

difficulties, including hours worked by members of religious orders for the orders to which they belong. Until further guidance is issued, a religious order is permitted, for purposes of determining whether an employee is a full-time employee under section 4980H, to not count as an hour of service any work performed by an individual who is subject to a vow of poverty as a member of that order when the work is in the performance of tasks usually required (and to the extent usually required) of an active member of the order.

C. Application of hours of service to certain employees

Commenters requested guidance on the application of the hours of service definition to certain categories of employees whose hours of service are particularly challenging to identify or track or for whom the final regulations' general rules for determining hours of service may present special difficulties.

The Treasury Department and the IRS continue to consider additional rules for the determination of hours of service for purposes of section 4980H with respect to certain categories of employees (including adjunct faculty, commissioned salespeople, and airline employees), and certain categories of hours associated with work by employees (including layover hours (for example, for airline employees) and on-call hours). The regulation authorizes the promulgation of such rules through additional guidance, published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(b)).

Until further guidance is issued, employers of adjunct faculty, employers of employees with layover hours, including the airline industry, and employers of employees with on-call hours, as described in sections VI.C.1 through VI.C.3 of this preamble, respectively, are required to use a reasonable method of crediting hours of

service that is consistent with section 4980H. Further, employers of other employees whose hours of service are particularly challenging to identify or track or for whom the final regulations' general rules for determining hours of service may present special difficulties, such as commissioned salespeople, are required to use a reasonable method of crediting hours of service that is consistent with section 4980H.

A method of crediting hours is not reasonable if it takes into account only a portion of an employee's hours of service with the effect of characterizing, as a non-full-time employee, an employee in a position that traditionally involves at least 30 hours of service per week. For example, it is not a reasonable method of crediting hours to fail to take into account travel time for a travelling salesperson compensated on a commission basis. Paragraphs C.1 through C.3 of this section VI of the preamble describe methods of crediting hours of service that are (or are not) reasonable to use with respect to adjunct faculty, layover hours, including for airline industry employees, and on-call hours. The examples of reasonable methods provided are not intended to constitute the only reasonable methods of crediting hours of service. Whether another method of crediting hours of service in these situations is reasonable is based on the relevant facts and circumstances.

1. Adjunct Faculty

Commenters raised issues relating to adjunct faculty who receive compensation for teaching a certain number of classes (or credits) and whose compensation is not based on the actual time spent on non-classroom activities such as class preparation, grading papers and exams, and counseling students. Comments from employers generally suggested that the hours of service equivalencies for non-hourly employees

(eight hours per day or 40 hours per week) were too high for this purpose, but that counting actual hours would be administratively burdensome. These commenters suggested various methods for permitting assumptions for hours of service that would be applied for each task completed, for example, a set number of hours of service per week per class or credit taught by an adjunct faculty member. Comments from employees and their representatives included two very different types of suggestions. Some suggested that any assumption be set sufficiently high and be subject to robust periodic review so as not to fail to attribute adequate hours of service for the work performed. Others suggested that the assumption be set at a relatively moderate level that would avoid giving undue incentives for institutions to reduce adjunct faculty members' teaching assignments to avoid full-time employee status.

In addition, comments from adjunct faculty members and educational organizations requested the adoption of a method whereby an adjunct faculty member would be treated as a full-time employee for purposes of section 4980H only if the faculty member were assigned a course load that was equivalent to (or, as requested in some comments, at least 75 percent of) the average course load assigned to faculty members who are treated as full-time employees by the particular educational organization or academic department. The course loads assigned to other faculty members may be a relevant factor in an employer's determination of the number of hours of service to be credited to an adjunct faculty member. However, the course loads of faculty treated as full-time employees may vary considerably, making implementation of the proposed approach very difficult to administer.

Until further guidance is issued, employers of adjunct faculty (and of employees in other positions that raise analogous issues with respect to the crediting of hours of service) are required to use a reasonable method for crediting hours of service with respect to those employees that is consistent with section 4980H. With respect to adjunct faculty members of an educational organization who are compensated on the basis of the number of courses or credit hours assigned, the commenters noted that a wide variation of work patterns, duties, and circumstances apply in different institutions, academic disciplines, and departments, and apply to different courses and individuals, and that this might factor into the reasonableness of a particular method of crediting hours of service in particular circumstances.

Various commenters also suggested, however, that, in the interest of predictability and ease of administration in crediting hours of service for purposes of section 4980H, regulations specify a multiple that might be applied to credit additional hours of service for each credit hour or hour of classroom time assigned to the adjunct faculty member. Commenters suggested a number of possible multiples that might be used for this purpose. After reviewing these comments, the Treasury Department and the IRS have determined that, until further guidance is issued, 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).

Although further guidance may be issued regarding these matters, the method described in the preceding paragraph may be relied upon at least through the end of 2015. To the extent any future guidance modifies an employer's ability to rely on that method, the period of reliance will not end earlier than January 1 of the calendar year beginning at least six months after the date of issuance of the guidance (but in no event earlier than January 1, 2016). This extended period of reliance is provided so that if the method described in the preceding paragraph is modified or replaced, employers will have sufficient time to make necessary adjustments. Of course, employers may credit more hours of service than would result under the method described in the preceding paragraph and also may offer coverage to additional employees beyond those identified as full-time employees under that method.

2. Layover Hours for Airline Industry Employees and Others

Commenters noted that pilots and flight attendants often are required, as a practical matter, to remain overnight between flights at a location other than their residence. The Treasury Department and the IRS continue to consider additional rules for the determination of hours of service, including layover hours, for purposes of section 4980H with respect to certain categories of employees whose hours of service are particularly challenging to identify or track or for whom the final regulations' general rules for determining hours of service may present special difficulties. Until further