

ACA OVERVIEW

Provided by Brown & Brown Benefit Advisors

Identifying Full-time Employees Using the Monthly 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 monthly 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.

This ACA Overview is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

HIGHLIGHTS

THE MONTHLY MEASUREMENT METHOD

- The monthly measurement method involves a month-to-month analysis of hours of service, where an employee’s full-time status for a calendar month is determined based on hours of service for that month.
- This method may cause practical difficulties for ALEs, particularly if there are employees with varying hours or work schedules.

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 monthly measurement method requires employers to look at hours of service each month.
- This could result in employees moving in and out of employer coverage on a monthly basis.

Brown
&
Brown

BENEFIT ADVISORS®

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.

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.

THE LOOK-BACK MEASUREMENT METHOD

To give ALEs flexible and workable options and greater predictability for determining full-time employee status, the IRS developed an optional look-back measurement method as an alternative to the monthly measurement method. The details of this method vary based on whether the employees are ongoing or new, and whether new employees are expected to work full-time or are variable, seasonal or part-time employees. The look-back measurement method involves:

- A **measurement period** for counting hours of service (called a standard measurement period or an initial measurement period);
- A **stability period** when coverage may need to be provided depending on an employee's full-time status; and
- An **administrative period** that allows time for enrollment and disenrollment.

An ALE has discretion in deciding how long these periods will last, subject to specified IRS parameters.

MONTHLY MEASUREMENT METHOD OVERVIEW

The monthly measurement method must be used to identify full-time employees by all ALEs electing not to use the look-back measurement method. The monthly measurement method involves a **month-to-month analysis** where full-time employees are identified based on their hours of service for each calendar month (not based on averaging hours of service over a prior measurement period).

Under the monthly measurement method, an ALE determines each employee's status as a full-time employee by counting the employee's hours of service for each calendar month. An employee will generally have to be treated as **full-time for any month in which he or she averages at least 30 hours of service per week**. An employee does not have to be treated as full-time for any month in which he or she averages less than 30 hours of service per week.

This month-to-month measuring may cause practical difficulties for employers, particularly if there are employees with varying hours or employment schedules, and could result in employees moving in and out of employer coverage on a monthly basis.

Employees First Otherwise Eligible for an Offer of Coverage

The final regulations provide that an employer will not be subject to a pay or play 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 full calendar month in which the employee is otherwise eligible for coverage. For this rule to apply, health plan coverage must be offered no later than the first day of the first calendar month immediately following the three-month period (if the employee is still employed on that date) and the coverage must provide minimum value. This rule applies only once per period of employment of an employee.

For this purpose, an employee is otherwise eligible for an offer of coverage in a month if the employee meets all conditions to be offered coverage under the plan other than the completion of a waiting period. An employee is first otherwise eligible if the employee has not previously been eligible or otherwise eligible for an offer of coverage under a group health plan of the employer during the employee's period of employment.

The Weekly Rule

To provide additional flexibility and reduce administrative burden on employers, the final regulations allow an employer to determine an employee's full-time employee status for a calendar month under the monthly measurement method based on the hours of service over successive one-week periods. Under this optional method—referred to as the weekly rule—full-time status for certain calendar months is based on hours of service over **four-week periods**, and for certain other calendar months on hours of service over **five-week periods**.

- For calendar months calculated using four week periods, an employee with **at least 120 hours of service** is a full-time employee.
- For calendar months calculated using five week periods, an employee with **at least 150 hours of service** is a full-time employee.

In general, the period measured for the month must contain either the week that includes the first day of the month or the week that includes the last day of the month, but not both. For this purpose, “week” means any period of seven consecutive calendar days applied consistently by the ALE for each

calendar month of the year. Thus, under the weekly rule, an employer may determine an employee's full-time status for a calendar month based on hours of service over a period that:

- Begins on the first day of the week that includes the first day of the calendar month, provided that the period over which hours of service are measured does not include the week in which falls the last day of the calendar month (unless that week ends with the last day of the calendar month, in which case it is included); or
- Begins on the first day of the week immediately subsequent to the week that includes the first day of the calendar month (unless the week begins on the first day of the calendar month, in which case it is included), provided the period over which hours of service are measured includes the week in which falls the last day of the calendar month.

However, for purposes of coordination with both the ACA's premium tax credits and the individual mandate, which are applied on a calendar month basis, an ALE is only treated as having offered coverage for a calendar month if it offers coverage to a full-time employee **for the entire calendar month**, regardless of whether the employer uses the weekly rule.

Rehire Rules

The final regulations include guidance for employers 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). Under the monthly measurement method, an employee must be treated as a continuing employee, rather than a new hire, unless the employee has had a period of **at least 13 weeks** during which no hours of service were credited (26 weeks for an employee of an educational organization).

However, the final regulations provide a rule of parity where the employee may be treated as a new hire 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.

A continuing employee treated as full-time is treated as having been offered coverage upon resumption of services if the employee is offered coverage:

- As of the first day that employee is credited with an hour of service; or
- If later, as soon as administratively practicable. (For this purpose, offering coverage by no later than the first day of the calendar month following resumption of services is deemed to be as soon as administratively practicable.)

Special Unpaid Leave and Employment Break Periods

The final regulations also include special rules for averaging hours under the **look-back measurement method** during special unpaid leave periods or employment break periods. "Special unpaid leave periods" include leave under the Family and Medical Leave Act (FMLA) or the Uniformed Services Employment and Reemployment Rights Act (USERRA) and leave for jury duty. An "employment break

period” is a period of at least four consecutive weeks (disregarding special unpaid leave), measured in weeks, during which an employee of an educational organization is not credited with an hour of service.

Under the monthly measurement method, the special unpaid leave and employment break period rules do not apply. This is the case regardless of whether the employer is (or is not) an educational organization. This is because determinations under the monthly measurement method are based on hours of service during that particular calendar month, and are not based on averaging over a prior measurement period.

International Transfers

An employer may treat an employee as having terminated employment if the employee transfers to a position at the same ALE (including a different ALE member that is part of the same ALE) if:

- The position is anticipated to continue indefinitely or for at least 12 months; and
- Substantially all of the compensation will constitute income from sources outside of the United States.

If, however, substantially all of the compensation will constitute U.S. source income, the employer may treat that employee as a new hire to the extent consistent with the rules related to rehired employees.

EXAMPLES

The following examples illustrate the rules for the monthly measurement method. In each example, the employer is an ALE with 200 full-time employees (including FTEs) that uses the monthly measurement method to identify full-time employees and offers coverage only to employees who are full-time employees (and their dependents).

Example 1—Employee First Otherwise Eligible for an Offer of Coverage

Facts: Employer Z uses the monthly measurement method. Employer Z hires Employee A on Jan. 1, 2016. For each calendar month in 2016, Employee A averages 20 hours of service per week and is not eligible (or otherwise eligible) for an offer of coverage under the group health plan of Employer Z. Effective Jan. 1, 2017, Employee A is promoted to a position that is eligible for an offer of coverage under a group health plan of Employer Z, following completion of a 90-day waiting period. For January 2017 through March 2017, Employee A meets all of the conditions for eligibility under the group health plan, other than completion of the waiting period. The coverage that would have been offered to Employee A under the terms of the plan, but for the waiting period, during those three months would have provided minimum value. Effective April 1, 2017, Employer Z offers Employee A coverage that provides minimum value. Employee A averages 40 hours of service per week for each calendar month in 2017.

Conclusion: Because Employer Z offers minimum value coverage to Employee A no later than the first day following the period of three full calendar months, beginning with the first full calendar month in which Employee A is otherwise eligible for an offer of coverage under a group health plan of Employer Z, Employer Z is not subject to a pay or play penalty for January 2017 through March 2017 by reason of its failure to offer coverage to Employee A during those months. For calendar months after March 2017, an offer of minimum value coverage may result in a pay or play penalty with respect to Employee A for any month for which the offer is not affordable and for which Employer Z has received a premium tax credit. Employer Z is not subject to a pay or play penalty by reason of its failure to offer coverage to Employee A during each month of 2016 because, for each month of 2016, Employee A was not a full-time employee.

Example 2—Rehire Rules for Employers that are not Educational Organizations

Facts: Same as Example 1, except that Employee A has zero hours of service during a nine-week period of unpaid leave (that constitutes special unpaid leave) beginning on June 25, 2017, and ending on Aug. 26, 2017. As a result of the nine-week period during which Employee A has zero hours of service, Employee A averages less than 30 hours of service per week for July 2017 and August 2017. Employee A averages more than 30 hours of service per week for each month between and including September 2017 through December 2017. Employer Z does not use the rule of parity, and Employer Z is not an educational organization.

Conclusion: Because Employee A resumes providing services for Employer Z after a period during which the employee was not credited with any hours of service of less than 13 consecutive weeks, Employer Z may not treat Employee A as having terminated employment and having been rehired. Therefore, Employer Z may not treat Employee A as a new employee upon the resumption of services, and, accordingly, Employer Z may not again apply the rule for employees first otherwise eligible for an offer of coverage. Although the nine consecutive weeks of zero hours of service constitute special unpaid leave, the averaging method for periods of special unpaid leave does not apply under the monthly measurement method. Therefore, Employer Z may treat Employee A as a non-full-time employee for July 2017 and August 2017.

Example 3—The Weekly Rule

Facts: Employer Y uses the monthly measurement method in combination with the weekly rule for purposes of determining whether an employee is a full-time employee for a particular calendar month. For purposes of applying the weekly rule, Employer Y uses the period of Sunday through Saturday as a week, including the week that includes the first day of a calendar month and excluding the week that includes the last day of a calendar month (except in any case in which the last day of the calendar month occurs on a Saturday). Employer Y measures hours of service for:

- The five weeks from Sunday, Dec. 27, 2015, through Saturday, Jan. 30, 2016, to determine an employee's full-time employee status for January 2016;

- The four weeks from Sunday, Jan. 31, 2016, through Saturday, Feb. 27, 2016, to determine an employee's status for February 2016; and
- The four weeks from Sunday, Feb. 28, 2016, through Saturday, March 26, 2016, to determine an employee's status for March 2016.

For January 2016, Employer Y treats an employee as a full-time employee if the employee has at least 150 hours of service (30 hours per week × 5 weeks). For February 2016 and March 2016, Employer Y treats an employee as a full-time employee if the employee has at least 120 hours of service (30 hours per week × 4 weeks).

Conclusion: Employer Y has correctly applied the weekly rule as part of the monthly measurement method for determining each employee's status as a full-time employee for the months January, February and March 2016.

MORE INFORMATION

Please contact Brown & Brown Benefit Advisors for more information on the ACA's employer shared responsibility rules or the look-back measurement method.