



Patient Protection and Affordable Care Act and Part-time Firefighters

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Patient Protection and Affordable Care Act and Part-time Firefighters

Reference Number: MTAS-1779

The Patient Protection and Affordable Care Act (PPACA or the Act), more commonly called the Affordable Care Act (hereinafter referred to as the Act), became law on March 23, 2010. The act is the most significant change in the American health care system since the passage of Medicare and Medicaid in 1965, and the greatest effect of the act is health insurance reform. The act requires certain employers to offer health care benefits to part-time employees, and this requirement may affect cities and fire departments using part-time firefighters. The focus of this section is on how the act affects cities and fire departments employing part-time firefighters and volunteer firefighters.

PPACA for Public Safety Employees

Reference Number: MTAS-1781

The Patient Protection and Affordable Care Act (PPACA) applies to all public, private, and non-profit employers. On Monday, February 10, 2014, the Internal Revenue Service (IRS) finalized rules clarifying that volunteers in a government or tax-exempt organization are exempt from the Patient Protection and Affordable Care Act (PPACA). This exception is beneficial for the volunteer fire service and for combination fire departments, too.

Hours worked by a volunteer who does not receive (and is not entitled to receive) compensation in exchange for the performance of services are not treated as hours of service for the purposes of the PPACA. The final regulations provide that hours of service do not include hours worked as a "bona fide volunteer." Bona fide volunteers include any volunteer who is an employee of a government entity or an organization described in section 501(c) that is exempt from taxation under section 501(a) whose only compensation from that entity or organization is in the form of (i) reimbursement for (or reasonable allowance for) reasonable expenses incurred in the performance of services by volunteers, or (ii) reasonable benefits (including length of service awards), and nominal fees, customarily paid by similar entities in connection with the performance of services by volunteers. The 20 percent rule for nominal fees still applies (see the MORE page [1] on volunteer compensation for additional information on allowable compensation for volunteers).

The definition of volunteer is broad enough to include volunteer firefighters, EMS personnel, CERT participants, Fire Corp participants, and similar members of a fire or emergency services department who volunteer their services. Part-time employees (those who receive an hourly rate) are not considered to be volunteers.

The published rules for Shared Responsibility for Employers Regarding Health Coverage [2] are available from the Federal Register Website.

The PPACA does not *require* cities to offer health insurance to employees. However, the city will be penalized if there are at least 50 full-time equivalents (FTEs) as defined by the PPACA and the employer does not offer at least minimum credible coverage or if coverage is not affordable as defined by PPACA.

Penalties only apply if an employer has the equivalent of 50 FTEs, including part time and seasonal. Those employers would be penalized if they did not offer coverage that meets the minimum standards as defined by PPACA. There are several ways to determine how part-time employees are counted, and this is done using a "look back" period.

Under the look-back/stability period safe harbor method, an employer determines each employee's full-time status by looking back at a defined period of not less than three but not more than twelve consecutive calendar months, as chosen by the employer (the measurement period), to determine whether during the measurement period the employee averaged at least 30 hours of service per week. If the employee were determined to be a full-time employee during the measurement period, then the employee would be treated as a full-time employee during a subsequent "stability period," regardless of

the employee's number of hours of service during the stability period, so long as he or she remained an employee.

Using the look-back period is voluntary. If an employer chooses not to use a look-back period, the employer simply looks at each employee's actual hours each month and if they worked 30 or more hours they should have been offered coverage. It may be advantageous for a municipality with a workforce that is largely full-time and/or works very predictable hours to use the "count as you go" approach.

For more information on how an employer must define and calculate number of FTEs go to the IRS website at <http://www.irs.gov/pub/irs-drop/n-12-58.pdf> [3] for IRS Notice 2012-58, *Determining Full-Time Employees for Purposes of Shared Responsibility for Employers Regarding Health Coverage* (§ 4980H).

A "large employer" is defined as an employer with more than 50 full-time equivalent employees during the preceding calendar year. Both full-time and part-time employees are included in the calculation:

- Full-time employees are defined as those working 30 or more hours per week;
- Full-time *excludes* seasonal employees who work less than 120 days during the year;
- Part-time employees are employees that works less than 30 hours per week and this includes volunteers; or
- Part-time employees' hours as a group are included in the calculation.

Hours worked by part-time employees are included by, on a monthly basis, dividing their total number of monthly hours worked by 120.

For example, an employer with 35 full-time employees (30+ hours per week) also has 20 part-time employees who all work 24 hours per week (so each employee who works 24 hours per week, works a total of 96 hours per month). These hours worked by these part-time employees are the equivalent of having 16 full-time employees, calculated as follows (note: 120 hours of service in a calendar month is the monthly equivalent of 30 hours of service per week):

- 20 employees x 96 hours per month per employee = 1,920 hours worked
- $1920/120 =$ the equivalent of 16 "full-time" (30+ hours a week) employees

The 35 full-time employees, plus the 16 full-time equivalent employees, equals 51 full-time equivalent employees, so this employer would be considered a large employer under the PPACA.

PPACA Penalties

Reference Number: MTAS-1782

Cities with less than 50 employees meet the definition of a small business under the Patient Protection and Affordable Care Act (PPACA) and must notify workers of their health care options under state health exchanges. Employers with less than 50 FTE are exempt from the employer coverage requirements and applicable penalties under the act.

Regardless of whether a large employer offers coverage, it will only be potentially liable for a penalty beginning in January 2015 if at least one of its full-time employees obtains coverage through a health care exchange and qualifies for either a premium credit or a cost share reduction. To qualify for premium credits in an exchange, the employee must meet certain eligibility requirements, including that the employee's required contribution for self-only health coverage (through the employer) exceeds 9.5 percent of the employees' household income, or if the plan offered by the employer pays for less than 60 percent of covered expenses.

While hours worked by volunteers do not count toward the 50 full-time employee threshold, hours worked by part-time employees do count.

Employers are not required to offer coverage to ANY employee, but if the employer meets the definition of a large employer and does not meet minimum requirements of the PPACA, the employer will be penalized.

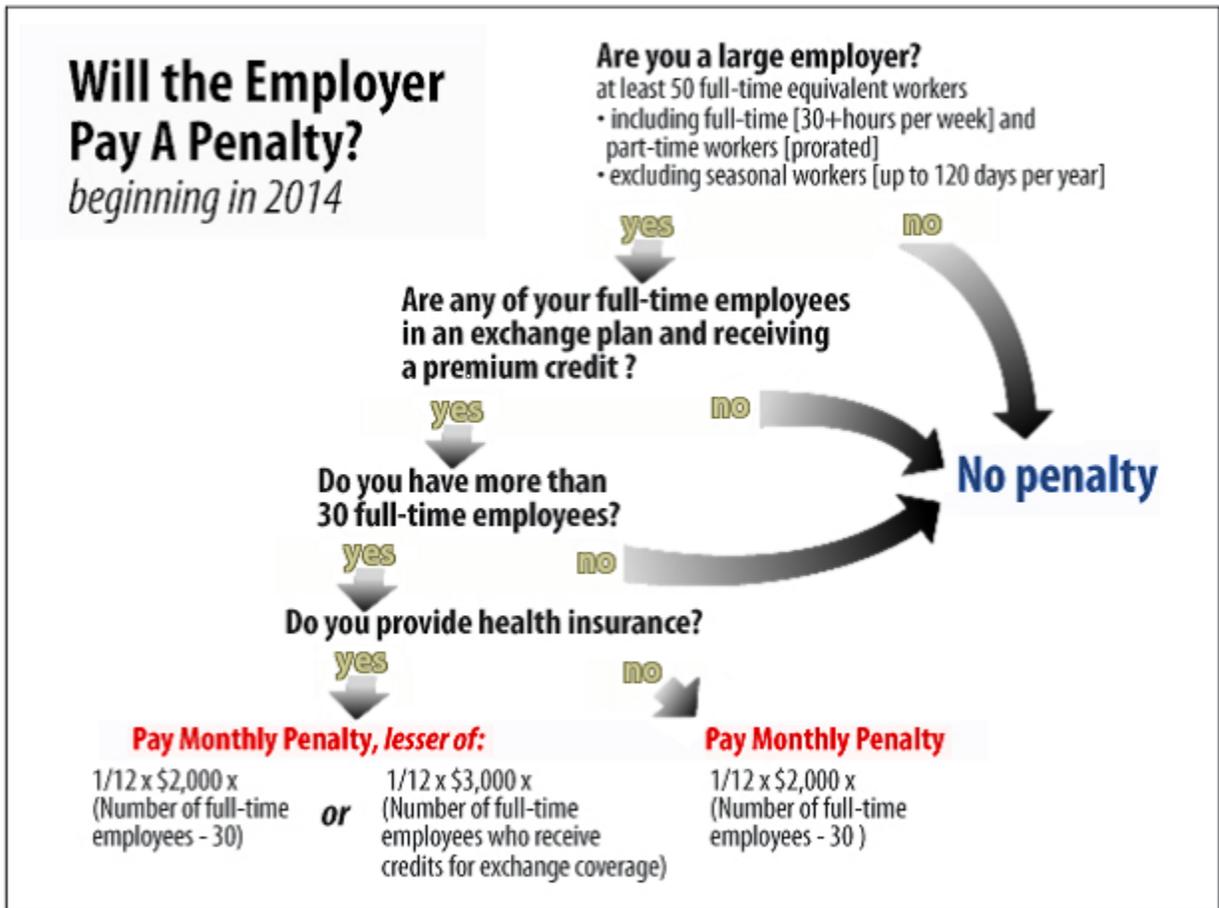
If a part-time employee obtains health insurance through an exchange, that will not trigger a penalty against their employer unless it is a large employer, and coverage was considered unaffordable.

If an employer does not offer insurance, but a full-time employee obtains insurance through a health care exchange, the penalty calculation against the employer is \$2,000 per year multiplied by the number of full-time employees, excluding the first 30.

If an employer offers insurance, but full-time employees enter the exchange, the penalty is the lesser of (1) \$3,000 annually for each employee entering the exchange, or (2) the penalty calculated for employers not offering insurance at all (\$2,000 per year x the number of full-time employees, excluding the first 30).

Penalties are based on the number of full-time employees – not FTEs. FTEs are used only to determine if the employer qualifies as a large employer for the purposes of the PPACA.

The following chart from the Congressional Research Service (see references [4]) shows how to determine if an employer will pay a penalty starting in January 2015. On July 17, 2013, Congress passed legislation delaying until January 2015 the employer requirements, employer penalties, and related reporting requirements specified under the PPACA.



PPACA Summary and References

Reference Number: MTAS-1783

This is just a brief overview of this very complex issue, and does not address all factors involved in the calculation of the “large” employer threshold or the possible imposition of penalties.

For cities staffing a fire department with part-time employees, any part-time firefighter who works more than 30 hours per week is a full-time employee for the purpose of the Patient Protection and Affordable Care act.

Fire departments may use part-time employees without having to offer them health care benefits as long as the part-time employees do not work more than 30 hours per week. This may involve hiring additional part-time firefighters and working them on a rotating system to keep the hours worked per firefighter to less than 30 per week.

Volunteers are not subject to the PPACA. Cities may continue to use volunteers and paid-on-call firefighters as described above, and those personnel are not considered employees for FLSA or for the PPACA.

Fire department administrators are encouraged to consult with their agency's human resources department for more information on the PPACA and its applicability to fire department staffing.

References:

Bianchi, Alden J. 2010. The "Employer Responsibilities" Requirement of The Patient Protection and Affordable Care Act: A View from the Weeds. <http://www.mintz.com/newsletter/2010/Advisories/0321-0410-NAT-HCR/web.html> [5]

Bianchi, Alden J. 2011. Treasury/IRS Propose Safe Harbor under Affordable Care Act's Employer Responsibility Rule for Determining "Household Income." <http://www.mintz.com/newsletter/2011/Advisories/1405-1011-NAT-ELB/web.htm> [6]

Internal Revenue Service. 2012. Notice 2012-58. Determining Full-Time Employees for Purposes of Shared Responsibility for Employers Regarding Health Coverage (§ 4980H). <http://www.irs.gov/pub/irs-drop/n-12-58.pdf> [3]

Kaiser Family Foundation. 2012. Explaining Health Care Reform: How will the Affordable Care Act affect small businesses and their employees? <http://www.kff.org/health-reform/fact-sheet/explaining-health-reform-how-will-the-affordable-care-act-affect-small-businesses-and-their-employees/> [7]

Mulvey, Janemarie. 2013. *Potential Employer Penalties Under the Patient Protection and Affordable Care Act (ACA)*. <http://www.fas.org/sgp/crs/misc/R41159.pdf> [8]

Links:

[1] <https://www.mtas.tennessee.edu/reference/>

compensation-and-employee-status-volunteer-firefighters

[2] <https://www.federalregister.gov/articles/2014/02/12/2014-03082/>

shared-responsibility-for-employers-regarding-health-coverage

[3] <http://www.irs.gov/pub/irs-drop/n-12-58.pdf>

[4] <https://www.mtas.tennessee.edu/reference/ppaca-summary-and-references>

[5] <http://www.mintz.com/newsletter/2010/Advisories/0321-0410-NAT-HCR/web.html>

[6] <http://www.mintz.com/newsletter/2011/Advisories/1405-1011-NAT-ELB/web.htm>

[7] <http://www.kff.org/health-reform/fact-sheet/>

explaining-health-reform-how-will-the-affordable-care-act-affect-small-businesses-and-their-employees/

[8] <http://www.fas.org/sgp/crs/misc/R41159.pdf>

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