



# A Close Look at the Employer Responsibility Rule and Variable Hour and Seasonal Employees



# Variable Hour and Seasonal Employees

Under Notice 2012-58, the Department of Treasury provided a “look-back/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.

- If the employee is determined to be full time during either the initial or standard measurement period, then the employee is treated as full time during a subsequent stability period during which coverage must be offered.
- Through 2014, employers are allowed to use a reasonable, good faith interpretation for seasonal employees.
  - After the initial measurement period, the associated stability period for newly hired variable hour or seasonal employee must be the same length as the stability period for ongoing employees.
  - If an employer is considered a large employer **solely because of seasonal workers**, they will not be considered a large employer.



# Who is eligible?

- Employer would calculate each employee's full-time status by looking back “at a measurement period of **at least three but not more than 12** consecutive calendar months”
  - determine if the employee worked an average of 30 hours per work during this “measurement” period.
  - If yes, the employee is considered a full-time employee during a subsequent “stability” period, regardless of the number of hours worked during that subsequent period.
  - The measurement period is defined by the employer.
    - The employer will establish an ongoing employee measurement period that is the same for that category of employee each year
    - New employees will first enter an initial measurement period based on their date of hire

## Who is eligible (continued)

- Employers may use measurement periods and stability periods that differ either in length or in their starting and ending dates for the following categories of employees:
  - Collectively bargained employees and non-collectively bargained employees
  - Salaried employees and hourly employees
  - Employees of different entities
  - Employees located in different states

# Optional Administrative Period

The Notice provides for an optional administrative period between the standard measurement period and the associated stability period to determine which employees are eligible and to enroll them.

- Cannot exceed 90 days
- For ongoing employees must overlap previous stability period.
- May not extend either the measurement or coverage period.
- Must include all days between start date and when employee first enrolled in coverage (except the initial measurement period)



# Optional Administrative Period

For newly hired variable hour or seasonal employees, the combined length of the initial measurement period and administrative period cannot extend beyond the last day of the first calendar month beginning on or after the first anniversary of the employee's start date – 13 months total.

# An Example

- ABC Company has one category of workers that work in a retail setting with hours that vary from week to week
- The company has a health plan with a plan date of January 1.
- For this category of workers, ABC sets up a measurement period to monitor employees that begins on October 1 of each year and ends on September 30<sup>th</sup>.
  - This is called the Ongoing Employees Measurement period. It recurs during the same time period every year.
- From October 1<sup>st</sup> through the end of December, ABC determines who averaged 30 hours per week during the measurement period, offers coverage to them, and enrolls those who want to participate in the plan.
  - Note: During this administrative period, a new measurement period has begun for all variable hour workers since an employee who averaged 30 hours a week one year may do the same in a subsequent year.
- ABC must continue to offer coverage these employees during the following year of coverage, even if the employees slip to part-time status.



# An Example

- New variable hour employees are treated slightly differently, because a new employee could be hired at any time
- This means that the measurement period for a new employee will be different than the employer's ongoing employee measurement period.
- For example, let's say that Susan is hired by ABC Company on April 1<sup>st</sup>, and that ABC has decided to use a 12 month initial measurement period for new employees.
- For new employees of employers that use a 12 month initial measurement period, the administrative period is shortened and can be no longer than 1 month.
- Note: During this initial measurement period, which would start on April 1<sup>st</sup> and end on March 31<sup>st</sup>, Susan also entered the ongoing employee measurement period (reminder – for her employer this runs October 1 through September 30)
- This means that she would catch up to the regular monitoring period after the first year.



# Example

- Let's say that for the period from April 1, 2014 to March 31, 2015, Susan averaged 30 hours per week.
- Her offer of coverage must be for May 1, 2015 and she must be offered coverage through April 30, 2016
- Meanwhile, she also entered the ongoing employee measurement period on October 1, 2014 which lasted until September 30, 2015. During this time Susan did **not** average 30 hours per week.
- This means that although Susan must be offered coverage through April 30, 2016 because of her initial measurement period, she does **NOT** have to be offered coverage for the rest of 2016 as she did not qualify as a full time employee under the ongoing employee assessment.

# Example: Variable Hour Employee – 12 Month Measurement and Stability Period

**New Hire –  
April 1, 2014**

Administrative Period  
April 1, 2015 – April 30, 2015

Initial Measurement Period  
April 1, 2014 – Mar. 31, 2015

Stability Period  
May 1, 2015 – April 30, 2016

2014

2015

2016

Standard Measurement Period  
Oct. 1, 2014 – Sept. 30, 2015

Stability Period  
Jan. 1, 2016 – Dec. 31, 2016

Administrative Period  
Oct. 1, 2015 – Dec. 31, 2015

**Ongoing  
Employee**

# Transitional Measurement Periods

- The proposed regulations provide transitional relief for employers intending to adopt a 12-month measurement period and then a 12-month stability period.
- The rules provide that employers may adopt a transition measurement period that is shorter than 12 months but that is no less than 6 months long and that begins no later than July 1, 2013 and ends no earlier than 90-days before the first day of the plan year beginning on or after January 1, 2014.
- The maximum administrative period is 90-days.
- This transition relief is solely for stability periods beginning in 2014.
- However, employers who adopt a full-12-month measurement period are not required to begin the measurement period by July 1, 2013