



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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OFFICE OF THE CHIEF COUNSEL

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CONEX-127975-16

The Honorable Timothy Kaine
United States Senator
121 Russell Road, Suite 2
Abingdon, VA 24210

Attention:

Dear Senator Kaine:

I am responding to your September 7, 2016 inquiry on behalf of your constituent, _____ asked for help clarifying the Affordable Care Act (ACA) rules on employment conversion from full-time to part-time. She believes the "26-week break rule" under the ACA prevents her from switching from full time to part-time status at her job with a state university.

We see no reason why the rules in the ACA's employer shared responsibility regulations would require _____ to have a 26-week break in service after working full-time and then changing to part-time for the _____.

The ACA's employer shared responsibility regulations explain how to identify full-time employees, including the "13/26" rule. This rule tells employers how to treat employees rehired after termination of employment or resuming service after other absence. Employees of education institutions are considered continuing employees unless they have a period of 26 weeks without an hour of service. See Treasury Regulation section 54.4980H-3(d)(6)(ii). In this case, the rule treats the employee as terminated from employment and rehired.

For employers that are not educational institutions, the rule is 13 weeks without an hour of service. See Treasury Regulation section 54.4980H-3(d)(6)(i).

If the employer is using the look-back measurement method to determine employee status, the educational employer must continue to treat an employee as full time solely for purposes of the employer shared responsibility rule. This does not prevent the employee from accepting and working in a part time position. Generally, the only consequence is that when the employer treats the employee as full time, (even though the employee is working part time), the employee must continue to be offered health coverage for a certain time or the employer is potentially subject to an assessable payment under the employer shared responsibility provision. The ACA rules do not prevent the educational employer from providing the former full time employee a part time position.

I hope this information is helpful. If you have additional questions, please call me at
or at .

Sincerely,

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