



# IRS Addresses Regulatory Problems by Issuing More Regulation

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## Introduction

The Affordable Care Act's (ACA) employer mandate requires that all medium and large employers offer health insurance coverage to full-time employees who work an average of 30 hours or more per week. As a result, many employers, particularly school districts, have been cutting employees' hours to part-time, reducing staff, or privatizing services to avoid the mandate.

## New IRS Guidance

Until now, under the ACA, an employee was considered 'full-time' if he or she worked an average of 30 hours or more per week over the course of the year, though an employee was considered to be a 'rehire' if he or she experienced an 'employment break' of 13 weeks or more during which the employee logged no hours.

Educational organizations were exempt from the 13-week employment-break cap and instead were required to exempt up to 26 weeks of non-employment before an employee became a rehire to accommodate the long summer breaks common in many districts.

To reduce the expense of the employer mandate, many school districts began using part-time contract employees from staffing agencies to fill ancillary roles, such as bus drivers or cafeteria staff. Because the staffing agencies are these workers' legal employers, and they are not themselves educational organizations, the 13-week employment break standard applies to these agencies and their employees. This means that contract employees who do not work throughout the summer currently begin each new school year as a new hire, and continue to be treated as part-time employees exempt from the employer mandate.

On February 1, 2016 the Internal Revenue Service (IRS) released guidance intended to close this loophole. The new rule would apply the extended 26-week employment break exemption not only to educational organizations, but also to third party employees who provide services to an educational organization who are not offered a meaningful opportunity to provide those services year round.

The effect of this guidance will be to make more school staff full-time employees and put more financial strain on already over-taxed school districts. This stress will likely contribute to a further reduction in resources available to students and teachers, and may slow hiring in these organizations, forcing schoolchildren to pay the price of one of Obamacare's least popular mandates.