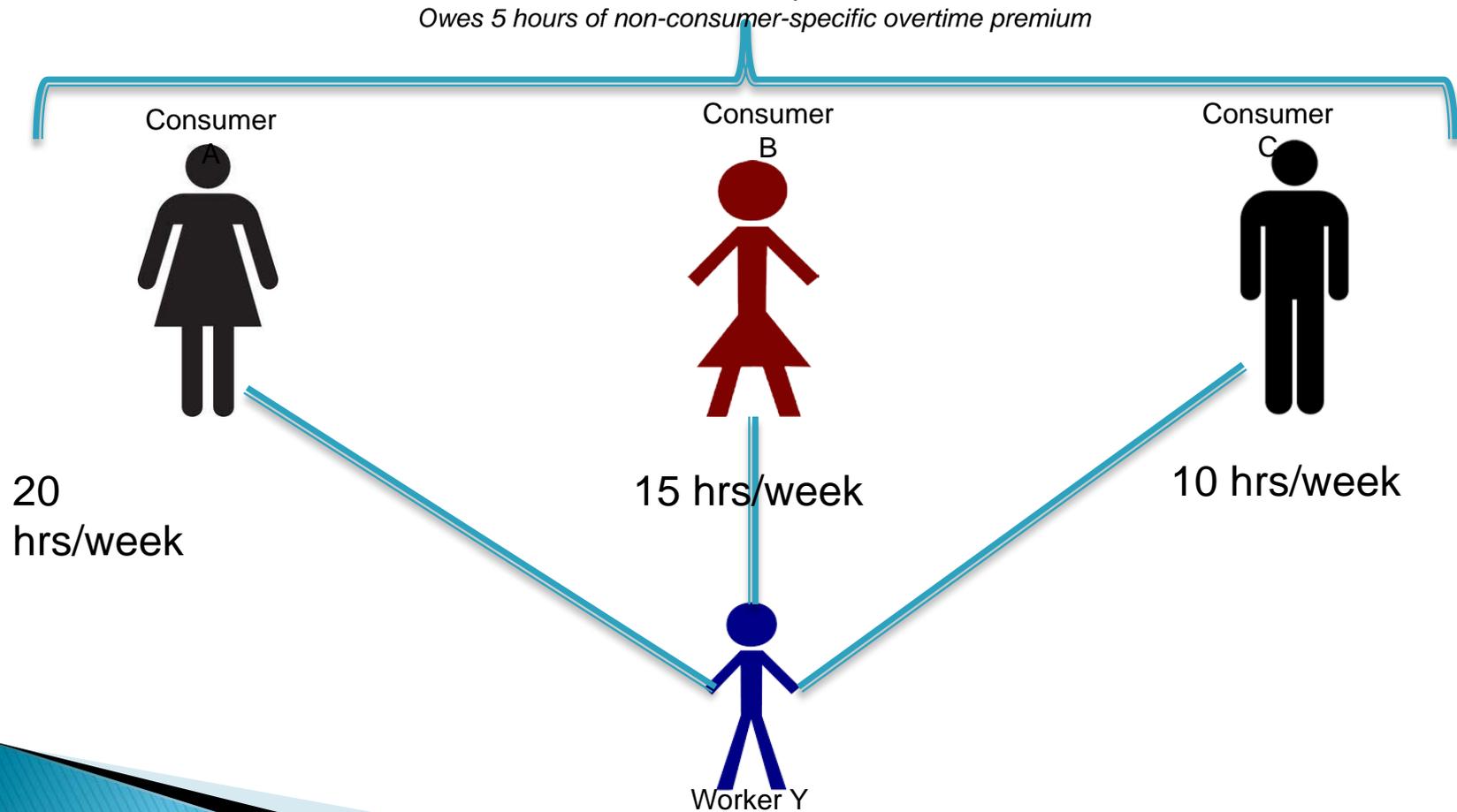


Updates from the Internal Revenue Service

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Third Party Home Care Rule Payments

Third Party Joint Employer (e.g. a state)
Owes 5 hours of non-consumer-specific overtime premium



FLSA Third Party Employment

- ▶ FLSA joint third party employers who do not meet the common law test criteria to be a common law employer will generally be classified as a **statutory employer** for tax purposes

Statutory Employment

- ▶ Defined as person or entity who has control over payment of wages for services provided, but is **not** the common law employer
- ▶ Payments made by statutory employers are considered wages

Reporting wages under consumer-employer's EIN

Q.

Is it allowable to pay and report third party statutory employer wages and taxes under the consumer-employer's EIN?

Paying and reporting third party wages & taxes

Q.

Should all third party wages, plus taxes and returns associated with those wages, occur under the third party's EIN?

States obtaining separate EINs

Q.

If there is a state who is a third party joint employer and is only responsible for certain overtime and travel time, and they need an EIN to make payments, can the state have an EIN separate from their state employees' returns just for this third party payments?

Forms W-4 for Third Party Employers

Q.

Does a third party employer need to collect W-4 information from the employee, or will the common law employer's W-4 suffice?

Appointing an Agent for Third Party Payments

Q.

Can third party employers appoint an agent to handle paying and reporting third party wages and taxes?

W-2 Reporting for Third Party Employers Using an Agent

Q.

If the third party employer uses an agent, under whose EIN should Forms W-2 be reported?

FICA Refunding

Q.

Should FICA be refunded for workers whose third party payments did not meet the annual FICA threshold?

Family Exemptions

Q.

Is it correct that none of the family employee exemptions would apply for wages paid by a third party because the third party wouldn't have any family relationships with the worker?

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2014-7

- ▶ Notice that makes difficulty of care payments non federal income taxable

IRS Notice 2014-7 and Third Party Employment

Q.

Could third party payments ever be considered “difficulty of care” payments under IRS Notice 2014-7?

Notice 2014-7 Applicability

Q.

Does Notice 2014-7 apply to Medicaid payments made in non-waiver Medicaid programs?

Reporting Difficulty of Care Payments

Q.

How should difficulty of care payments be reported on Form 941, including the Schedule R?

Difficulty of Care Payments and W-2 Reporting

Q.

Can difficulty of care payments be reported as “Other” income in Box 14 of Form W-2?

Difficulty of Care Eligibility

Q.

What if a worker declares to the payer that the payments he/she receives are difficulty of care payments, but the payer has information that indicates the worker's statement is not true?

Notice 2014-7 Compliance

Is compliance with Notice 2014-7 the responsibility of the payee or the payer?

That is to say, is it allowable for the payer to continue treating payments that may be “difficulty of care” as regular wages, and then have the employee get a refund via their individual Form 1040?

Notice 2014-7 Compliance for Payers

Q.

We are a payer who has done nothing so far to comply with IRS Notice 2014-7. What should we do?

Difficulty of Care Eligibility

Q.

How should we handle situations in which a consumer lives part-time in a home where the worker lives full-time and has no other home?

An example would be a child who receives services from parents who are divorced and live in separate residences. The consumer lives part-time in each parent/caregiver's residence.

Reminders

- ▶ Family Exemptions – they are not optional
- ▶ Form SS-4 –working on a solution for HCRSS who have a prior EIN.
 - We know that now if an HCSR has an EIN agents currently cannot obtain an EIN for an HCSR who already has an EIN

Questions?

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