



INDIANA COMMISSION  
for  
HIGHER EDUCATION

TO: EARN Indiana Employers

FROM: Amanda J. Stanley, Director of Program Relationships *AS*

RE: EARN Indiana and the Affordable Care Act

DATE: June 6, 2013

Several employers asked how the Affordable Care Act will impact the EARN Indiana program. Specifically, it was asked whether an employer participating in EARN Indiana would be required to offer a student health care insurance if the student is working as an intern more than 29 hours per week. The following information was provided by the Indiana Attorney General's office in response to this inquiry.

If you have additional questions regarding the EARN Indiana program, please contact [earnindiana@che.in.gov](mailto:earnindiana@che.in.gov).

**BRIEF ANSWERS**

Under the Affordable Care Act, employers participating in the EARN Indiana program would not be required to provide student interns with health care insurance due to the fact that they are not considered "full-time" employees.

**ANALYSIS**

Many provisions of the Affordable Care Act that become effective in 2014 are designed to expand access to affordable health coverage.<sup>1</sup> These include provisions for automatic enrollment of full-time employees in an employer's health plan, shared responsibility of employers regarding health coverage, coverage to be offered through State-based Affordable Insurance Exchanges ("Exchanges"), premium tax credits to assist individuals in purchasing coverage through Exchanges, and other related provisions.<sup>2</sup> Effective January 1, 2013, a \$2,000 per employee penalty will be imposed on employers with more than 50 employees who do not offer health insurance to their full-time workers.

In order to determine whether students working as intern with the EARN Indiana program would need to be provided with health care insurance, there needs to be the consideration of what constitutes a "full-time" employee for the purposes of the Affordable Care Act. In section 4980H of the Internal Revenue Code the Treasury and the Internal Revenue Service determine that what qualifies as a "full-time" employee will depend upon whether, based on the facts and circumstances, (a) the employee is reasonably expected as of the time of hire to work an average of 30 or more hours per week on an annual basis and (b) the employee's first three months of employment are reasonably viewed, as of the end of that period, as representative of the average hours the employee is expected to work on an annual basis.<sup>3</sup>

<sup>1</sup> Department of Labor, DOL Technical Release 2012-01, Frequently-Asked-Questions from Employers Regarding Automatic Enrollment, Employer Shared Responsibility, and Waiting Periods (2012), pg. 1.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 5.

Specifically, it is intended that the upcoming proposed regulations or other guidance would provide, for purposes of section 4980H, that:

- If a newly-hired employee is reasonably expected to work full-time *on an annual basis* and does work full-time during the first three months of employment, the employee must be offered coverage under the employer's group health plan as of the end of that period in order to avoid the possibility that the employer would be subject to a section 4980H payment after the end of that three-month period.
- If, based on the facts and circumstances as of the time of hire, it cannot reasonably be determined that a newly-hired employee is expected to work full-time, the following rules will apply for purposes of determining whether the newly-hired employee is considered a full-time employee in applying section 4980H with respect to the employer's group health plan:
  - If the employee works full-time during the first three months of employment, and the employee's hours during that period are reasonably viewed, as of the end of that period, as representative of the average hours the employee *is expected to work on an annual basis*, the employee will first be considered a full-time employee for purposes of section 4980H as of the end of that three-month period. (If the employee works part-time during the first three months of employment, then no section 4980H penalty applies during the first or second three month period.)
  - If the employee works full-time during the first three months of employment, but the employee's hours during that period are reasonably viewed, as of the end of that period, as not representative of the average hours the employee *is expected to work on an annual basis*, the plan is permitted an additional three-month period to determine the employee's status, and no section 4980H payment would be required with respect to that employee during the first or second three-month periods. (If the employee works part-time during the second three months of employment, then no section 4980H penalty applies during the first, second, or third three-month period.)<sup>4</sup>

In light of these scenarios, students working with the EARN Indiana program would not be considered full-time employees given that the program only allows students to work up to 40 hours a week if the employment occurs during the summer term and the student is not enrolled in courses during the summer term. If the student is enrolled in courses at the time of employment, the student is limited to 20 hours per week. Since the program has specified that students may only work up to 40 hours a week during the *summer term*, it is assumed that students would not be working "full-time" on an annual basis and therefore their employers would not be required to provide them with health care insurance.

#### CONCLUSION

Based on section 4980H of the Internal Revenue Code, students participating in the EARN Indiana program would not be considered "full-time" employees and their employers would not be required to provide them with health care insurance under the Affordable Care Act.

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<sup>4</sup> *Id.* at 5-6.