The Affordable Care Act: Summary of Proposed Employer Rules

Doug Evans
President
R L Evans Company

February 2013

Discussion Topics

- Overview of coverage requirements
- Key definitions for employers
  - Large employer
  - Full-time employee vs. Part-time employees
- Tax penalties and other fees
  - Employer penalties under IRC §4980H
  - No offer of coverage, Unaffordable coverage
  - Affordability test, Minimum value test
- Communication with employees, Exchanges and IRS
  - Process and timing for communications and reporting
  - Employer reporting requirements
  - Key issues in forthcoming guidance

Major coverage requirements and expansion provisions

- The ACA aims to expand health coverage through a series of provisions that generally go into effect on January 1, 2014:
  - **Individual mandate:** Mandates all Americans, with some exceptions, to maintain a minimum level of health coverage or face a tax.
  - **Insurance Exchanges:** Creates health insurance Exchanges and provides premium tax credits to assist eligible individuals with the purchase of coverage.
  - **Medicaid expansion:** Allows states to expand Medicaid up to 133% of federal poverty level.
  - **Employer mandate:** Mandates employers with 50 or more full-time equivalents to offer coverage to full-time employees and their dependents or pay taxes if an employee obtains Exchange coverage and a premium tax credit.

Status of implementation of employer requirements

- **December 28, 2012:** The Administration released comprehensive proposed rules on the major employer coverage requirements under the ACA. Employers can rely on these rules until final rules are released.
- **October 1, 2013:** Exchanges begin open enrollment period.
- **January 1, 2014:** Employers must generally be in compliance with coverage requirements.
  - The Administration has provided transition relief in certain circumstances, such as:
    - Liability for penalties for non-calendar year plans in 2014.
    - The process for smaller employers to determine large employer status in 2013.
    - Measurement periods for stability periods starting in 2014.
    - Coverage for dependents in 2014.
    - Some issues remain outstanding and will be addressed in forthcoming regulations.

Basic Employer Coverage Rules

- Large employers may be subject to an excise tax if at least one full-time employee, whose household income is between 100% and 400% of the federal poverty level, receives a premium tax credit for Exchange coverage and the employer either:

Fails to offer coverage to full-time employees and their dependents

or

Offers coverage to full-time employees that does not meet the law's affordability or minimum value standards

Determining whether an employer is an "Applicable Large Employer" for purposes of complying with ACA and the accessible payment penalties (IRC §4980H).

Who is a large employer under the ACA?

- Any employer with 50+ full-time equivalents is considered a large employer.
- IRC §4980H applies to all common law employers, including governmental entities, churches, and tax-exempt organizations with at least 50 full-time equivalent employees.
- Foreign companies with at least 50 full-time equivalent employees performing work in the US with US-source compensation also are subject to the law.

Determining large employer status

- For each calendar month of the preceding calendar year, employers must:
  1. Count the number of full-time employees (including seasonal employees) who work an average 30 hours per week per month.
  2. Calculate the number of full-time equivalent employees by aggregating the number of hours worked by non-full-time employees (including seasonal employees) and dividing by 120.
  3. Add the number of full-time employees and full-time equivalents calculated in steps (1) and (2) for each of the 12 months in the preceding calendar year.
  4. Add the monthly totals and divide by 12. If the average exceeds 50 full-time equivalents, determine whether the seasonal employee exception applies.

- *Seasonal employee exception:*
  - IRC §4980H does not apply to employers whose workforce exceeds 50 full-time employees for no more than 120 days, or four calendar months, during a calendar year if the employees in excess of 50 who were employed during that period were seasonal employees. The 120 days or four calendar months are not required to be consecutive.
  - For purposes of determining large employer status until further guidance is issued, employers may apply a reasonable, good-faith interpretation of the statutory definition of seasonal worker, including a reasonable, good-faith interpretation of the standard set forth under the DOL regulations at 29 CFR 500.20(s)(1).

Transition relief for smaller employers

- Employers can determine whether they are large employers based on a period of six consecutive calendar months as chosen by the employer in the 2013 calendar year, rather than based on the entire 2013 calendar year. The January 1, 2014, compliance deadline is not delayed for smaller employers determined to be large employers based on the six-month calculation.

- New Employers – An employer not in existence during an entire preceding calendar year is considered a large employer for the current calendar year if it is reasonable expected to employ and average of 50 full-time employees (including FT Equivalents) on business days during the current calendar year.

Determining large employer status based on controlled group rules

- **Definition:** The determination of large employer status is made based on the Internal Revenue Code's controlled group rules under IRC §414(b), (c), (m) or (o).
  - Example: If an employer composed of a parent corporation and 10 wholly owned subsidiary corporations, on a controlled group basis, has 50 or more full-time equivalent employees….. each corporation, regardless of the number of its employees, is treated as a large employer.
- **Penalty:** For purposes of assessing liability, the IRC §4980H tax penalties are applied separately to each member of the controlled group. Each member of the controlled group is liable for its own tax penalties under IRC §4980H.

For an employer who is determined to be an applicable large employer, you must determine who is an eligible Full-time (vs. Part-time) employee for coverage/penalty considerations (IRC §4980H).

Who is a full-time employee under the ACA?

- **Full-time employee:** Defined as an employee who provides, on average, 30 ***hours of service*** per week, per month or 130 hours of service per calendar month ((52 wks/yr x 30hrs) / 12 mos = 130).
  - **Hour of service:** Each hour for which an employee is paid or entitled to payment for the performance of duties, vacation, leave, holiday, illness, incapacity, layoff, jury duty, military duty or other leave of absence
- **Calculation for hourly and non-hourly employees:**
  - Hourly employees: Count actual hours served
  - Non-hourly employees: Select one of three methodologies that does not understate hours:
    - Count actual hours
    - Days worked equivalence: Count 8 hours for each day credited with at least one hour of service
    - Weeks worked equivalence: Count 40 hours of service for each week credited with at least one hour of service.
- **General rule:** Employees who are classified or determined to be full time are eligible for the employer's health plan after the applicable wait period not to exceed 90 days.
- **Safe harbors:** Available for part-time, seasonal, and variable hour employees to determine when they are treated as full-time employees.

Definition of full-time employee: safe harbors

- The Department of Treasury provides a "measurement/stability period" safe harbor to allow for a measuring period for employees where it cannot be determined if the employee is reasonably expected to work on average at least 30 hours per week. Employers can select a measurement period of three to 12 months.
  - If the employee is determined to be full time during the measurement period, then the employee is treated as full time during a subsequent stability period in which coverage must be offered. Stability period must be at lease as long as the measurement period (minimum six months).
  - Specific safe harbor methods are provided for ongoing employees, and newly hired variable hour and seasonal employees.
  - Employers can use an optional administrative period (not to exceed 90 days) between the standard measurement period and the associated stability period to determine which employees are eligible for coverage, and to notify and enroll them. (For newly hired variable hour or seasonal employees, the combined length of the initial measurement period and administrative period is effectively limited to no more than 13 months.)
- Proposed Treasury regulations reserve the definition of "seasonal employee" and confirm that through 2014 large employers are permitted to use a reasonable, good-faith interpretation of the term for purposes of determining full-time status.
- Proposed regulations also provide special rules for; change in employee status, multiemployer plans, education organizations, and temporary staffing.
- **Transition relief:** Employers may adopt measurement periods in 2013 shorter than their plan's stability period of 2014. To do so, the measurement period must be no less than six months and end no sooner than 90 days before the start of the plan year beginning in 2014.

Part-time Employees

- Large employers are not required to offer coverage to part-time employees (those who work less than 30 hours per week per month).
- For large employers who do offer coverage to part-time employees:
  - The application of the limitation of 90-day waiting period prior to coverage applies. Notice 2012-59 states that other conditions for eligibility under the plan are permissible as long as the conditions do not avoid compliance with the 90-day waiting period.
    - *A cumulative hours of service requirement of no more than 1,200 hours for part-time employees may be utilized before the 90-day waiting period applies*.
  - Certain insurance market reforms apply, such as preventive care without cost sharing, and no annual and lifetime limits on Essential Health Benefits.

Tax Penalties under IRC §4980H

Tax Penalties and Other Fees

- Employers will face non-deductible taxes under IRC §4980H if
  - They do not offer minimum essential coverage **or**;
  - The coverage they offer is unaffordable or not of minimum value to employees with household income between 100% and 400% of the federal poverty level; **and**
  - At least one employee receives a tax credit for Exchange coverage.

- If an employee is enrolled in an eligible employer-sponsored plan, regardless of the cost or value of the plan, such employee will be ineligible for a premium tax credit.

- Medicaid-eligible employees will not be eligible for tax credits and therefore, employers will not face tax penalties for those employees. States can expand Medicaid eligibility effectively to 138% of federal poverty level.

Calculation of non-deductible excise taxes under IRC §4980H(a)

Tax for no coverage - IRC §4980H(a)
❖ If a large employer does not offer minimum essential coverage to full-time employees and their dependents, an employer may face a tax of: ➢ $2,000 x the total number of full-time employees (FTE) if at least one FTE is receiving a premium assistance tax credit.
Large employers who do not offer coverage may subtract the first 30 workers when calculating their liability for taxes under IRC §4980H(a)

Tax for no coverage under IRC §4980H(a)

- The proposed regulations state that in general, a large employer (that is a single entity or a large employer member (controlled group)) will not be subject to the penalty under IRC §4980H(a) so long as the employer offers minimum essential coverage under an eligible employer-sponsored plan to its full-time employees and their dependents.
- Such minimum essential coverage does not have to meet the law's affordability and minimum value standards to avoid penalties under IRC §4980H(a). The proposed regulations also state that a large employer (that is a single entity or large employer member) cannot be liable for tax penalties under both IRC §§4980H(a) and (b) for the same month.
  - Dependents: Defined as an employee's child under age 26 (see IRC §152(f)(1)). Employers will not face tax penalties for not offering coverage to spouses.
  - De minimis rule: A large employer (that is a single entity or a large employer member) will be treated as offering coverage to full-time employees if they offer coverage to 95% of their full-time employees.
  - Offer of coverage: Proposed regulations do not propose any new specific rules for demonstrating that an offer of coverage was made. The normal rules for substantiation and recordkeeping requirements apply.
  - Nonpayment of premiums: A large employer will not be treated as failing to offer coverage if the coverage is terminated solely due to the employee's failure to pay the employee's share of premium on a timely basis.

Assessment and administration of taxes

- Penalty assessment for controlled groups:
  - For purposes of assessing liability, the IRC §4980H tax penalties are applied separately to each member of the controlled group.
  - Each member of the controlled group is liable for its own tax penalties under IRC §4980H and is not liable for the IRC §4980H tax penalties of any member of the controlled group that makes up the large employer.
  - For purposes of calculating penalties under IRC §4980H, only one 30-employee reduction is allowed per controlled group. The reduction is allocated among the members that make up the controlled group on the basis of the number of employees employed by each.

Calculation of non-deductible excise taxes under IRC §4980H(b)

Tax for unaffordable coverage – IRC §4980H(b)
❖ If a large employer offers minimum essential coverage to full-time employees and their dependents but the coverage is unaffordable to certain employees or does not provide minimum value, an employer may face a tax of: ➢ The lesser of $3,000 x the number of FTEs receiving a premium assistance tax credit or $2,000 x the total number of FTEs
Taxes under §4980H(b) are capped not to exceed an employer's potential tax under §4980H(a).

Tax for coverage that is unaffordable, does not provide minimum value under IRC §4980H(b)

- **Affordability general rule.** Employee's share of the self-only premium for the employer's lowest-cost plan that provides minimum value cannot exceed 9.5% of household income or the employee may be eligible for a premium tax credit to purchase Exchange coverage.
- **Safe harbors.** Employers can demonstrate they offer coverage meeting the affordability standard by showing the employee premium share for self-only coverage, under their lowest-cost plan that meets the minimum value standard, meets a following safe harbor:
  - **Form W-2 safe harbor.** Employee premium share does not exceed 9.5% of the amount required to be reported in Box 1 of Form W-2. The proposed regulations provide guidance for using the W-2 safe harbor for an employee who was not a full-time employee for the entire calendar year. Application of this safe harbor is determined after the end of the calendar year and on an employee-by-employee basis, taking into account the employee's Form W-2 wages from the employer and the employee contribution.
  - **Rate of pay safe harbor.** Employee premium share does not exceed 9.5% of the product of multiplying the hourly rate of pay (either each employee's individual rate of pay or the lowest rate of pay paid by a large employer that is a single entity or a large employer member) by 130 hours per month (the benchmark for full-time status for a month under IRC §4980H).
  - **Federal poverty line safe harbor.** Employee premium share does not exceed 9.5% of the Federal poverty line for one person. The calculation could be done using the most recently published federal poverty guidelines as of the first day of the plan year for the plan offered by a large employer that is a single entity or a large employer member.

Estimates for Affordability Safe Harbors

Estimates for Individual Eligibility for Medicaid or Tax Credits and Affordability Safe Harbors[1]

Scenario	Percent of federal poverty level	Annual income	Hourly wage[4]	Affordability test safe harbor (9.5% of current wages)	Estimated employee premium share for self-only coverage for affordability test safe harbor[5]
In states that expand Medicaid under the ACA to 133% of Federal Poverty level:					
Minimum wage worker[2] eligible for Medicaid	~101%	$11,310	$7.25	Medicaid eligible	n/a
Statutory upper limit for Medicaid eligibility	133%	$14,856	$9.52	$1,411	$118
Effective upper limit for Medicaid eligibility[3]	138%	$15,415	$9.88	$1,464	$122
Upper limit for eligibility for tax credits	400%	$44,680	$28.64	$4,245	$354
In states that do not expand Medicaid under the ACA:					
Minimum wage worker eligible for Exchange credits if employer coverage is not offered/affordable	~101%	$11,310	$7.25	$1,074	$90
Upper limit for eligibility for tax credits	400%	$44,680	$28.64	$4,245	$354

1. The chart is based on the 2012 HHS Federal Poverty Guidelines for one person ($11,170).

2. Federal minimum wage ($7.25 per hour). Note: As of January 1, 2012, minimum wage rates are higher than the federal minimum wage in the District of Columbia and 18 states (Alaska, Arizona, California, Colorado, Connecticut, Florida, Illinois, Massachusetts, Maine, Michigan, Montana, Nevada, New Mexico, Ohio, Oregon, Rhode Island, Vermont and Washington ($9.19/hr)).

3. ACA §2002 (as added by HCERA §1004(e)(2)) requires states to apply an "income disregard" of five percent of the federal poverty level in meeting the income test, resulting in an effective income threshold of 138% of FPL for Medicaid eligibility.

4. Based on the ACA threshold for classification as a full-time employee (average 30 hours per week) multiplied by 52 weeks.

5. 9.5% of current wages divided by 12 months

Tax for coverage that is unaffordable, does not provide minimum value under IRC §4980H(b)

- Minimum value: A plan fails to provide minimum value (MV) if "the plan's share of the total allowed costs of benefits provided under the plan is less than 60 percent of such costs."
  - Generally understood to be a 60% actuarial value test (percentage of medical expenses -- deductibles, co-insurance, co-payments, etc. -- paid for by the plan for a standard population and set of allowed charges).
- Treasury and HHS have proposed three distinct options for determining MV on a pass/fail basis.
  - Minimum Value (MV) Calculator: Allows an employer to input in-network cost-sharing features of their health plan for different categories of benefits into an online calculator. Employers would not be able to use the MV calculator if they have "non-standard" features, such as atypical quantitative or cost-sharing limits on the four core benefit categories: hospital/ER services, physician/mid-level practitioner care, pharmacy benefits and lab/imaging services. (http://cciio.cms.gov/resources/regulations/index.html#pm)
  - Safe-Harbor Checklist: Provides design-based safe harbors that allow an employer to perform an "eyeball test" and see if their plan design features meet one of several design-based safe harbors. Each safe harbor checklist would describe the cost-sharing attributes of a plan that apply to the four core categories.
  - Actuarial Certification: If an employer plan contains non-standard features and neither the MV calculator nor the design-based checklists applies to the plan, an employer could use a certified actuary to determine whether the plan meets the MV standard.

Transition relief for §IRC 4980H

- **Employers with non-calendar year plans:** Generally, a large employer who currently offers a non-calendar year plan will not be liable for tax penalties for months prior to the first day of their plan year beginning in 2014.
  - This transition relief means that a large employer would not have to make mid-year changes to a non-calendar year plan in order to meet the law's coverage requirements. For example, if an employer maintained a plan with a July 1 through June 30 plan year as of December 27, 2012, that employer would need to ensure that the eligible employees are offered coverage that meets the law's affordability and minimum value standards by June 30, 2014 (the beginning of the 2014 plan year).
- **Coverage for dependents:** Employers will not face tax penalties relating to the offering of dependent coverage provided that employers take steps during plan years that begin in 2014 toward satisfying the dependent coverage requirements.
  - **Cafeteria plans:** Employers have the option of amending one or more of their cafeteria plans to permit an employee to make a one time mid-year change in election without a qualifying event.
- **Multi-employer plans:** An employer will not be subject to IRC §4980H tax penalties if;
  - The employer is required to make a contribution to a multiemployer plan with respect to a full-time employee pursuant to a collective bargaining agreement or appropriate related participation agreement.
  - Coverage under the multiemployer plan is offered to the full-time employee (and the employee's dependents).
  - The coverage offered to the full-time employee meets the law's affordability and minimum value standards.

Communication with Employees, Exchanges and IRS

Step 1
- Employer provides employees with information about coverage and availability of Exchanges (late summer or early fall 2013)

Step 2
- Employee provides Exchange with information to determine eligibility for the premium tax credit

Step 3
- Exchange verifies information and makes preliminary eligibility determination regarding the premium tax credit

Step 4
- Exchange notifies employer that employee may receive a premium tax credit
- Employer has right to appeal Exchange's determination of employee's eligibility

Step 5
- Employer files information with IRS and employee
- Employee files personal return

Step 6
- Assessment of employer tax penalties
- Employer has right to appeal tax liability to IRS

Summary of annual employer reporting requirements to Treasury/IRS

	9002 (amends IRC §6051)	1502 (IRC §6055)	1514 (IRC §6056)
Applies to:	Employers who issue at least 250 W2 forms annually	Health insurance issuers, government agencies, employers that sponsor self-insured plans, and other persons that provide minimum essential coverage to an individual	Large employers who are subject to §4980
Due by:	1/31/2013 (first due date, 1/31 each year thereafter)	1/31/2015 (first due date, 1/31 each year thereafter)	1/31/2015 (first due date, 1/31 each year thereafter)

Data elements:	The aggregate cost of applicable employer-sponsored coverage, except that this paragraph shall not apply to—
	• For employer-sponsored coverage:
	  ○ Contributions to Archer MSAs or health savings accounts; or
	  ○ Contributions to a flexible spending arrangement.
	
	Note: Guidance requires employers to include in reporting:
	• Major medical
	• *Health Flexible Spending Arrangement for the plan year in excess of employee's cafeteria plan salary reduction for all qualified benefits*
	• *Hospital indemnity or specified illness (insured or self-funded), paid through salary reduction (pre-tax) or by employer*
	• *Domestic partner coverage included in gross income*
		• Name, address, tax ID number of insured and all others covered under the policy
		• Dates of coverage during the calendar year
		• Whether coverage is a qualified health plan (QHP) offered through an Exchange
		• For QHPs offered through an Exchange, the amount of cost-sharing subsidies or premium assistance tax credits received
		• For employer-sponsored coverage:
		  ○ Name, address and employer ID number of the employer maintaining the plan
		  ○ The portion of the premium paid by the employer
		  ○ If the coverage is a QHP in the small group market offered through an Exchange
		• Statements to individuals:
		  ○ Name and address of the person required to submit the return, including phone number of the information contact
		  ○ Information included in return with respect to the individual
		• Notification of non-enrollment: Not later than June 30 of each year, the Secretary of the Treasury, acting through the IRS and in consultation with the Secretary of HHS, shall send a notification to each individual who files an individual income tax return and who is not enrolled in minimum essential coverage. Such notification shall contain information on the services available through the Exchange operating in the State in which such individual resides.
			• Name, date and employer ID number of the employer
			• Certification as to whether the employer offers full-time employees and their dependents the opportunity to enroll in minimum essential coverage offered under an eligible employer-sponsored plan
			  ○ Length of any waiting period
			  ○ Months during the year for which coverage was available
			  ○ Monthly premium for the lowest-cost option under the plan
			  ○ Applicable large employer's share of total allowed cost of benefits under the plan
			• The number of full-time employees for each month during the calendar year
			• The name, address, and TIN of each full-time employee during the calendar year and the months (if any) during which such employee (and any dependents) were covered under any such health benefits plans, and
			• Such other information as the Secretary may require
			• Statements to individuals:
			  ○ Name and address of the person required to submit the return, including phone number of the information contact
			  ○ Information included in return with respect to the individual

Additional taxes and fees under the ACA

Employers

- **Plan compliance failure:** Excise tax equal to $100 per day, per individual to whom the failure to comply with ACA and HIPAA requirements relates.
- **PCORI:** Plan years ending after September 30, 2012, per capita fee that funds the Patient-Centered Research Outcome Institute (PCORI).
  - $1 per covered employee during fiscal year 2013 and $2 thereafter through 2019 applies to both insured and self-insured plans.
- **Transitional reinsurance:** Beginning January 2014, per capita fee of $63/yr that funds a transitional reinsurance fund. Ends in 2016
- **High-cost plans:** Beginning in 2018, 40% excise tax on the value of health plan coverage that exceeds certain dollar thresholds under IRC §4980I.

Insurers

- Tax on Insurance companies (beginning 1/1/14). Beginning at 1.9% -2.3% of premiums, growing to 3-4% by 2023. Impacting insured renewals after 1/1/13.
- Fees to support Exchanges. Federally Facilitated Exchanges will include a fee of about 3.5%. States running their own exchanges will assess fees as necessary to support the exchange.

Key issues in forthcoming guidance

- Minimum essential coverage
- Health Reimbursement Accounts
- Information reporting to the IRS under IRC §6056
- Communications between employers, employees and Exchanges
- Auto-enrollment
- Nondiscrimination - IRC Sec 105h
- Treatment of wellness programs under affordability test

More Detail on the Treatment of Seasonal & Variable Hour Employees

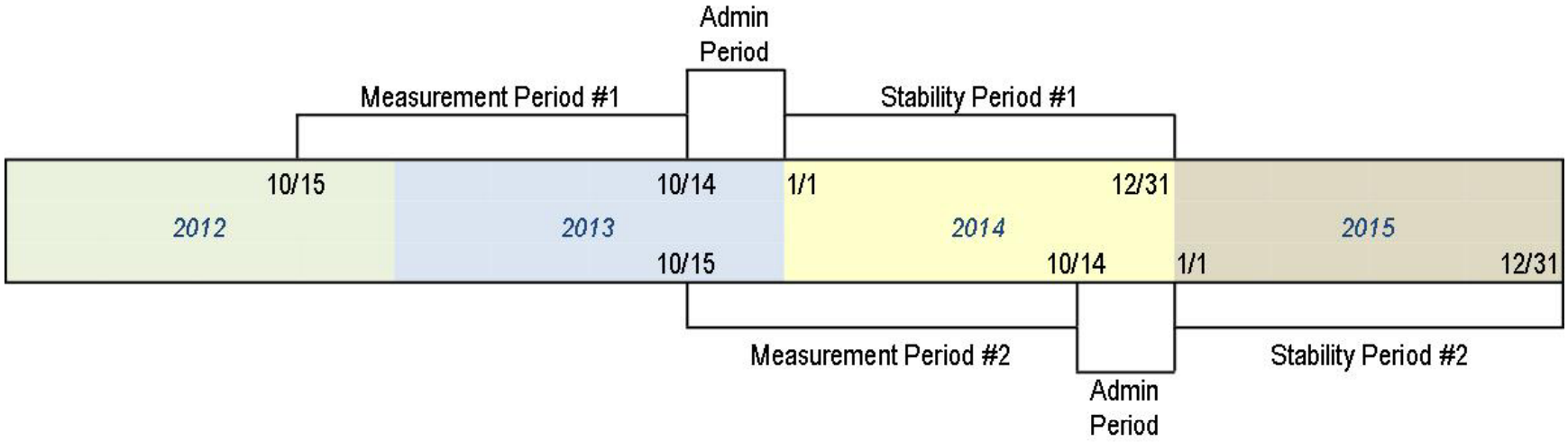
Detail rules relating to PT and Seasonal Ees

- Safe Harbor (Notice 2012-58) – Ongoing Employee (one who has been employed for at least one standard measurement period)
  - To determine if a variable hour or seasonal employee must be treated as a FT ee, employers are allowed to use a "measurement" (look-back) period and "stability" (future coverage/non-coverage period if found to be eligible/ineligible during the measurement period) period of 3 to 12 months.
    - Safe harbor can be used if: Employee is considered variable hour at time of employment and it cannot be determined if the employee is expected to work at least 30 hrs/wk, or an employee is hired to provide services on a seasonal basis ("reasonable, good faith interpretation" through 2014). Would also apply to a new sales clerk hired to work > 30 hrs/wk during holiday season even if their employment may continue afterward….. if it is not reasonably expected that the hour requirement would be met during the initial measurement period.
  - Employer determines if the employee averaged 30 hours of service per week during the measurement period.
    - Hour of service: Each hour for which an employee is paid or entitled to payment for the performance of duties, vacation, leave, holiday, illness, incapacity, layoff, jury duty, military duty or other leave of absence
  - If employee is determined to be a full-time employee during the "measurement" period, they must be treated as a full-time employee during the subsequent "stability" period regardless of the number of hours they work (so long as they remain an employee).

Continued – Rules for On-going Ees

- The stability period must be a period of at least 6 consecutive months and cannot be shorter than the measurement period.
- If the employee is found not to be a full-time employee during the measurement period, the employer is permitted to treat them as not a full-time employee during the stability period.
- Administrative Period: To allow an employer time to calculate who is eligible and to notify and enroll eligible members. No longer than 90 days. To prevent coverage gaps, it will overlap the prior stability period.
  - Employers may have different measurement and stability periods, that differ in length, or in their starting or ending dates for;
    - Collectively bargained employees;
    - Salaried/hourly employees;
    - Employees of different entities;
    - Employees located in different states.

Continued – Rules for On-going Ees

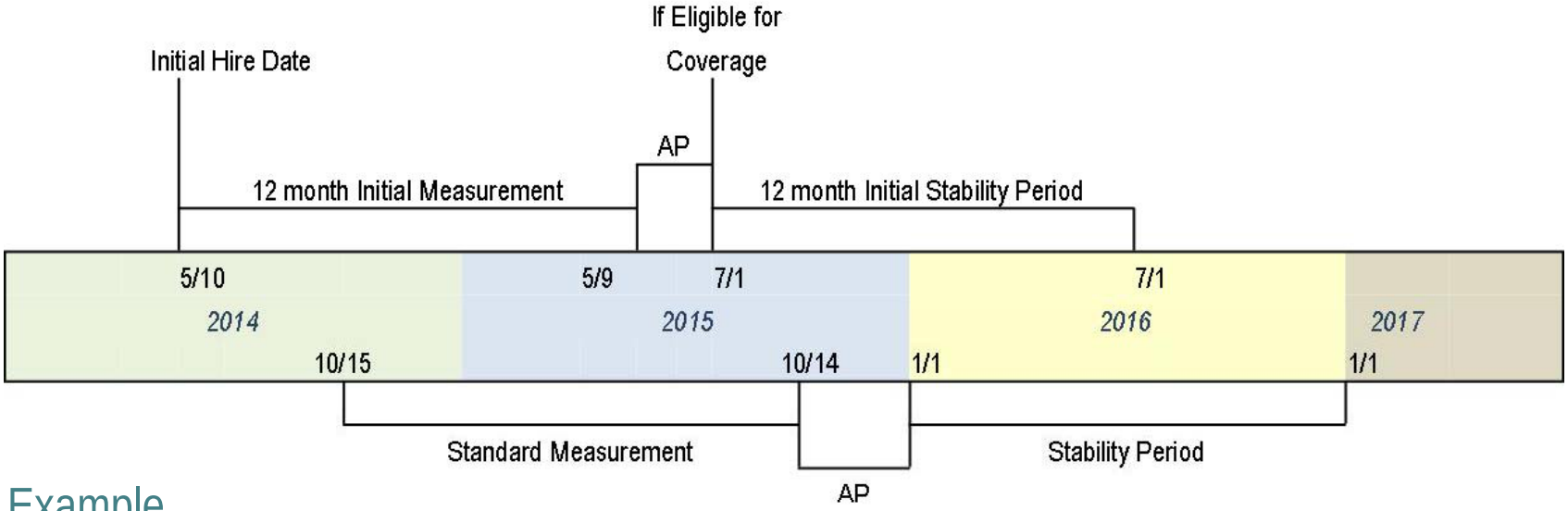


Employee hired prior to 10/15/12. Employer sets 12 month measurement period (10/15 thru 10/14); a 77 day admin. period (10/15 to 12/31); and a 12 month stability period (1/1 thru 12/31).

- If it is determined that the employee has averaged 30 hours of service per week during the measurement period (hours of service / 52 weeks), the employee must be covered during the entire stability period (as long as they continue to be employed) from 1/1/14 thru 12/31/14.
- If it is determined that the employee does not average 30 hrs of service during the measurement period. They would not be eligible for coverage during 2014.
- In both cases, testing would occur during the next measurement period (10/15/13 thru 10/14/14) to determine eligibility for 2015.

- New-Hires Safe Harbor:
  - Same rules as Ongoing employees (3 – 12 month measurement period and an administrative period of up to 90 days.)
    - The maximum administrative period must include any days between the employee's original start date and the beginning of the initial measurement period.
      - If an employee starts on March 5th and the initial measurement period begins on the first of the month following employment (April 1), the 26 days must be counted as part of the administrative period.
  - "Measurement period and administrative period combined cannot extend beyond the last day of the first calendar month beginning on or after the one-year anniversary of the employee's start date (total, at most, 13 months and a fraction of a month)."
    - If a new variable hour or seasonal employee is determined not to be a full-time employee during the initial measurement period, the employer is permitted to treat the employee as not a full-time employee during the initial stability period that follows the initial measurement period. This stability period for such employees must not be more than one month longer than the initial measurement period and, as explained below, must not exceed the remainder of the standard measurement period (plus any associated administrative period) in which the initial measurement period ends.
    - In these circumstances, allowing a stability period to exceed the initial measurement period by one month is intended to give additional flexibility to employers that wish to use a 12-month stability period for new variable hour and seasonal employees and an administrative period that exceeds one month. To that end, such an employer could use an 11-month initial measurement period (in lieu of the 12-month initial measurement period that would otherwise be required) and still comply with the general rule that the initial measurement period and administrative period combined may not extend beyond the last day of the first calendar month beginning on or after the one-year anniversary of the employee's start date.

Continued – Rules for New-Hire employees



Example

Employee hired May 10, 2014 into a seasonal position, or a variable hour position, and it is uncertain if they will average 30.hours of service. Employer has a 12 month Initial measurement period beginning on DOH (5/10/14 thru 5/9/15); a one month (plus fractional month) admin period* (5/10/15 to 6/30/15); and a 12 month initial stability period (7/1/15 thru 6/30/16).

- If it is determined that the employee has averaged 30 hours of service per week during the initial measurement period (hours of service / 52 weeks), the employee must be covered during the entire stability period (as long as they continue to be employed) from 7/1/15 thru 6/30/16).
- If it is determined that the employee does not average 30 hrs of service during the initial measurement period. They would not be eligible for coverage until they had been employed for an entire Standard Measurement Period (10/15/14 thru 10/14/15). They therefore could become eligible for coverage on 1/1/16.
- In both cases, testing would occur again once they had been employed for an entire Standard Measurement period.

* Measurement period and administrative period combined cannot extend beyond the last day of the first calendar month beginning on or after the one-year anniversary of the employee's start date (total, at most, 13 months and a fraction of a month).

Additional Considerations

- Measurement Period Transition Relief:
  - Employers may adopt measurement periods in 2013 shorter than their plan's measurement and stability periods of 2014. To do so, the measurement period in 2013 must be no less than six months and end no sooner than 90 days before the start of the plan year beginning in 2014.

- Change in Employment Status
  - For a New Seasonal or Variable hour employee who has a material change in their position of employment (had the employee begun employment in that position, they would have been eligible for benefits);
    - If the change occurs during the initial measurement period, benefits must be extended as of the 1st day of the 4th month following the change, or if earlier;
    - The first day of the first month following the initial measurement period (including any administrative period)
  - For an Ongoing Seasonal or Variable hour employee (employed for at least one full measurement period), a change in employment status does not change the employee's status during the stability period.

Questions