



American Federation
of Teachers, AFL-CIO

AFT Teachers
AFT PSRP
AFT Higher Education
AFT Public Employees
AFT Healthcare

555 New Jersey Ave. N.W.
Washington, DC 20001
202/879-4400
www.aft.org

Randi Weingarten
PRESIDENT

Antonia Cortese
SECRETARY-TREASURER

Lorretta Johnson
EXECUTIVE VICE PRESIDENT

VICE PRESIDENTS

Shelvy Y. Abrams
Mary J. Armstrong
Barbara Bowen
Linda Bridges
Kenneth Brynien
Elsie P. Burkhalter
Stacey Caruso-Sharpe
Kathy A. Chavez
Lee Cutler
Edward Doherty
Kathleen M. Donahue
Thomas A. Dooher
Marietta A. English
Eric Feaver
Andy Ford
Ed Geppert, Jr.
David Gray
Judy Hale
David Hecker
Richard C. Iannuzzi
Keith R. Johnson
Jerry T. Jordan
Dennis Kelly
Ted Kirsch
Francine Lawrence
Karen GJ Lewis
Bonnie K. Luisi
Louis Malfaro
Michael Mulgrew
Maria Neira
Ruby J. Newbold
Candice Owley
Andrew Pallotta
Sharon M. Palmer
Marcia B. Reback
Laura K. Rico
Pat Santeramo
Sandra Schroeder
Phillip H. Smith
John Tarka
Christine Trujillo
Ann Twomey
Adam Urbanski



Submitted via e-mail to notice.comments@irscounsel.treas.gov

June 17, 2011

CC:PA:LPD:PR (Notice 2011-36)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Dear Ladies and Gentlemen:

On behalf of our 1.5 million members, the American Federation of Teachers (AFT) welcomes the chance to respond to the IRS Request for Comments on Shared Responsibility for Employers Regarding Health Coverage (Section 4980H).

The AFT represents many hourly employees whose work follows the academic calendar. School custodians, office employees, school bus drivers, school food service workers, special education assistants, and many others work in public schools, often only during the school year. Many of our members perform similar support work at community colleges and universities. It is essential that all school employees who work thirty or more hours per week be considered full time for the purpose of calculating potential employer penalties under the Affordable Care Act. Fair implementation of the Act also requires that employers be prohibited from reducing hourly workers' schedules to 29 hours per week solely for the purpose of avoiding potential penalties.

The AFT also represents contingent faculty in higher education. Many of these contingent positions, also known as adjunct or part-time faculty positions, are held by employees with a teaching load equivalent to or greater than that of a full-time faculty member. The work schedules of contingent faculty members require special consideration, as we discuss on page two.

Comments on the Proposed Look-Back/Stability Period Safe Harbor Method for Determining Full-time Status

We applaud the IRS proposal to provide an alternative to a month-to-month determination of full-time status. However, we believe that the proposed look-back/stability period safe harbor method must protect non-seasonal employees who work thirty or more hours per week only during the academic year or during other nonstandard working years. We make the following recommendations for ensuring the fair implementation of the look-back/stability period method:

Hourly academic-year employees

- Employers should not be permitted to include an employee's non-working months in the measurement period. Instead, employers should be required to use a measurement period that encompasses typical working months. For example, if an employee works full time for nine months of the year, the employer should be compelled to use three or more of those nine working months as its measurement period.

Under no circumstances should the determination of the measurement period be left solely to the discretion of the employer. Explicit guidance on this issue is needed to avoid an employer-selected measurement period that includes only or primarily summer months, or months which include lengthy school vacations.

- Many of our collective bargaining agreements extend health insurance coverage to employees who work fewer than thirty hours per week, yet are contractually defined as full-time employees. Because the laudable intent of the Affordable Care Act is to expand coverage, not reduce it, we would like to ensure that the thirty-hour definition of full time is not seen by the employer as a mandate or excuse to terminate such coverage. We strongly encourage the regulation to state that the Affordable Care Act neither requires nor condones the termination of coverage currently extended to employees working fewer than thirty hours per week.
- Similarly, we would welcome a regulatory prohibition against the manipulation of employees' work schedules for the sole purpose of avoiding potential penalties. Prohibiting employers from reducing work weeks to 29 hours would help ensure that the Act enhances rather than reduces workers' ability to pay for coverage. A clear procedure for monitoring and reporting such schedule manipulation would also ensure the fair implementation of the Act.
- Employees who perform multiple part-time jobs for the same employer should have all their hours worked for that employer count towards the calculation of their full-time status. For example, if a school hires bus drivers to perform custodial tasks in between their bus runs, all hours worked for that school should count toward the thirty hour threshold. If the regulations are silent on this issue, we fear that employers will shirk their shared responsibility by putting more of our members in this situation to avoid potential penalties.

Contingent/adjunct higher education faculty

The AFT represents many contingent faculty members in higher education. These positions, also known as adjunct or part-time faculty positions, are often held by employees with a teaching load equivalent to or greater than that of a full-time faculty member. For the purpose of determining full-time status under the Affordable Care Act, the regulation should establish a calculation method for contingent faculty that is based on contact and/or credit hours.

The common standard for gauging workload in higher education is that for each credit taught, an instructor works a minimum of three hours per week. This credit-hour standard is derived from the Carnegie Unit and is commonly used in higher education.¹ Therefore, if a contingent instructor teaches one three-credit course, that instructor is considered to work a minimum of nine hours per week. Consequently, an instructor who teaches four three-credit classes works over 30 hours per week and should be considered a full-time employee for the purpose of the employer penalty, even if their institutional status is adjunct or part-time.

Other non-hourly employees

For other non-hourly employees, employers should be required to choose a calculation method (either the days-worked or weeks-worked equivalency) that maximizes the number of employees defined as full-time. This is especially important for teachers and other employees who may regularly conduct a portion of their work at home or outside of normal business hours.

Comments on the 90-Day Waiting Period Limitation

We applaud the Affordable Care Act's elimination of insurance coverage waiting periods longer than 90 days and believe that any waiting period should start with the employee's first day of work.

Thank you for the opportunity to comment on this important issue.

Sincerely,



Patricia Olshefski
Director, AFT PSRP Department
Senior Assistant to the AFT Executive Vice President



Lawrence N. Gold
Director, AFT Higher Education

ALC: pc opeiu#2 afl-cio

¹ For more discussion of the credit hour standard in higher education, as well as its use in determining faculty workload, see the transcript of the Department of Education Inspector General's Review of Standards for Program Length in Higher Education Hearing held June 17, 2010 (Washington, DC: US Government Printing Office, 2010), and Thomas Ehrlich's article, "The Credit Hour and Faculty Instructional Workload," in *New Directions for Higher Education*, Issue 122, p. 45-55 (Wiley: 2003).