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Identifying Full-time Employees Using the Look-back Measurement Method

The Affordable Care Act (ACA) requires applicable large employers (ALEs) to offer affordable, minimum value health coverage to their full-time employees or possibly pay a penalty. This employer mandate is also known as the "employer shared responsibility" or "pay or play" rules.

ALEs can use one of two methods to determine whether employees are full-time under the employer shared responsibility rules:

- The **monthly measurement method** determines full-time status for each calendar month based on the employee's hours of service in that month.
- The **look-back measurement method** determines full-time status for a longer period of time based on average hours of service during a prior period.

This ACA Overview summarizes the rules for ALEs using the look-back measurement method.

LINKS AND RESOURCES

- On Feb. 12, 2014, the Internal Revenue Service (IRS) published final regulations on the employer shared responsibility rules.
- The IRS has also provided Questions and Answers for employers on the employer shared responsibility rules.

HIGHLIGHTS

LOOK-BACK MEASUREMENT METHOD

The look-back measurement method involves:

- A measurement period;
- An optional administrative period; and
- A stability period.

This method provides more stability for some employers.

FULL-TIME EMPLOYEES

- A full-time employee is an employee who was employed, on average, at least 30 hours of service per week (or 130 hours in a calendar month).
- The look-back measurement method allows employers to look at average hours of service over a longer period of time.

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CHOOSING A MEASUREMENT METHOD

Two methods are available for determining full-time employee status—the **monthly measurement method** and **the look-back measurement method.** These methods provide minimum standards for identifying whether employees are full-time under the employer shared responsibility rules. ALEs may decide to treat additional employees as eligible for coverage, or otherwise offer coverage more expansively than what would be required to avoid an employer shared responsibility penalty.

The monthly measurement method involves a month-to-month analysis of hours of service. Under this method, an employee's full-time status for a calendar month is determined based on hours of service for that month. This month-to-month measuring may cause practical difficulties for ALEs, particularly if there are employees with varying hours or work schedules, and could result in employees moving in and out of employer coverage on a monthly basis.

In general, an ALE must use the same measurement method for all employees. An ALE generally cannot use the monthly measurement method for employees with predictable hours of service and the look-back measurement method for employees whose hours of service vary. However, an ALE may use different measurement methods for employees who are in different categories. The following categories of employees can be treated differently:

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

LOOK-BACK MEASUREMENT METHOD OVERVIEW

The IRS created the look-back measurement method as an optional alternative to the monthly measurement method, in order to give ALEs greater predictability and stability for determining full-time status. The look-back measurement method involves:

- A **measurement period** for counting hours of service (called a standard measurement period or an initial measurement period, depending on the circumstances);
- An optional **administrative period** that allows time for enrollment and disenrollment; and
- A **stability period** during which coverage is provided if the employee averages full-time hours during the prior measurement period.

If the employee was employed, on average, at least 30 hours of service per week during the measurement period, the ALE **must treat the employee as a full-time employee for the stability period.** This rule applies regardless of the employee's number of hours of service during the stability period, as long as he or she remains an employee, unless a special rule applies.

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An ALE has discretion in deciding when these periods begin and how long they will last, subject to specified IRS parameters. When setting up the look-back measurement method, it can be helpful for the ALE to first determine the stability period it would like to use, as that will affect how long the measurement period has to be. Note that different rules apply based on whether employees are ongoing or new, and whether new employees are expected to work full time or are variable, seasonal or part-time employees.

The chart below provides an overview of how these groups of employees are handled under the look-back measurement method. The following sections provide additional details on how to administer this method for each group.

Ongoing Employees	Measure hours of service during the standard measurement period (SMP) to determine whether they are full-time **for the related** stability period. May use 90-day administrative period between SMP and stability period.
New Employees Expected to Work Full Time	Determine employee's full-time status for a calendar month based on hours of service for that month. If full-time, coverage must be offered after three calendar months of employment. Begin measuring as an ongoing employee when the next SMP begins.
New Variable Hour, Seasonal and Part-time Employees	Measure hours of service during an initial measurement period (IMP) to determine whether full-time for the related stability period. May use an administrative period between IMP and stability period.

ONGOING EMPLOYEES

An **ongoing employee** is an employee who has been employed by an ALE for at least one complete standard measurement period (SMP). In other words, ongoing employees are those who were already employed when the SMP started.

For ongoing employees, an ALE determines each employee's full-time status for the stability period by looking at the employee's hours of service during the SMP. The SMP may last between three and 12 consecutive months, as chosen by the ALE.

If an employer chooses a 12-month SMP, it could make the SMP the calendar year, a non-calendar year plan year or a different 12-month period, such as the one ending shortly before the open enrollment period. Many employers choose to use the 12-month plan year as their stability period.

The rules regarding the stability period will depend on whether the employee averaged full-time hours of service during the SMP:

- **If the employee averaged full-time hours of service during the SMP**—the stability period must be at least six calendar months and must be at least as long as the SMP.

- **If the employee did not average full-time hours of service during the SMP**—the ALE may treat the employee as not full-time during the stability period that follows. In this case, the stability period cannot be longer than the SMP.

Because ALEs may need time between the measurement and stability periods to determine which ongoing employees are eligible for coverage and to notify and enroll employees, ALEs may use an **administrative period** between the SMP and stability period. The administrative period can last **up to 90 days**, but must overlap with the prior stability period to prevent any gaps in coverage for employees enrolled in coverage because of their full-time status during a prior measurement period.

In general, the SMP and stability period must be uniform for all employees. However, ALEs may apply different measurement, administrative and stability periods for the categories of employees described on page 2.

NEW EMPLOYEES EXPECTED TO WORK FULL TIME

Different rules apply to new employees who are reasonably expected, at their start dates, to be full-time employees (if they are not seasonal employees). For these employees, the ALE determines the employee's full-time status for each calendar month based on his or her hours of service during that month.

Whether an ALE's determination regarding a new employee's full-time status is reasonable is based on the facts and circumstances at the employee's start date. The employer shared responsibility regulations provide some guidance on determining whether a new employee is reasonably expected to be full-time.

Examples of factors to consider when determining if a new employee is full-time

- Whether the employee is replacing an employee who was (or was not) a full-time employee
- The extent to which hours of service of ongoing employees in the same or comparable positions have varied above and below an average of 30 hours of service per week during recent measurement periods
- Whether the job was advertised, or otherwise communicated to the new hire or documented (for example, through a contract or job description), as requiring hours of service that would average 30 (or more) hours of service per week or less than 30 hours of service per week

If the employee's hours of service for the calendar month equal or exceed an average of 30 hours of service per week, the employee is a full-time employee for that calendar month.

An ALE will not be subject to an employer shared responsibility penalty with respect to an employee for not offering coverage to the employee during a period of **three full calendar months**, beginning with the first day of the first full calendar month of employment (if, for the calendar month, the employee is otherwise eligible for coverage under the ALE's group health plan). For this rule to apply, the employee must be offered coverage no later than the first day of the fourth full calendar month of employment (if the employee is still employed on that day) and the coverage must provide minimum value.

Once the new employee becomes an ongoing employee (that is, he or she is employed for at least one complete SMP), the measurement rules for ongoing employees will apply. This means that the employee's full-time status will be determined using the SMP, just like other ongoing employees.

NEW VARIABLE HOUR, SEASONAL AND PART-TIME EMPLOYEES

Under the look-back measurement method, another set of rules applies to new variable hour employees, new seasonal employees and new part-time employees. An ALE determines whether these employees are full-time employees by measuring their hours of service during an IMP. During the IMP, the ALE is not subject to an employer shared responsibility penalty with respect to these employees, as long as it offers affordable, minimum value coverage during the stability period to employees who are determined to be full-time based on hours of service in the IMP.

The employer shared responsibility rules define the terms "variable hour employee," "seasonal employee" and "part-time employee." They also provide guidance on determining whether an employee meets these definitions.

VARIABLE HOUR EMPLOYEE

Based on the facts and circumstances at the employee's start date, the ALE cannot determine whether the employee is reasonably expected to be employed, on average, at least 30 hours per week because the employee's hours are variable or otherwise uncertain. Factors to consider in this determination include, for example:

- Whether the employee is replacing an employee who was full-time or a variable hour employee;
- The extent to which hours of service for employees in the same or comparable positions have actually varied above and below an average of 30 hours of service per week during recent measurement periods; and
- Whether the job was advertised, or otherwise communicated to the new hire or documented (for example, through a contract or job description), as requiring hours of service that would average 30 (or more) hours of service per week, less than 30 hours of service per week or may vary above and below an average of 30 hours per service per week.

For purposes of determining whether an employee is variable hour, the ALE cannot take into account the likelihood that the employee may terminate employment with the ALE before the end of the IMP.

SEASONAL EMPLOYEE

An employee who is hired into a position for which the customary annual employment is six months or less. The period of employment should begin each calendar year in approximately the same part of the year, such as summer or winter. In certain unusual instances, the employee can still be considered a seasonal employee even if the seasonal employment is extended in a particular year beyond its customary duration (regardless of whether the customary duration is six months or less).

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PART-TIME EMPLOYEE
A new employee who the ALE reasonably expects to be employed, on average, less than 30 hours per week during the IMP, based on the facts and circumstances at the employee's start date.

Similar to the method for ongoing employees, **the look-back measurement method for new variable hour, seasonal and part-time employees utilizes a stability period for when coverage may need to be provided, depending on the employee's hours of service during the IMP**. An administrative period can also be used to make eligibility determinations and notify and enroll employees.

An ALE has discretion in deciding when the initial measurement, stability and administrative periods will start and end, subject to specified IRS parameters. **However, the stability period for these employees must be the same length as the stability period for ongoing employees**.

INITIAL MEASUREMENT PERIOD (IMP)	The IMP must last between three and 12 consecutive months, as chosen by the ALE. It must begin on the employee's start date or on any date up to and including the first day of the first calendar month following the employee's start date (or on the first day of the first payroll period starting on or after the employee's start date, if later).
STABILITY PERIOD	**Not Full-time Employees:** If an employee does not have, on average, at least 30 hours of service per week during the IMP, the ALE may treat the employee as not a full-time employee during the stability period that follows the IMP. The stability period for these employees cannot be more than one month longer than the IMP, and cannot exceed the remainder of the first entire SMP (plus any associated administrative period) for which the variable hour, seasonal or part-time employee has been employed. **Full-time Employees:** An employee who was employed an average of at least 30 hours of service per week during an IMP must be treated as a full-time employee during the stability period that follows the IMP. The stability period for these employees must be a period of at least six consecutive calendar months, and cannot be shorter than the IMP.
ADMINISTRATIVE PERIOD	An ALE may use an administrative period in connection with the IMP and before the start of the stability period. The administrative period cannot exceed 90 days in total. It includes all periods between the start date of a new variable hour, seasonal or part-time employee and the date the employee is first offered coverage under the ALE's health plan, other than the IMP. Also, the IMP and the administrative period, combined, cannot extend beyond the last day of the first calendar month beginning on or after the one-year anniversary of the employee's start date (totaling, at most, 13 months and a fraction of a month).

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Once a new variable hour, seasonal employee or part-time employee has been employed for an entire SMP, the employee must be tested for full-time status, beginning with that SMP, at the same time and under the same conditions as other ongoing employees. This could result in an employee being measured under both an IMP and an SMP simultaneously.

This means that once the next SMP starts after the employee is hired, the employee's hours of service must be tracked during that SMP. There will most likely be overlap, both with the IMP and SMP and the related stability periods. The regulations provide specific rules for how to handle the employee after the IMP and SMP, depending on whether the employee averages full-time hours of service:

30 or More Hours of Service per Week

If the employee averaged 30 or more hours of service per week during an IMP or SMP, he or she must be treated as full-time for the entire associated stability period. If the employee averaged 30 or more hours of service per week during the IMP, but not during the SMP that overlaps or immediately follows it, the employee is treated as full-time until the end of the stability period that goes along with the IMP (even if the stability period that goes along with the SMP starts before that).

Under 30 Hours of Service per Week

If the employee did not average 30 hours or more of service per week during the IMP, but did average 30 or more hours of service during the overlapping or immediately following SMP, the employee must be treated as a full-time employee for the entire stability period that corresponds to that SMP (even if that stability period begins before the end of the stability period associated with the IMP).

If there is a gap between the stability periods for the IMP and SMP, the treatment as full-time (or not) that applies during the stability period associated with the IMP continues to apply until the beginning of the stability period associated with the first full SMP during which the employee is employed.

SPECIAL RULES

Rehired Employees and Employees Returning from Leave

The final regulations include guidance for ALEs on how to classify an employee who earns an hour or more of service after the employee terminates employment (or has a period of absence). If an employee goes at least **13 consecutive weeks** without an hour of service and then earns an hour of service, he or she may be treated as a new employee for purposes of determining his or her full-time status. The ALE may apply a rule of parity for periods of less than 13 weeks. Under the rule of parity, an employee is treated as a new employee if the period with no credited hours of service is at least four weeks long and is longer than the employee's period of employment immediately before the period with no credited hours of service.

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For an employee who is treated as a continuing employee, the measurement and stability periods that would have applied to the employee, had he or she not experienced the break in service, would continue to apply upon the employee's resumption of service.

"Special Unpaid Leave"—FMLA Leave, USERRA Leave and Jury Duty Leave

The final regulations include a method for averaging hours when measurement periods include special unpaid leave—leave under the Family and Medical Leave Act (FMLA) or the Uniformed Services Employment and Reemployment Rights Act (USERRA) and leave for jury duty. This method only applies to an employee who is treated as a continuing employee upon resuming services for the ALE, and not to an employee who is treated as terminated and rehired. Under the averaging method, the ALE either:

- Determines the average hours of service per week for the employee during the measurement period excluding the special unpaid leave period, and uses that average as the average for the entire measurement period; or
- Treats employees as being credited with hours of service for special unpaid leave at a rate equal to the average weekly rate at which the employee was credited with hours of service during the weeks in the measurement period that are not special unpaid leave.

MORE INFORMATION

Please contact Clarke & Company Benefits, LLC for more information on the ACA's employer shared responsibility rules or the look-back measurement method.

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