

**Special points of interest:**

- *P.L. 2001, chapter 272*
- *IRS Private Letter Ruling*
- *LOSAP Rule Changes*

**P.L. 2001, chapter 272**

In December of 2001, Public Law 2001, chapter 272 amended Public Law 1997, chapter 388, the law that created the Emergency Services Volunteer Length of Service Award Program Act. The amendments made under P.L. 2001, c. 272 are as follows:

- For those active volunteer members who also serve as paid employees within a local government unit of the State, credit shall be given for activities performed during the individual's regularly assigned work periods.
- In addition to a penalty of no less than \$100 and no more than \$1,150, any person who knowingly violates the LOSAP law can be subject to a forfeiture of benefits and prohibition from serving in any emergency service organization in the State. Further, any person who knowingly misrepresents the credit earned by a volunteer or service organization shall be subject to a fine of no less than \$1,150 for each individual whose credit or status was misrepresented.

**IRS PRIVATE LETTER RULING 200224002**

The Internal Revenue Service (IRS) has ruled (Private Letter Ruling 200224002, December 18, 2001) that an employer's plan, which provides length of service awards to bona fide volunteer firefighters and rescue workers for services provided as volunteers is a plan under 457 (e) (11) (B), under which the New Jersey LOSAP system is designed.

## IRS RULING CONTINUED...

Under section 457 (e) (11) (B), an employer with volunteers who provide services such as firefighting, emergency medical services, and ambulance services, can provide a length of service award plan equal to an amount not exceeding \$3,000 with respect to any year of service provided by the volunteer. However, an active volunteer member who qualifies for LOSAP under separate sponsoring agencies, can receive up to \$3000 from each of the separate sponsoring agencies.

In New Jersey, the maximum initial amount allowable for LOSAP awards is \$1,150, and is subject to the annual consumer price index adjustment.

The IRS also clarified that amounts paid under the program are not wages for purposes of federal employment taxes and that benefits under the plan are only includible in the gross year for tax years in which amounts are paid or otherwise made available to the participant or the participant's beneficiaries under the terms of the plan. Length of service payment award qualifies as non-taxable until distribution under Section 457 (e) (11) (B).

Active volunteer members who qualify for LOSAP awards under separate sponsoring agencies can receive up to the maximum allowable amount from each sponsoring agency.

## LOSAP RULE Amendment

The LOSAP Rules were originally adopted effective January 16, 2001, the Rules govern all aspects of creating, operating and administering LOSAPs. N.J.A.C. 5:30-14.49 requires sponsoring agencies to procure reviews of contractor administered LOSAP plans. The reviews are required to be made in accordance with the American Institute of Certified Public Accountants' (AICPA) Statements for Accounting and Review Services. As part of the required review, the contractor must provide to the sponsoring agency financial data and information related to the benefits awarded to volunteers, the plan's investment results and an opinion from the latest audit report prepared by the contractor's independent public accountant. Subsection (h) requires the sponsoring agency's independent auditor to make an appropriate statement and express limited assurances with respect to the information provided to the sponsoring agency by the contractor.

## Proposed LOSAP Rule Amendment continued...

The proposed amendment removes a requirement that these assurances are made a part of the sponsoring agency's annual audit. Instead, the amendment requires that the review is completed within six months of the close of the sponsoring agency's fiscal year and that a copy of the review is submitted to the Director. These amendments are being proposed to clarify the review requirements of the rules. The amended language is less confusing and clarifies the standard of the review. The review was never intended to be conducted to the same standard as an audit of the sponsoring agency's books and records.

## New LOSAP Rule

In addition to the proposed amendments at N.J.A.C. 5:30-14.49 a new rule is being proposed at N.J.A.C. 5:30-14.63. The purpose of the proposed new rule is to address inquiries and questions that the Division has received with respect to the LOSAP eligibility requirements. The new rule provides that paid firefighters and emergency medical service employees of a sponsoring agency cannot also be unpaid volunteers if they perform the same type of services for which they are employed and paid to perform. In other words, if someone volunteers to do, unpaid, the same type of work he or she is paid to do, then that person is not eligible for LOSAP. However the rule allows LOSAP eligibility to paid firefighters and emergency medical service employees who volunteer to perform services dissimilar in nature from those that such employees are paid to perform.

The rule also extends LOSAP eligibility to paid firefighters and emergency medical service employees who perform only when such services are provided to another sponsoring agency. The proposed new rule promotes consistency with the Federal Fair Labor Standards Act (FLSA) which stipulates requirements for minimum wage and overtime. By restricting a paid employee from performing similar services in an unpaid capacity, the proposed new rule serves to uphold the FLSA's overtime requirement that work performed by an employee beyond a 40-hour work week be compensated at time and one-half.

The proposed amendment and new rule are currently posted with a 60-day comment period at the New Jersey Register at N.J.A.C. 1:30-3.3(A)5.

**Paid firefighters and emergency medical service employees of a sponsoring agency cannot also be unpaid volunteers if they perform the same type of services for which they are employed and paid to perform.**

***COMING  
SOON...***

Consumer Price Index (CPI) Adjustment. Sponsoring agencies will be informed of the adjusted award amount through the issuance of a Local Finance Notice, publication of a public notice in the New Jersey Register and GovConnect.

***ADDITIONAL  
INFORMATION***

- The full version of P.L. 2001, c. 272 can be obtained online, [www.njleg.state.nj.us](http://www.njleg.state.nj.us)
- Division of Local Government Services [www.nj.gov/dca/lgs/](http://www.nj.gov/dca/lgs/)
- Internal Revenue Service Private Letter Ruling 200224002 can be obtained online [www.irs.gov](http://www.irs.gov)