VARIABLE HOUR AND SEASONAL EMPLOYEES UNDER THE AFFORDABLE CARE ACT

The Affordable Care Act (ACA) mandates that every employer with 50 or more full-time equivalent employees in the United States must offer health coverage to all full-time employees and their children or pay a financial penalty. A full-time employee is defined as any employee who works an average of 30 hours or more per week.

The employer mandate has been delayed until 2015 and specific timing is expected to be affected by the delay. However, following is a summary of the requirements for measurement/stability periods for variable hour and seasonal employees under the Act's provisions. These requirements are used to determine whether these employees qualify as full-time under the provision, based on a retrospective review of hours worked.

VARIABLE AND SEASONAL EMPLOYEES DEFINED

Under the Affordable Care Act, a "variable hour" employee is an employee who, at the start of employment, the employer cannot in good faith determine whether the individual is expected to average 30 hours of service per week during an initial measurement period. This applies to both new and ongoing employees.

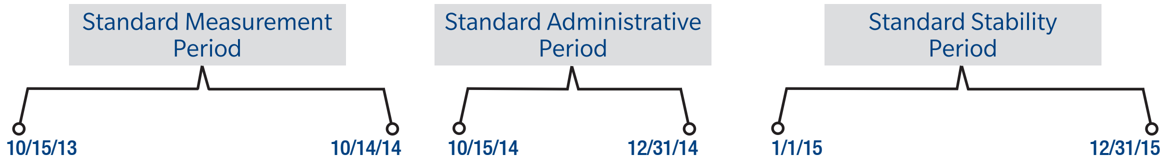
The ACA specifies how employers will measure hours of service for variable hour and seasonal employees.

"MEASUREMENT" AND "STABILITY" PERIODS FOR DETERMINING FULL-TIME STATUS

Following are the proposed measurement and stability periods to calculate the status of variable hour part-time and seasonal workers.

- Choose a look-back measurement period of 3 to 12 months and a stability period of no less than 6 months or the length of the measurement period, if greater
- If an employee averages 30 or more hours per week during measurement period, the employee must be considered full-time for subsequent stability period; if not, the employee will not be considered full-time for the stability period
- You may use an administrative period up to 90 days between measurement and stability periods to conduct enrollment
- Employees not employed for full "standard" measurement period must be evaluated on a rolling basis when employment reaches the length of the "initial" measurement period selected for new employees (e.g., on the employee's 1-year anniversary for a 12-month measurement period)

SAMPLE 12-MONTH STANDARD MEASUREMENT & STABILITY PERIODS (WITH ADMINISTRATIVE PERIOD)



REQUIREMENTS BY EMPLOYEE TYPE

There are some nuances with respect to the measurement, administrative and stability periods between new employees and ongoing, existing employees that employers need to be aware of to properly calculate employee status.

Requirements for Ongoing Variable Hour Employees

MEASUREMENT PERIOD	ADMINISTRATIVE PERIOD	STABILITY PERIODS
☐ Is at least 3, but no more than 12, consecutive calendar months	☐ Optional administrative period	☐ Are at least 6 consecutive calendar months
	☐ Is no longer than 90 days	☐ Are no shorter than the ongoing measurement period
		☐ Period or periods cover entire year – such that ongoing employees who continue to work full time for the employer will have continuous coverage
		☐ Begins at the end of the measurement period or at the end of the administrative period if the employer chooses to have one

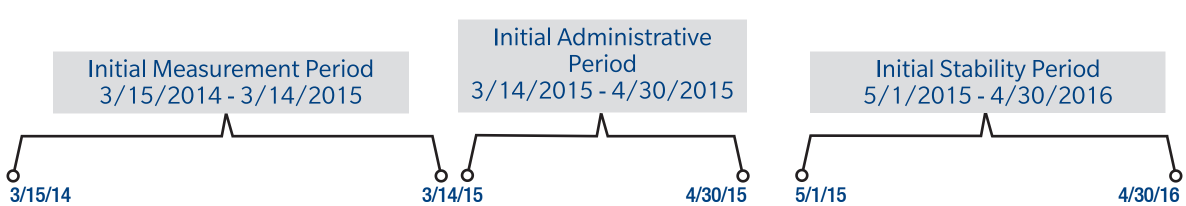
In addition to the rules outlined above, it is important to note there are also rules for dealing with special leaves and breaks in service that employers need to be aware of under ACA.

Example

To calculate whether some of these workers qualify as full-time employees, the company chooses a 12-month standard measurement period. For this example, the measurement period begins October 15, 2013.

1. On Oct. 15, 2014, the company "looks back" and identifies employees employed on or before Oct. 15, 2013, who worked at least 1,560 hours during the standard measurement period.
2. Assuming the employee is still employed Jan. 1, 2015, the company must offer coverage or pay penalties during the corresponding 12-month stability period for as long as the employee remains, and could be subject to penalties if coverage is not offered.
3. The company can apply an "administrative period" up to 90 days to enroll the employee. However, the 90-day waiting period would not apply to ongoing employees.

Employee Hired on 3/15/2014



Requirements for New Hire Variable Hour Employees

MEASUREMENT PERIOD

- ☐ Is measured from any date between the date of hire and first of the month following the date of hire
- ☐ Is at least 3, but no more than 12, consecutive calendar months
- ☐ Is same as, or up to 1 month shorter than, the initial stability period

ADMINISTRATIVE PERIOD

- ☐ Is no longer than 90 days
- ☐ Combined measurement period and administrative period isn't more than 13 months measured from first of month beginning on or after start date (so if employer using 12 month measurement period, maximum administrative period is 1 month or 1 and a fraction of a month)
- ☐ Employees not employed for full "standard" measurement period are evaluated on a rolling basis when employment reaches the length of the "initial" measurement period selected for new employees (e.g., on the employee's 1-year anniversary for a 12-month measurement period). Additional rules apply for transition from "initial" to "standard" measurement/stability periods

STABILITY PERIODS

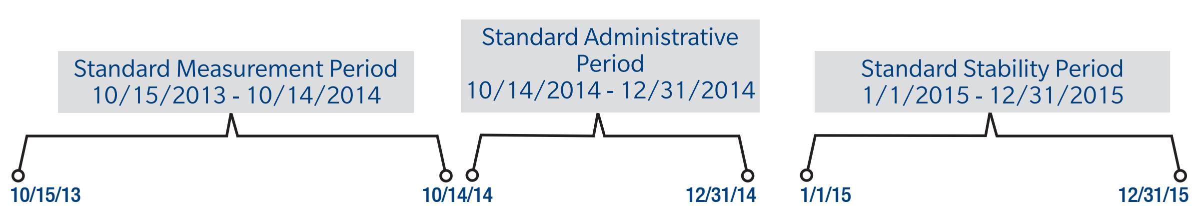
- ☐ Are the same length (number of months) as the periods for the ongoing variable/seasonal employees

Example

A new employee is hired on March 15, 2014. To determine whether a new employee qualifies for full-time status, the employer calculates as follows:

1. On March 14, 2015, the company "looks back" to see if the employee worked at least 1,560 hours over the 12-month period.
2. If so, the company must treat the employee as full-time during the entire 12-month "initial stability period," provided the employee remains, and can be subject to penalties if coverage is not offered.
3. The initial measurement period and administrative period combined cannot extend beyond the last day of the first calendar month beginning on or after the 1-year anniversary of date of hire. Therefore, the waiting period could not be longer than one or more months.

Employees Hired on or before 10/15/2013



PAYROLL PERIODS AND MEASUREMENT

For the variable hour measurement periods, employers can tie to a payroll period. There is some flexibility for an employer to line up their measurement period with their payroll periods. Since payroll periods can vary year to year (26 pay/year), the measurement periods can be set, but start and end periods vary. Use of pay period must reflect the actual time of the measurement period. If a measurement period runs 10/15 – 10/14, the employer could start counting the first full pay period after 10/15. To do this, the measurement period would stop as of the pay period that includes 10/14.

NEXT STEPS

Having a firm understanding of the requirements for variable hour employees under the new mandates is just the beginning. Balancing the financial and operational exposures with respect to hiring and staffing against the new ACA taxes and fees is both a complex and potentially costly endeavor.

With Marsh & McLennan Agency, you have peace of mind knowing that our team of experts is monitoring and analyzing the reform and the implications for your business on an ongoing basis. Our local team, backed by the resources of industry experts, is there to help you navigate today and prepare for the future.

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