



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

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Dear \_\_\_\_\_ :

Thank you for writing. I apologize for the delay in responding to your inquiry of April 29, 2016, to President Obama. You wrote about the "13/26" rule in the employer shared responsibility regulations under the Affordable Care Act (ACA) and suggested this rule requires you to take a 6-month break-in-service following retirement before you can work part-time for your former employer.

The employer shared responsibility regulations under the ACA have various rules about how to identify full-time employees, including the "13/26" rule that tells employers how to treat employees rehired after termination of employment or resuming service after other absence. See Treasury Regulation section 54.4980H-3(c)(4). We see no reason why the rules in the employer shared responsibility regulations would require you to have a 6-month break in service after retirement before working as a part-time employee at the Northern Virginia Community College.

Under the employer shared responsibility regulations, the 13/26 rule treats an employee as a continuing employee of an educational institution unless the employee has a period of 26 weeks without an hour of service. See Treasury Regulation section 54.4980H-3(c)(4)(ii). In this case, the rule treats the employee as terminated from employment and rehired. The rule is 13 weeks without an hour of service for employers that are not educational institutions. See Treasury Regulation section 54.4980H-3(c)(4)(i). Therefore, this 13 week rule does not apply in your case because of your employer. For more information see the Treasury Regulations on the employer shared responsibility provisions on [IRS.gov/affordable-care-act](http://IRS.gov/affordable-care-act).

If your employer has told you that a break-in-service is required after retirement, the reason may be due to the terms of your retirement plan instead of any ACA requirement. Some retirement plans restrict distributions to employees who transfer to a part-time position with the same employer before incurring some minimum break-in-service. If you have questions about the terms of your retirement plan, you should contact your employer or plan administrator.

I hope this information is helpful. If you have any questions, please call me at \_\_\_\_\_ or \_\_\_\_\_ (badge number \_\_\_\_\_) at \_\_\_\_\_.

Sincerely,

Christine Ellison, Acting Chief  
Health and Welfare Branch  
Office of Associate Chief Counsel  
(Tax Exempt and Government Entities)