

## Defining Full-Time Employees for Large Employers Shared Responsibility and the Affordable Care Act (ACA) - October 2016

The ACA requires that Applicable Large Employers (ALEs) that do not offer affordable health insurance coverage to their Full-Time employees could be assessed a penalty if a Full-Time employee purchases health insurance coverage from the Health Insurance Marketplace (Exchange) and qualifies for a tax credit/premium subsidy. This requirement is outlined in greater detail in the document titled “The Affordable Care Act and Requirement of Large Employers to Offer Health Coverage” on our website.

This document provides an overview of the process by which employers may measure employees’ hours to determine their full-time status as described in the regulations. As part of this overview, the following topics will be addressed:

- Determining Full-Time vs. Part-Time Status
- Monthly Measurement Periods
- Safe Harbor: Existing/Ongoing Variable Hour, Part-Time, and Seasonal Employees
- New Full-Time Employees
- Safe Harbor: New Variable Hour, Part-Time, and Seasonal Employees
- Waiting Periods
- Other Related Questions

### Determining Full-Time vs. Part-Time Employee Status for Large Employers

The regulations require that Large Employers offer health insurance coverage to all existing and newly hired full-time employees. However, not all employers offer health insurance coverage to part-time or variable hour employees, or to Seasonal Employees. In addition, it is not always clear whether these employees are working an average of 30+ hours per week. Therefore, the regulations permit employers to measure part-time, variable or seasonal employees over a period of time to determine if they are working 30+ hours per week. Employers can use either 1) a month-to-month process; or 2) a longer Measurement Period process to determine potential eligibility for health insurance.

**Reminder:** Full-Time is defined as an average of at least 30 hours of service per week or 130 hours of service in a calendar month. Hours of service include hours for which an employee is paid or entitled to be paid such as paid time off, sick time, holiday time.

### Monthly Measurement Periods

Employers have the option of measuring employees on a monthly basis to determine full-time status:

- If upon the start date the employee is expected to be full-time, the employer is expected to offer health insurance coverage at the end of Waiting Period.

- If the employee is expected to be part-time, variable or seasonal, and the employer chooses to measure the employee's hours on a monthly basis, the employer will not be subject to a potential Shared Responsibility penalty if the employee (if determined to be full-time) is offered health insurance coverage no later than the 1<sup>st</sup> day after three (3) full calendar months of employment. (However, note that an employer is still required to comply with the Waiting Period requirement whereby any Waiting Period imposed cannot exceed 90 calendar days.)

*Note: the Monthly Measurement Period process may create a lot of fluctuation in eligibility status.*

### Safe Harbor: Measuring Hours of Existing/Ongoing Part-Time, Variable Hour and Seasonal Employees

This process would be used to determine which Part-Time, Variable Hour or Seasonal Employees would be eligible for coverage:

- \* The employer can establish a Standard Measurement Period to determine whether an employee has worked an average of 30 hours per week. This Standard Measurement Period is a "look back" period, of at least 3 but no more than 12 months.
- \* Once the employer has established the Standard Measurement Period, and has determined whether the employee is full-time (FT) or part-time (PT), the employer then establishes a Stability Period during which the employee maintains this FT or PT status (as applicable) regardless of actual hours worked during the stability period, as long as the employee remains employed. The Stability Period is a prospective period of time (i.e., looking forward). For **full-time employees**, the Stability Period must be at least 6 consecutive calendar months, and cannot be **shorter** than the Standard Measurement Period. For **part-time employees**, the Stability Period cannot be **longer** than the Standard Measurement Period.
- \* The start of the Stability Period can be delayed for up to 90 days after the end of the Standard Measurement Period, for an Administrative Period to allow the employer to calculate an employee's hours, collect enrollment materials, etc.

*EBS Note:* Our recommendation to most clients thus far has been for employers to have a 12 month Standard Measurement Period and a 12 month Stability Period. Having a 12 month Stability Period allows an employer to sync up the Stability Period with their health insurance plan or contract year. The longer Standard Measurement Period and Stability Periods also allow employers to measure hours one time per year.

#### Example for Calendar Year Plan - 2017 Plan Year:

- Standard Measurement Period – November 1, 2015 to October 31, 2016
- Administrative Period – November 1, 2016 – December 31, 2016
- Stability Period – January 1, 2017 to December 31, 2017

	2015				2016				2017			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
2016 Plan Yr												
2017 Plan Yr												

Green = Standard Measurement Period

Red = Administrative Period

Blue = Stability Period

### New Full-Time Employees

If an employee is expected to work full-time, then the regulations anticipate that an employer will offer the new employee health coverage as a full-time employee, and that such coverage will begin no more than 90 days after the employee’s hire date (i.e., the employer cannot impose a Waiting Period longer than 90 calendar days).

A new employee working Full-Time but expected to work for a limited duration (e.g., Short Term or Temporary employees) cannot be treated as a Variable Hour employee (see below); but must be offered coverage within 90 days of the date of hire.

### Safe Harbor: New Part-Time, Variable Hour, Seasonal Employees

This approach is used when the hours of a new employee cannot be determined. This process is also used for Seasonal Employees. **New:** The final regulations included a definition of Seasonal Employee which states that an employee is “seasonal” if the employee is in a position for which the customary annual employment is six months or less, with the employment period beginning at approximately the same time each year.

### Measurement Period for New Employees

- The employer may use an Initial Measurement Period between 3 and 12 months to measure the average hours worked per week. This Initial Measurement Period is similar to the Standard Measurement Period used for ongoing employees, except that it covers the first 3 to 12 months of employment. The Initial Measurement Period begins on any date between the employee’s start date and the 1<sup>st</sup> day of the calendar month following the start date. The employer can also apply an Administrative Period after the end of the Initial Measurement Period, not exceeding 90 days in length, to allow for time to offer coverage to the employee, complete enrollment forms, etc. <sup>1</sup>.
- At the end of the Initial Measurement Period (and any Administrative Period), if it is determined the employee worked an average of 30 or more hours per week, the employee is classified as a Full-Time Employee for the Stability Period. The Stability Period is a prospective period of time (i.e., looking forward). For full-time employees, the Stability Period must be at least 6 consecutive calendar months, and cannot be shorter than the Standard Measurement Period. The Stability Period for Variable Hour and Seasonal employees must be the same length as the Stability Period for ongoing employees.

- If it is determined after the Initial Measurement Period that the employee is not working an average of 30 or more hours per week, the employee is then classified as a Part-Time Employee for the Stability Period. For part-time employees, the Stability Period cannot be more than one (1) month longer than the Initial Measurement Period.
- Each new Variable Hour or Seasonal Employee would have his/her own Initial Measurement Period, Administrative Period and Stability Period based on date of hire.

**Notes:** The Initial Measurement Period combined with the Administrative Period cannot exceed 13 months plus a fraction of a month (i.e., it may not extend beyond the last day of the first calendar month beginning on or after the one-year anniversary of the employee’s start date). Therefore, an employer can begin the Initial Measurement Period on the date of hire or the 1<sup>st</sup> of the following month.

The following shows an example of a New Hire and their specific Measurement Period and then how the new employee is added to the annual Measurement Period process.

**Sarah - Hired January 15, 2016**

- Initial Measurement Period (11 months) - 2/1/16 to 12/31/16
- Administrative Period (1 month) - 1/1/17 to 1/31/17
- Stability Period (12 months) - 2/1/17 to 1/31/18

	2016				2017				2018				
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	
Hired 1/15/2016	Initial Measurement Period				Administrative Period	Stability Period							
2018 Plan Year					Standard Measurement Period				Administrative Period	Stability Period			

New Hires	Ongoing Employees
Orange = Initial Measurement Period	Green = Standard Measurement Period
Red = Administrative Period	Red = Administrative Period
Tan = Stability Period	Blue = Stability Period

**Waiting Period** - Applies to all employers (Large and Small) offering health insurance coverage

A Waiting Period is defined as the period of time that must pass once an employee begins work, before coverage takes effect.

The regulations state that for employers offering a health insurance plan, any Waiting Period cannot exceed 90 calendar days, including weekends and holiday. Therefore, employers will no longer be permitted to have a Waiting Period such as “1<sup>st</sup> of the month following 90 days of service.”

## Other related questions

### **Can an Employee's Status Change During the Stability Period?**

The final regulations address that if a new variable hour or seasonal employee changes status during the **Initial Measurement Period** and that employee becomes a full-time employee, the employer is expected to offer health coverage to that employee on the earlier of:

- The first day of the fourth full calendar month following the change in employment status; or
- The end of the Initial Measurement Period and Administrative Period.

### **Can an employer establish different Measurement Periods and Stability Periods for different categories of employees?**

An employer can establish different Measurement Periods and Stability Periods for the following categories of employees:

- Each group of collectively bargained employees covered by a separate collective bargaining agreement;
- Collectively bargained and non-collectively bargained employees;
- Salaried employees and hourly employees; and
- Employees whose primary places of employment are in different states.

### **How do I treat employees that are rehired after termination of employment or that are resuming service after other absence?**

The final regulations clarify that if an employee is rehired and his/her break in service is greater than 13 weeks (26 weeks for educational organizations) the regulations permit the employer to treat the person as a new employee.

An employer can also adopt a rule of parity under which an employee may be treated as rehired after a shorter period of at least four consecutive weeks during which no hours of service were credited if that period exceeded the number of weeks of that employee's period of employment with the applicable large employer immediately preceding the period during which the employee was not credited with any hours of service.

*Please note that EBS is sharing this information to assist you with your compliance planning. We recommend that you contact your legal counsel and/or accounting resource with specific questions relating to this law.*

#### Sources:

1. Federal Register, "Shared Responsibility for Employer Regarding Health Coverage, Final Rule," February 12, 2014, 26 CFR Parts 1, 54 and 301
2. New Regulations Help Employer Ease Into Pay or Play, February 19, 2014, Miller Johnson, Priority Alert
3. EBIA Webinar, "Tracking Full-Time Employees for Employer Pay or Play," March 6, 2014

