ACA)

The ACA was enacted to reduce the number of people without health insurance. The major provisions of the ACA came into effect in 2014. Two of the main provisions under the ACA included the individual mandate and the employer mandate. The individual mandate is the requirement for individuals to buy health insurance if they are not covered by an employer-sponsored plan, or to pay a penalty to the IRS. The employer mandate is the requirement that employers with over 50 employees must offer health insurance coverage to their full-time employees and their dependents, or potentially face a penalty from the IRS. In general, for purposes of the ACA, a full-time employee is, employed on average at least 30 hours per week.

An employer can face two potential penalties:

1. If an employer does not offer coverage to at least 95 percent of its full-time employees they may be subject to an employer shared responsibility payment under section 4980H(a) of the Internal Revenue Code. This penalty is incurred if at least one full-time employee purchases insurance coverage through the marketplace and the government has subsidized their insurance premiums through a tax credit.
2. Even if an employer offers coverage to at least 95 percent of its full-time employees, it may owe the second type of employer shared responsibility payment under section 4980H(b) of the Internal Revenue Code. This penalty is on a per employee basis for each full-time employee who is not offered coverage (not in the 95% offered coverage) and purchases insurance coverage through the marketplace and the government subsidized their insurance premiums through a tax credit.

In general, a full-time employee could receive government subsidy in the form of the premium tax credit if: (1) the coverage the employer offers to the employee is not affordable; (2) the

coverage the employer offers to the employee does not provide minimum value; or (3) the employee is not one of the at least 95 percent of full-time employees offered coverage. Additional information on the employer shared responsibility payment can be found on the [IRS Website](http://www.irs.gov) (www.irs.gov).

Audit Objectives

The objectives of the audit are to determine if seasonal employees are being offered health insurance and retirement benefits in accordance with federal and state laws, to determine if the City is potentially liable for a penalty under the ACA and to evaluate the HR policies and procedures associated with seasonal employee benefits.

To achieve the objectives, the following procedures were performed:

- Inquired of HR if there are written policies and procedures related to seasonal employees health insurance and retirement benefits status.
- Provided HR a sample selection of seasonal employees and requested documentation to determine compliance with Section 45 of the NYS Retirement and Social Security Laws of 1986.
- Used payroll data in MUNIS (the City's financial accounting software) to identify seasonal employees meeting hour requirements to be considered full-time per the ACA.
- Met with HR and outside consultants to inquire if a potential ACA penalty exists under Internal Revenue Code section 4980H(b).
- Obtained and reviewed response from HR and outside consultant on analysis and calculation of potential ACA penalty.

Audit Findings

1. Not in Compliance with Section 45 of the NYS Retirement and Social Security Laws of 1986

42 of 94 (45%) seasonal employees selected for testing do not have a signed form acknowledging that they have been made aware of their opportunity to join the NYS Pension Plan. Without the required documentation on file, it cannot be determined if the seasonal employees were offered membership in accordance with the law.

2. Notification Procedures for Enrollment in NYS Pension Plan are Not Sufficient

Upon hire, HR sends the NYS enrollment form and waiver form to the employee by regular and certified mail. If neither form is returned, no additional effort is made to contact the employee to obtain the forms.

3. Research and Analysis of Potential ACA Penalty Not Performed

Prior to this audit, HR had never performed an analysis of the potential ACA penalty. DAC requested that HR research the issue, including providing a calculation of the potential penalty. HR performed a thorough analysis and provided it the DAC.

HR concluded that the City may owe a penalty under section 4980H(b). For each full-time employee not offered health insurance coverage that receives the premium tax credit for purchasing coverage through the marketplace a penalty can be assessed. HR calculated that the maximum potential penalty was \$274,590 for 2016. HR estimated the maximum cost of providing health insurance coverage to full-time seasonal employees as \$477,816 for 2016. Thus, HR estimated that the City would save a minimum of \$203,226 in 2016 by not providing these individuals health insurance.

4. No Written Documentation of the Process and Procedures for Offering Seasonal Employees Health Insurance and Retirement Benefits

Formal written policies and procedures for offering seasonal employees health insurance and retirement benefits do not exist. Per a conversation with HR, seasonal employees are not offered health insurance but are given the option to join the NYS Pension Plan. Additionally, a written definition of a seasonal employee does not exist, 81 individuals classified as seasonal employees worked enough hours to be considered full-time by the ACA definition.

Audit Recommendations

1. Obtain Required Documentation to Comply with Section 45 of NYS Retirement and Social Security Laws of 1986

HR should review employee files for compliance with this law. Required documentation should be obtained. Employees are reporting to work at their specified department/location after hire and can be contacted to complete the required documents.

2. Monitor and Document Analysis of Employer Shared Responsibility Provisions of the Affordable Care Act

HR should monitor the hours worked by seasonal employee and perform an annual analysis of the potential penalty under law section 4980H(b) compared to the cost of providing health insurance to these employees.

3. Document and Standardize the Process for Enrollment in Health Insurance and Retirement Plans

HR should create formal written enrollment policies and procedures related to health insurance and retirement benefits for new hires (including seasonal employees). The procedures should ensure compliance with applicable federal and state laws, and City policies.



CITY OF BUFFALO
DEPARTMENT OF HUMAN RESOURCES
Compensation & Benefits Division



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February 2, 2018

Kevin J. Kaufman, CPA
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RE: Response to Department of Audit and Control's Recommendation Report Dated December 21, 2017

Mr. Kaufman:

Thank you for meeting with us on Friday, January 12, 2018 to review some outstanding concerns. I look forward to our continued collaboration. Below, please find the Division of Compensation & Benefits' responses, organized according to your recommendations contained in the above referenced report.

I. RETIREMENT DOCUMENTATION

Recommendation:

Obtain Required Documentation to Comply with Section 45 of NYS Retirement and Social Security Laws of 1986.

HR should review employee files for compliance with this law. Required documentation should be obtained. Employees are reporting to work at their specified department/location after hire and can be contacted to complete the required documents.

Response:

The Division of Compensation & Benefits will continue to attempt contacting employees for purposes of obtaining paperwork concerning retirement registration options by both regular and certified mail, and additionally, will contact department heads and timekeepers for assistance in obtaining the paperwork when employees are non-responsive to these mailings. Moreover, the Division of Compensation & Benefits has supplied those departments which it deems to have high volume and/or perpetual hiring—such as the Department of Public Works (DPW) and Department of Parking—New York State

Retirement applications and Waiver forms, which new employees should complete in conjunction with other new hire paperwork. Lastly, in an attempt to encourage new employees to comply with the directive that retirement paper work be completed in a timely fashion, the Division of Compensation & Benefits will not issue employee identification badges until such paperwork has been fully completed in its entirety and provided to the Division of Compensation & Benefits.

II. ACCOUNTING FOR SEASONAL EMPLOYEES UNDER THE AFFORDABLE CARE ACT

Recommendation:

Monitor and Document Analysis of Employer Shared Responsibility Provisions of the Affordable Care Act.

HR should monitor the hours worked by seasonal employees and perform an annual analysis of the potential penalty under 26 United States Code, Section 4980(H) compared to the cost of providing health insurance to these employees.

Response:

On an annual basis, the Division of Compensation and Benefits will monitor the number of seasonal employees hired and compare the potential penalty of not providing or offering health insurance to these employees with any potential cost the City might incur for failure to provide or offer such insurance pursuant to the Affordable Care Act.

III. STANDARDIZATION OF ENROLLMENT PROCESS FOR HEALTHCARE AND RETIREMENT PLANS

Recommendation:

Document and Standardize the Process for Enrollment in Health Insurance and Retirement Plans.

HR should create formal written enrollment policies and procedures related to health insurance and retirement benefits for new hires (including seasonal employees). The procedures should ensure compliance with applicable federal and state laws, and City policies.

Response:

The processes and procedures for offers of enrollment or enrollment in a healthcare insurance plan and/or a New York State Retirement System plan will vary depending on whether the employee is a full-time employee or a seasonal employee. Under the Affordable Care Act, a full-time employee is defined as an employee who works thirty (30) hours per week, or one-hundred thirty (130) hours per month, on average within an initial measurement period (IMP), regardless of whether there are breaks in the service which make the employees service intermittent. The City colloquially refers to these employees as "seasonal," they are not true seasonal employees for purposes of the Affordable Care Act, but can be referred to as "Regularly Intermittent Employees." A true seasonal employee is one who works 120 days or less in a year, regardless of whether such days are worked consecutively or non-consecutively. Traditional definitions of "Full-time" and "Seasonal" are used when determining an employees retirement options.

A. Health Insurance Regarding Full-Time Employees

Active full-time employees and retirees who were previously full-time employees receive health insurance benefits which are determined by applicable Collective Bargaining Agreements (CBA). Newly hired full-time employees are contacted by mail, and their supervisors are contacted by electronic correspondence for purposes of scheduling a "New Hire Orientation," and health benefits and eligibility are communicated to the employee at this meeting. Retired individuals who were previously full-time employees are contacted by mail for purposes of scheduling an "Exit Interview," and benefit entitlements and eligibility are communicated to the retiree at this interview, with appropriate paperwork following such interview by mail.

Regularly Intermittent Employees who are classified as full-time employees due to hours worked in the IMP are eligible for healthcare insurance coverage during a "stability period," which is a set period after the IMP. The Compensation & Benefits Division will annually monitor the number of hours Regularly Intermittent Employees log between 1 May and 30 April in order to determine which employees are eligible for healthcare coverage under the Affordable Care Act. The Department of Audit & Control will provide the number of hours employees work to the Division of Compensation & Benefits to assist in this task.

This monitoring strategy will be referred to as a "Look Back Tracking Analysis," and it will assist in ensuring that the City avoids the Large Employer Penalty that may be imposed for failure to provide health insurance coverage to at least ninety-five (95) percent of its full-time employees. The Division of Compensation & Benefits will provide an annual cost benefit analysis which addresses whether it is more expensive for the City to not offer coverage to regularly intermittent employees, or whether it is more expensive to risk a small penalty for not providing coverage to those employees.

B. New York State Retirement Regarding Full-time Employees

Enrollment into the New York State Retirement System (NYSRS) is not optional for full-time employees, and information regarding registration into the NYSRS is provided at the above referenced New Hire Orientation.

C. Health Insurance Regarding Seasonal Employees

True seasonal employees, as defined through the above established parameters of the Affordable Healthcare Act, are not entitled to healthcare insurance coverage.

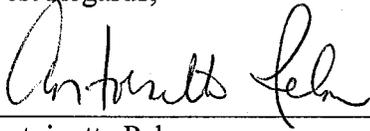
D. New York State Retirement Regarding Seasonal Employees

Enrollment in the NYSRS is optional for seasonal employees. Employees may elect to enroll in the NYSRS or waive enrollment. NYSRS applications and enrollment waiver forms will be provided to each department, and should be completed at the same time that other departmental paperwork is completed, such as W-2 information. These forms will also be located in the Division of Compensation & Benefits. In the event that NYSRS enrollment or waiver is not completed at the department level,

these forms will be sent to the seasonal employee by both regular and certified mail to the address on file with the Division of Compensation & Benefits.

In conclusion, the Division of Compensation & Benefits looks forward to the implementation of these procedures for the betterment of the City and its employees. Please do not hesitate to contact me with any questions or concerns. Thank you for your time and attention to these issues.

Best Regards,

A handwritten signature in cursive script, appearing to read "Antoinette Palmer", written over a horizontal line.

Antoinette Palmer
Director of Compensation & Benefits