

EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

STATE OF INDIANA, et al.,)
)
 Plaintiffs,)
 v.)
)
INTERNAL REVENUE SERVICE, et) CASE NO. 1:13-cv-1612-WTL-
al.,) TAB
)
)
 Defendants.)

DECLARATION OF ANITA K. SAMUEL

I, Anita K. Samuel, declare the following to be true:

1. I am over 18 years of age and am competent to testify in a court of law and have personal knowledge of the information set forth in this declaration.
2. I am the Director of the Indiana State Personnel Department. In this role I am responsible for human resource management for the Executive Department of Indiana State Government as directed by Indiana Code § 4-15-2.2-15.
3. The State offers full-time employees an array of health plans, all of which offer minimum essential coverage under the Affordable Care Act.
4. Because the IRS has promulgated a rule, 26 C.F.R. § 1.36B, stating that citizens who purchase coverage on a Federal Exchange are entitled to the same subsidies as citizens who purchase from a State Exchange (the "IRS Rule") and because receipt of such subsidy by a State employee would trigger the requirements of 26 U.S.C. § 4980H(a)-(b) (the "Employer Mandate"), the State has

restructured its workforce so that no part-time employee works, on average, more than 30 hours per week. (See Attachment 1: Financial Management Circular #2013-05.)

5. In addition to full-time and part-time workers, the State also maintains an intermittent workforce. With intermittent employees, the expectation is that the employment relationship will be irregular, "as needed," of short duration, or seasonal. Because of the IRS Rule and the Employer Mandate, the State has also restructured its intermittent workforce. Intermittent employees may now work no more than 180 days during the period October 15 to October 14 of the subsequent year, with any amount of time spent performing work on a calendar day constituting one "day." (See Attachment 1).
6. In the past, the State had—and would prefer to still have—part-time and intermittent employees who work, on average, between 29 and 37.5 or more hours per week and who do not receive benefits, but these employees would be classified as "full-time" by the Affordable Care Act.
7. The average part-time State employee makes \$13.67 per hour. If that employee worked 37 hours a week for 52 weeks a year (and were thus classified as full-time by the Affordable Care Act), the employee would make \$26,301.08 per year. Also, I am aware of an individual employee who makes \$9.75 per hour and who worked an average of 30.21 hours per week before her hours were reduced. Such pay rate and hours would allow her to earn \$15,316.47 per year.
8. The State had some workers who were treated as part-time in 2013 that, under the Affordable Care Act, the federal government would consider full-time workers. Thus, if the Employer Mandate were to be enforced for 2014, the State could be subject to penalties for not providing benefits to all who would qualify as full-time employees by virtue of hours worked in 2013.

I declare under penalty of perjury under the laws of the United States of America and the State of Indiana that to the best of my knowledge the foregoing information is true and correct.

Executed on this 7th day of February, 2014.



Anita K. Samuel
Director, Indiana State Personnel Department
402 W. Washington Street, Suite W161
Indianapolis, IN 46204

ATTACHMENT 1

Financial Management Circular: #2013-05

Effective Date: October 15, 2013

General Subject: Part-time and Intermittent Employment

Authority: IC 4-12-1-13(f)
IC 4-15-2.2
31 IAC 5-1-1(3)
31 IAC 5-2-4(c)
26 USC 4980H

Application: This circular applies to employment subject to the jurisdiction of the State Personnel Department

WHEREAS, the federal Patient Protection and Affordable Care Act (PPACA) establishes that employers share responsibility for offering health coverage to an employee who is employed on average at least 30 hours of service per week.

Section 1: Part-time

- (a) "Part-time appointment," defined in 31 IAC 5-1-1(3) to require at least half-time but less than full-time work, must be administered consistent with PPACA's definition of "full-time" [IRC Section 4980H(c)(4)(A)].
- (b) Persons appointed part-time are only authorized and permitted to work, on average, less than 30 hours per week.
- (c) The less than 30 hours weekly can be averaged over the pay period. However, part-time appointments at the Department of Natural Resources, that primarily consist of seasonally variable responsibilities, will be averaged from October 15 to October 14, instead of being averaged over the pay period.

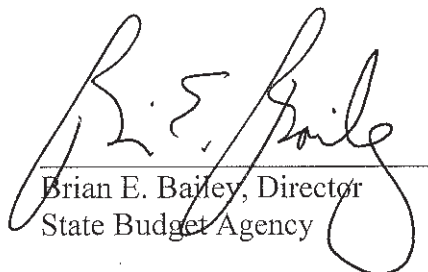
Section 2: Intermittent

- (a) Any amount of time spent performing work on a calendar day constitutes one "working day" for purposes of the 180 working day limit in 31 IAC 5-2-4(c).
- (b) The annual 180 working day limit is applied during the period October 15 to October 14 of the subsequent year.
- (c) Any exceptions previously granted to the 180-day working limit for intermittent appointments are rescinded.

Section 3: The State will apply the on-average-less-than-30-hours-weekly PPACA test against attendance records to determine eligibility for health coverage.



Anita K. Samuel, Director
State Personnel Department



Brian E. Bailey, Director
State Budget Agency