ACA: EMPLOYER MANDATE MEASUREMENT PERIODS

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 can use one of two measurement methods – the monthly measurement method or the look-back measurement method – to determine an employee's full-time status for purposes of compliance with the employer mandate. Under the monthly measurement method, each employee's full-time status is determined separately for each calendar month. Meaning, employees who average 30 hours or more per week in a month are provided an offer of coverage for that month. For example, if an FTE has a change in employment status and reduces their hours worked, the offer of coverage for that month will be affected if the average number of weekly hours worked for the month drops below 30 hours.

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.

While straightforward, the monthly measurement method can create administrative challenges for employers with variable-hour and seasonal employees, such as employees in construction, hospitality, and retail businesses. Because of this, the IRS allows employers to use the look-back measurement method – the method most commonly used – to determine an employee's full-time status. Particulars of the look-back measurement method are explained in further detail below.

Importantly, employers must uniformly apply either the monthly or look-back measurement method to each permissible category of employees. In other words, employers cannot apply two different methods to the same category of employees. The regulations identify the following four categories of employees:

- Collectively bargained and non-collectively bargained employees • Employees covered by different collective bargaining agreements
- Salaried and hourly employees
- Employees whose primary places of employment are in different states

For an illustration of how changes in employment status affect FTE determinations, see **Appendix A, Change in Status Scenarios.** 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**.

EMPLOYEE STATUS OVERVIEW

As noted above, employers can use either the monthly or look-back measurement method to determine an employee's full-time status. This publication focuses on the complexity of administering the look-back measurement method, including how to handle situations where an employee changes from full-time to part-time or terminates and is rehired. Special considerations, discussed in greater detail below, apply to the measurement of work hours for variable-hour and seasonal employees.

Before discussing the details related 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 hours or more weekly (or 130 hours or more 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 hours or more of work per week

A "seasonal" employee is one whose customary annual employment does not exceed 6 -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 6-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 hours or more per week; or an employee hired into a high-turnover position but working 30 hours or more per week.

LOOK-BACK MEASUREMENT PERIOD BASICS

For variable hour and seasonal employees, employers can use look-back measurement periods to determine if the employee is an FTE to whom they must offer coverage. 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 hours or more 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. employees. However, employers must use the same measurement period for all employees within each of the four permissible employment categories.

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 6-month measurement period (counting hours monthly) and a 12-month measurement period with an administrative period and a calendar-year plan.

Example 1: 6-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 6-month standard measurement period. Therefore, the employee is considered an FTE eligible for coverage in the plan during the subsequent 6-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 the employer's 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 from 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 December 31, Year 3 (coinciding with the employer's calendar-year plan). Such employees would remain covered throughout Year 3 regardless of how many hours they 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.

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.

Below are examples to illustrate how the initial measurement period applies to new hires.

Example 1: Julie was hired on September 1 to work approximately 20 hours per week, with additional hours as needed. Does Julie's employer need to provide her an offer of coverage upon hire?

Answer 1: No. Julie will only need an offer of coverage if she measures as full-time during her initial measurement period.

Example 2: Steve was hired on March 1 to work approximately 25 hours per week, with additional hours as needed. During his initial 12-month measurement period, Steve measured as full-time and therefore received an offer of coverage beginning March 1 the following year. The month after receiving an offer of coverage, Steve had a reduction in hours and is currently working 10 to 15 hours per week. The employer uses a 12-month measurement period and 12-month stability period. Can Steve's employer terminate coverage in light of his change in status?

Answer 2: Steve's offer of coverage should remain through the end of his stability period (i.e., for 12 months following the end of the 12-month measurement period). Because Steve measured an average of 30 hours per week in the measurement period, he should be offered coverage for the entirety of the stability period.

CHANGE IN STATUS

Special rules apply for employees who experience a change in employment status during a measurement period. The rules vary depending on if the employee was hired as full-time or variable-hour, and whether the employee is a new employee (an employee still within the initial measurement period) or an ongoing employee (an employee who has completed the initial measurement period). The examples below illustrate scenarios employers may face when employees experience a change in status.

Change in Status During Initial Measurement Period

Notably, there is an exception for variable-hour employees in their first year of employment. This exception applies if the employment status of a new variable-hour employee materially changes before the end of the initial measurement period in such a way that, if the employee had begun employment in the new position or status, the employee reasonably would have been expected to average at least 30 hours of service per week (i.e., the employee would not have been treated as a variable-hour employee). In this event, the employer has until the first day of the fourth month following the change in employment status (or, if earlier, the first day of the first month following the end of the initial measurement period – plus any applicable administrative period – if the employee averaged 30 or more hours of service per week during the initial measurement period) to treat the employee as an FTE and offer coverage.

> **Example 3:** Michelle was hired on February 15 to work approximately 20 hours per week, with additional hours as needed. On May 1 of the same year, Michelle took a full-time position within the company. Must Michelle's employer now offer her coverage in light of her change in status?
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> **Answer 3:** Yes. Michelle must receive an offer of coverage by August 1 of the year in which she was hired (i.e., the first day of the fourth month following the change in status). This is because, had Michelle begun employment in the new position, she would have received an offer of coverage accordingly.

Employee Status: FTE at Hire

When an employer utilizes the look-back measurement method, the measurement method applies to all employees — not just variable-hour and seasonal employees. In other words, employees hired as FTEs also need to be measured. That said, rules regarding employees hired as FTEs are slightly different. As mentioned, a new hire (who is not a seasonal employee) who is reasonably expected to work full-time hours will be evaluated monthly until they have completed a full standard measurement period. Thereafter, the employee's status is evaluated based on hours of service credited during each measurement period (even if administratively the employer may not actually be measuring hours, since they already know the employee will be full time).

> **Example 4:** Griffin is hired on June 10 as an FTE. He is offered coverage on July 1of the same year, as the plan's waiting period is defined as the first of the month following date of hire. On August 1 of the same year, Griffin switches to a part-time position. Does Griffin's employer need to offer him coverage for August?
>
> **Answer 4:** Since Griffin has not yet completed a full standard measurement period, his offer of coverage is determined monthly. Griffin would no longer receive an offer of coverage for August if he averaged less than 30 hours per week during August.

Exception: Ongoing Employee Change in Status

If the employee was hired as a full-time employee and offered coverage immediately (after any compliant waiting period) and continuously, then there is a limited exception that may apply when there is a change in employment status. The exception provides that if an employee completes a standard measurement period and then transfers to a position that would have been considered part-time if the employee had originally been hired into that position, the employer can change the offer of coverage beginning with the first day of the fourth full month after the change in status occurs (i.e., three full calendar months after the change in status). At that time, the employer could switch the employee to the monthly measurement method so that hours worked per month would dictate an offer of coverage each month. And, if the hours worked are less than 30 per week on average, no continued offer of coverage is required (and the employer would offer COBRA at that time).

Importantly, this exception can only be used if both of the following are true:

- The employer has continuously offered minimum-value coverage to the employee starting no later than the first day of the calendar month after the employee's first three calendar months of employment through the calendar month in which the transfer occurs
- The employee actually averages less than 30 hours per week for three full calendar months after the transfer

Example 5: Carson is hired on June 15 as a full-time employee. He is offered coverage August 1 in the same year since the plan's waiting period is defined as the first of the month following 30 days of employment. On January 15 of the following year, Carson changes to a part-time position, averaging less than 30 hours per week. Does Carson's employer still need to offer Carson coverage in light of the change in status?

Answer 5: In this scenario, the employer can utilize the limited exception that permits the employer to change Carson's offer of coverage beginning May 1 following the change in status (i.e., the first day of the fourth month after the change in status occurs). This is because Carson was continuously offered coverage and averaged less than 30 hours per week for three full calendar months after the transfer.

Example 6: Same facts from Example 2. Can Steve's employer apply this limited exception to change his offer of coverage during his stability period?

Answer 6: No. Because Steve did not receive an offer of coverage by June 1 following his date of hire (i.e., the first day of the month after his first three calendar months of employment), this exception will not apply.

This limited exception generally will not apply to employees who were hired as variable-hour employees because most employers will not have continuously offered coverage to them, as demonstrated in Example 6. The limited exception also does not apply to full-time employees in their first year of hire, since such employees are measured monthly until they have completed a full standard measurement period. Rather, the limited exception only applies to employees who have completed a standard measurement period.

See Appendix A for an illustration of these various change in status scenarios.

REHIRES

Special rules also apply for employees who are terminated and later rehired. 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. Under these circumstances, 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. While the employer mandate requires in certain circumstances that an employee's offer of coverage must remain through the end of the stability period (as described earlier in this publication), a plan's eligibility terms may state otherwise. To avoid potential penalties under the employer mandate, employers should ensure that the plan's eligibility terms align with the ACA requirements. Since measurement periods will determine plan eligibility for variable-hour and seasonal employees, employers that use look-back 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 allowable measurement methods to determine when employees are eligible for an offer of coverage.

RESOURCES

IRS Notice 2012-58

Employer Mandate Proposed Guidance

Final Regulations

PPI BENEFIT SOLUTIONS