ACA: EMPLOYER MANDATE LOOK-BACK MEASUREMENT PERIODS

Look-back measurement periods allow employers to average the hours of variable hour and seasonal employees over a period of time to determine full-time status.

The ACA requires applicable large employers (ALEs) – those with 50 or more full-time employees (FTEs) and full-time equivalents – to offer affordable minimum value coverage to substantially all FTEs (those working 30 hours or more per week) and their dependents, or risk a penalty. The requirement, known as the employer mandate or employer shared responsibility provision, has been in effect since 2015.

ALEs must be familiar with the rules for determining an employee's full-time status and must ensure that they have reliable systems for tracking work hours. Employers face special challenges in identifying which of their employees are FTEs, particularly for those with irregular or seasonal work schedules. Special considerations apply to the measurement of work hours for variable hour and seasonal employees, such as employees in construction, hospitality and retail businesses. This publication addresses these matters in detail.

For additional information about tracking work hours for other types of nontraditional employees, such as adjunct faculty, commission-based employees, employees with layover or on-call hours, and employees hired or leased from a staffing company, see the PPI publication **ACA: Employer Mandate Full-Time Employees**. For additional information about determining whether an employer is subject to the employer mandate, and for more detailed information regarding penalties that apply for failure to offer affordable coverage, see the PPI publications **ACA: Applicable Large Employers** and **ACA: Employer Mandate Penalties and Affordability**.

DEFINITIONS OF VARIABLE HOUR AND SEASONAL EMPLOYEES

Before discussing the details relating to measurement periods, it is important to understand the definitions of "variable hour" and "seasonal" employees.

A "variable hour" employee is one whose schedule cannot be definitively known in advance. In other words, the employee's hours are expected to vary such that the employer cannot reasonably determine in advance whether the employee will work 30 or more hours weekly (or 130 or more hours monthly). Factors that employers should consider in identifying variable hour employees include the following:

- Whether the employee is replacing a full- or part-time employee
- Whether employees in the same or similar positions are full- or part-time employees
- Whether the job was advertised or otherwise represented as requiring 30 or more hours of work per week

A "seasonal" employee is one whose customary annual employment does not exceed six months and whose work begins at approximately the same time each year. Examples of a seasonal employee may include a holiday seasonal retail store employee, a ski instructor or a golf course maintenance worker. In special circumstances, an employee may still be considered seasonal where the season extends beyond six months, such as when a ski instructor works seven or eight months due to an unusually long winter.

Importantly, the following would not likely be considered variable hour or seasonal employees: a nonseasonal, short-term, full-time employee; an intern or per diem employee working 30 or more hours per week; or an employee hired into a high-turnover position but working 30 or more hours per week.

MEASUREMENT, STABILITY AND ADMINISTRATIVE PERIODS GENERALLY

For variable hour and seasonal employees, employers have the option to use look-back measurement periods to determine if the employee is an FTE to whom they must offer coverage. Alternatively, employers can track hours and determine FTE status on a monthly basis. The look-back measurement method has three components: the measurement period, the administrative period and the stability period. Generally, a measurement period is a period of between three and 12 months (the employer can choose) during which the employer measures the average weekly or monthly work hours of the employee. If, during that measurement period, an employee works an average of 30 or more hours per week (or 130 hours or more per month), then that employee becomes eligible for coverage (i.e., is treated as an FTE) during a subsequent coverage period, called a "stability" period. Employers may also implement an "administrative" period between the measurement and stability periods, in which the employer calculates the measurement period hours, notifies eligible employees of their FTE status and provides an enrollment opportunity for them to elect coverage.

Employers may use a different measurement period for different categories of employees, of which there are four: collectively bargained and non-collectively bargained employees, employees covered by different collective bargaining agreements, salaried or hourly employees, and primary places of employment in different states. Importantly, employers must use the same measurement period for all employees within a specific employment category.

Details of the measurement periods vary for ongoing employees (standard periods) versus newly hired employees (initial periods). The differences between standard and initial periods are described in more detail below.

ONGOING EMPLOYEES

General Parameters for Standard Periods (Ongoing Employees)	
Measurement Period	3-12 consecutive months
Stability Period	The longer of 6 months or the length of the standard measurement period
Administrative Period	Up to 90 days

Below are two examples of how the ongoing employee standard measurement periods might work with a six-month measurement period (counting hours monthly) and a 12-month measurement period with an administrative period and a calendar-year plan.

Example 1: Six-Month Standard Measurement and Stability Periods, Counting Hours Monthly

6-Month Standard Measurement Period						6-Month Standard Stability Period					
Hours Worked Per Month						Hours Worked Per Month: N/A					
Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
146	119	104	158	129	150	n/a	n/a	n/a	n/a	n/a	n/a
FT	PT	PT	FT	PT	FT	Full-Time Employee, Eligible for Coverage					

In the above example, the employee averages 134.3 hours per month (sum of January through June hours divided by six) during the six-month standard measurement period. Therefore, the employee is considered an FTE eligible for coverage in the plan during the subsequent six-month stability period (regardless of the number of hours the employee actually works during the stability period). Note that the 6-month standard measurement period repeats every 6-months. In this example, the next standard measurement period would run from July through December (not shown). Only a partial-year snapshot of one standard measurement period and one standard stability period is illustrated in this example.

Example 2: 12-Month Standard Measurement Period with an Administrative Period and a Calendar-Year Plan

12-Month Standard Measurement Period	Administrative Period (77 days)	12-Month Standard Stability Period

Oct. 15, Year 1 | Oct. 15, Year 2 | Calendar Year 3 | Calendar Year 4

To coordinate a measurement period with an employer's plan year and allow time for an administrative period, the employer could implement a 12-month standard measurement period that ends within 90 days of the beginning of the plan year (using a calendar-year plan for purposes of the example). The administrative period is the time during which the employer can determine which employees averaged 30 hours or more, offer them coverage and conduct an open enrollment period (which could coincide with the open enrollment period for its other, non-variable hour and nonseasonal employees). In the above example, the 12-month standard measurement period would run from October 15, Year 1, through October 14, Year 2, with the administrative period running October 15 through December 31, Year 2. Any employees who average 30 hours or more during the standard measurement period would be offered coverage that begins on January 1, Year 3, and runs through Year 3 (coinciding with the employer's calendar-year plan), and would remain covered through Year 3 regardless of how many hours actually worked during Year 3. Conversely, an employee that does not average 30 hours or more during the standard measurement period is not an FTE and therefore is not offered coverage during Year 3 (and if the employer has 100+ FTEs, it is not liable for a penalty for these employees in Year 3).

Standard Measurement Periods for Ongoing Employees

Employers will need to implement measurement periods for ongoing variable hour or seasonal employees to determine which employees are FTEs each year.

Measurement and stability periods will begin to overlap for ongoing employees: for a period of time, employees will eventually be in both measurement and stability periods simultaneously. Employers must remember that a measurement period generally determines eligibility for the entire subsequent stability period, regardless of the actual hours the employee works during that subsequent stability period.

Thus, for example, in the chart below, Measurement Period A determines eligibility for Stability Period A, Measurement Period B determines eligibility for Stability Period B, etc.

Overlap of Measurement and Stability Periods

Measurement Period A	Measurement Period B	Measurement Period C	
	Stability Period A	Stability Period B	Stability Period C

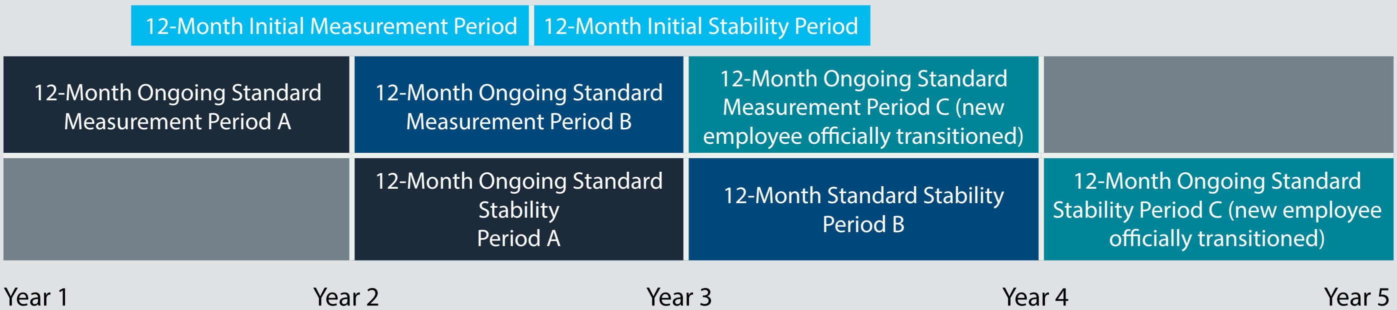
Year 1 | Year 2 | Year 3 | Year 4 | Year 5

NEW EMPLOYEES

General Parameters for Initial Periods (New Employees)	
Measurement Period	3-12 consecutive months
Stability Period	The longer of 6 months or the Standard Stability Period length
Administrative Period	Up to 90 days, but combined initial measurement and administrative periods may not exceed 13 months after hire date

For new employees, the measurement periods (called "initial" periods) become slightly more complicated. This is because the dates of the initial measurement periods are not set dates. Rather, they may begin on any date between the new employee's hire date and the first calendar day of the next consecutive calendar month. In addition, each new employee will have their own initial measurement period, resulting in many different initial measurement periods (although employers can group together new employees hired during the same calendar month and begin their measurement periods simultaneously on the first calendar day of the next consecutive calendar month). As new employees become ongoing employees, they will eventually transition into the standard measurement and stability periods for ongoing employees. The chart below outlines the interplay between 12-month initial and standard periods.

Interplay Between Initial and Standard Periods



As illustrated in the above chart, a new employee is measured both during the 12-month initial measurement period (which determines FTE status for the subsequent 12-month initial stability period), and during the first standard measurement period beginning after their hire date (i.e., 12-month Standard Measurement Period B, which determines FTE status for 12-month Standard Stability Period B). Eventually the new employee becomes an ongoing employee and is measured exclusively through the standard periods in place for ongoing employees.

CHANGE IN STATUS AND REHIRES

Special rules apply for employees who experience a change in employment status during a measurement period or who are terminated and later rehired. On change in status, if the employee was hired as a variable hour or seasonal employee, but was thereafter (i.e., while in a measurement period) moved to full-time status, then the employee is considered an FTE on the first day of the fourth month following the status change (or, if earlier and the employee averaged 30 or more hours per week during the initial measurement period, then the first day of the first month following the end of the initial measurement period). For additional information about offers of coverage for employees who experience a change in employment status, see the PPI publication **ACA Look-Back Measurement Method: Offers of Coverage and Changes in Status**.

On rehires, generally an employee will retain FTE or non-FTE status during an entire stability period for as long as the employee continues to be employed by the employer (called a "continuing employee"). An employee who is not considered a continuing employee is considered a new employee and enters into a new initial measurement period upon rehire. Thus, employers must determine whether a rehire must be treated as a continuing or new employee.

There are two methods of determining when an employee who returns to work following a period of absence (including a termination) will be considered a new employee. Under the first method, if the employee is rehired after at least 13 consecutive non-working weeks (approximately 3 1/2 months), the employee is considered a new employee. Under the second method (which applies for periods of absence less than 13 weeks), the employee is considered a new employee if the absence was at least four weeks and exceeds the number of weeks of employment immediately preceding the absence. For information regarding the special rules that apply for teachers and other employees of educational institutions, see the PPI publication **ACA: Employer Mandate Full-Time Employees**.

If the employee is not considered a new employee under one of the two methods referenced immediately above, then upon rehire the employee is considered a continuing employee, meaning that the employer treats the rehired employee as if the employee never left (i.e., the employer retains the employee's FTE or non-FTE status during the measurement or stability period).

COBRA OBLIGATIONS

For employees who experience a reduction in hours during a stability period, whether COBRA rights are triggered depends on whether the plan itself conditions benefits eligibility on an employee working a certain number of hours. If so, and if the reduced hours drop below the threshold for benefits eligibility, then the reduction in hours will generally be an immediate COBRA qualifying event.

However, for purposes of the employer mandate, the employee's FTE status (and therefore also the employer's penalty risk) is locked in for the entire stability period, regardless of whether the employee remains eligible for benefits under the terms of the plan. Thus, to avoid liability under the employer mandate, the employer should treat a reduction in hours during a stability period as a COBRA qualifying event with a deferred loss of coverage that occurs at the end of the stability period. The employer may choose whether the COBRA maximum coverage period is measured from the date of the triggering event (i.e., the reduction in hours) or from the date of the loss of coverage. This should be outlined in the employer's written plan document, discussed below.

For employees who are terminated from employment during a stability period, the termination of employment constitutes an immediate COBRA qualifying event (loss of coverage due to termination of employment).

Finally, for fully insured plans, employers that use measurement periods should work closely with insurers to ensure that plan eligibility rules, including those that govern COBRA-triggering loss of eligibility, are clearly memorialized in plan documents.

PLAN DOCUMENTS AND RECORDKEEPING

Plan documents and summary plan descriptions (SPDs) generally must include information about plan eligibility. Since measurement periods will determine plan eligibility for variable hour and seasonal employees, employers that use measurement periods should describe the measurement and stability periods (e.g., length, application to new and ongoing employees, any administrative period, etc.) in the plan documents and SPDs, and may consider including the eligibility requirements as part of offer letters or enrollment information provided to employees when the expected number of work hours is unknown at the date of hire.

In addition, employers are responsible for reporting to the IRS regarding their compliance with the employer mandate. The employer's report identifies which employees were treated as FTEs and which were offered coverage. Since measurement periods are used to determine the FTE status of and related coverage offer to variable hour and seasonal employees, employers must keep detailed records on the use of measurement periods to substantiate their reports. Thus, employers should diligently maintain records on the use of measurement periods.

SUMMARY

The ACA employer mandate requires employers that are subject to the provisions of the mandate to offer affordable coverage to their FTEs or pay a tax penalty for their failure to do so. Employers should understand the nuances of the look-back measurement method to determine when employees are eligible for an offer of coverage.

RESOURCES

IRS Notice 2012-58

Employer Mandate Proposed Guidance

Final Regulations

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