



## INTERNATIONAL ASSOCIATION OF FIRE CHIEFS

Providing leadership for the fire and emergency services since 1873  
4025 FAIR RIDGE DRIVE • FAIRFAX, VA 22033-2868 • TEL: 703/273-0911 • FAX: 703/273-9363 • www.iafc.org

### **Fire Departments and the Patient Protection and Affordable Care Act**

On March 23, 2010, Congress passed the Patient Protection and Affordable Care Act (P.L. 111-148) which was one of the most significant reforms to the U.S. health care system. The Patient Protection and Affordable Care Act (PPACA) created a requirement, known as the Employer Shared Responsibility Provision (ESRP) for “large employers” to provide health insurance to their “full-time” employees. The definition of “large employer” could potentially have large impacts on fire departments. All chiefs are encouraged to consult a legal professional and benefits administrator in their state to review their specific situation.

#### **Definition of Large Employer**

Currently, the IRS requires fire departments to issue a Form W-2 to every compensated volunteer firefighter – thus establishing fire departments as “employers” and volunteers as their “employees.”<sup>1</sup>

- The IRS evaluates three areas to determine the employment classification of volunteer firefighters<sup>2</sup>
  - o Behavioral Control – Can the department control how a volunteer completes a task? Does the department provide training for the job tasks?
  - o Financial Control – Does the department provide a place to work and the tools to complete job tasks? Does the department restrict where the volunteer can offer their services?
  - o Type of Relationship – Does the department maintain an indefinite working relationship with the volunteer? Does the department provide “employee-type” benefits, such as a pension plan, vacation pay, or sick pay?
- Using these criteria, the IRS has ruled that volunteer firefighters are classified as employees.

While the IRS does classify nominally compensated volunteers as employees of their fire departments, the IRS has ruled that nominally compensated volunteers will not be classified as “employees” for the purposes of the ESRP.<sup>3</sup>

<sup>1</sup> USA. Internal Revenue Service. *Issues for Firefighters*. Washington, DC: 2013. Web.

<<http://www.irs.gov/Government-Entities/Federal,-State-&-Local-Governments/Issues-for-Firefighters>>.

<sup>2</sup> United States. Internal Revenue Service. *Publication 15-A: Employer's Supplemental Tax Guide*. Washington, DC: 2013. Web. <<http://www.irs.gov/pub/irs-pdf/p15a.pdf>>. Pg. 7-8

<sup>3</sup> IRS Final Rule on ESRP. <http://www.gpo.gov/fdsys/pkg/FR-2014-02-12/pdf/2014-03082.pdf>. P. 8550.



- The IRS has identified two methods for counting the number of hours an employee works
  - *Monthly Measurement Method*: Employers may simply count the number of hours worked by an employee each month.
  - *Look-Back method*: Employers may select a “measurement period” of three to twelve months in which they compute the total number of hours worked by an employee and divide the number of hours worked by the number of weeks in the measurement period chosen.
    - Employers are free to determine the measurement period, provided the measurement period dates are the same for all employees.
    - The IRS guidance may permit varying the measurement period on an employee-by-employee basis for employees involved in collective bargaining.
      - The IRS is expected to clarify this point in future guidance.
  - For full-time, salaried employees, employers may assume the employee works 8-hours per day.<sup>7</sup>
- When an employer hires a new employee, they must make a reasonable estimation of whether the employee will be full-time
  - If the employer reasonably believes the employee will be a full-time employee, the employer must offer qualified health insurance to the employee by the conclusion of the employee’s first three months of employment<sup>8</sup>
- Once an employer determines an employee is a full-time employee, the employee must be enrolled in a health insurance plan during a period of time known as the “administrative period.”
  - The administrative period may be no longer than 90 days.<sup>9</sup>
  - Once an employer is considered a large employer, all employees must be offered qualified health insurance by April 1 of the first year in which an employer is classified as a large employer.
  - If an employee enters a qualified health insurance plan during the administrative period, no penalty will be assessed.
- The IRS will assess fines for any employer with uninsured employees after the administrative period ends.

## **Insurance Requirements**

The PPACA places several requirements on the required employer provided insurance plans:

- Employee contribution may not exceed 9.5% of the employee’s household income.<sup>10</sup>
- Plans must pay for at least 60%, on average, of covered health expenses.<sup>11</sup>

If an employer does not offer a health insurance plan which meets the above criteria, employees will receive a tax credit and will be eligible to obtain insurance through a state exchange.

---

<sup>7</sup> Ibid

<sup>8</sup> Ibid. P. 8555

<sup>9</sup> Ibid.

<sup>10</sup> Mulvey, Janemarie. Pg. 11

<sup>11</sup> Ibid. Pg. 12

## Penalties for Non-Compliance

The IRs will begin enforcing the ESRP in a tiered manner

- Large employers with 50-99 full-time employees must achieve compliance by 2016
- Large employers with more than 100 full-time employees or FTEs, 75% of qualified employees must be offered health insurance by 2015, 95% by 2016, and 100% by 2017. Large employers providing either no insurance or inadequate insurance will be fined.
- Fines will be assessed if one or more full-time employees do not receive either coverage or adequate coverage and then pursues coverage through an exchange.
- Fines will be assessed based on the total number of full-time employees, not just those who are not receiving insurance.
  - o Part-time employees are not counted or prorated when calculating fines.
- When assessing fines, the PPACA waives the first 30 full-time employees.

Starting in 2015, the IRS will begin enforcing the ESRP based on the above information. Large employers **not offering** insurance will be assessed a monthly fine of \$166.67 for each employee, minus the 30 employees waived by the PPACA. ( $\$166.67 \times (\text{Number of employees} - 30 \text{ employees})$ ).<sup>12</sup>

- After 2015, the monthly penalty will slowly increase each year.

Large employers **offering inadequate** insurance will be assessed a monthly fine of the lesser of:<sup>13</sup>

- \$166.67 for each employee, minus the 30 employees waived by the PPACA
- \$250 for each employee who receives tax credits to purchase insurance through a state exchange
  - o After 2015, the monthly penalty will slowly increase each year.



14

**Note:** These penalties are for 2015; penalties in future years will be adjusted.

<sup>12</sup> Ibid. Pg. 4

<sup>13</sup> Ibid.

<sup>14</sup> Ibid. Pg. 5.

## **References:**

Congressional Research Service – [\*Potential Employer Penalties Under the Patient Protection and Affordable Care Act.\*](#) 2013.

Department of Health and Human Services - [\*Preventative Services Covered Under the Affordable Care Act.\*](#) 2012.

Department of Labor - [\*Technical Release No. 2013-02: Guidance on the Notice to Employees of Coverage Options under Fair Labor Standards Act §18B and Updated Model Election Notice under the Consolidated Omnibus Budget Reconciliation Act of 1985\*](#) - 2013

Internal Revenue Service – [\*Internal Revenue Manual, Part 6.550.1.1.6\*](#) - 2009

Internal Revenue Service – [\*Issues for Firefighters.\*](#) 2013.

Internal Revenue Service – [\*Publication 15-A: Employer's Supplemental Tax Guide.\*](#) 2013.

National Association of Counties – [\*Health Reform Implementation FAQ's.\*](#) 2013.

## **Other Sources of Information**

The Official Federal Health Care Reform website: <http://www.healthcare.gov/>

The National Association of Counties Health Reform Implementation website: <http://www.naco.org/programs/csd/Pages/HealthReformImplementation.aspx>