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Michael K. Smith, Secretary

January 16, 2007

The Honorable James H. Douglas, Governor
Members, House Committee on Health Care
Members, House Committee on Ways & Means
Members, Senate Committee on Health & Welfare
Members, Senate Committee on Finance
Members, Commission on Health Care Reform
Members, Health Access Oversight Committee

Dear Governor Douglas and Legislative Members:

I am pleased to submit to you the enclosed report on options for the treatment of seasonal employees under the Employers' Healthcare Premium Contribution found in 21 V.S.A chapter 25. The statute requires employers to pay $91.25 each quarter for each full time equivalent employee when the employer does not pay some part of the employee's health care coverage. The statute treats all workers - full time, part time, temporary, and seasonal - the same. The Legislature had questions about whether seasonal workers should be treated the same as all workers and, in section 32 of Act 191, asked that the Administration develop a report that provides options for this workforce sector.

To develop the options, we asked a workgroup consisting of businesses with seasonal workers, those without seasonal workers, and other interested individuals to examine the issues. The workgroup met several times and developed the options in the enclosed report. The workgroup recommends the option of not including seasonal workers who have health care coverage from any source because it supports the goal of health care coverage while recognizing some of the unique characteristics of seasonal work and seasonal workers.

I am sure you will find the options developed by the work group interesting and helpful in your discussion of this issue.

Sincerely,

Michael K. Smith
Secretary of Administration

VERMONT

OPTIONS FOR THE TREATMENT OF SEASONAL WORKERS under the EMPLOYERS' HEALTHCARE PREMIUM CONTRIBUTION

(§34 OF ACT 191 OF THE 2006 SESSION)

Submitted to Governor James H. Douglas
and
the Vermont General Assembly

by

Vermont Agency of Administration
Vermont Department of Labor

January 15, 2007

PURPOSE AND BACKGROUND

Act 191 of the 2006 Legislative Session created an Employer Healthcare Premium Contribution to help pay for the health care reform programs. The goal of the contribution is a more equitable distribution of the cost of care to the uninsured by establishing a reasonable method for sharing the cost with employers who do not offer health insurance. Revenues from the Employer Healthcare Premium Contribution will be deposited into the Catamount Fund to pay for Catamount Health and Employer-sponsored Insurance Premium Assistance Programs, the Non-group Health Insurance Market Security Trust, a statewide Immunization Program, and State Medicaid –related programs as determined by the legislature.

The Employer Contribution assesses all Vermont employers $91.25 per quarter for:

1. Any employee who is not offered employer sponsored health care coverage,
2. Any employee not eligible for coverage offered by the employer, and
3. Any employee who elects not to accept offered coverage and has no other private or public health care coverage.

The law exempts 8 full-time equivalent (FTE) in 2007 and 2008, 6 FTE's in 2009, and 4 thereafter.

The rules governing the Employer Contribution adopt the unemployment insurance definition of employee, which includes most workers. This also is the pool of workers that was used to develop the estimate of revenues from the assessment for the Catamount Fund. The following individuals are <u>not</u> included in the definition:

- Workers on small farms
- Full-time college students working at the college in a program designed to provide financial assistance
- Elected officials
- Emergency volunteers such as volunteer fire fighters
- Licensed insurance and real estate sales
- Foreigners temporarily in Vermont on cultural exchange (J-1) visas
- Foreigners in Vermont on temporary foreign agricultural (H-2A) visa

Temporary workers in the US on H-2B temporary non-agricultural visas are employees and will be subject to the Employer Contribution assessment.

Section 32 of Act 191 requires that "*No later than January 15, 2007, the Secretary of Administration or designee shall study and report on the options for treating seasonal employees in the employer assessment*." Concerns around seasonal employment arose late in the session, so the study was added to ensure that any special issues related to seasonal employees were fully explored.

The administration formed a work group comprised of legislators, seasonal employers and other interested parties (see Appendix 1) to examine the issues to inform the report.
The workgroup identified the following reasons why seasonal/temporary employees might deserve special treatment within the Employer Contribution assessment:

- The employer/employee relationship with seasonal/temporary workers is different than the relationship with permanent employees.

- There is no expectation by either the worker or the employer that the temporary/seasonal job will become permanent.
- Some seasonal workers are paid by the job and not by the hour. As an example, venues for concerts and exhibits such as the Champlain Exposition pay individuals a flat fee for setting up and tearing down the event.

➢ Impact on Wages:

- Some employers pay seasonal/temporary workers more to compensate for not providing insurance. Employers look at the total cost of labor, wages and benefits; if benefits are increased, wages may decline. Most seasonal/temporary workers' wages are relatively low and paying the assessment may lower the wage even further.

➢ Insurance issues:

- Existing coverage: An estimated 40–65% of seasonal employees in Vermont have insurance from another job or spouse*. (Estimates based on informal survey of employees of some workgroup members.*)
- Insurance product availability: The initial assumption of the work group was that there are no insurance products available for seasonal/temporary workers if insurance is offered through the employer. However, the work group learned the following from the Department of Banking, Insurance, Securities and Health Care Administration (BISHCA):
  - Federal ERISA law prevents the state from regulating employee welfare benefits offered by employers.
  - Employers can include seasonal or temporary workers on their health plans, but state law cannot mandate that seasonal workers be included by employers.
  - State law does mandate that all insurers include in their products coverage for part-time employees that work at least 17.5 hours per week.
  - Therefore, employers who purchase a commercially–offered insurance product automatically have coverage available for their employees who work 17.5 hours or more. This provision does not mandate that employers pay any portion of the cost of that coverage.
  - Insurers do not have to sell to large group employers (over 50 employees), so it is possible that these employers may not be able to find a product if they have too many seasonal employees that might result in higher risk or administrative costs. However, there are more insurers offering products in the market than in the small group market.
  - Insurers in the small group market have to sell to small group employers (fewer than 50 employees), so any small group products on the market are available to these employers (i.e., guaranteed issue).
  - If an employer is self-insured, the state mandate regarding coverage for part-time workers described above does not apply.

  The workgroup members also suggested that because of employment with multiple employers, administration of insurance products for seasonal / temporary workers may be more complex than for permanent workers.

- Continuation of Health Coverage COBRA: COBRA applies to all group plans maintained by private sector employers with at least 20 employees, and state and local government. The initial assumption of the work group was that this federal law creates a disincentive for offering insurance to seasonal workers because employers must cover COBRA costs once seasonal employees leave. Upon further research, it was determined that employers do not have to cover COBRA costs; employers may require individuals who elect continuation of coverage through COBRA to pay the full cost of the coverage plus a 2% administrative fee. Workgroup members noted, however, that for self-insured employers this may mean that the employer would have to cover within their self-insured pool the medical costs of former employees for up to 18 months after they leave the job.

DEFINITION OF SEASONAL EMPLOYEE

The work group struggled with its initial attempts to define seasonal employees as there is no commonly accepted definition. Must seasonal employees work in industries with easily visible seasonal employment patterns? What is the difference between someone who works for 15 weeks in a temporary job in a non-seasonal industry and one who works 15 weeks in a seasonal job?

The Vermont Department of Labor, utilizing a technique known as time series decomposition, identified 32 Vermont industries with seasonal employment patterns (see Appendix II). The largest are education, accommodations, specialty trade contractors, food service and drinking places, recreation, administration and support, and heavy and civil engineering construction. The difference between the peak employment and the minimum employment of the 32 industries is 37,554 jobs. However, other industries employ seasonal workers.

Estimates from the Current Population Survey, which is based upon a household survey, give a broader view of part year workers. The survey estimates that 27 percent of Vermont workers, or slightly more than 100,000 people, work part of a year (see Appendix III). A part-year is defined in the survey as working less than 50 weeks. To gain a more accurate estimate of seasonal workers, the Vermont Department of Labor applied national estimates of the weeks worked to the estimates found in Appendix III. The result suggests there are 20,000 full time (35 or more hours per week) seasonal workers and 23,000 part time seasonal workers in Vermont – a total of 43,000 workers (11% of Vermont's workforce).

After lengthy discussion the work group concluded that some seasonal jobs last up to 26 weeks and there is no significant difference between a seasonal job and a temporary job. The workers in seasonal and temporary jobs are both short-term employees. The group adopted the following definition:

A short-term employee means an individual who works for an employer for fewer than 26 weeks in a calendar year in a job understood not to be permanent.

OPTIONS

The work group identified three options for the Legislature to consider: 1) exempt all short-term employees from the Employer Contribution, 2) exempt short-term employees who have private insurance coverage from any source, and 3) include short-term employees in the Employer Contribution

assessment (which is consistent with the current statute). The work group also identified advantages and disadvantages associated with each option.

Option 1 – Exempt all short-term employees from the Employer Contributions.

Pros:

- It removes the potential double assessment for employees who work full time for one employer and moonlight as a short-term employee.
- It removes an incentive for business to out-source seasonal work such as that done in call centers that take orders for retailers during holidays.
- It removes incentives to reduce employment because of the increased cost of the health care contribution.
- It will reduce the employment cost of employers of short-term workers.

Cons:

- It will reduce the amount of revenue deposited into the Catamount Fund by an estimated $1.1 million (13% of the estimated revenues from the Employer Contribution in FY08).
- It increases the administrative complexity to employers who will have to develop systems to distinguish and track short-term employees from other employees.

Option 2 – Exclude from the Employer Contribution all short-term employees who have private health insurance.

Pros:

- The assessment paid would truly be for those individuals who are uninsured.
- It would benefit small businesses that cannot offer or have roadblocks to offering coverage.

Cons:

- It will reduce the amount of revenue deposited into the Catamount Fund by an estimated $400,000 (5% of the estimated revenues from the Employer Contribution in FY08).
- It may cause employers to screen for those with health care coverage when hiring short-tem employees.

Option 3 – Include all short-term employees in the Employer Contribution (no change from the existing statute).

Pros:

- The existing statute treats all employers the same.
- It will maintain the projected revenues for the Catamount Fund.

Cons:

- It increases the cost of doing business for seasonal businesses that do not provide health care.
- It may create an incentive to out-source seasonal work such as call centers used by some retailers during peak sales periods.
- It may cause businesses heavily dependent upon seasonal employees to get along with fewer workers.

RECOMMENDATION

The work group recommends that the Legislature adopt Option 2 - exempting short-term workers with private health insurance eliminates the assessment on workers who have other permanent employment. It assesses jobs of workers who are truly not insured. It will lessen pressure to reduce jobs and/or wages of short-term workers. Finally, it has a relatively small impact upon estimated revenues for the Catamount Fund.

SUMMARY

A significant portion of Vermont's workforce works in short-term employment. For those employers utilizing short-term workers, the Employer Contribution represents a significant increase in cost. As an example, the School Board Insurance Trust, working with school business managers, estimates that the cost to school districts for substitute teachers and other short-term workers will be $109,000 the first year of the assessment. Cost will increase as the number of exempted FTE's declines and the Employer Contribution increases. Some employers in the accommodation and leisure industry have employment that increases in peak season to three or four times the off-season level.

The employer-employee relationship with short-term workers is different from the relationship with permanent workers. Neither expects the job to be permanent nor do the workers expect the same level of benefits found with permanent employees. While not impossible, it is more difficult and, probably, more expensive for employers to offer health insurance to short-term employees. In addition, some short-term workers may have other permanent jobs that provide insurance. A non-scientific survey of work group members suggests 40-60 percent of these workers are insured through other jobs or through a family member's insurance.

The Employer Contribution will put downward pressure on short-term jobs and/or the wages paid to the short-term workers. Businesses in competitive industries, such as mail order retail, which can out-source functions, will do so. Other businesses will reduce the number of short-term workers when possible. Businesses that cannot adjust employment levels and cannot pass the cost to consumers will reduce wages to pay the Employer Contribution.

Exempting short-term workers from the Employer Contribution recognizes the different employer-employee relationship and reduces pressures to out-source jobs and reduce jobs. It will also reduce the estimated revenue from the Employer Contribution to help fund health care reform.

Appendix I
SEASONAL EMPLOYEE WORKGROUP PARTICIPANTS

Senator Kevin Mullin	
Representative Janet Ancel	
William Reedy	Vermont State Colleges
Cheryl Mullins	Middlebury College
Craig Fuller	Keller & Fuller
David Mount	Westaff
Diane Davis	Killington Ski Area
Don Mayer	Small Dog Electronics
Gail Borden	Shelburne Museum
George Phillips	Vermont Tax Department
Ginney Champney	Suss MicroTec
Gretchen Babcock	University of Vermont
Jim Harrison	Vermont Grocers Association
Kathi Kieran	Trapp Family Lodge
Ken Ballard	Spherion
Lisa Chapin	Waitsfield-Champlain Valley Telecom
Michael Barb	Harrington Hams
Nancy Shaw	Vermont State Colleges
Otto Engelberth	Engelberth Construction
Parker Riehle	Vermont Ski Area Association
R. B. Klinkenberg	Harrington Hams
Rachel Novak	Basin Harbor
Rebecca Heintz	BISHCA
Rene LeBerge	Personnel Department Incorporated
Tom Ball	Vermont Department of Human Resources
Heather Shouldice	William Shouldice Associates
Susan Besio	Agency of Administration
Tom Douse	Department of Labor

Appendix II

9/12/06

Determining Seasonal Employment in Vermont.

Andrew M. Condon & Richard Willey, Vermont Department of Labor.

SUMMARY

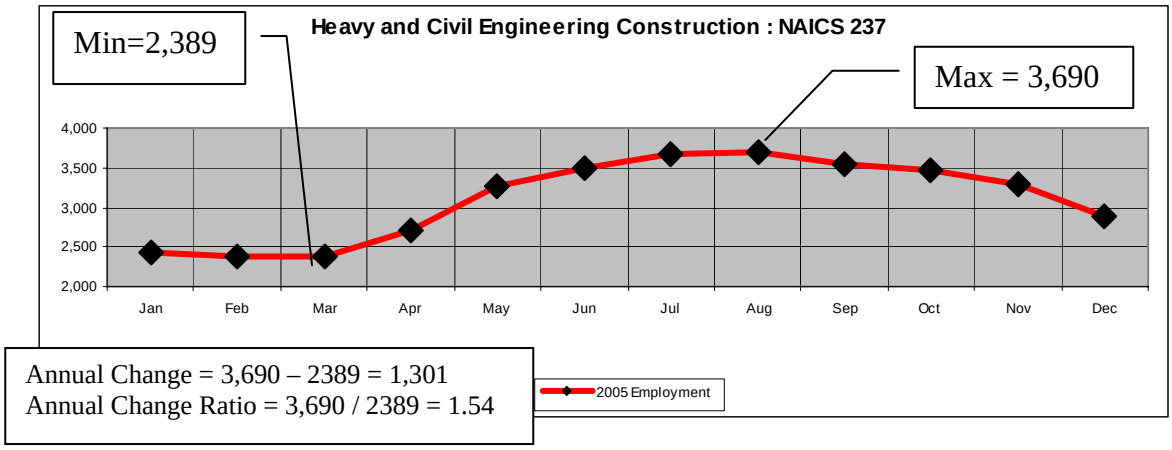
Seasonal employment is defined as less than year-round employment where the duration and amount of employment is driven by a particular industry's regularly occurring periods of peak and slack demand for its goods or services. Using VDOL's Quarterly Census of Employment and Wages database (QCEW); ninety-eight industries were examined in Vermont in order to identify those whose annual employment patterns can be characterized as being driven by a "substantial "amount of seasonality. The industries are defined at the three digit NAICS (North American Industry Classification System) level. Our analysis consisted of two stages: (1) identification of industries with substantially seasonal employment patterns, and (2) quantification of seasonal employment.

Seasonal Industries in Vermont

The ninety-eight industries in Vermont defined at the 3-digit NAICS level were examined using five years of QCEW monthly employment data. For each industry we computed the following statistics:

Average Monthly Employment: -	AVGEMP,
Average Annual Minimum Employment –	AAMIN,
Average Annual Maximum Employment –	AAMAX,
Average Annual Change in Employment -	AACHG (annual max – annual min),
Average Annual Change Ratio -	AACR (Annual Max / Annual Min)

Industries were ranked by the AACR statistic and employment patterns were graphed and inspected for seasonal patterns



Based on this procedure 36 industries were identified as having a significant component of seasonal employment. These industries totaled 132,147 average annual employment between 2001 - 2005 (including seasonal and non seasonal) or 44% of Vermont's average annual total covered non-farm employment over the period (see Table 1 below).

TABLE 1. Vermont Industries with Seasonal Employment Patterns

Quantifying Seasonal Employment: Changes in data over time, including employment data, can be described as having four components:

Trend: Changes in similar direction (positive or negative) over a long period of time (e.g., Population growth)

Seasonality: Regularly repeating changes that occur in the same way every year due to weather, business practices or market demand. (e.g. winter resort employment). Note: these patterns are not necessarily controlled by climatic "seasons."

Cycle: Somewhat regularly repeating changes that occur over periods longer than a year, (e.g. Business cycles).

Error: Random changes in data that cannot be predicted.

NAICS	Industry Name	Avg. Mthly. Employment 2001-2005	Avg. Ann. Min. Employment 2001-2005	Avg. Ann. Max. Employment 2001-2005	Avg. Ann. Change 2001-2005	Avg. Ann. Change Ratio 2001-2005
111	Crop Production	486	281	660	379	2.44
112	Animal Production	1,238	1,121	1,343	222	1.20
113	Forestry and Logging	165	129	184	55	1.44
114	Fishing, Hunting and Trapping	not publishable, but included in totals				
115	Agriculture & Forestry Support Activity	337	308	365	57	1.19
212	Mining (except Oil and Gas)	not publishable, but included in totals				
213	Support Activities for Mining	not publishable, but included in totals				
236	Construction of Buildings	4,788	4,266	5,247	981	1.23
237	Heavy and Civil Engineering Construction	3,027	2,401	3,585	1,184	1.49
238	Specialty Trade Contractors	9,096	7,548	10,242	2,694	1.36
312	Beverage & Tobacco Product Manufacturing	322	286	365	79	1.28
324	Petroleum & Coal Products Manufacturing					
327	Nonmetallic Mineral Product Mfg	2,053	1,738	2,212	474	1.27
443	Electronics and Appliance Stores	877	835	973	138	1.16
444	Building Material & Garden Supply Stores	3,520	3,177	3,820	643	1.20
445	Food and Beverage Stores	9,589	9,333	9,896	563	1.06
448	Clothing and Clothing Accessories Stores	2,901	2,710	3,321	611	1.23
451	Sporting Goods/Hobby/Book/Music Stores	2,200	1,992	2,584	592	1.30
452	General Merchandise Stores	3,087	2,922	3,322	400	1.14
453	Miscellaneous Store Retailers	3,136	2,877	3,441	564	1.20
483	Water Transportation	not publishable, but included in totals				
485	Transit and Ground Passenger Transport	1,488	1,074	1,615	541	1.51
487	Scenic and Sightseeing Transportation	67	34	110	76	3.40
493	Warehousing and Storage	772	694	882	188	1.27
516	Internet Publishing and Broadcasting	not publishable, but included in totals				
532	Rental and Leasing Services	not publishable, but included in totals				
533	Lessors, Nonfinancial Intangible Assets	not publishable, but included in totals				
551	Management of Companies and Enterprises	303	278	334	56	1.20
561	Administrative and Support Services	7,822	7,024	8,454	1,430	1.21
611	Educational Services	35,443	23,878	38,288	14,410	1.61
711	Performing Arts and Spectator Sports	594	390	962	572	2.55
712	Museums, Parks and Historical Sites	393	286	519	233	1.82
713	Amusement, Gambling & Recreation Industries	2,933	2,419	3,808	1,389	1.57
721	Accommodation	11,385	8,314	14,920	6,606	1.79
722	Food Services and Drinking Places	18,028	17,169	19,101	1,932	1.11
921	Executive, Legislative, & Gen Government	3,831	3,572	4,208	636	1.18
TOTALS		**132,147**			**38,244**	

The process known as "Time series decomposition" is a procedure that can isolate and quantify the seasonal impact on employment separate from the other components. This gives us a more accurate picture of seasonal employment independent of the growth trends or cycles that may be affecting a particular industry. The average annual change values in Table 1 (above) cannot provide this level of accuracy.

Time series decomposition was performed on the industries identified in Table 1. The results are summarized in Table 2. (Below). Four industries were not included in the analysis as their employment was too small to use the procedure.

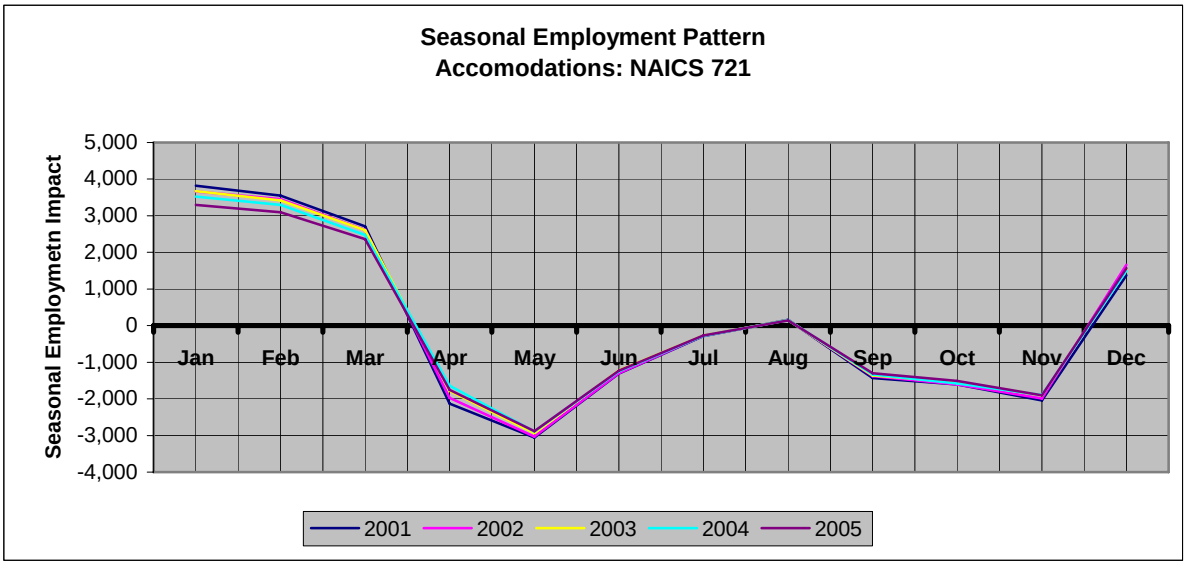
Based on this procedure there are approximately 37,500 seasonal jobs in Vermont industries with obvious seasonal employment patterns. This number drops to 23,200 if Education is excluded. An argument for excluding education is that most of this employment is elementary, secondary and higher education teachers who are typically thought of as earning year–round equivalent salaries and who tend to have competitive benefit packages.

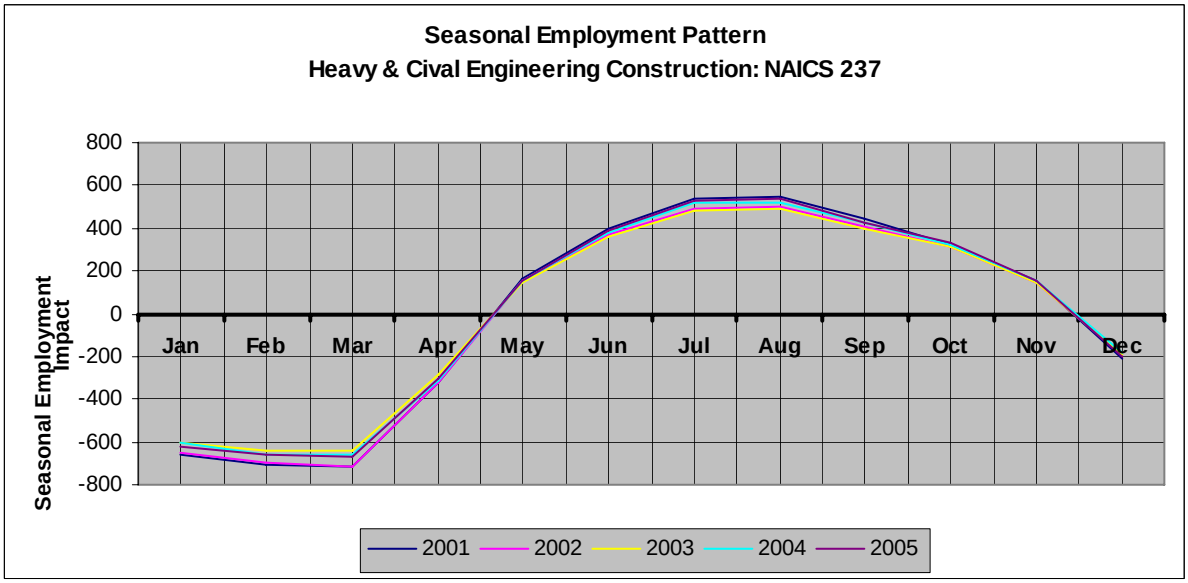
A limitation of this analysis is that it does not capture seasonal employment in industries that do not display any substantial seasonal employment pattern. While there will be some seasonal employment in these industries, we feel the number will be relatively small.

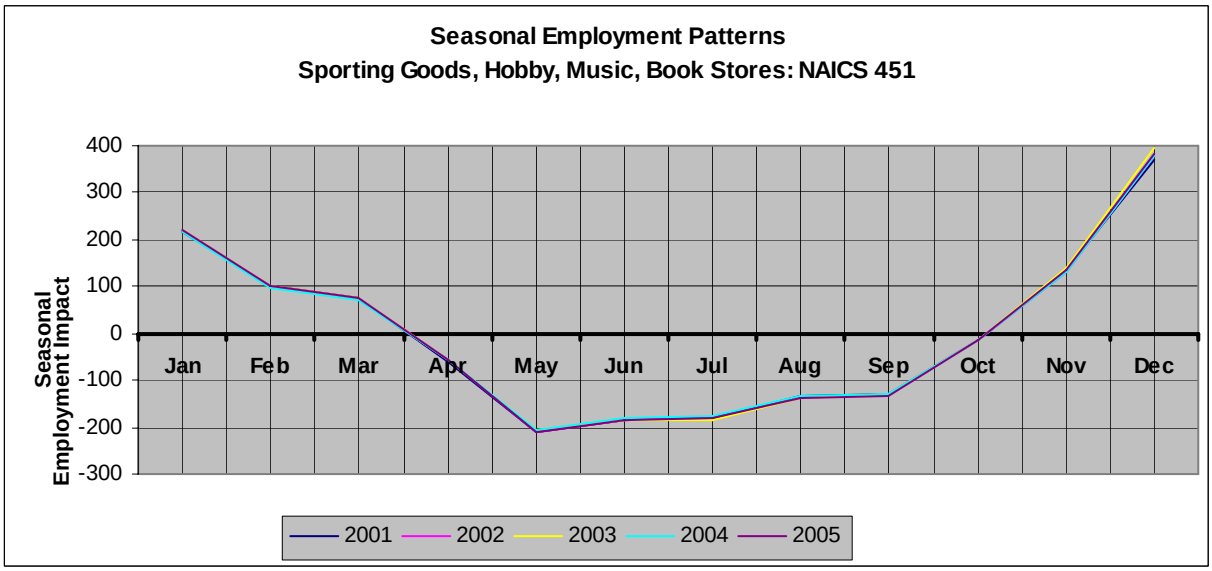
TABLE 2

NAICS	Industry	Annual seasonal component of employment
721	Accommodation	6,553
238	Specialty Trade Contractors	2,557
722	Food Services and Drinking Places	1,868
713	Amusement Gambling Recreation Industries	1,387
561	Administrative and Support Services	1,308
237	Heavy and Civil Engineering Construction	1,202
236	Construction of Buildings	907
921	Executive Legislative Gen Government	591
451	Sporting Goods Hobby Book Music Stores	589
448	Clothing and Clothing Accessories Stores	580
711	Performing Arts and Spectator Sports	580
453	Miscellaneous Store Retailers	579
444	Building Material Garden Supply Stores	563
485	Transit and Ground Passenger Transport	558
327	Nonmetallic Mineral Product Mfg	465
445	Food and Beverage Stores	451
452	General Merchandise Stores	427
111	Crop Production	411
212	Mining except Oil and Gas	251
712	Museums Parks and Historical Sites	228
532	Rental and Leasing Services	208
112	Animal Production	187
315	Apparel Manufacturing	135
493	Warehousing and Storage	130
443	Electronics and Appliance Stores	118
487	Scenic and Sightseeing Transportation	70
312	Beverage Tobacco Product Manufacturing	65
115	Agriculture Forestry Support Activity	59
113	Forestry and Logging	55
551	Management of Companies and Enterprises	52
483	Water Transportation	49
611	Ed Services	14,371
TOTAL SEASONAL EMPLOYMENT		37,554
TOTAL SEASONAL EMPLOYMENT (w/o Education)		23,183

Sample Seasonal Patterns for Selected 3 Digit NAICS Industries







Appendix III

Table 1. All Year Full/Part-Time Worker Statistics by Firm Size for the State of Vermont

Firm Size	All Year Full/Part-Time Worker Status				Total
	All Year		**Part Year**		
	Full-Time	*Part-Time*	*Full-Time*	*Part-Time*	
Under 10					
Number of Workers	59,789	16,276	21,137	16,549	113,751
%Workers in Group	52.56	14.31	18.58	14.55	100
%All Year Workers	25.6	40.68	40.87	32.28	30.21
10 - 24					
Number of Workers	25,324	5,933	6,107	7,769	45,133
%Workers in Group	56.11	13.14	13.53	17.21	100
%All Year Workers	10.84	14.83	11.81	15.15	11.99
25 - 99					
Number of Workers	35,478	3,811	6,445	7,179	52,914
%Workers in Group	67.05	7.2	12.18	13.57	100
%All Year Workers	15.19	9.53	12.46	14	14.05
100 - 499					
Number of Workers	38,074	3,481	8,383	6,688	56,626
%Workers in Group	67.24	6.15	14.8	11.81	100
%All Year Workers	16.3	8.7	16.21	13.04	15.04
500 - 999					
Number of Workers	10,890	1,345	1,604	1,079	14,918
%Workers in Group	73	9.02	10.75	7.23	100
%All Year Workers	4.66	3.36	3.1	2.1	3.96
1000+					
Number of Workers	63,988	9,162	8,037	12,009	93,197
%Workers in Group	68.66	9.83	8.62	12.89	100
%All Year Workers	27.4	22.9	15.54	23.42	24.75
Total	233,542	40,009	51,714	51,273	376,538
%Workers	62.02	10.63	13.73	13.62	100

Source: March CPS 2005
Note: All observations are weighted using March CPS 2005 Supplement final person weight.