

## **GIL 29-20-2 Tax Incentives: Treatment of Alternative Employment Arrangements Due to the COVID-19 National Emergency for Purposes of Calculating Employment Levels Under the Nebraska Advantage Act**

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May 28, 2020

Dear XXXX,

You have asked how DOR will treat various alternative employment arrangements, made necessary by the COVID-19 state of emergency and related directed health measures, for purposes of calculating the number of new employees under the Nebraska Advantage Act (Act). Because of the nature of the question asked, we are providing this General Information Letter (GIL) in response.

GILs address general questions; provide analysis of issues; and direct taxpayers to the Nebraska statutes, DOR regulations, revenue rulings, or other sources of information to help answer a question. A GIL is a statement of current DOR policy, and taxpayers may rely on DOR to follow the principles or procedures described in a GIL until it is rescinded or superseded. You may also find current regulations, revenue rulings, information guides, taxpayer rulings, and other GILs that may be helpful to you at [revenue.nebraska.gov](http://revenue.nebraska.gov).

On March 13, 2020, Governor Pete Ricketts declared [a state of emergency](#) due to the COVID-19 pandemic. To slow the spread of the virus, the Governor issued several directed health measures and asked Nebraskans to practice social distancing. To protect the health of their employees and community, many businesses have chosen to utilize alternative employment arrangements for some or all of their workers. Some of the alternative employment arrangements involve employees working from home, working reduced hours, or being paid to stand ready-to-work. However, under the Act, the number of new employees is calculated based upon the number of hours worked at the project. This GIL will address how DOR will treat each of these alternative employment arrangements for purposes of calculating the number of new employees under the Act during the pandemic.

Many employers have arranged for some or all of their employees to work remotely. Because of the large increase in the number of employees temporarily working at alternative work-sites, it will be difficult for employers to keep track of the number of hours worked at the project and even more difficult for DOR to verify the number of hours worked there. For the entire period this GIL is applicable, DOR will not require employers to track the location of workers displaced by the pandemic, and will consider all employees who worked at the project prior to March 13, 2020 as continuing to work at that location, even though the employer has allowed or required the employees to temporarily work from home or an alternate location. Employees who are hired after March 13, 2020, who work from home or an alternative site, and begin work at the project location

by the date this GIL expires, will be considered to have worked at the project since their date of hire. In both circumstances, employers should continue to withhold, or commence withholding, for Nebraska income tax. The employees are considered to have Nebraska source income throughout the period that this GIL applies. Incentive companies should track employee hours as though these employees are performing work at the project while this GIL is applicable, regardless of the location from which the employees are working.

Some employers have asked workers to temporarily not return to work and have continued to pay them to stand ready to return to work when called. The hours of employees temporarily placed on ready-to-work status due to the COVID-19 state of emergency will be treated similarly to vacation or sick leave because the absence is temporary and limited to the emergency. These hours will be considered leave time used and will count toward the calculation of the number of new employees.

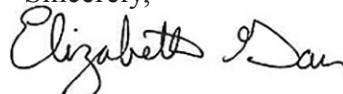
Other employees may continue to work at the project for a reduced or subsidized rate of pay. The calculation of the number of new employees includes hours paid at or above the required weekly wage. The hours of employees who are not base year employees, who are properly E-Verified, and who are paid the required weekly wage will continue to count toward the number of new employees. Wages include all payments for work at the project that are subject to the federal Medicare tax. Wages paid by the employer that are subject to the federal Medicare tax count towards the required weekly wage even though they are subsidized by the federal government. Furloughed workers who are paid benefits, but not wages, cannot be included in the calculation of the number of new employees because they do not meet the required weekly wage.

The hours of employees working reduced hours will continue to count toward the employee calculation as long as they receive the required weekly wage. The reduction in hours worked by full-time hourly employees will not affect the number of hours attributed to any full-time salaried employees. For projects with an application date on or after September 6, 2013, full-time salaried employees are deemed to have worked 40 hours per week as provided in [Neb. Rev. Stat. § 77-5709](#). For projects with an application date before September 6, 2013, the hours of full-time salaried workers are calculated pursuant to [Revenue Ruling 29-05-4](#). That ruling states that a full-time salaried employee “will be treated as having worked the number of hours established as the regular workweek for full-time hourly employees.” DOR has determined that the regular workweek is established by the employer’s policies, and not by temporary conditions or events. The COVID-19 emergency is temporary and does not affect the employer’s policies. The number of hours established as the regular work week for full-time hourly employees remains the number of hours established by the business before the COVID-19 emergency.

This GIL applies to tracking hours and calculating the number of new employees for the period commencing on March 13, 2020 and continuing until January 1, 2021 or 30 days after the end of the declared emergency, whichever is later. This GIL does not change the requirements for tracking hours or calculating the number of new employees for any other period of time.

For the Tax Commissioner

Sincerely,



Elizabeth Gau

Attorney, Policy Section

Nebraska Department of Revenue