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Using the Look-Back Measurement Method to Determine Full Time Status

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Background

Under the Employer Shared Responsibility Provisions of the Affordable Care Act (ACA), large employers must offer health coverage to substantially all full time employees (and their dependents) or be exposed to possible penalties. In order to avoid all penalties, that health coverage must be affordable and meet minimum value.

Employers can determine full-time status either by counting each employee's hours of service or by using one of the "equivalency" methods that apply for qualified retirement plans. Since most employers will count hours of service to determine full-time status, the proposed and final regulations offer two Measurement Methods employers can use. These are:

- Monthly Measurement Method
- Look-Back Measurement Method

This article explains what the Look-Back Measurement Method is and how to use it. It does not address the important first step of how to determine *which* Measurement Method to use, or the exceptions associated with the first step. For more information on that topic, see Leavitt's June 19, 2014 article: Large Employers Must Apply the Same Measurement Method to All Employees in the Same Category.

Helpful Definitions

Large Employer: A large employer under the Employer Shared Responsibility provision is defined for 2015 as one who employed on average at least 100 full-time employees or full-time equivalent employees in 2014; for 2016 and beyond the threshold is lowered to at least 50 full-time employees or full-time equivalents in the prior calendar year.

Full-time Employee: A full-time employee is one who works on average at least 30 hours per week or at least 130 hours per month.

Full-time Equivalent Employee: Generally, two or more part-time employees equal one full-time equivalent employee. The number of full time equivalents an employer has is calculated by adding up the number of hours worked by part-time employees (those who per work less than 30 hours per week) in each calendar month, and dividing that number by 120.

Affordable Health Coverage: Group health coverage is considered "affordable" if an employee's share of the monthly cost for self-only coverage is not more than 9.5% of the employee's monthly income from the employer (there are two alternative calculations of monthly income) or not more than 9.5% of the Federal Poverty Level for one. For more information on calculating affordability, please see our August 2014 summary: Affordability under the Employer Shared Responsibility Provisions of the ACA.

Minimum Value: A plan provides Minimum Value if the plan pays on average at least 60% of the total allowed benefits under the plan, and the participant does not pay more than 40% of the total allowed benefits under the plan. This amount does not include premiums.

Using the Look-Back Measurement Method

There are two kinds of Look-Back Measurement Methods:

- Standard: used to track hours for ongoing employees
- Initial: used to track hours for newly-hired employees

Both types of Look-Back Measurement Methods are comprised of:

- A Measurement Period,
- A Stability Period, and
- An optional Administrative Period.

During the Measurement Period the employer tracks employees' hours of service; during the Stability Period the employer should offer coverage to employees who were full-time during the Measurement Period; and during the Administrative Period the employer determines who was full-time, notifies them and offers coverage.

Note that employers are not *required* to offer coverage to employees who were full-time during the Measurement Period, but failure to do so may expose the employer to employer shared responsibility penalties (under Code section 4980H(a) or (b)).

The *Standard* Look-Back Method

The Standard Look-Back Method applies to ongoing employees. An ongoing employee is one who has been employed for at least one complete Standard Measurement Period.

Standard Measurement Period

To use the Standard Look-Back Measurement Method, an employer first selects a "Look Back" period, called the Standard Measurement Period, which can be anywhere in length between 3 and 12 months. The employer selects the start date as well as the duration of the Standard Measurement Period.

Many employers are using a 12-month Measurement Period. The upside to using 12 months is it allows employers greater flexibility when scheduling employee hours and allows a full year over which to average hours. The downside, however, is that if an employee works at least 1,560 hours over the 12 months, the employee is eligible for coverage for 12 months. In contrast, under a six-month Measurement Period a full-time employee would be eligible for coverage for only six months.

The employer then tracks each ongoing employee's hours of service during the Standard Measurement Period. An employee who averages at least 130 hours per month during the Measurement Period is a full-time employee for that Measurement Period. For example, if the Measurement Period is six months, an employee with 780 hours of service during those six months is full-time. For a 12-month Measurement Period the threshold for full-time status is 1,560 hours of service.

Standard Administrative Period

An employer may choose to insert a Standard Administrative Period after the Standard Measurement Period and before the Standard Stability Period. The purpose of the Standard Administrative Period is to allow employers time to total and average the hours of service of each employee during the Standard Measurement Period, notify eligible employees, explain coverage available under the plan, answer questions, collect materials from employees, and enroll employees who elect coverage before day one of the Standard Stability Period. The Standard Administrative Period may not exceed ninety (90) days, which may in practice be the first of the month following two months. It may not cause a gap in coverage, and it may not reduce or lengthen the Standard Measurement or Standard Stability Periods. As you can see diagram below (in the Example after the Standard Stability Period), the Standard Administrative Period overlaps the end of the prior Standard Stability Period and the beginning of the next Standard Measurement Period.

Standard Stability Period

Employees who worked on average at least 30 hours per week or at least 130 hours per month during the Measurement Period (i.e., were full time) should be offered health coverage for the entire Standard Stability Period regardless of the hours they actually work during the Standard Stability Period (unless they cease to be employed by the employer).

The rules regarding the length of the Standard Stability Period vary, depending on whether an employee was full-time or part-time during the Standard Measurement Period.

For employees who were full-time during the Standard Measurement Period, the Standard Stability Period must be at least six consecutive calendar months, and cannot be shorter than the Measurement Period.

For example, if the Standard Measurement Period is 12 months, the Standard Stability Period must be at least 12 months. If the Standard Measurement Period is only six months, the Standard Stability Period must be at least six months. Even if the Standard Measurement Period was only three months, the Standard Stability Period must be at least six months.

For employees who were part-time during the Measurement Period, the Stability Period cannot be longer than the Measurement Period. The six- and 12-month examples above would be the same for both part-time and full-time employees, but if the Standard Measurement Period was only three months, the Standard Stability Period for *part-time* employees could not be more than three months.

The Standard Measurement Period (and Stability Period) must be the same for all ongoing employees in the same category, but large employers may use different Standard Measurement Periods for employees in certain different categories. Allowable categories are:

1. Salaried v hourly employees
2. Collectively bargained v non-collectively bargained employees
3. Employees covered by different collective bargaining agreements
4. Employees whose primary place of employment is in different states

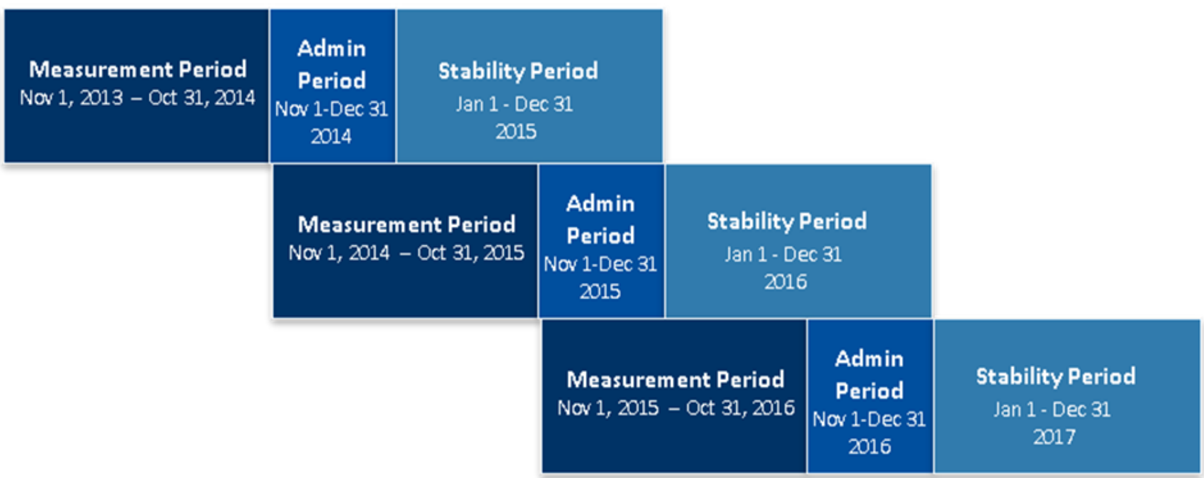
Example:

Employer X has a calendar year plan and selects a 12-month Standard Measurement Period which begins November 1, 2013 and ends October 31, 2014. During the Standard Measurement Period Employer X tracks the hours of service of ongoing employees.

Employer X selects a Standard Administrative Period that begins November 1, 2014 and ends December 31, 2014. During the Administrative Period, Employer X identifies those who worked on average at least 30 hours per week during the Standard Measurement Period, notifies them of their eligibility and plan options, collects materials and enrolls employees for coverage to begin January 1, 2015.

Employer X selects a 12-month Standard Stability Period that begins with the calendar year plan on January 1, 2015.

Note that as soon as one Standard Measurement Period ends the next one begins, so the Standard Administrative Period overlaps the end of the prior Standard Stability Period and the beginning of the next Standard Measurement Period.



The *Initial* Look-Back Method

For newly-hired employees who are not reasonably expected at date of hire to be full-time, the Initial Look Back Method applies until they become ongoing employees. Note that newly-hired employees who are expected at date of hire to be full-time must be measured using the Monthly Method, not under the Look-Back Method. (See Leavitt's June 19, 2014 article: Large Employers Must Apply the Same Measurement Method to All Employees in the Same Category.)

Initial Measurement Period

The Initial Look-Back Measurement Method generally works the same for newly-hired employees as the Standard Look-Back Method works for ongoing employees, but there are some differences. To use the Initial Look-Back Method for newly hired employees, an employer first selects a "Look-Back" period called the Initial Measurement Period, which can be anywhere in length between 3 and 12 months. The Initial Measurement Period for each employee begins on his or her date of hire (or as of the first day of the next month, if the employer elects to use a split Administrative Period as explained below). The employer sets the duration of the Initial Measurement Period, but the start date of each new employee's Initial Measurement

Period is based upon the new employee's hire date. It does not start on the same date as the Standard Measurement Period.

The employer then tracks the hours of service of each new employee during his or her Initial Measurement Period.

Initial Administrative Period

The employer's tasks during the Initial Administrative Period generally are the same as during the Standard Administrative Period (i.e., tracking hours to determine full-time status, notifying and enrolling eligible employees), but there are some differences in how the Administrative Periods work.

The first difference relates to the allowed length of the Initial Administrative Period. The Initial Administrative Period cannot exceed 90 days (similar to the Standard Administrative Period), however, there is an additional limitation. The total combined time of the Initial Administrative Period and the Initial Measurement Period cannot exceed 13 months plus a portion or fraction of another month. In practice, this means that when an employer selects a 12 month measurement period, an Initial Administrative Period may not be longer than 1 month plus a partial month.

The second difference is that the *Initial* Administrative Period may be split. Part 1 of the Initial Administrative Period would start on the day the new employee starts working and would end on the last day of that month. The Initial Measurement Period would start the next day (i.e., the first day of the following month). Part 2 of the split Administrative Period would start the day after the Initial Measurement Period ended and would end on the last day of that month. The reason an employer would do this is for administrative ease, so there are only 12 start dates for Initial Measurement Periods each year (the first of each month), rather than potentially 365 start dates (if a large employer hired a new employee each day of the year).

Example:

<u>Split Initial Administrative Period:</u> New employee A starts on March 10th and new employee B starts on March 17th. Instead of starting the Initial Measurement Period on March 10th for employee A and on March 17th for employee B, the employer starts Part 1 of the Initial *Administrative* Period for employee A on March 10th and for employee B on March 17th. Part 1 continues through March 31st for both employees A and B. The Initial *Measurement* Period for both employees starts April 1st and continues through March 31st of the following year. The day after the Initial Measurement Period ends, Part 2 of the Initial *Administrative* Period starts (April 1st) for both employees.

<u>Limit on Length of Initial Administrative Period:</u> Same facts as above. Part 2 of the Initial Administrative Period starts April 1st for both employees, and it must end by April 30th. This is because the combined length of the Initial Administrative Period and the Initial Measurement Period cannot exceed 13 months plus a portion or fraction of an additional month. The Initial Measurement Period (12 months) plus Part 2 of the Initial Administrative Period (1 month) plus a portion or fraction of an additional month from Part 1 of the Initial Administrative Period (March 10th to end of month for employee A and March 17th to end of month for employee B) totals 13 months plus a partial month.

Initial Stability Period

The Initial Stability Period is the period during which the employer must offer coverage to all newly-hired employees who worked on average at least 30 hours per week or 130 hours per month during the Initial Measurement Period. The employer must offer coverage regardless of the hours newly-hired employees actually work during the Initial Stability Period, unless they cease to be employed by the employer.

The requirement to offer health coverage only applies as long as an employee continues working for the employer. For example, a newly hired employee is determined to be full-time during the Initial Measurement Period. During the Initial Administrative Period, health benefits are offered and the employee opts in to the coverage. The new employee quits one month into the Initial Stability Period. Health coverage under the Employer Plan may stop. However, the employer must offer COBRA pursuant to rules unrelated to the Affordable Care Act and should also give the employee information regarding the Individual Exchange, now known as the Marketplace.

The length of the Initial Stability Period varies depending on whether an employee was full-time or part-time during the Initial Measurement Period. For employees who were full-time during the Initial Measurement Period, the Stability Period must be at least six consecutive calendar months, and cannot be shorter than the Measurement Period.

For example, if the Initial Measurement Period is 12 months, the Initial Stability Period must be at least 12 months.

For employees who were part-time during the Initial Measurement Period, the Stability Period cannot be more than one month longer than the Initial Measurement Period.

Note the difference in the rules for employees who are part-time during the *Standard* Measurement Period and employees who are part-time during the *Initial* Measurement Period. For newly hired employees who are part-time during the Initial Measurement Period, the Initial Stability Period can be one month longer than the Initial Measurement Period; however, the Standard Stability Period cannot be longer than the Standard Measurement Period for ongoing part-time employees.

Newly Hired Employee Transitioning to Ongoing Employee

A new employee becomes an ongoing employee after the employee has been employed for at least one complete Standard Measurement Period. So, the employer must track a newly-hired employee's hours of service during both an Initial Measurement Period plus a Standard Measurement Period before the employee is considered an ongoing employee. These two periods will overlap unless an employee's hire date also happens to be the first day of the Standard Measurement Period.

In order to facilitate a seamless transition from the Initial Look-Back Method to the Standard Look-Back Method, the employee's hours are tracked with both the Initial Look-Back method and the Standard Look-Back method. On the first day of the Standard Measurement Period that begins after the date of hire, the employer starts tracking the newly hired employee's hours under the Standard Look-Back Method but also continues to track the newly-hired employee's hour under the Initial Look-Back Method for one full cycle.

Example:

The plan year for the employer's group health plan is January 1 – December 31. The employer elects to have a 12-month Measurement Period and a 12-month Stability Period, for both ongoing and newly-hired employees whose status is not yet known or who are variable hour or seasonal employees. For ongoing employees, the Standard Periods (for 2014-2016) will be:

- December 1, 2013 – November 30, 2014 = Standard Measurement Period
- December 1- 31, 2014 = Standard Administrative Period
- January 1 – December 31, 2015 = Standard Stability Period

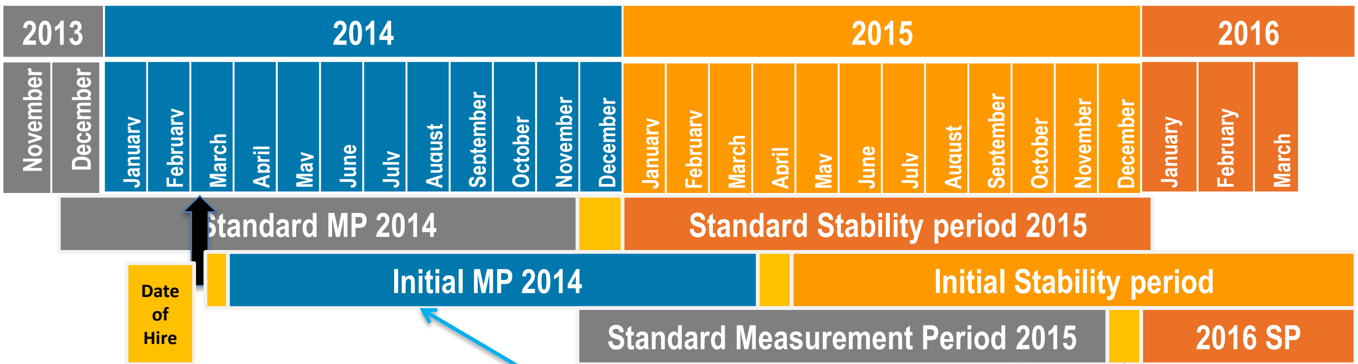
See the diagram on the following page.

A newly-hired employee starts working on March 10, 2014, and the employee is not reasonably expected to work full-time. The employer starts Part 1 of the Initial Administrative Period on March 10, 2014, which continues through March 31, 2014. The Initial Measurement Period starts April 1, 2014 and the employer starts tracking the newly-hired employee's hours on this date. On December 1, 2014 the Standard Measurement Period begins and the employer starts tracking the newly-hired employee's hours using the Standard Look-Back Method as well as the Initial Look-Back Method. That is, the employer tracks the employee's hours of service for the period April 1, 2014 – March 31, 2015, and for the period December 1, 2014 – November 30, 2015.

- If the employee had at least 1,560 hours of service during April 1, 2014 – March 31, 2015, (1560 divided by 12 months is 130) the employee must be offered coverage for the period May 1, 2015 – April 30, 2016. The Initial Look-Back Method is not used for this employee again. (There is an exception to this rule under certain rehire or return from unpaid leave situations.)
- If the employee has at least 1,560 hours of service during December 1, 2014 – November 30, 2015, (1560 divided by 12 months is 130) the employee must be offered coverage for the period January 1, 2016 –December 31, 2016. If the employee was full-time during the Initial Measurement Period, the employee will already have an offer of coverage through April 30, 2016, so the offer of coverage under the Standard Stability period will actually only be from May 1 – December 31, 2016.

Note that when the Standard Measurement Period ends on November 30, 2015, the newly-hired employee becomes an ongoing employee. The next Standard Measurement Period for this employee begins the very next day—on December 1, 2015 – and continues until November 30, 2016. The former new-hire is now an ongoing employee and is on the Standard Look-Back Method just like other ongoing employees. (This assumes the employee is in a category of employees that is measured using the Look-Back Measurement Method rather than the Monthly Measurement Method.)

When a New Hire becomes an On-going Employee



1- EE hired March 10, 2014

-- *Initial* Admin Period #1 = March 10-31, 2014

--*Initial* Measurement Period = April 1, 2014 – March 31, 2015

-- *Initial* Admin Period #2 = April 1-30, 2015

--Initial Stability Period = May 1, 2015- April 30, 2016

--1st *Standard* MP = Dec. 1, 2014 – Nov. 30, 2015

2- EE becomes an ONGOING EE as of Dec. 1, 2015

3- Track new EE's hours April 1, 2014-March 30, 2015, to determine eligibility for May 1, 2015-April 30, 2016

4- And also track hours Dec 1, 2014-Nov 30, 2015, to determine eligibility for Jan - Dec 31, 2016

2016 Stability period extends through Dec 31, 2016

During both the Initial Stability Period and the Standard Stability Period, the employee should be receiving health benefits if: 1) the employee's hours during the associated Measurement Period averaged at least 30 hours per week or 130 hours per month, and 2) the employee opts in to the offered employer sponsored coverage.

If the employee's hours average at least 30 hours per week or 130 hours per month during *both* the Initial Measurement Period and the Standard Measurement Period, there will be an overlap of coverage eligibility when the Standard Stability Period begins. In that case, coverage would be continuous between the start of the **Initial** Stability Period and through the end of the **Standard** Stability Period.

If the employee stops working, there is no longer an obligation to provide health coverage, but the employer must offer COBRA pursuant to COBRA rules.

