



Measurement Periods, Change in Employment Status, and, Re-Hire Rules under the ACA

Presented by:



Choosing a Measurement Method

The final regs do not permit an employer to adopt the look-back measurement method for variable hour and seasonal employees while using the monthly measurement method for employees with more predictable hours.

The look-back approach is an optional safe harbor, and the statutory monthly measurement period is also available. The monthly measurement period requires employers to treat an employer as being full time for any month in which the employee works 130 hours. An employer is permitted to apply different measurement periods that vary in length of their starting and ending dates for the following categories of employees:

- Collectively bargained employees covered by a separate agreement;
- Collectively bargained and non-collectively bargained employees;
- Salaried employees and hourly employees; and
- Employees whose primary places of employment are in different states.

Employees may use either the monthly measurement period or look-back measurement method for each of these categories of employees.

Monthly Measurement Method

- For employers with a relatively stable, consistent workforce who only employ and hire full-time employees.

Look-Back Measurement Method

- For employers with high employee turnover, a variable hour workforce, or seasonal employees for whom the employer cannot **reasonably determine** their full-time or non-full time status, based on the facts and circumstances at the start date (cannot be determined that the employee is reasonably expected to be employed on average at least 30 hours per week).

	Monthly	Look-Back
Approach for determining full time status	Based on hours of service for each calendar month	Based on hours of service during a look-back period of 3 to 12 months
When to offer affordable, MV coverage to new <u>full-time</u> employees to avoid penalties	By the first of the month following 3 full calendar months of employment (rule applies once per period of employment)	
Break in service (rehiring a former employee or when an employee returns from a period of unpaid leave)	Treated as a new employee if 13 or more weeks with no hour of service. (26 weeks for educational organizations) When treated as a new employee, the employer could restart the initial measurement period or apply a new 90-day waiting period for full-time employees. Optional rule of parity can be applied.	
Special unpaid leave (FMLA, USERRA military leave, and jury duty) ¹	N/A	Ignore period of leave when averaging hours or calculate the same average weekly rate not part of the leave
Employment break of 4 or more consecutive weeks for employees of educational organizations	N/A	Ignore period of break when averaging hours or calculate at same average weekly rate as active period (up to 501) hours, not counting any special unpaid leave

¹ Special Unpaid Leave and Employment Breaks (FMLA, Military Leave under USERRA, Jury Duty) must be treated in one of two ways:

1. Exclude periods of unpaid leave from the measurement period when averaging hours; or
2. Credit hours of service for the unpaid leave period at a rate equal to the average weekly rate during the measurement period that was not part of the special unpaid leave.

Special Unpaid Leave Breaks do not apply to monthly measurement periods.

Monthly Measurement Method

- An employer will not be subject to an assessable payment before the end of the period of three full calendar months beginning with the first full calendar month in which the employee is otherwise eligible for an offer of coverage. This rule applies only **ONCE** per period of employment.
- To avoid penalties for the initial three full calendar months, the coverage offered after the initial three full calendar months of employment must provide MV. If not, the employer will be subject to assessable payments beginning with the first full calendar month in which an employee is full time.
- The final regs adopt a standard of 130 hours per calendar month for determining whether an employee is a full-time employee under both the look-back and the monthly measurement period.

Look-Back Measurement Method

- Separates employees into two major categories:
- Ongoing employees – those who have been employed for at least one complete standard measurement period (full-time or part-time); and,
- New employees – those who have not been employed for at least one complete standard measurement period.

There are two sub-categories of new employees:

- Those reasonably expected **2** to be full-time and not seasonal;
 - The measurement period does not apply and an offer of coverage must be made at or before the conclusion of the employee's initial 3 calendar months of employment.
 - They will become ongoing employees only after completing one full standard measurement period – therefore these employees will generally be “locked in” for coverage until that time.
- Variable hour, part-time and seasonal employees.
 - Variable hour employees are those for which the employer cannot, as of their start date, determine whether the employees are reasonably expected to average at least 30 hours of service per week.
 - Part-time employees for which it is reasonably expected, as of their start date, not to be full-time (and not variable or seasonal).
 - Seasonal employees are defined as those in a position for which the customary annual employment is six months or less.
 - Part-time employees who move into a full-time position must be offered coverage by the first day of the fourth month following the change of position.

2 Reasonable is based on the facts and circumstances, and are only applied during the initial measurement period and not during subsequent standard measurement periods where the determination of full-time is strictly made by hours of service in the prior measurement period.

What is a Waiting Period?

- Under the look-back measurement method, a waiting period is the period of time that must pass before coverage for an employee or dependent who is otherwise eligible to enroll can become effective. Being otherwise eligible means having met the plan's substantive eligibility conditions
 - being in an eligible job classification
 - receiving job-related licensure requirements
 - an orientation period up to one month
- Eligibility that is based solely on the lapse of a time period would be permissible for no more than 90 days. Other conditions for eligibility (those that are not based solely on a time period) are generally permissible.
- If a plan conditions eligibility on an employee working a specified number of hours, and it cannot be determined for a newly-hired employee, the plan may take a reasonable amount of time to determine eligibility.

Change in Employment Status for Variable Hour Employees

- A **new** variable hour employee is promoted **during the initial measurement period** to a position in which employees are reasonably expected to be employed on average 30 hours per week – must be treated as a full-time employee as of the first day of the fourth month following the change in employment status or, if earlier, and the employee averages more than 30 hours of service during the initial measurement period, the first day of the first month following the end of the initial measurement period (including any optional administrative period applicable to the initial measurement period).
- The change in employment status rule only applies to **NEW** variable hour and seasonal employees. A change in employment status for an ongoing employee does not change the employee's status as a full-time employee or non-full time employee during the stability period.
- If an **ongoing** variable hour employee's position of employment status changes before the end of a stability period, the change will not affect the classification of the employee as full time or not full time for the remaining portion of the stability period.

Change in Employment Status – Special Rules

- If an employee experiences changes from full-time to part-time status, the employer is allowed to apply the monthly measurement period within three months of the change if the employee actually averages less than 30 hours per week for each of the three months following the change in employment status **and** if the employer has offered the employee continuous coverage that provides MV from at least the fourth month of the employee's employment.
- An employer may apply the monthly measurement period to an employee even if the employer does not apply the monthly measurement period to employees in the same category. The employer may continue to apply the monthly measurement period through the end of the first full measurement period that would have applied had the employee remained under the applicable look-back measurement method.
- Otherwise, under the look-back measurement method, full time employee status in a stability period is based on hours of service in the prior applicable measurement period, regardless of whether the employee experiences a change in employment status during the measurement or stability period.
- Under the look-back measurement method, each employee's hours of service are measured (not just variable hour and seasonal employees) during the measurement period. In general, under the look-back measurement method, if the change in employment status results in a change in hours of service, that change is captured in a subsequent stability period.

Re-Hire Rules

For an employee who is treated as a continuing employee, the measurement and stability period that would have applied to the employee had the employee not experienced a period of no credit hours of service would continue to apply upon the employee's resumption of service, or, if later, as soon as administratively practicable.

- If the period between termination and rehire or an unpaid leave is less than 13 weeks an employee is treated as continuing and the following conditions apply:
- The employee retains the same full-time or part-time status for the remainder of the applicable stability period as before the break in service; and,
- Coverage availability for full-time employees must be the first day the employee is credited with an hour of service.

Parity Rules (optional)

- An ALE may choose a period of at least four consecutive weeks during which the employee was not credited with any hours of service that exceeds the number of weeks of that employee's period of employment immediately preceding the period and that is shorter than 13/26 weeks.

