



By: Arthur Tacchino
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More on the Pay and Play Final Regulations

The final regulations are 227 pages in length, not to mention a few additional pages in a fact sheet and FAQ. They are extremely complex simply due to the nature of what the regulations require. Employers vary so much in size and makeup from industry to industry and because of this the regulations had to address specific issues that face specific types of employers. Below is a sampling of how very specific job titles or job functions are handled when tracking hours of service.

Adjunct Professors:

Adjunct professors generally are not tracked the way a normal hourly employee would be. They are paid to teach a course and essentially manage their own hours, with some required classroom and on campus hours. However, the required hours in no way reflect the actual amount of time an Adjunct Professor really works. Because of this the IRS has recognized the following method of crediting hours of service to an Adjunct Professor.

One (but not the only) method that is reasonable for this purpose would credit an adjunct faculty member of an institution of higher education with (a) 2 1/4 hours of service (representing a combination of teaching or classroom time and time performing related tasks such as class preparation and grading of examinations or papers) per week for each hour of teaching or classroom time (in other words, in addition to crediting an hour of service for each hour teaching in the classroom, this method would credit an additional 1 1/4 hours for activities such as class preparation and grading) and, separately, (b) an hour of service per week for each additional hour outside of the classroom the faculty member spends performing duties he or she is required to perform (such as required office hours or required attendance at faculty meetings).

Layover Hours for Airline Industry Employees and Others

Airlines and their employees also find themselves in a unique situation based on the hours they work and how they should be credited. Below is how the IRS proposes to credit hours of service for airline industry employees on layover.

For layover hours for which an employee does not receive additional compensation and that are not counted by the employer towards required hours of service, it would be reasonable for an employer to credit an employee in the airline industry with 8 hours of service for each day on which an employee is required, as a practical matter, to stay away from home overnight for business purposes (that is, 8 hours each day (or 16 hours total) for the two days encompassing the overnight stay). The employee must be credited with the employee's actual hours of service for a day if crediting 8 hours of service substantially understates the employee's actual hours of service for the day (including layover hours for which an employee receives compensation or that are counted by the employer towards required hours of service).

**On-Call Hours**

On-Call hours also presented an issue when it came to crediting hours of service. The issue is that someone could be “on-call” for hours on end, but actually never provide service simply because they are not required to. It would seem unfair or artificial to count those hours as service worked hours. Therefore the IRS came up with the following rule when it comes to on-call hours.

It is not reasonable for an employer to fail to credit an employee with an hour of service for any on-call hour for which payment is made or due by the employer, for which the employee is required to remain on-call on the employer’s premises, or for which the employee’s activities while remaining on-call are subject to substantial restrictions that prevent the employee from using the time effectively for the employee’s own purposes. Generally speaking, if the employee is providing services or stuck in a position where they do not have full control over their actions, then those hours will be credited to the employee.

Conclusion:

As you can see, there are several detailed and complex regulations regarding a variety of employees. Employers and advisors must be aware of these rules so that they can guarantee compliance when it comes to tracking hours of service and reporting those hours to the IRS.