

Break in Service Rules

Updated August 2023

Background

When employees return to work following a leave of absence or are rehired following a termination of employment, employers must determine how to handle benefit eligibility. For small employers (fewer than 50 full-time equivalents, or FTEs), benefit eligibility is simply handled in accordance with the plan eligibility rules. In many cases, employees are subject to a new waiting period unless the plan eligibility rules contain a rehire provision allowing for a waiver of the waiting period upon returning to work. However, applicable large employers (ALEs) must follow §4980H break in service rules, at least for medical coverage, to avoid potential penalties. The break in service rules for applicable large employers, including several examples, are set forth below.

Review of §4980H Requirements

Applicable large employers (ALEs) – those with 50 or more full-time equivalents (FTEs) – are required to offer medical coverage to full-time employees to avoid potential penalties under §4980H. The coverage must provide minimum value and be affordable.

Full-time employees are those who average 30 or more hours of service per week (130 or more hours of service per month). Employers may define full-time status using either the monthly measurement method or the look-back measurement method.

- Under the monthly measurement method, any employee who achieves 130 or more hours of service during the month is considered full-time.
- Under the look-back measurement method, employees' hours may be averaged over a 3–12 month measurement period, but then if an employee averages full-time during the measurement period, the employee must be treated as full-time for a stability period of equal length. For an employer with a lot of variable hour or seasonal employees, the look-back measurement method is often the best choice.

Break in Service Rules

Whether using the monthly measurement method or the look-back measurement method, it's necessary to follow the break in service rules when determining full-time status and whether an offer of medical coverage is required to avoid potential penalties. A "break in service" occurs when there is a period of time with no hours of service (i.e. a period during which an employee is not paid). Employment doesn't necessarily have to be terminated for there to be a break in service; there might also be a break in service when there is a leave of absence or a period of inactive status. There are two ways the break in service rules apply:

1. **General Rule:** If an employee returns to work or is rehired within less than 13 weeks (26 weeks for educational organizations), the employee must be treated as a continuing employee rather than a new hire.
2. **Rule of Parity** (applicable for new hires): If an employee's break in service is (i) at least 4 weeks long, and (ii) longer than the weeks of employment prior to the break, then the employee may be treated as a new hire.

New Hires

If the employee may be treated as a "new hire," the employer may disregard any previous employment. The employer is free to impose a new waiting period or an initial measurement period, as applicable, upon a rehire or a return to work. That being the case, some employers choose to be more generous than required, allowing a waiver or a shortening of the waiting period for those who are rehired or who return to work within a specified period. These employers should ensure that plan eligibility rules recognize such situations and allow for the waiting period to be handled differently than for those who are newly eligible.

Continuing Employees

If the employee must be treated as a "continuing employee," the employee must be given credit for previous employment. Benefit eligibility may depend upon whether the employee was covered prior to the break in service.

- If the employee was previously covered before the break in service, medical coverage must be reinstated as soon as administratively possible if the employee will be considered full-time upon rehire (i.e., no later than the 1st of the month following rehire).
- If the employee previously waived, coverage would not have to be offered again upon rehire; it would be acceptable to wait and offer coverage during open enrollment, because §4980H rules require only an annual opportunity to elect medical coverage.

In addition, for employers using the look-back measurement method, the measurement and stability periods continue as if the employee had never left, although no hours of service are credited during the break in service unless it was a leave of absence due to FMLA, USERRA, or jury duty ("special unpaid leave"). If the leave was "special unpaid leave" and the employee is considered a continuing employee, the employer is required to either exclude the leave or impute hours for the leave when measuring hours to determine full-time status.

Medical versus Other Benefits

Keep in mind that §4980H rules apply only to the medical plan. Many employers choose to follow the break in service rules for all their benefits for ease of administration, but that is not required. A “continuing employee” who was previously enrolled would need to be offered medical coverage upon rehire to avoid potential penalties, but the employer could impose a new waiting period for any other benefits offered (e.g. dental, vision).

Examples

Example 1 (Monthly Measurement Method) – Full-time employee of several years voluntarily resigns, but then is rehired as a full-time employee 28 weeks later. Since the break in service was at least 13 weeks long, the employee may be treated as a new employee. For all benefits, including medical, the employer may impose a waiting period.

Example 2 (Monthly Measurement Method) – Full-time employee of several years waived coverage in the most recent open enrollment period and then terminated employment. The employee is rehired 5 weeks later. Since the break in service spanned fewer than 13 weeks, the employee must be treated as a continuing employee; however, because the employee waived coverage during open enrollment, it would not be necessary to offer coverage again until the next open enrollment.

Example 3 (Monthly Measurement Method) – Full-time employee of several years is enrolled in coverage and retires, but then is rehired as a part-time employee 4 weeks later. Since the break in service spanned fewer than 13 weeks, the employee must be treated as a continuing employee. However, as a part-time employee, the employee is not eligible for benefits upon rehire.

Example 4 (Look-Back Measurement Method) – Full-time employee of several years is enrolled in coverage and retires, but then is rehired as a part-time employee 4 weeks later. The employee must be treated as a continuing employee.

- Even though the employee is rehired as part-time, their previous measurement period must be honored for the duration of the stability period, and medical benefits must be offered no later than the 1st of the month after rehire (other benefits depend upon plan eligibility/rehire rules).
- Employee is considered full-time for the remainder of the stability period. When measuring hours during the current measurement period to determine status for the next stability period, no hours need be credited for the 4-week break in service.

Example 5 (Look-Back Measurement Method) – Variable hour employee determined to be full-time in the previous measurement period and enrolled in benefits. Employee’s employment is terminated, but then the employee is rehired as a variable hour employee 30 weeks later. The employee may be treated as a new employee. For all benefits, including medical, the employer may impose an initial measurement period.

Example 6 (Look-Back Measurement Method) – Variable hour employee determined to be full-time in the previous measurement period and enrolled in benefits. Employee’s employment is terminated, but then the employee is rehired as a variable hour employee 6 weeks later. The employee must be treated as a continuing employee.

- Even though the employee is rehired as variable hour, their previous measurement period must be honored for the duration of the stability period, and medical benefits must be offered no later than the 1st of the month after rehire (other benefits depend upon plan eligibility/rehire rules).
- Employee is considered full-time for the remainder of the stability period. When measuring hours during the current measurement period to determine status for the next stability period, no hours need be credited for the 6-week break in service.

Example 7 (Look-Back Measurement Method) – Variable hour employee determined to be full-time in the previous measurement period and enrolled in benefits. Employee goes out on FMLA-protected leave for 8 weeks and then returns to work. The employee must be treated as a continuing employee.

- Medical benefits must continue to be available for the 8 weeks of FMLA-protected leave.
- If benefits are terminated during the leave, they must be offered no later than the 1st of the month following return to work.
- Employee is considered full-time for the remainder of the stability period. When measuring hours during the current measurement period to determine status for the next stability period, hours must be imputed during the 8 weeks of leave (or the 8 weeks must be excluded from the measurement period) because FMLA is considered special unpaid leave.

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