ADMINISTRATIVE DIRECTIVE NO. 183

This 31st day of October 2013:

IT APPEARS THAT:

1. The federal Patient Protection and Affordable Care Act (ACA) was enacted into law on March 23, 2010, with the purpose of increasing access to health insurance coverage through multiple provisions that take effect incrementally over several years. One of the provisions, the Employer Shared Responsibility Penalty, applies to large employers with 50 or more full-time employee equivalents, such as the State of Delaware. Full-time is defined as 30 or more hours of service per week on average during the fiscal year (130 hours per month or 1,560 hours per fiscal year). This provision will become effective on July 1, 2015. In preparation for the implementation of this law, Delaware's Office of Management and Budget (OMB) has established measures to align the State's workforce to comply with the regulations.

2. It is appropriate for the Judicial Branch to act consistently with OMB's policy and procedures concerning the management of casual/seasonal employees and contractual staff, in support of the State's efforts to comply with the ACA.

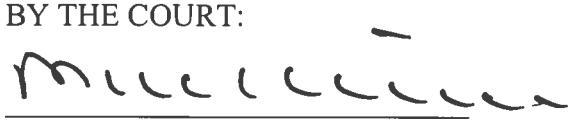
NOW THEREFORE, IT IS DIRECTED, with the unanimous approval of the Justices of the Supreme Court (Del. Const., Art. IV, § 13), that:

A. The Judicial Branch "Policies and Procedures for the Management of Casual/Seasonal and Contractual Employees pursuant to the Affordable Care Act" are hereby adopted. A copy of the policies and procedures is attached.

B. The State Court Administrator is directed, with the approval of the Chief Justice, to implement additional minor changes to the Judicial Branch "Policies and Procedures for the Management of Casual/Seasonal and Contractual Employees pursuant to the Affordable Care Act." Further revision of this Administrative Directive is not required to implement such changes. Any changes shall be reflected in the policies and procedures incorporated with this Administrative Directive and the date of the amendments noted.

C. Presiding judges/agency heads shall ensure that this Administrative Directive is disseminated to affected employees in their courts/agencies.

BY THE COURT:



Chief Justice Myron T. Steele

c: The Honorable Jack A. Markell
The Honorable Randy J. Holland
The Honorable Carolyn Berger
The Honorable Jack B. Jacobs
The Honorable Henry duPont Ridgely
Members of the Judicial Conference
The Honorable Joseph R. Biden, III
The Honorable Brendan O'Neill
Chair Senate Judiciary Committee
Chair House Judiciary Committee
Ann Visalli, Director, OMB
State Court Administrator
Counsel to the Governor
Court Administrators
Clerk of the Supreme Court

JUDICIAL BRANCH POLICY AND PROCEDURES FOR THE MANAGEMENT OF CASUAL/SEASONAL AND CONTRACTUAL EMPLOYEES PURSUANT TO THE AFFORDABLE CARE ACT

STATEMENT OF PURPOSE

The Judicial Branch shall act consistently with the Office of Management and Budget (OMB) in support of the State of Delaware's efforts to comply with the federal Patient Protection and Affordable Care Act (ACA) concerning the management of casual/seasonal and contractual employees. ACA was enacted into law on March 23, 2010, with the purpose of increasing access to health insurance coverage through multiple provisions that take effect incrementally over several years. One of its provisions, the Employer Shared Responsibility Penalty, applies to large employers with 50 or more full-time employee equivalents, such as the State of Delaware. Under ACA, full-time is defined as 30 or more hours of service per week on average during the fiscal year (130 hours per month or 1,560 hours per fiscal year). This provision will become effective on July 1, 2015.

POLICY

Consistent with efforts to align the State's workforce in compliance with the Employer Shared Responsibility Penalty provision in ACA, individuals hired as Judicial Branch casual/seasonal employees pursuant to 29 *Del.C.* §5903 (17) (a), should not work 30 or more hours per week on average during a fiscal year unless prior approval is obtained from the Chief Justice and OMB.

PROCEDURES

A. All Courts, the Administrative Office of the Courts (AOC) and Judicial Agencies shall determine which of their employees shall be considered independent contractors or casual/seasonal employees pursuant to 29 *Del.C.* §5903 (17) (a) (not designated as "regular permanent full-time" or "permanent part-time" employees). See Division of Accounting Payroll Worker Classification Policy (issued April 17, 2009, and found at http://extranet.accounting.state.de.us/Memo_10/payroll_pol.pdf) for information on making this determination.

B. If an individual is determined to be a **casual/seasonal employee**, the following procedures apply:

    1. Effective immediately, written requests for approval for casual/seasonal employee(s) pursuant to 29 *Del.C.* §5903 (17) (a), to work 30 or more hours

per week on average during a fiscal year shall be submitted by the court/agency to the Chief Justice, through the State Court Administrator.

2. The request should include:

    a. Employee's name(s)
    b. Employee's budget position number(s)
    c. Appropriate category within §5903 (17) (a) that each casual/seasonal employee falls under
    d. Justification of the need for the employee to work 30 or more hours per week on average during the fiscal year, and
    e. Timeframe/duration of the need for the employee to work 30 or more hours per week on average during the fiscal year.

3. Upon receiving notice of approval by the Chief Justice, the court/agency may then submit the request to OMB for approval.

4. The approval will be valid for the fiscal year in which it is received and must be reviewed annually.

5. OMB has advised that it will regularly monitor the number of hours worked by casual/seasonal employees and will contact courts/agencies concerning situations in which casual/seasonal employees do not appear to be in compliance with the Employer Shared Responsibility Penalty provision in ACA.

6. Limitations apply regarding hiring former employees receiving a pension benefit from the State Employees' Pension Plan as casual/seasonal employees. Additional information on state pensioners' return to work can be found at http://www.delawarepensions.com/includes/rtw/RTWFAQs071613.pdf.

7. At the time this Directive goes into effect, casual/seasonal employees currently working 30 or more hours per week on average, or casual/seasonal employees hired into positions in which the person(s) previously holding the position(s) worked 30 or more hours per week on average, may continue working over 30 or more hours per week as mandated by work demands, until the Chief Justice advises otherwise.

C. If an individual is determined to be an **independent contractor**, the following procedures apply:

1. Temporary staffing and contractual services should generally be procured in accordance with 29 *Del.C.* §69, Subsections III & VI (dependent upon their classification). A list of currently available and awarded statewide contractual services can be found at www.MyMarketplace.Delaware.gov.

2. Prior to hiring an independent contractor, the appointing authority in each Court, AOC or Judicial Agency, is responsible for:

    a. Ensuring that the PHRST payroll system is queried to determine if there is an existing employee relationship with the contractor or whether the individual has separated from state service within two years from the date that they are intended to be hired as a contractor.

    b. Limitations apply regarding hiring former state employees receiving a state pension benefit on a contractual basis. Additional information on state pensioners' return to work can be found at http://www.delawarepensions.com/includes/rtw/RTWFAQs071613.pdf. Courts/agencies should contact the State of Delaware Public Integrity Commission for guidance about exceptions to these requirements. See http://depic.delaware.gov/index.shtml.

    c. Determining whether the contractor possesses a valid Delaware business license.

ADOPTED: October 31, 2013