

WAYS AND MEANS RELEASES TWO BILLS THAT WOULD LIMIT THE REACH OF THE EMPLOYER MANDATE

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On February 4, 2014, the Committee on Ways and Means sent two bills to the House that, if enacted, would affect the requirement that employers share responsibility for health coverage costs by narrowing the definition of “full-time employee” for purposes of the employer mandate provisions of the Affordable Care Act (“ACA”).

The ACA includes employer shared responsibility provisions that are applicable to employers with 50 or more full-time employees. According to these “employer mandate” or “play or pay” provisions of the ACA, such employers must either provide adequate health insurance coverage for their full-time employees or pay a penalty. Currently, the ACA generally provides that a full-time employee is one who performs at least 30 hours of service per week in any given month.

The first bill (H.R. 2575, Save American Workers Act of 2014) working its way through Congress was drafted in response to concerns that employers will lay off employees or cut hours in order to fall below the 50 full-time employee threshold and avoid having to offer health coverage or pay penalties. To alleviate some of these concerns, the bill seeks to increase the minimum service hours to 40 hours per week for purposes of the ACA. (A copy of the Joint Committee on Taxation report on this bill is available [here](#).)

The second bill (H.R. 3979, Protecting Volunteer Firefighters and Emergency Responders Act), proposes to exempt bona fide volunteer services from being considered services by a full-time employee. The rule also recommends that the hours of volunteer firefighters and other volunteer emergency responders should not be used for purposes of calculating the 50 full-time employee threshold. The proposed rule follows existing Federal wage and hour laws applicable to volunteers. (A copy of the Joint Committee on Taxation report on this bill is available [here](#).)

On February 10, 2014, the Department of Treasury and the Internal Revenue Service issued regulations providing guidance on the employer mandate, as described in our prior post. The guidance includes a clarification that service performed for government or tax-exempt entities by bona fide volunteers such as volunteer firefighters and emergency responders will not be counted for purposes of determining the number of full-time employees under the ACA. As a result, there seems to be a general consensus that such volunteer hours should not be counted as full-time

service hours, and it may be likely that H.R. 3979 will become a law. However, it remains to be seen whether H.R. 2575 will be enacted. Because its passage could potentially benefit some large employers, its development should be closely monitored.

We thank our extern, Marsha Clarke, for her help in preparing this post.

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