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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 for “large employers” to provide health insurance to their “full-time” employees. The definition of “large employer” could potentially have large impacts on all fire departments – career, combination, or volunteer. Though the full impacts of the PPACA will not be known until the Internal Revenue Service (IRS) releases its final rule later this year, this is an issue that all fire chiefs should be monitoring. 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.”¹

- The IRS evaluates three areas to determine the employment classification of volunteer firefighters²
 - 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.

However, we are awaiting the final IRS regulations about whether volunteer firefighters will be covered under the Patient Protection and Affordable Care Act (PPACA).

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

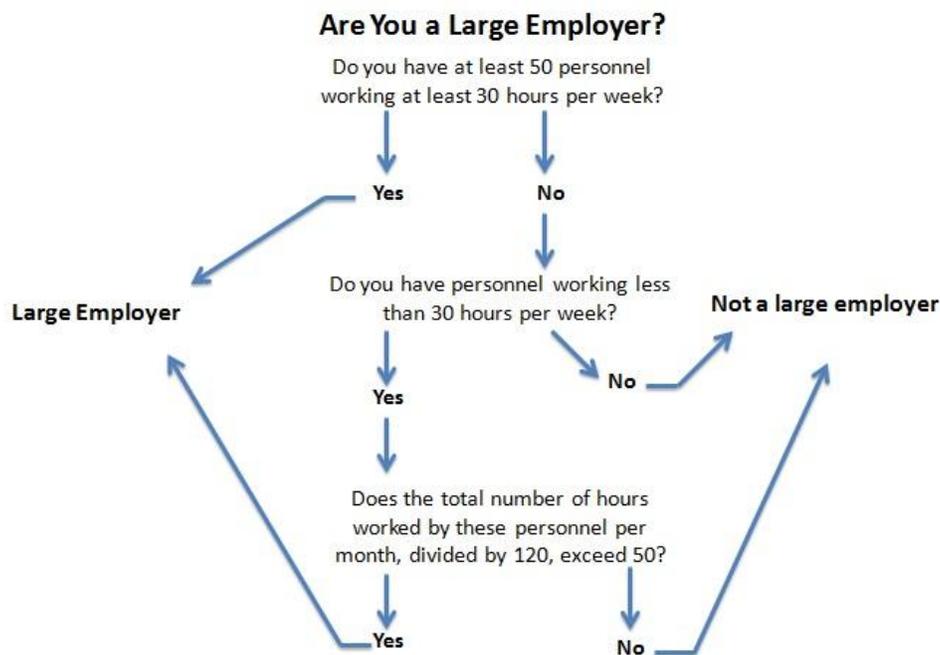
<<http://www.irs.gov/Government-Entities/Federal,-State-&-Local-Governments/Issues-for-Firefighters>>.

² 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

The PPACA created a requirement for “large employers” to provide health insurance.³

- The PPACA defines a “large employer” as an organization which has 50 or more full-time employees or equivalents.
 - o The PPACA defines a full-time employee as an individual who works at least 30 hours per week.
 - o The PPACA also states that several part-time employees can be counted by the IRS to represent a full-time employee.
 - As an example, two employees who each work 15 hours per week will be counted by the IRS as one full-time employee for the purposes of determining whether an employer is a “large employer.”

The IRS’ Internal Revenue Manual⁴ (IRM) states that time spent on-duty in a fire station, responding to calls, training, or handling administrative matters must be counted as “time worked.” The IRM would not require departments to count “stand-by” time when firefighters are not obligated to be in a specific area, but are able to respond to an emergency call if alerted by pager, cell phone, or other electronic device.⁵



The IRS has provided guidance for determining how many hours an employee has worked:⁶

³ Mulvey, Janemarie. United States. Congressional Research Service. *Potential Employer Penalties Under the Patient Protection and Affordable Care Act*. Washington, DC: , 2013. Web. <<http://www.fas.org/sgp/crs/misc/R41159.pdf>>. Pg. 2-3

⁴ The IRS will likely use the IRM guidelines when creating their final rule on PPACA, however this cannot be positively confirmed until after the final rule is released.

⁵ United States. Internal Revenue Service. *Internal Revenue Manual*. Washington, DC: , 2009. Part 6.550.1.1.6. Web. <http://www.irs.gov/irm/part6/irm_06-550-001.html>.

⁶ Mulvey, Janemarie. Pg. 7

- 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.
 - o Employers are free to determine the measurement period, provided the measurement period dates are the same for all employees.
 - o 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.
- 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.”
 - o The IRS guidance has not defined the length of the administrative period.
 - o 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.⁷
- Plans must pay for at least 60%, on average, of covered health expenses.⁸

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.

Penalties for Non-Compliance

In 2015, the IRS will begin enforcing the insurance requirements created by the PPACA.

- 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.
- 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.

For 2015, 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. ($\$166.67 \times (\text{Number of employees} - 30 \text{ employees})$).⁹

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

⁷ Ibid. Pg. 11

⁸ Ibid. Pg. 12

⁹ Ibid. Pg. 4

Large employers *offering inadequate* insurance will be assessed a monthly fine of the lesser of:¹⁰

- \$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.



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

Notification Requirements

The PPACA requires that employers provide notification to their employees by October 1, 2013 to detail their coverage options. The Department of Labor has created model notices employers can use.¹²

Application of the PPACA to Fire Departments

It is unclear how exactly the PPACA's requirements for employer provided insurance, and notification of coverage options, will be applied to fire departments. The IRS will issue a final rule to clarify these requirements before the end of this fiscal year.

As the PPACA stands now, the IAFC and other national organizations believe fire departments will need to comply with the PPACA.

¹⁰ Ibid.

¹¹ Ibid. Pg. 5.

¹² United States. Department of Labor. *Technical Release No. 2013-02*. Washington, DC: , 2013. Web. <<http://www.dol.gov/ebsa/newsroom/tr13-02.html>>.

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>