AssuredPartners

POWER *through Partnership*

ACA AND MEASURING FULL-TIME EMPLOYEES

The Affordable Care Act (ACA) imposes certain requirements upon applicable large employers (ALEs) (companies that employed an average of at least 50 full-time employees, including full-time equivalent employees, in the prior calendar year). Of those requirements is that an ALE comply with the “employer shared responsibility” rules, i.e., offering affordable, minimum value health coverage to full-time employees, as failure to do so will result in a penalty.

An ALE may be a single entity or may consist of a group of related entities, referred to as ALE members.

Under the ACA, a full-time employee is defined as one who was employed, on average, at least 30 hours per week or 130 hours per month. There are two methods for determining full-time employee status:

- The **monthly measurement method** determines full-time status of an employee on a month-by-month basis by looking at whether the employee has at least 130 hours of service for each month. Under this method, any employee with at least 130 hours of service during the applicable calendar month will be considered a full-time employee for that month.

- The **look-back measurement method** determines full-time status of an employee during a future period (referred to as the stability period), based on the employee's hours of service in a prior period (referred to as the measurement period). Under this method, an employer “looks back” over a defined period of time to determine if the employee averaged at least 30 hours per week.

An ALE must generally use the same measurement method for all employees. However, the following categories of employees may be treated differently for calculation purposes:

- 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.

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The **monthly measurement method** 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. This method can also be challenging when employees contribute to the cost of coverage. Since full-time status is determined at the end of the month, it is not always possible to process employee elections and collect premiums on a timely basis. Furthermore, this method requires constant attention to track employee hours, which can be an administrative burden.

The **look-back measurement method** provides ALEs with more predictability for determining full-time status. The look-back measurement method involves:

- A prior measurement period for counting hours of service (a standard measurement period (SMP) for ongoing employees, or an initial measurement period (IMP) for new employees);
- An optional administrative period (used in conjunction with the IMP and prior to the start of the stability period but cannot exceed 90 days in total) 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.

For ongoing employees, those who have already completed an SMP, an ALE determines an 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 3 and 12 consecutive months, as determined by the ALE. The stability period may last between 6 and 12 consecutive months but cannot be less than the corresponding measurement period.

For new employees who are reasonably expected, at their start dates, to be full-time employees, the ALE determines the employee's full-time status for each calendar month based on the employee's hours of service during that month. 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 considered a full-time employee for that calendar month.

Variable hour employees whose hours fluctuate from month to month are subject to the lookback measurement method in determining full-time status. If a variable hour employee has a 12-month lookback period and is determined to be a full-time employee, then coverage must be offered no later than the first day of the 13th month following employment.

Special rules may apply when an employee experiences a change in employment status, i.e., full-time to part-time or vice versa. The special rules that apply will differ depending on whether the employee is ongoing or new, as well as the circumstances surrounding the change.

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Moving from Full-Time to Part-Time Status

For an ongoing employee, health benefits for an employee who has a change in status from full-time to part-time will remain eligible for the remaining portion of the current stability period. Benefits should not be cancelled in this situation until the end of the stability period in which the employee moves into the part-time position. Additionally, if the employee averages at least 30 hours per week during the measurement period in which the change in status occurs, coverage will also be required in the following stability period. However, there is an exception in this case. The employer is allowed to switch to the monthly measurement method for an employee moving to part-time starting with the first day of the 4th full month after the employee moves to a part-time position. This is allowed only if (a) minimum value coverage has been offered to this employee since employment began (or within 3 full months) continuing through the month in which the employee moves to part-time and (b) if the employee averaged less than 30 hours per week for each of the 3 full months after the move to a part-time position.

If a newly hired employee is reasonably expected, as of the day employment begins, to work full-time, the employee will generally have full-time status determined under the monthly measurement method until the employee completes one full standard measurement period. Because of this requirement, coverage for a new employee could be terminated under the monthly measurement period if the new employee does not average at least 30 hours per week during a month as the employer had expected.

Moving from Part-Time to Full-Time Status

When an ongoing employee moves from a part-time position to a full-time position, the change in status will not affect the employee's status as a part-time employee for the remainder of the stability period. Therefore, the employer is not required to offer coverage to the employee immediately at the time the employee moves to the full-time position. Coverage would be offered to the employee for the stability period that follows the measurement period during which the employee worked an average of 30 hours per week. Employers may, however, elect to be more generous than what the laws require and offer healthcare to an employee moving from part-time to full-time sooner. If the employer chooses to do so, it is important that the plan provisions clearly state the eligibility requirements that will be followed in such situations.

If a new employee moves from a part-time position to a full-time position during their initial measurement period, the employer must offer coverage to that employee no later than the first day of the 4th full month following the date that the change in status occurs. If the employee averaged at least 30 hours per week during the IMP, the employee must be offered coverage by the beginning of the corresponding stability period if that date is earlier than the first day of the 4th full month following the date of the change in status.

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Rehired Employees

If an employee is rehired by an employer and has 0 hours of service for AT LEAST 13 consecutive weeks (26 weeks for educational organizations), the rehired employee (or an employee who returns from a leave of absence) will be treated as a new hire for purposes of an offer of coverage. When the employee will be offered coverage in this situation will be dependent upon whether they are rehired into a full-time or part-time position. An employee rehired into a variable hour, seasonal, or part-time position will be put into a new look-back measurement period and the employer will track hours to determine if full-time and whether an offer of benefits is required. If the employee is rehired into a full-time position, coverage should be offered within three months or within the normal waiting period established by the plan.

If the rehired employee has 0 hours of service for LESS THAN 13 consecutive weeks (26 weeks for educational organizations) the rehired employee (or an employee who returns from a leave absence) will be treated as a continuing employee. In this case, the employee will retain the status they had as either a full-time or part-time employee for the remainder of the stability period that was observed prior to the employee's departure. If the employee was covered under the employer's health plan, the employee should be offered coverage by the 1st day of the month following the date they are rehired. In cases where the employee had waived coverage for the stability period, it is not required that the employee receive a new offer of coverage when the employee is rehired or returns from a leave of absence. The employer will resume counting hours for the remaining months in the measurement period and count 0 hours for the period in which the employee was absent due to termination of employment or leave of absence, unless the employee was on a special unpaid leave, for example FMLA, or if considered an employment break.

Further, an employer may utilize the Rule of Parity for periods of less than 13 weeks. Under this rule, an employee can be treated as a new employee if the number of weeks during which no services are performed both (a) exceeds the number of weeks of employment immediately preceding the period during which no services are performed and (b) is at least four weeks long .

For example, if an employer uses the rule of parity, an employee who works for five weeks and then has no credited hours for six weeks may be treated as a new employee upon rehire. This rule of parity really only applies to employees who leave before completing 13 (or 26, for educational institutions) weeks of service.

If treated as an ongoing employee, the IMP and SMP that would have applied to an individual were it not for their break in service will continue to apply once the employee resumes service.

Offering Coverage to Full-Time Employees

For all scenarios discussed above, once a determination is made regarding which employees are indeed eligible for coverage, the employer must make an offer of coverage in accordance with the rules of its benefits plan document.