

The Employer Mandate

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*Presented by the Regulatory and
Legislative Strategy Group*



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- Minimum Value and Affordable

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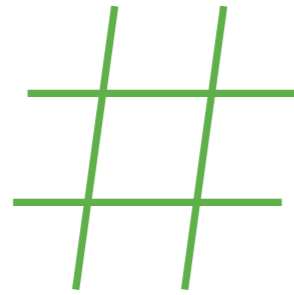


01

Applicable Large Employer Status

Applicable Large Employer (ALE)

GENERAL RULES



Average 50 or More FT/FTE

Full-Time (FT)

Any employee with at least 130 or more hours of service in a month

Full-Time Equivalent (FTE)

All part-time workers' hours in a month ÷ 120



Previous Year

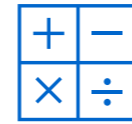
Status is based on the employer's number of FT/FTE employees in the prior calendar year

ALE: Calculating 50 FT and/or FTE Employees



Full-Time Employees in Each Month

- For each month in the calendar year, count how many employees had at least 130 hours of service in that month
- This is the number of FT employees the employer had each month



Add Together All FT Employees and FTE Employees and Divide by 12

- Add the sum of all FT and FTE employees from each month, and divide the total by 12
- The result is the average number of FT/FTE employees an employer had in the previous calendar year



Part-Time Employees in Each Month

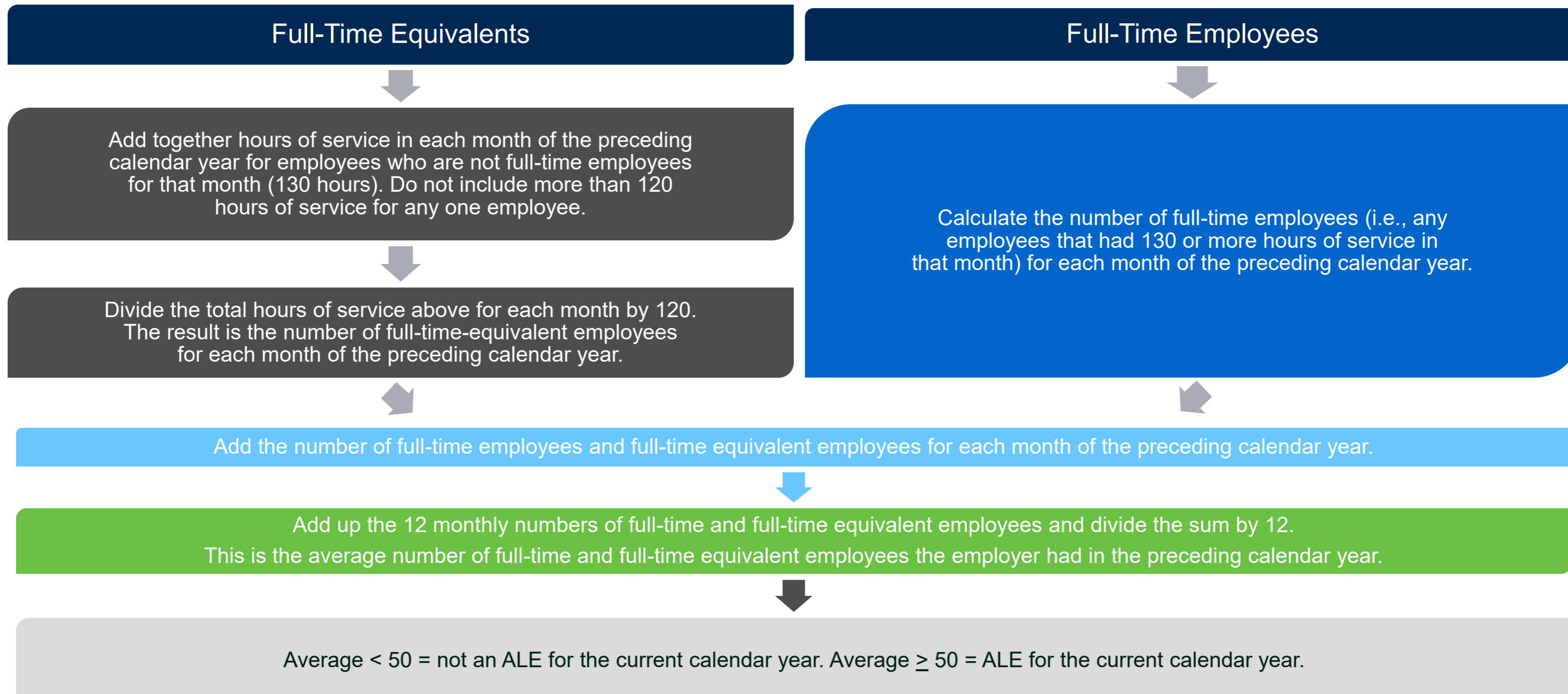
- For each month in the calendar year, take the number of hours of service of each employee that worked less than 130 hours of service a month (up to 120 hours of service for each PT employee), and add together all PT hours worked for each month in the calendar year
- Divide the total number of all Part-Time employee hours for each month (i.e., all PT hours worked in that month) by 120



Did Employer Average 50 or more Employees in Previous Year?

- If the average is < 50 , then the employer is not an ALE for the current calendar year
- If the average is > 50 , then the employer is an ALE for the current calendar year

Applicable Large Employer Status



ALE: Seasonal Workers



Seasonal Workers and ALE Status

Employer is **not** an ALE if:

- 1) Employer's workforce exceeds 50 FT/FTE employees for 120 days or fewer (during calendar year); and
- 2) Employees in excess of 50 FT/FTE during such 120-day period are seasonal workers

Definition of Seasonal Worker

Employee who performs labor or services on a seasonal basis

Not the Same as Seasonal Employee

A seasonal worker is used for the calculation of whether the employer is an ALE, a seasonal employee is an employee that may be subject to a Measurement Period under the Look-Back Measurement Method

ALE: Military Coverage

Military Coverage and ALE Status

Certain employees with military coverage may be excluded as a FT/FTE worker as it relates to ALE status:

- 1) Workers who have coverage under TRICARE; or
- 2) Workers who have coverage under a Veterans Affairs (VA) health program



ALE: Common Mistakes Calculating ALE Status

Count All Common-Law Employees of Employer

Generally, employer has control over the daily duties and has the right to hire/fire common-law employees

Commonly Owned Entities

All FT/FTE employees of all commonly owned employers (i.e., same affiliated services group/controlled group of entities)

Capture all Common Law Employees Employed under All Commonly Owned Entities

Common Law Employees

Could be staffing agency/PEO employees, union employees or misclassified independent contractors/1099s

Commonly Owned Entities

If together all of the entities that are “commonly owned” averaged 50 or more FT/FTE employees in the immediately preceding year, all entities under “common ownership” are considered an ALE (even if an entity has less than 50 FT/FTE employees)

02

Employer Mandate

ALE Status

50 FT/FTE EMPLOYEES IN PREVIOUS YEAR

Penalty A

An employer is subject to penalties for all FT employees (minus 30 FT employees) for failure to offer “substantially all” (i.e., 95%) FT employees Minimum Essential Coverage (MEC), and 1 PTC

Penalty B

An employer is subject to penalties for each FT employee that receives a PTC due to not being offered affordable and Minimum Value coverage

Penalty A

In 2026, \$3,340 per FT employee per year (\$278.33 per FT EE, per month) minus the first 30 FT employees if at least one employee receives a premium tax credit in the Exchange/Marketplace.

Penalty B

In 2026, \$5,010 per FT employee per year (\$417.50 per FT EE, per month) that receives a premium tax credit in the Exchange/Marketplace.

02

Employer Mandate: Offer to “Substantially All” FT Employees Mandate

Employer Mandate

OFFER OF COVERAGE TO “SUBSTANTIALLY ALL” FT EMPLOYEES

Offer of MEC to “Substantially All” Employees

An ALE will be subject to Penalty A (the largest penalty) if it fails to offer MEC to “substantially all” (95%) FT Employees:

- 1) The penalty is only triggered when at least one FT employee goes to the Exchange/Marketplace and receives a Premium Tax Credit
- 2) This penalty is assessed on a monthly basis during the calendar year
- 3) An employer receives the first 30 FT employees without penalty (divided in proportion to # of FT EEs per ALE Member in a “commonly owned” group of entities)

Penalty

Monthly penalty amount, multiplied by the number of FT employees (-30 FT employees) of the ALE member, multiplied by the number of months of non-compliance

Minimum Essential Coverage (MEC)

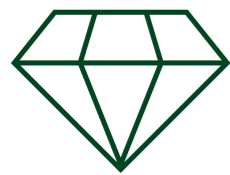
- Very basic medical benefits

02

Employer Mandate Minimum Value and Affordable

Employer Mandate

AFFORDABLE AND MINIMUM VALUE



Minimum Value

This means that the medical plan provides at least 60% AV to participants



Affordable

Measurement of the employee cost for self-only coverage in the lowest cost plan providing MV (cannot exceed 9.02% in 2025 (as adjusted for inflation) of employee's household income)

Affordability Safe-Harbors – ALE safe-harbors:

Employee can pay no more than these calculated values for self-only coverage for the lowest cost plan on a monthly basis:

1. Box 1, W-2 – $(\text{Box 1, W-2 wages on December 31} \div 12) \times (\text{affordability percentage (AP)})$
2. Rate of Pay – Hourly Rate (for hourly EEs) $\times 130 \times (\text{AP})$; Salaried EEs = $(\text{Salary} \div 12) \times (\text{AP})$
3. Federal Poverty Line – $(\text{FPL} \div 12) \times (\text{AP})$

ACA: Affordability of the Coverage

ACA: Coverage Affordability and Penalties

- If a plan is not considered “affordable” to a FT employee, the employer could be subject to penalties for failure to offer an affordable plan to an employee that purchases coverage in the Marketplace/Exchange and receives a premium tax credit.

Opt-Out Credits Under the ACA

- An opt-out credit could impact the cost of the plan making it more expensive to the FT employee, unless:
 - » **Opt-Out in Place Before December 16, 2015:** Essentially a “grandfathered” opt-out arrangement need not take into account the value of an opt-out credit for purposes of calculating affordability
 - » **Conditional Offer:** If the opt-out program only allows employees to receive the opt-out credit if they attest (or other reasonable evidence) that the employee (and any associated spouse/dependent children of the tax household) are enrolled in MEC that is not individual market coverage. If the employer satisfies this requirement, then the employer need not calculate affordability of the plan based upon the opt-out credits

ACA: Coverage Affordability and Penalties

- Health flex credits/employer flex credits only reduce the employee’s required contribution if the flex credit may be used to reduce the cost of MEC/MV coverage, which can be in addition to reimbursements for other medical care expenses within the meaning of IRC Section 213. Flex credits cannot go towards non-health care related expenses and cannot be claimed as taxable cash if employer seeks to reduce the employee’s required contribution towards coverage.

03

ACA: Different Categories of Employees

ACA: Capture All Common Law Employees



Common Law Employees

When reviewing what employees qualify for benefits as a full-time employee, make sure to review **all common law employees of the employer**:

- 1) Generally, this is **all** employees the ALE has direct control over and is responsible for supervising their daily job duties; and
- 2) The ALE has the right to hire/terminate this employee

Interns, Seasonal and Temporary Employees

An ALE may be subject to penalties for failure to offer these employees coverage if they have full-time hours of service.

Employees of a Staffing Agency, PEO, Union, Potentially Misclassified Independent Contractors/1099s

ALE should review whether they have direct control over these types of individuals, as they could be considered a common law employee.

Employers should consult legal counsel as to which individuals may be considered their common law employees under the law

ACA: Categories of Employees

Full-Time Employee

- A full-time employee is, for a calendar month, an employee employed on average at least 30 hours of service per week, or 130 hours of service per month

Part-Time Employee

- A part-time employee is, for a calendar month, an employee employed on average less than 30 hours of service per week, or less than 130 hours of service per month

Variable Hour or Seasonal Employee

Variable Hour Employee

An employee the employer is unsure of whether this employee would have at least 30 hours of service a week or at least 130 hours of service in each month, as their hours fluctuate on a weekly/monthly basis.

Seasonal Employee

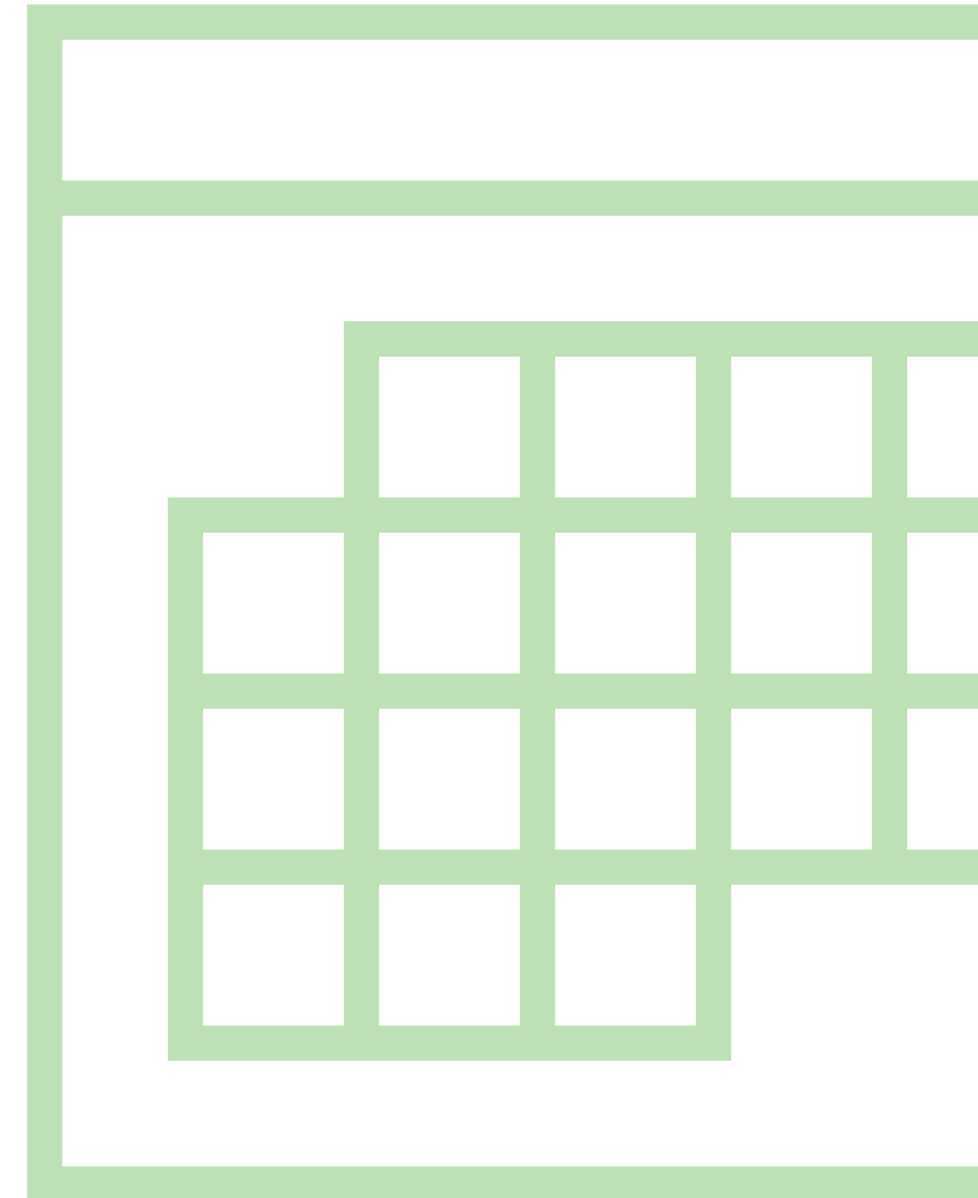
Differently defined than seasonal “worker.” Seasonal employee is defined as an:

- Employee that is employed for six months or less; and
- Employed at the same time of year every year

ACA: Categories of Employees

Unique Employees with Challenging Schedules

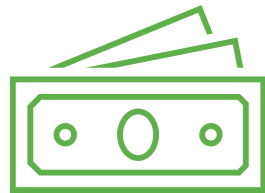
- **Airline Employees, Firefighters:** Must attribute actual hours of service, and not attribute only eight (8) hours for each day of work despite being paid a salary
- **On-Call Employees:** Must count hours of service if it restricts their free time and if they are paid or entitled to payment
- **Adjunct Professors:** Must be attributed 2.25 hours of service for every hour of class teaching, in addition to attributing hours of service for work performed outside of the classroom (e.g., office hours, faculty meetings)
- **Piecemeal Workers:** Must count all hours of service and cannot dismiss hours of service due to flat-rate structure



03

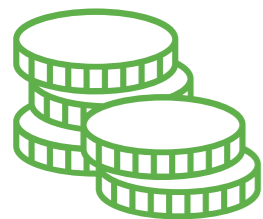
ACA: Hours of Service

ACA: Definition of Hours of Service



Paid Hours of Service

This includes any hour of service that an employee is actually paid for, such as overtime pay, on-call hours, hours beyond an 8-hour salaried shift



Entitled to Payment

“Entitled” to payment during a time in which no duties are performed, such as paid hours of service for paid sick leave, paid vacation, PTO/DTO

Clarifications

Workers’/Unemployment Compensation

Workers’ compensation/unemployment compensation is typically not considered hours of service, so long as pay is solely for the purpose of complying with workers/unemployment compensation law.

Disability Compensation

If the employer did not directly (or indirectly) contribute to the arrangement, then these paid hours are not considered hours of service (for this exception to apply, the employee must pay 100% of the disability premium on a post-tax basis).

03

ACA: Measurement Methods for Full Time Employees

ACA: Measurement Methods for FT Employees

Monthly Measurement Method

Full-time status based upon whether an employee has 130 or more hours of service in a month

Look-Back Measurement Method (LBMM)

Full-time status is based upon EE averaging 130 or more hours of service per month/30 or more hours of service a week during a Measurement Period

- ALEs may or may not tie plan eligibility to full-time status as defined by the ACA (e.g., employees that have less than 30 hours may still be benefits eligible).
- ALEs may choose to adhere to a different definition of full-time, but risk penalty exposure if that definition of full-time is greater than 30 hours of service a week. Penalties could be assessed against an employer if they fail to offer coverage by the first day of the month in which an employee has 130 or more hours of service in that month (Monthly Measurement Method) or in a month in which an employee is considered a FT employee during their Stability Period (Look-Back Measurement Method).
- Plan documents and SPDs should reflect plan's eligibility requirements.

03

ACA: Monthly Measurement Method

ACA: Monthly Measurement Method

Can Be Utilized with Any Employee Category

Under this method, a full-time employee is defined as any employee that has:

- 130 or more hours of service a month; or
- Weekly Rule - 120 or more hours of service in a four-week month or 150 or more hours of service in a five-week month (weeks may begin either on the first day of the calendar month or the week immediately subsequent to the week that includes the first day of the calendar month)

Exception to Penalties Associated with Failing to Offer MEC to a FT Employee:

- An ALE Member will not be subject to penalties for failing to offer coverage to a FT employee during the period beginning with the first full calendar month in which the employee is first otherwise (but for completion of the waiting period) eligible for an offer of health coverage and ending no later than two full calendar months after the end of that first calendar month.
 - This exception for penalty assessment only applies if:
 - It is only applied to a FT employee once per period of employment; and
 - The employee would have been otherwise eligible for coverage, but for the occurrence of a waiting period.

ACA: Monthly Measurement Method



Pros

Administratively no monitoring of averaged hours of service



Cons

Employer must know going into month whether employee will be FT, as coverage must be offered by first day of month the employee has 130 or more hours of service (unless Limited Non-Assessment Period applies)

Mistakes Employers Can Make

- Employer cannot look at a previous month's hours of service for a FT employee, the employer must anticipate full-time hours correctly for each future month and offer coverage by the first day of the month in which an employee completes 130 or more hours of service.
- Full-time, short-term employees (including temporary employees and interns) are treated similarly to all other full-time employees and an employer could be subject to penalties for failing to offer coverage to short-term/temporary employees after an applicable waiting period unless an exception applies.

03

ACA: Look-Back Measurement Method

ACA: Look-Back Measurement Method

Variable Hour Employees, Part-Time Employees or Seasonal Employees

Under this method, a full-time employee is defined as any employee that has:

- Averaged 30 or more hours of service a week/130 or more hours of service a month during their respective Measurement Period (**which will be defined in later slides**)
- If a variable hour/part-time/seasonal employee averages 30 or more hours of service per week/130 or more hours of service a month, they would be considered a full-time employee for the entire corresponding Stability Period (**which will be defined in later slides**)

ALE must apply the same Look-Back Measurement Method to all employees in that employment category (hourly, salary, state, collective bargaining agreement), meaning an employee that was not previously subject to LBMM could now be subject to the LBMM due to transitioning to a different employment category (e.g., salary to hourly).

LBMM: Measurement Periods

Initial Measurement Period

A **new hire** has their own associated Initial Measurement Period that measures their average hours of service that begins following their hire date

**Note: An employer should not apply an Initial Measurement Period to a newly hired employee expected to have 30 or more hours of service a week and instead should offer coverage after the applicable FT employee waiting period.*

Standard Measurement Period

All **ongoing** employees' hours of service are measured during the Standard Measurement Period the same time of year, every year

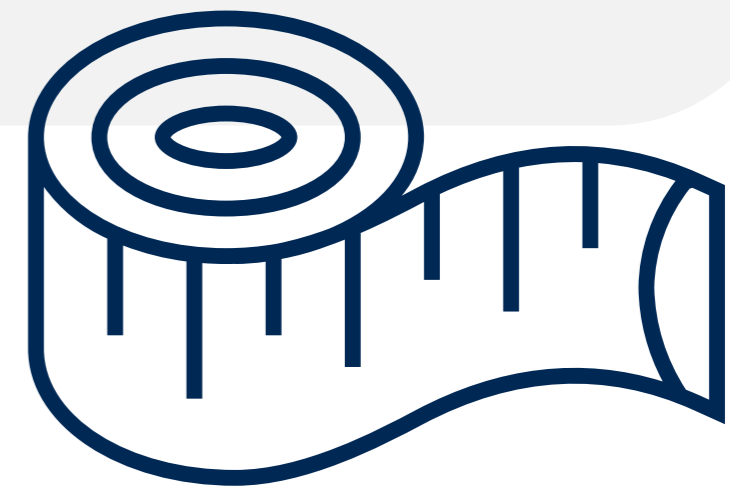
Clarifications

Initial Measurement Period

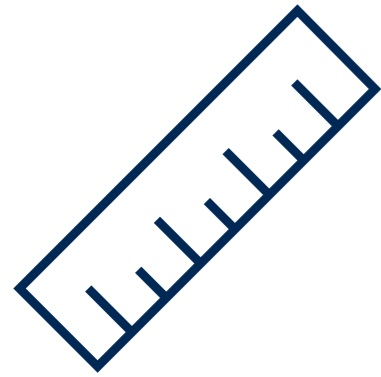
Typically begins the first day of the month following the date of hire (DOH), to reduce the administrative burden of tracking multiple Initial Measurement Periods each month for each new employee hired on different dates during each month.

Ongoing Employee

Defined as an employee who has completed an entire Standard Measurement Period.



LBMM: Initial Measurement Period



Initial Measurement Period

The Initial Measurement Period only applies to new hire employees when averaging hours of service:

- Duration must be between 3 – 12 months; and
- In combination with any associated Administrative Period, cannot be longer than 13 months and a fraction of a month.

Variable/Seasonal Employees

Benefits may only be delayed/suspended during the length of an Initial Measurement Period if the employee is properly categorized as a variable hour, part time or seasonal employee. Employees that are considered FT from DOH are subject to the MMM until they complete a Standard Measurement Period if they are in a category subject to the LBMM.

Match Length of Standard Measurement Period

The Initial Measurement Period should match the length of the Standard Measurement Period unless the employer decides to adopt an 11-month Initial Measurement Period with a two-month Administrative Period which may be paired with a 12-month Standard Measurement Period.

LBMM: Administrative Period

Administrative Period



The Administrative Period that can be applied to new hire employees and ongoing employees. This period is used to calculate whether an employee/employees have averaged the requisite hours to be considered FT:

- 1) Cannot be longer than 90 days (do not use three (3) months, as that could potentially exceed 90 days); and
- 2) If the Administrative Period follows an **Initial** Measurement Period for a new hire, when the two are combined (Admin Period + IMP) cannot be longer than 13 months and a fraction of a month.

- **Typically Overlaps with Open Enrollment:** The Administrative Period follows a Measurement Period, and averaging of hours should be completed slightly prior to open enrollment/initial enrollment so that offers of coverage can be provided to FT employees in time for the Stability Period.
- **Permissive:** ALEs **may** adopt an Administrative Period but are not required to.

LBMM: Stability Period

Stability Period

The Stability Period applies to new hire employees and ongoing employees and occurs immediately after the Administrative Period (if applicable). If an employee averages 30 or more hours of service a week/130 or more hours of service a month during their Measurement Period, the employee is treated as a FT employee for the entire duration of the Stability Period:

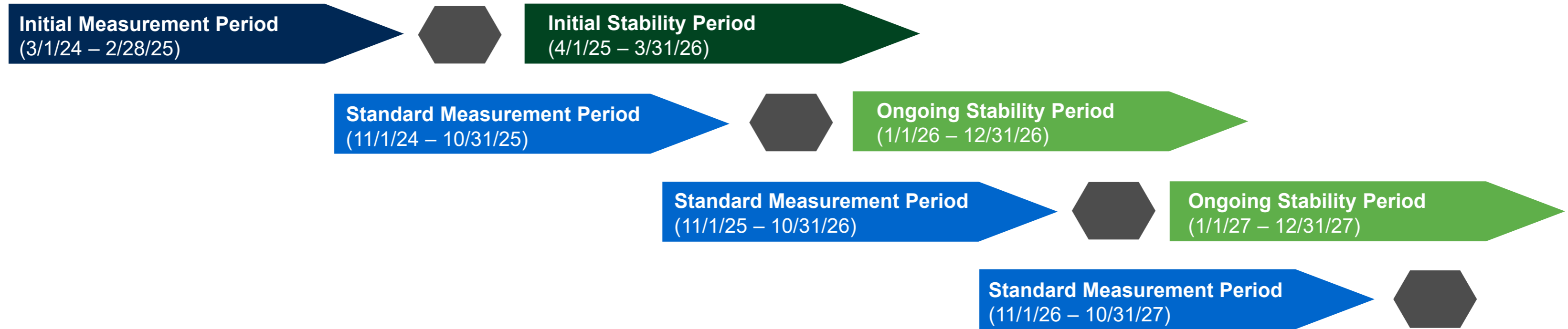
- 1) Cannot be shorter than six months and cannot be longer than 12 months
- 2) Generally, matches the length of the Measurement Period; and
- 3) Regardless of hours of service performed during the Stability Period, under the ACA the employee is considered a FT employee for the entire duration of the Stability Period

Measurement Periods Shorter Than Six Months

Generally, the Stability Period matches the corresponding Measurement Period, however:

- 1) For Measurement Periods shorter than six months, the Stability Period must be at least six (6) months if the individual qualifies for an offer of coverage (i.e., is considered a FT employee during the Stability Period);
- 2) For those that are not considered a FT employee during the Stability Period, the Stability Period cannot be longer than the length of the Measurement Period

Look-Back Measurement Method



1

NEW VARIABLE HOUR EMPLOYEE

- Start date: 2/12/24

2

INITIAL MEASUREMENT PERIOD

- Beginning first of month following date of hire (3/1/24)
- Initial Administrative Period of one (1) month

3

STANDARD MEASUREMENT PERIOD

- Calendar year plan year, with Standard Measurement Period of 12 months (11/1 – 10/31);
- Ongoing Administrative Period of two (2) months

4

ELIGIBILITY

- If the new variable hour employee measures full time during Initial Measurement Period (dark blue), she will maintain eligibility for the entire Initial Stability Period (red)
- Eligibility for the Ongoing Stability Period (green) will be determined by the Standard Measurement Period (light blue), and so on

LBMM: Other Important Rules

Consistency in Application of Look-Back Measurement Method

- Employer must apply the same Look-Back Measurement Method to all employees in that employment category, meaning an employee that was not previously subject to LBMM could now be subject to the LBMM due to transitioning to a different employment category (e.g., salary to hourly).
- The employment categories prescribed by the IRS – The same measurement method/period must be used in the following category of employees: 1) Hourly; 2) Salaried; 3) Collectively Bargained (different measurement methods/periods may also be among different collectively bargained employee groups); 4) Non-collectively bargained employees; and 5) Different state for primary place of employment.

Transitions in Employment from Full-Time to a Category that Applies the Look-Back Measurement Method

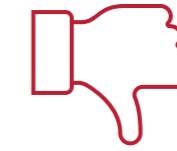
- Full-Time employees that later transition to a variable hour/part-time status under the LBMM could be considered a FT employee during a Stability Period. ALEs, however, in some instances may treat these types of employees as part-time employees for a month subject to the three-month rule (exception to the general rule).
 - » If employee was offered coverage within the first full three-months of employment, after the employee has completed an entire Measurement Period and is considered a FT employee for the entire Stability Period, if the employee transitions to part-time status an employer may begin applying the MMM to that employee so long as the employee averages less than 30 hours of service a week for a three-month consecutive period.

ACA: Look Back Measurement Method



Pros

- ALE can avoid offering coverage to FT, seasonal employees; and
- ALE has advance notification of FT status of employees to help avoid penalties under the Employer Mandate



Cons

Administratively burdensome

- Employer must apply the same Look-Back Measurement Method to **all** employees in that employment category, meaning an employee that was not previously subject to LBMM could now be subject to the LBMM due to transitioning to a different employment category (e.g., salary to hourly).
- Previously Full-Time employees that later transition to a part-time status may be entitled to benefits during a Stability Period but may be allowed to cancel coverage subject to the 3-month rule (exception to the general rule).

04

Other Regulations

Penalty Relief: Limited Non-Assessment Periods

- First Year as an ALE Period (January – March)
- Waiting Period under the Monthly Measurement Method
- Waiting Period under the Look-Back Measurement Method
- Initial Measurement Period and Associated Administrative Period under the Look-Back Measurement Method
- Period Following Change in Status that Occurs During Initial Measurement Period Under the Look-Back Measurement Method
- First Calendar Month of Employment (unless coverage offered on first day of the month which is also the first day of employment)



ACA: Re-Hire Rule

Re-Hire Rule: Non-Educational Organizations

- A **non-educational** organization employer may only treat an employee returning from a break in service (e.g., terminated employee returns to work) as a new hire (e.g., reinstitute a waiting period/Initial Measurement Period) if that employee has a break in service that is **13 or more weeks of 0 credited hours of service**.
- **Rule of Parity** – If employee was employed for less than 13 weeks (or 26 weeks for educational organizations) and the employee has more weeks/days of 0 credited hours of service than the number of weeks/days for which they were employed, then the employer may treat them as a new hire (can only apply the rule of parity to employees that have at least 4 weeks of 0 credited hours of service).

Re-Hire Rule: Educational Organizations

- For an **educational organization**, an employer may only treat an employee returning from a break in service (e.g., employee returns to work after terminating employment) as a new hire (e.g., reinstitute a waiting period/Initial Measurement Period) if that employee has a break in service that is **26 or more weeks of 0 credited hours of service**.
- **Educational Organizations** cannot include an employment break period (defined as a break in service of four weeks or more and does not include special unpaid leaves) when using the Look-Back Measurement Method, which reduces the number of weeks used in averaging hours of service. Employers need only exclude up to **501 hours of service** for employment break periods.

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