Federal Health Care Reform

Updated Compliance Guide

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HealthPlans, Inc.

Introduction

Health Plans published the first edition of this *Guide* in June 2013. This updated version incorporates changes announced by the Departments of Health and Human Services (HHS), Labor (DOL) and Treasury (IRS) ("the Departments") since then, many of which we have described in *Compliance Bulletins* and *Alerts* over the past 16 months. This *Guide* reflects Health Plans, Inc.'s current understanding of the Affordable Care Act (ACA) provisions in effect for plan years that begin in 2015:

- Shared responsibility provisions
  - The **individual mandate**
  - The **employer mandate** (aka the "**play or pay**" provisions)
  - The employer notice and reporting requirements
- Benefits and eligibility mandates
- Federal fee assessments applicable to health plans

As additional guidance and implementing regulations are issued on any of these provisions, we will update this material.

The companion to this *Guide*, the *Participation Supplement,* and three participation checklists are available on our Health Care Reform page, and provide more information and tools to help develop plan eligibility provisions that satisfy the ACA rules.

This *Guide* is intended to be a general statement of the major provisions of the Affordable Care Act that would affect most self-funded group health plans. It is not intended to provide a comprehensive analysis of every rule under the ACA. This *Guide* should not be construed as specific legal advice or legal opinion. The contents are for general informational purposes only and are not a substitute for the advice of legal counsel.

Key terms appear in **bold** throughout the *Guide* and are defined in the *Glossary*.

Inside:

New Provisions At-a-Glance

The chart below highlights the new or clarified provisions that have been issued in guidance from the Departments since our first publication of this *Guide* in 2013.

Provision	Summary	See page(s)
Monthly method of counting hours	Specific rules for establishing eligibility for coverage on a month-to-month basis using either calendar month or weekly approach	15, 47
Deadline for offering coverage to new employees	The play or pay provisions were amended to permit an employer to offer coverage by the first day of the fourth full calendar month of employment instead of by the 91st day of employment	21
Part-time and variable hour employees new and revised definitions	Distinguishes between employees reasonably expected to average fewer than 30 hours of service per week (part-time employee) and employees for whom it can not reasonably be determined how many hours of service per week they will average (variable hour employee)	22, 69
Seasonal employee defined	New definition for seasonal employee under look-back method	22, 69
Changing between monthly and look-back methods of measuring hours	Detailed rules about how to classify employees who, because of a job change, move between the monthly and look-back methods of counting hours	57
Minimum value coverage redefined	In November 2014, HHS clarified that in order to provide minimum value, a plan must provide substantial coverage for in-patient and physician services, as well as cover at least 60% of the total allowed cost of services provided under the plan.	25, 68
New §125 Cafeteria Plan rules for employees covered in group health plans	Permits employees to drop coverage in order to enroll in Exchange coverage: • During a stability period when their hours drop such that they are no longer expected to average 30 or more hours of service per week • During the Exchange open enrollment period, if they are enrolled in non-calendar year plans • During an Exchange Special Enrollment Period	8
Break in service rules	Specifies that a plan may use either a rule of parity or a 13-week break-in-service (26 weeks for employees of educational organization) to determine when a returning employee should be treated as a continuing employee	22-23
Covering children to age 26	The IRS clarified that under the ACA, eligible children should be covered under a plan through the end of the month in which they reach age 26.	32

Shared Responsibility Overview

Under the general heading of "shared responsibility," the ACA imposes requirements on both individuals and employers.

For individuals, the requirements center on obtaining health coverage or facing a possible penalty each year. This is known as the **individual mandate**.

For **applicable large employers**, the requirements include the need to provide medical coverage to **full-time employees** or face potential penalties. These are known as the **employer mandate** or **play or pay** rules. In addition, virtually all employers are also subject to a variety of notice and reporting requirements.

The chart below provides a high level overview of how the **individual** and **employer mandates** interact and potentially trigger financial penalties under the final rules.

Individual mandate – *applies to virtually all individuals, subject to income guidelines and limited exemptions which may waive the requirement*	**Employer mandate –** *applies only to certain "large" employers with 50[1] or more full-time employees and full-time equivalents*
Individuals must obtain • ***Affordable*** • ***Minimum essential coverage*** under a health plan beginning in 2014, or face a possible tax penalty	Unless an **applicable large employer** offers full-time employees and their eligible children • ***Affordable*** • ***Minimum value coverage*** beginning in 2015 the employer may face potential penalties if any full-time employee obtains subsidized Exchange coverage

[1] For 2015, applicable large employers with fewer than 100 full-time employees will not be subject to penalties. Also please note: The federal government uses the terms Insurance Exchange (or "Exchange") and Insurance Marketplace (or "Marketplace") interchangeably to mean the entities through which individuals in each state will be able to purchase insurance coverage that satisfies the requirement for coverage under the ACA. For clarity, we will use the term "Exchange" throughout this Guide.

Special rule for non-calendar year plans

The **individual mandate** took effect on January 1, 2014.

The **employer mandate** takes effect on January 1, 2015 for calendar year plans. For non-calendar year plans, it takes effect on the first day of the plan year that begins in 2015 ***if*** the eligibility criteria for participating in the plan as of January 1, 2015 are no more restrictive than they were on December 27, 2012 (the date the shared responsibility regulations were issued). If not, the **employer mandate** for non-calendar year plans also takes effect on January 1, 2015.

Example
Assume that as of December 27, 2012, a plan that begins its plan year on July 1st defined full-time as being scheduled to work 35 hours per week.

If on January 1, 2015, the eligibility is still based on 35 hours per week, the plan will not be assessed a penalty if an employee averaging 32 hours per week obtains a subsidy between January and June 2015.

Note that the rules described in this *Guide* for the employer mandate represent the minimum requirements under the ACA. Employers are always free to extend coverage to those who do not meet the definition of **full-time employee** under these rules.

The following sections describe the **individual** and **employer mandates** as well as other aspects of the shared responsibility provisions.

The Individual Mandate

Basic Rule

Since January 1, 2014, most individuals in the United States have been required to participate in a health plan that provides **minimum essential coverage**, unless the plan is not **affordable**, or unless the individual qualifies for a waiver based on a handful of statutory exemptions.

If an individual is without **minimum essential coverage** for more than three consecutive months during the calendar year, a penalty tax will be calculated and is payable when the individual's tax return is filed. The **minimum essential coverage** requirement also applies to joint filers and to dependents listed on each taxpayer's return.

> *Appendix 1 – Individual Mandate*, includes additional detail about how the **individual mandate** works, the major exemptions from the mandate, and the penalties individuals may face if they do not obtain **minimum essential coverage**.

Linking Subsidized Individual Coverage to Employer Penalties

Starting with the plan year that begins in 2015, if an individual is covered by a policy issued through an Exchange, the individual will avoid any penalty. However, if an employee of an **applicable large employer** obtains subsidized Exchange coverage, that employer may be subject to a penalty under the **employer mandate** described in the next section.

> The threshold requirement for triggering an employer penalty is that at least one **full-time employee** (as defined by the ACA) obtains subsidized Exchange coverage.
>
> If no **full-time employee** obtains subsidized Exchange coverage, no employer penalty can be triggered.

Under the ACA, subsidized Exchange coverage is ***not*** available to any employee who:

- Is already enrolled in an employer-sponsored health plan
- Declined **affordable**, **minimum value coverage** under an employer-sponsored health plan
- Is eligible for other coverage such as Medicare Part A, Medicaid, CHIP or Tricare.
- Has household income that exceeds four times the federal poverty level ($46,680 for individuals/$95,400 for a family of four in 2014)
- Is not a citizen or legal resident

When an employee receives subsidized Exchange coverage, the Exchange will provide a Certification to the employer as notice that the employer may be subject to a penalty. The Certification is the first step in assessing any penalty against an employer, and will also include instructions for the employer about how to appeal a penalty. Certifications regarding employee coverage during a specific calendar year will be sent to employers after the deadline for the employees to file their tax returns for that year. For example, certification of a subsidy received in 2015 would be sent after April 15, 2016, the filing deadline for 2015 tax returns.

Electing Exchange Coverage Midway through a Plan Year

Under IRS Notice 2014-55, employees enrolled in medical coverage through a §125 Cafeteria Plan may elect to drop coverage outside an open enrollment period under three special circumstances in addition to the change in status rules that generally govern election changes.

1. If an employee's **hours of service** are reduced such that the employee is not reasonably expected to average 30 or more **hours of service** per week, the employee may cancel coverage in order to enroll in Exchange coverage or in other **minimum essential coverage**, provided the new election is made within 30 days of the change in hours.

2. Any employee who is enrolled in a non-calendar year medical plan may elect to drop the employer coverage during the Exchange annual open enrollment period in order to enroll in Exchange coverage for the following calendar year.

3. Any employee who becomes eligible to enroll in Exchange coverage during an Exchange Special Enrollment Period may elect to drop the employer coverage during the Special Enrollment Period in order to enroll in Exchange coverage.

Employer Responsibilities

The ACA includes numerous obligations for employers in terms of plan design, fees and reporting. However, the "employer responsibility" or "employer shared responsibility" provisions refer specifically to the:

- ***Employer mandate***, aka the "**play or pay**" provisions
- ***Notice requirements*** regarding the availability of Exchanges
- ***Reporting requirements*** regarding the status of the coverage offered by the employer

"Play or Pay" Provisions – The Basic Rule

This part of the law refers to the requirement that **applicable large employers** offer **full-time employees**[2] a medical plan that meets certain cost and coverage standards (play) or face possible penalties (pay).

Starting in 2015, **applicable large employers** may be subject to penalties if one or more **full-time employees** enroll in subsidized Exchange coverage ***unless:***

A. The employer has offered **minimum essential coverage** to **substantially all full-time employees** and their eligible children, and
B. The plan offered is **affordable** and provides **minimum value coverage**

For plan years beginning in 2015 only, **applicable large employers** with fewer than 100 **full-time employees** will ***not*** be subject to penalties if they meet all the following conditions:

1. The employer did not reduce its workforce between February 9, 2014 (the date final regulations were issued) and December 31, 2014 in order to satisfy the workforce size conditions above. Reductions in workforce or overall hours are permitted if there was a bona fide business reason for the reduction.
2. The employer continued to offer coverage to eligible employees since February 9, 2014,
    i. With employer contributions toward the cost of coverage being at least 95% of the dollar amount offered as of February 9, 2014, or the same or higher percentage of the total cost of coverage, and
    ii. If there was any change in the benefits offered, the new benefits provided **minimum value**; and
    iii. The employer did not narrow or reduce the class or classes of eligible employees or dependents to whom coverage was offered.
3. The employer certifies on a prescribed form that it meets the eligibility criteria above.

[2] For the purposes of the employer responsibility provisions, "employee" means common law employee under the standards used by the IRS. It does not include leased employees, sole proprietors, partners in partnerships or 2% S corporation shareholders. It also does not include employees who work outside the United States.

For plan years beginning in 2016, all **applicable large employers** will be subject to the penalty provisions of the ACA.

Employer penalties

Under the basic rule above, one of two penalties may be levied against employers. These penalties are called the **Part A** and **Part B penalties** throughout this *Guide*, following their subsection designations under the law.

Part A penalty (no offer penalty) **–** if an **applicable large employer** fails to offer **minimum essential coverage** to **substantially all full-time employees** and their eligible children, and one or more employees obtain subsidized Exchange coverage, an employer could pay a penalty equal to:

2015: (Total # of full-time employees – 80) x $2,000

All subsequent years: (Total # of full-time employees – 30) x $2,000

In 2015, penalties generally apply only to **applicable large employers** with 100 or more **full-time employees**. In subsequent years, all **applicable large employers** will be subject to the penalty provisions.

In 2015, **substantially all** means 70% of **full-time employees**. In subsequent years, it means 95% of **full-time employees**.

Example:

Part A Penalty

Assumptions

- 500 **full-time employees**
- 300 or 60% are offered **minimum essential coverage**
- 1 **full-time employee** receives subsidized Exchange coverage

2015: [(500 – 80) x $2,000] = (420 x $2,000) = $840,000

All subsequent years: [(500 – 30) x $2,000] = (470 x $2,000) = $940,000

Part B penalty (cost and coverage penalty) **–** if the coverage offered fails to provide **affordable, minimum value coverage,** the **Part B penalty** would be equal to the *lesser of* the **Part A penalty** above, or:

(Total # of full-time employees who receive subsidized Exchange coverage) x $3,000

Example:

Part B Penalty

Assumptions

- 500 **full-time employees**
- 500 are offered **minimum essential coverage**
- 5 **full-time employees** receive subsidized health coverage through an Exchange
- The plan is either **unaffordable** or does not provide **minimum value coverage**

All years: 5 x $3,000 = $15,000

The $2,000 Part A penalty is multiplied by the number of ***all*** **full-time employees** in excess of 80 for 2015; in excess of 30 for all subsequent years.

The $3,000 Part B penalty is multiplied only by the number of employees who **actually obtain subsidized Exchange coverage.**

While each penalty is expressed as an annual amount, they are prorated based on the actual number of months during which the **full-time employees** had subsidized Exchange coverage.

The Essential Questions

To determine the potential risk for a penalty under the rule, an employer will need to answer the questions below.

Question 1. Are we an **applicable large employer**?

Question 2. Who are our **full-time employees**?

Question 3. Have we offered **minimum essential coverage** to **substantially all full-time employees**?

Question 4. Does the plan provide **minimum value coverage** and is it **affordable**?

This section of the *Guide* provides an overview of how to answer these questions. In *Appendix 2* at the end of the *Guide*, there is additional detail about the information that is required to answer the questions based on each employer's workforce and the plans offered to their employees.

Question 1. Are We an Applicable Large Employer?

An employer will be subject to the **employer mandate** part of the ACA only if it is an **applicable large employer** as defined by the regulations. This determination must be made for each year, beginning 2015, based on the workforce composition during the previous calendar year.
In general, an organization is an **applicable large employer** if:

- The number of **full-time employees** and **full-time equivalents (FTEs)**
- Averaged 50 or more
- On business days during the previous calendar year

Special transition rule for the first year

To establish status as an **applicable large employer** for 2015, employers may compute the average number of **full-time employees** and **full-time equivalents** over any consecutive six-month period in 2014 instead of over the entire calendar year.

Defining the terms

For the purpose of determining whether an employer is an **applicable large employer**:

- **Full-time employee** means:
  - An employee who, with respect to any month during the previous calendar year, had 30 **hours of service** per week or 130 **hours of service** for that month (under special transition rule for the first year, employers may measure employee hours during any consecutive six-month period chosen by the employer)[3]
- **Full-time equivalents (FTE)** means the combined **hours of service** of all non-full-time employees for each month (capped at 120 per person), divided by 120
- **Hours of service** means each hour for which an employee is paid or is entitled to payment, such as vacation time, sick time, disability, jury duty, military duty or paid leave of absence.

The answer to Question 1 is easy for most employers. Either they always have more than 50 **full-time employees** and **full-time equivalents**, or the combination of **full-time employees** and **full-time equivalents** never approaches 50.

But for employers whose workforces fluctuate above and below 50, or include commissioned employees, **seasonal employees** or employees on variable, part-time or non-traditional schedules, or which are members of a larger controlled group of corporations, or are new businesses just starting up, the answer may require a multi-step analysis and calculation. More information about how to make this determination is available at: http://www.irs.gov/uac/Newsroom/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act.

Not an **applicable large employer?**

Employers which are not **applicable large employers** based on the number of **full-time employees** during the previous calendar year will not be subject to the **employer mandate** in the current year.

But most other provisions of the ACA do apply to all employers. Please see the other sections of this *Guide*, including *Employer Notice and Reporting Responsibilities*, *Benefits and Eligibility Changes*, and *ACA Action Plan*.

[3] An employer with 50 or more full-time employees can avoid applicable large employer status if the workforce exceeded 50 full-time employees for 120 days or fewer during the calendar year, and the employees in excess of 50 were seasonal workers.

Question 2. Who Are Our Full-time Employees?

Employers will need to identify whether each employee is **full-time** for several reasons:

1. **Applicable large employers** must offer **full-time employees** coverage under the employer's medical plan, or risk a penalty

> **Full-time employee** means an employee who has or who averages 30 **hours of service** per week or 130 **hours of service** per month.

2. All employees need to be reevaluated at specified times to see if, based on actual hours, their status has changed, thereby either gaining or losing eligibility for coverage under the plan
3. **Applicable large employers** will be required to report to the IRS the number of **full-time employees** they had each month of the calendar year starting 2015
4. All employers will need to be able to document their findings regarding their status as an **applicable large employer** each year and regarding the status of any employee who receives subsidized Exchange coverage

Determining who is a **full-time employee** for the purposes of the play or pay and information reporting requirements is the most challenging part of the **employer mandate**[4]. Here's why:

The ACA was originally drafted to require that **full-time** status be determined on a monthly basis. This approach was quickly determined to be impractical for many employers for the following reasons:

- Many employers cannot know with certainty what the employee's **hours of service** would be until the month is over.
- If eligibility is determined retroactively, and an employer hadn't offered coverage to a **full-time employee** who received subsidized Exchange coverage for that month, there would be no opportunity for the employer to take corrective action, offer coverage for the period in question, and avoid a penalty.
- The administrative costs of evaluating eligibility and then either starting or stopping coverage for each employee every month could be prohibitive.

The IRS addressed these issues by creating an alternative to the **monthly method** for determining employee status, called the **look-back method.** Both are summarized below.

The chart on page 18 gives a high-level comparison of the major differences, advantages and disadvantages of each method.

[4] Determining status as an applicable large employer involves a different method of counting employee hours than the play or pay and information reporting provisions.

Changing from one method to another during an individual's period of employment is subject to the special rules described in *Appendix 2*.

Monthly method overview

The **monthly method** of identifying **full-time employees** looks at the **hours of service** for each employee each month.[5] The only distinction among employees under the **monthly method** is whether they actually had 130 or more **hours of service** in a given month and were therefore **full-time employees**, or had fewer than 130 **hours of service** and were therefore **part-time employees**.

Basic rule

If at the end of any month, an employee is determined to have had 130 or more **hours of service**, the employee should have been offered coverage for that entire month. Otherwise, if the employee obtained subsidized Exchange coverage for that month, an **applicable large employer** could be subject to **Part A penalties**.

Exception

There is a **limited non-assessment period** during which no penalty would be assessed against an **applicable large employer** for failing to offer coverage to a **full-time employee**. Here's how it works:

- No **Part A penalty** would be assessed until after the first three full calendar months of employment (the **limited non-assessment period**) if coverage is offered to a **full-time employee** by the first day of the fourth full calendar month of full-time employment
- No **Part B penalty** will be assessed during the **limited non-assessment period** if the coverage offered meets the **minimum value** requirements

Important

The **limited non-assessment period** applies only once during each employee's continuous period of employment, regardless of whether the employee has changes in status that affect eligibility for coverage under the plan, unless the employee has had a break in service[6].

5 There are two ways to track hours under the monthly method – the calendar month and weekly approaches – which are described in Appendix 2.
6 See *Offering coverage following rehire*, page 22.

To illustrate, assume that Employee X works for Employer Y without a break in service as follows:

Event	Status	Eligibility
Hired on 4/12/15	Full-time	4/12/15 – 7/31/15 is limited non-assessment period; no penalty for not offering coverage, but must offer coverage by 8/1/15
Hours reduced 10/1/15	Part-time	Coverage terminated effective 10/1/15
Hours increased 3/1/16	Full-time	Offer coverage 3/1/16 to avoid Part A and Part B penalties; no second limited non-assessment period available to correspond with the change in status

Look-back Method Overview

The **look-back method** of identifying **full-time employees** uses a three-phase approach involving **measurement**, **administrative** and **stability periods**.

1. ***Measurement period***
   For each category of employees, **hours of service** are tracked over a specified past period 3-12 months long, as determined by the employer. (**Hours of service** may include certain periods of unpaid leave or other unpaid absences. See *Appendix 2* for details.)
2. ***Administrative period***
   During the optional **administrative period**, which may be up to 90 days long, the employer evaluates the data collected, determines each employee's status as **full-time** (eligible for coverage) or **part-time** (not eligible for coverage) based on **hours of service** during the **measurement period,** and then offers coverage to **full-time employees** and notifies **part-time employees** of termination of coverage, as applicable.
3. ***Stability period***
   An employee's status as **full-time** or **part-time** is locked in during the **stability period**, in most cases without regard to whether the employee's **hours of service** during that period actually change. The length of the **stability period** depends on the length of the **measurement period**, and like the **measurement period**, must be the same for all employees in the same category**.**
   - If a **full-time employee's** hours drop below an average of 30 per week/130 per month during the **stability period**, the employee is still eligible for coverage until the end of the **stability period.**
   - If a **part-time employee's** hours increase to an average of 30 per week/130 per month during a **stability period**, the employee generally remains ineligible to participate in the plan until such time that the employee's hours over a **standard measurement period** have averaged at least 30 per week or 130 per month.

   See page 57 for the special rule for **stability periods** that may apply to new employees.

Appendix 2 – Tracking hours and classifying employees, provides additional information on the process of determining each employee's eligibility for coverage, including:

- Evaluating the effects of changes in job status and breaks in service on classifying employees
- Defining and counting **hours of service** for different categories of employees under the **monthly** and **look-back methods**
- Using the optional **weekly rule** to track employees' **hours of service** under the **monthly method**
- Using the hours data to classify all employees as either **full-time** (eligible for coverage) or **part-time** (and ineligible for coverage)
- Applying the **limited non-assessment period**
- Identifying every employee as either **ongoing** or **new** under the **look-back method**
- Distinguishing between different types of **new employees** under the **look-back method**
- Applying the rules to establish **measurement**, **administrative** and **stability periods** under the **look-back method** for the first year of implementation, as well as for subsequent years
- Changing between the **monthly** and **look-back methods**

The permitted categories of employees are:

- Salaried/hourly
- Union/non-union
- Subject to different collective bargaining agreements
- Working in different states

The same method of measuring hours must be applied to all employees in each category, regardless of whether some employees are reasonably expected to be full-time and others are not.

The ***Look-back Rules Summary*** chart on page 54 outlines the specific regulatory requirements for establishing **measurement, administrative** and **stability periods**, including the special transition rule for the first year of implementation.

Illustrations of **measurement**, **administrative** and **stability periods** begin on page 58.

The chart below provides a very high-level overview of the features of and differences between the **look-back** and **monthly methods** of identifying **full-time employees**. It is intended to help familiarize readers with the basic issues associated with each method. Any actual advantages or disadvantages of one method over the other, or between the variations available under the **look-back method** require a fact-specific analysis, factoring in the composition of the employer's workforce and the employer's overall benefits strategy.

Look-back vs. Monthly Method Comparison Chart

Look-back Method	Monthly Method
Both may be used for all employees, or any category of employees listed below • **Salaried/ hourly** • **Union/non-union** • **Subject to different collective bargaining agreements** • **Working in different states**	
Provides greater protection against the larger Part A penalty when employee hours fluctuate	May make employers more vulnerable to the larger Part A penalty when employee hours fluctuate
Best option when employee hours fluctuate above and below 30 hours, but also works for stable hours	Most appropriate when employee hours don't fluctuate, or when those below 30 hours per week are offered coverage
Provides predictability about length of coverage, but also locks in coverage for those whose hours drop	May result in administrative /employee relations burden if participation changes monthly
Allows employer to establish eligibility over up to 12 months for part-time, variable hour, and seasonal employees whose hours may fluctuate during that period	Requires employers to immediately offer coverage to employees whose hours unexpectedly increase

Classifying Current Employees for 2015

Before the first day of the plan year that begins in 2015, employers will have to determine which current employees must be offered coverage for the 2015 plan year in order to avoid potential penalties. Health Plans first described these requirements in our June 2013 *Compliance Guide*. Although the regulators postponed the initial implementation of this part of the employer mandate, the basic requirements are the same: employers must apply ACA-compliant eligibility rules to the health plans they sponsor, and must document their employees' hours or face potential penalties. The steps required to make that determination will depend on whether the **look-back** or **monthly method** is used.

Employers adopting the **look-back method** will be able to use historical data to document **hours of service**. We understand that payroll vendors are working with employers to generate employee hours data to support these eligibility determinations. Those adopting the **monthly method** may also want to use historical data to confirm their identification of current employees as either **full-time** or **part-time**.

Look-back method

- Decide the length of the **measurement**, **administrative** and **stability periods** for **ongoing** and **new employees**
- Determine whether to use the special **transition measurement period** for the first year of implementation for **ongoing employees**; the transition rule permits an employer to have a 12-month **stability period** in 2015 but use a shorter **measurement period** to establish the status of current employees as either **full-time** or **part-time** as of the first day of the plan year that begins in 2015. The **transition measurement period** must be:
  - At least six months long,
  - Include the **hours of service** each employee averaged since at least July 1, 2014, and
  - End no sooner than 90 days before the plan year that begins in 2015

  Examples:

  If a plan year begins on January 1, 2015, the employer could review the average **hours of service** from May 1, 2014 through October 31, 2014, identify the **full-time employees** in November 2014 and offer them coverage effective January 1, 2015.

  If a plan year begins on April 1, 2015, the employer could review the average **hours of service** from July 1, 2014 through January 31, 2015, identify **full-time employees** in February 2015 and offer them coverage effective April 1, 2015.

  Any employee hired after the **transition measurement period** has begun would be subject to the **measurement** and **stability periods** the employer establishes for **new employees**.

Monthly method

Establish an ongoing system for tracking hours month-by-month to ensure that **full-time employees** are accurately identified and offered coverage as they become eligible.

The companion to this *Guide*, *Participation Supplement*, and separate checklists for using the **look-back** and **monthly methods** of identifying **full-time employees** provide tools and information to help employers understand how to develop eligibility criteria that satisfy ACA rules. All are available on our Health Care Reform page.

Question 3. Have We Offered Minimum Essential Coverage to Substantially All Full-time Employees?

This question determines whether an **applicable large employer** is at risk for a **Part A penalty** if any **full-time employee** obtains subsidized Exchange coverage.

Here is a recap of the **Part A penalty** formula: [7]

2015: (Total # of full-time employees – 80) x $2,000

All subsequent years: (Total # of full-time employees – 30) x $2,000

This section analyzes:

- What it means to *offer* coverage
- The definition of **minimum essential coverage**
- The meaning of **substantially all**

What it means to *offer* coverage

Offering coverage means notifying **full-time employees** and their dependent children[8] of their eligibility and giving them the opportunity to enroll in a plan. The timing of the offer depends on whether the **monthly** or **look-back method** is used. If the **look-back method** is used, the timing of the offer also depends on whether the **full-time employee** is an **ongoing** or **new employee**.

The Terms

Certain terms have somewhat different meanings under the **monthly** and **look-back methods** of identifying **full-time employees**.

Full-time employee

- Monthly method – an employee who has 130 **hours of service** in a given month
- Look-back method – a **new employee** who is reasonably expected to average 130 **hours of service** per month, or an employee who has averaged 130 **hours of service** per month in the most recently completed **initial** or **standard measurement period**

New employee

- Monthly method – a newly hired employee
- Look-back method – any employee who is not an **ongoing employee**

[7] See page 10 for a detailed explanation and example of the **Part A penalty**.
[8] The requirement to cover dependent children does not include foster or step children. The ACA does not require employers to offer coverage to spouses.

Ongoing employee (applies only to the **look-back method**) – an employee who has been employed for at least one complete **standard measurement period**[9]

The different types of **measurement periods** are explained in detail in *Appendix 2*.

Offering coverage under the monthly method

- **New full-time employees** must be offered coverage by the first day of the fourth full calendar month after they are first otherwise eligible for coverage under the employer's plan. For example,
  - A **full-time employee** hired on April 15 must be offered coverage by August 1.
  - An employee who changes from **part-time** to **full-time** status on April 15 must be offered coverage by August 1
- The period until the offer must be made is called a **limited non-assessment period**, during which an employer will not be assessed a **Part A penalty**. **The Part B penalty** will also be avoided during the **limited non-assessment period** if the coverage offered to the employee when the **limited non-assessment period** ends provides **minimum value**.

Offering coverage under the look-back method

- **Ongoing full-time employees** must be offered coverage at least once a year. Most employers already follow this rule by having annual open enrollment periods. **Applicable large employers** who currently don't allow employees to enroll in their plans after their initial eligibility periods[10] will want to consider whether to incorporate annual open enrollment periods going forward to help avoid being subject to a **Part A penalty**.

- **New employees** who, upon hire, are not **seasonal employees**, and who are reasonably expected to average 30 or more **hours of service** per week or 130 or more hours per month, i.e., are reasonably expected to work **full-time**, must be offered coverage and be permitted to begin coverage by the first day of the fourth full calendar month of their employment.

  Note: Regulations issued in Summer 2014 added a 'bona fide orientation period' during which an **applicable large employer** would not have to offer coverage to a **full-time employee**. The addition of the orientation period now enables plan sponsors to resolve the inconsistency between the 90-day waiting period limit under Section 2708 of the Public Health Services Act (PHSA) and the play or pay requirement that coverage be offered to **full-time employees** no later than the first day of the fourth full calendar month of employment (i.e., the first of the month *following* 90 days of employment).

[9] For the initial implementation of these rules, an **ongoing employee** is also any individual employed on the date that the first **measurement period** begins.
[10] Except under the HIPAA Special Enrollment rules.

- The types of **new employees** listed below do not need to be offered coverage when hired. Instead, employers should begin the **initial measurement period** to track **hours of service** for these employees to determine their status for the following **stability period**.
  Seasonal employees – when hired, are in a position which is customarily expected to last six months or less, and which begins at about the same time each year
  Part-time employees – when hired, are reasonably expected to average fewer than 30 hours per week or 130 hours per month
  Variable hour employees – when hired, it is not possible to determine whether or not they will average 30 hours per week or 130 hours per month

- **New employees** whose status changes from **seasonal, part-time or variable hour** to **full-time** (i.e., reasonably expected to average 30 hours per week or 130 hours per month) during their **initial measurement periods** must be offered coverage by:
  - The first day of the fourth month following the change in employment status
  - Or, if earlier, the first day of the first month following the end of the **initial measurement** and **administrative periods** if the employee had averaged 30 hours per week or 130 hours per month or more during the **initial measurement period**

  See *Look-back Rules Summary* on page 54 for details about how employers are required to establish the length of these periods.

> Solely for the purposes of January 2015, under either the **monthly** or **look-back methods**, if **an applicable large employer** with a calendar year plan year offers coverage to a **full-time employee** by the first day of the first payroll period that begins in January 2015, the employee will be treated as having coverage for the entire month. This exception applies ***only*** in January 2015.

Offering coverage following rehire

Whether a returning employee is considered a **new** or continuing employee depends on the break-in-service rules below. These rules are important because they assess whether the employee is subject to another **limited non-assessment period** under the **monthly method**, will be restored to the same **stability period** status under the **look-back method,** or will be treated as a **new employee**. The test determines when the returning employee must be offered coverage.

Employers may use either of the break-in-service rules, but must use the same rule for all employees in the same category. [11] But keep in mind - in all cases, employees with breaks of less than four weeks are treated as continuously employed.

Rule of parity – Returning employees can be treated as continuously employed if:

1. The break in service less than 13 weeks (26 for employees of educational organizations) long, and
2. The period of prior service is greater than the break

Otherwise, the employee is treated as a **new employee.**

13/26 week rule – Employees with breaks of less than 13 weeks (26 for employees of educational organizations) are treated as continuously employed; with breaks of 13/26 weeks or more, they are treated as **new employees**.

Under both methods, if the employee is treated as continuously employed, the period between termination and rehire, as well as the period of prior service would count toward satisfaction of any waiting period under the plan.

Employers have the choice of whether to reinstate coverage[12] for those treated as continuously employed on either:

1. The date of rehire, or
2. The first of the month following rehire

[11] Permitted categories are salaried/hourly; union/non-union; subject to different collective bargaining agreements; working in different states.
[12] Assuming that under the method in effect (look-back or monthly), the employee is eligible for coverage upon rehire.

The definition of minimum essential coverage

Minimum essential coverage is coverage that incorporates the benefits and eligibility provisions of the ACA. Plans deemed to provide **minimum essential coverage** include the following:

- Most employer-sponsored medical plans (including COBRA and retiree coverage) that satisfy the benefits and eligibility mandates of the ACA
- Coverage purchased in the individual market
- Medicare coverage
- Medicaid coverage
- Children's Health Insurance Program (CHIP) coverage
- Certain types of Veterans coverage
- TRICARE

But not:

- Specialized coverage, such as dental-only or vision-only plans
- Disease-specific plans, such as those for cancer
- Disability policies
- Workers' compensation

Health Plans works with clients to help identify whether their plan designs are compliant with the benefits and eligibility provisions of the ACA and provide **minimum essential coverage**.

The meaning of substantially all

For 2015, **substantially all** means 70% of **full-time employees**. For all subsequent years, **substantially all** means 95% of **full-time employees**. Thus, if an **applicable large employer** correctly identifies and offers coverage to **substantially all full-time employees** (and their eligible dependent children) at the proper time, the employer would not be subject to a **Part A penalty**.

Question 4. Does the Plan Provide Minimum Value Coverage and Is It Affordable?

This question encompasses a two-part test to see if an employee obtaining subsidized Exchange coverage might trigger a **Part B penalty** for an **applicable large employer.**

Here is a recap of the **Part B penalty**: [13]

(Total # of full-time employees who receive subsidized Exchange coverage) x $3,000

> **Important** – Employers only need to offer one plan design that satisfies the **minimum value test** and the **affordability test** for employee-only coverage. Any additional plan designs would not be subject to these requirements, nor is coverage for dependents subject to an affordability test.

Does the plan provide minimum value coverage?

Minimum value coverage means that the plan provides substantial coverage for in-patient and physician services, and generally covers at least 60 percent of the total allowed cost of the services provided under the plan. This level of coverage is based on the coverage available under a Bronze level Exchange plan.

Minimum value coverage can be determined in any of three ways:

1. Using the Minimum Value Calculator provided by Health and Human Services (available at http://cciio.cms.gov/resources/regulations/index.html)
2. Comparing the plan design against a checklist issued by the Internal Revenue Service in a notice of proposed rule making issued on May 3, 2013[14], or
3. Obtaining a certification of value from a member of the American Academy of Actuaries

Health Plans routinely tests plan designs on the HHS minimum value calculator and notifies clients in the event that a plan design does not satisfy the **minimum value** standard.

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13 See page 11 for a detailed explanation and examples of the Part B penalty.
14 The three choices in the proposed checklists are: (1) A plan with a $3,500 integrated medical and drug deductible, 80 percent plan cost-sharing, and a $6,000 maximum out-of-pocket limit for employee cost-sharing; (2) a plan with a $4,500 integrated medical and drug deductible, 70 percent plan cost-sharing, a $6,400 maximum out-of-pocket limit, and a $500 employer contribution to an HSA; and (3) a plan with a $3,500 medical deductible, $0 drug deductible, 60 percent plan medical expense cost-sharing, 75 percent plan drug cost-sharing, a $6,400 maximum out-of-pocket limit, and drug co-pays of $10/$20/$50 for the first, second and third prescription drug tiers, with 75 percent coinsurance for specialty drugs.

Is the plan affordable?

A **Part B penalty** may be triggered if a **full-time employee** obtains subsidized Exchange coverage and the employer's plan is not **affordable** as defined by the ACA.

For **applicable large employers** who want to avoid a **Part B penalty**, this means figuring out an employee contribution policy that both satisfies the ACA's affordability rule and also generates sufficient amounts to meet the employer's health care benefits budget. Keep in mind, however, that the **Part B penalty** is calculated only on the number of **full-time employees** who obtain subsidized Exchange coverage for a month, not on all **full-time employees**. Thus, the risk of a **Part B penalty** may be low for some employers based on the overall income levels of their employees. The list on page 8 shows which **full-time employees** would not be eligible for subsidized Exchange coverage, and thus would not put an **applicable large employer** at risk for a **Part B penalty**.

Basic rule

For the purposes of the **employer mandate**, coverage is defined as **affordable** in 2015 if the employee contribution does not exceed 9.56% of the employee's household income for self-only coverage under the lowest cost plan that provides **minimum value**.

Safe harbor options

Because an employer normally wouldn't know what an employee's total household income is, the implementing regulations provide a choice of three optional safe harbor methods for determining affordability.

Safe Harbor Affordability Options[15]

9.5% of W-2 earnings in Box 1

The earnings reported in Box 1 reflect each employee's actual earnings for the prior calendar year, not rate of pay, and also do not include the employee's pre-tax contributions for coverage, flex plans, 401(k), etc. Thus, this approach could result in a different contribution for every employee.

9.5% of monthly rate of pay as of the first day of the plan year

For hourly workers the monthly rate of pay is determined by multiplying the hourly rate by 130 hours. For salaried workers not paid on a monthly basis, the calculation would be the annual rate of pay divided by 12. If wages go up, employers are not permitted to increase employee contributions. But if wages go down, the employee's contributions would need to be reduced.

9.5% of the federal poverty guideline in effect for an individual as of the first day of the plan year.

For 2014, the federal poverty guideline for an individual is $11,670 – this results in a monthly contribution of about $92 for single coverage. The rate for 2015 has not yet been published.

[15] It is our understanding that even though the basic rule regarding affordability changed from 9.5% to 9.56% of household income, the safe harbor options continue to be 9.5% of the applicable amount.

Employers may use different affordability safe harbors for different categories of employees, provided the method chosen is applied on a uniform and consistent basis for all employees in the same category.

The permissible categories are:

- Salaried/hourly
- Union/non-union
- Subject to different collective bargaining agreements
- Working in different states

Employers will want to work with their benefits/legal counsel and payroll vendors to determine the best method for setting and administering employee contribution rates.

Ultimately the decision regarding how to set employee contribution rates will be unique to each employer, driven by the composition of their workforces and their overall business plan.

Employer Notice and Reporting Responsibilities

Under the ACA, employers have multiple notice and reporting responsibilities. This section outlines the requirements as of the publication of this *Guide*.

Summaries of Benefits and Coverage

Plan sponsors must continue to provide Summaries of Benefits and Coverage (SBCs) to participants in their medical plans. Health Plans drafts SBCs for our clients to distribute to their employees.

SBCs must be distributed:

- 30 days in advance of renewal date if employees are **not** required to actively elect to maintain coverage (evergreen elections)
- On the first day of open enrollment if employees may actively elect to maintain or change coverage before the start of a new plan year
- With enrollment materials for newly eligible employees
- On the first day of coverage if coverage provisions changed since the SBC was distributed with the enrollment/open enrollment materials
- 60 days in advance of any mid-year increase or reduction in benefits, (a change would be communicated by amendment, but the updated SBC would have to be available to any newly eligible or newly enrolled employee)
- Upon request, within 7 business days

As of the publication date for this *Guide*, the content and format of the SBCs has not changed for 2015. Health Plans will keep clients advised regarding any future changes to the SBC standards.

Notice Regarding Health Insurance Exchange Coverage Options

The ACA modified the Fair Labor Standards Act (FLSA) to require that all employers subject to the FLSA[16]regardless of size, provide a notice to employees about the availability of insurance Exchanges and the possibility that an employee may qualify for subsidized coverage through an Exchange.

Initially, the notices had to be supplied to all employees by October 1, 2013.

Going forward, they must be supplied to new employees within 2 weeks of starting work.

Mandated content

The DOL provided model notices to be used by employers for the purpose of notifying employees about the availability of Exchanges. The link to the model notices is below. The variable employer- and plan-specific information that must be included is:

- Employer name, address, EIN and phone number
- Employer contact name, phone number and email address
- Eligibility criteria for coverage under the plan, including dependent eligibility criteria
- A statement regarding whether the plan meets the minimum value standard

Optional employee-specific content

Employers may, but are not required to personalize the notices to provide the following employee-specific information:

- Whether the employee is or will be eligible for coverage during the next three months
- The cost of employee-only coverage
- The frequency of premium payments
- Changes in availability of coverage or cost for the next plan year

The model notices are available at www.dol.gov/ebsa/pdf/FLSAwithplans.pdf.

Revised COBRA Notices

The model COBRA general and election notices have been further revised by the DOL to address the availability of health Exchanges.

Health Plans will incorporate the new language into:

- Our clients' Plan Documents/Summary Plan Descriptions
- Election forms for the plans for which we provide COBRA administration services

[16] If an employer wants to confirm whether it is subject to the FLSA, the Department of Labor has an internet compliance assistance tool to determine applicability of the FLSA. See www.dol.gov/elaws/esa/flsa/scope/screen24.asp.

Annual Information Reporting

In January every year, beginning in 2016, *all* employers offering **minimum essential coverage** will be required to send information to both the IRS and their employees regarding coverage under their plans during the prior calendar year. The requirements include:

- An annual information return to the IRS showing which employees were covered under the plan and over what period during the previous calendar year
- Notices to all individuals covered under the plan for any part of the previous calendar year showing the duration of coverage

In January 2016, employers will have to provide the IRS and employees with information about employee status and plan participation between January 1, 2015 and December 31, 2015. Going forward, this will be an annual requirement.

Applicable large employers will also have to provide the IRS and **full-time employees** with additional information related to enrollment, value and cost of the plans. The information on these notices is designed to help the IRS administer the **individual mandate** and **play or pay provisions** of the ACA.

Applicable large employers who offer self-funded plans are required to report all information on Form1095-C for active employees and submit copies of those forms to the IRS, accompanied by transmittal Form 1094-C. Fully-insured plans and non-applicable large employers offering self-funded plans would use Form 1095-B for employees and Form 1094-B for the IRS.

As of the publication date of this *Guide*, the final forms for the information reporting have not been published. But employers will want to analyze the required data elements now to establish processes for collecting them as of January 1, 2015. Draft forms and draft instructions are available at:

http://www.irs.gov/pub/irs-dft/f1094b--dft.pdf
http://www.irs.gov/pub/irs-dft/f1095b--dft.pdf
http://www.irs.gov/pub/irs-dft/f1094c--dft.pdf
http://www.irs.gov/pub/irs-dft/f1095c--dft.pdf
http://www.irs.gov/pub/irs-dft/i109495c--dft.pdf
http://www.irs.gov/pub/irs-dft/i109495b--dft.pdf

The information required on the Forms 1095 for employees includes:

- Employer contact name and phone number
- Months the employee was offered coverage and codes for reasons coverage was not offered
- Employee contribution for lowest-cost employee-only coverage
- Employee and dependent Social Security Numbers[17]
- Months during which employee and each dependent was covered for at least one day

The information on the transmittal Forms 1094 to the IRS includes:

- Number of **full-time employees** each month
- Total employee count each month
- Whether the coverage offered is **minimum essential coverage** (MEC)
- Which months the coverage was offered
- Indicator for any applicable transition relief that waives penalties which might otherwise be applicable

[17] Employers may report dates of birth if they have made reasonable but unsuccessful efforts to obtain the SSNs for dependents. An employer that makes an unsuccessful initial solicitation for a TIN in December in 2014 (or at the time the employment relationship is established), must make a second solicitation by December 31, 2015. One additional solicitation must be made by December 31, 2016, to have made a reasonable effort.

Benefits and Eligibility Mandates Beginning in 2015

The mandates for plan years that begin in 2015 are outlined in the chart below, with additional details following.

Provision	Applicable to	
	GF Plans	NGF Plans
Cover children to end of month in which they reach age 26, no exceptions	✓	✓
Offer coverage to full-time employees by the first day of the fourth full calendar month of full-time employment	✓	✓
Restrict out-of-pocket maximums to ACA established limits	*	✓
Count Rx out-of-pocket expenses toward out-of-pocket maximum	*	✓

*The ACA does not require grandfathered plans to set out-of-pocket limits or count prescriptions toward any existing out-of-pocket limits, but plans which want to provide Minimum Creditable Coverage (MCC) under Massachusetts law to their Massachusetts resident employees must comply with these standards to achieve compliance with the MCC requirements for 2015.

Provide Coverage to the End of the Month in Which a Child Reaches Age 26, No Exceptions

Recently issued guidance from the IRS indicates that plans are required to continue coverage for dependent children through the end of the month in which they reach age 26. Health Plans suggests making this change to client plans, as applicable, with the plan year that begins in 2015.

Offer Coverage to New Full-time Employees by First Day of the Fourth Full Calendar Month of Full-time Employment

This new requirement regarding when new **full-time employees** must be offered coverage is designed to accommodate the ACA's 90-day waiting period limit, newly introduced "orientation period", and the **limited non-assessment period** under the **monthly method** of identifying **full-time employees.** In essence, plans are not required to offer coverage to **new full-time employees** until the first day of the fourth full calendar month of full-time employment, regardless of whether the **monthly method** or **look-back method** is used to determine **full-time** status. Before this date, employers will not be assessed **Part A penalties** for failing to offer coverage to the **full-time employee**. If the coverage offered by the fourth month provides **minimum value**, the **Part B penalty** will also be waived during this period. The same protections against penalties described above will also apply to plans with shorter waiting periods before coverage begins.

Restrict Out-Of-Pocket Maximums to ACA-Established Limits

The ACA mandated that out-of-pocket maximums for in-network services must be limited starting in 2014. Under the ACA, this rule applies only to non-grandfathered plans. However, under Massachusetts Minimum Creditable Coverage (MCC) rules, it applies to all plans, regardless of grandfather status.

The limits for 2014 were the same as the 2014 limits for HSA-qualified HDHPs. Going forward, the ACA's indexing system results in different limits for HSA-qualified HDHP plans and all other medical plans. The out-of-pockets limits for 2015 are:

- HSA-qualified HDHPs $6,450 individual; $12,900 family
- All other medical plans $6,600 individual; $13,200 family

Count All Rx Out-Of-Pocket Expenses Toward the Out-Of-Pocket Maximum

Starting in 2015, all member out-of-pocket costs – including any deductibles, coinsurance and copayments for prescription drugs – must count toward each member's out-of-pocket maximum. Again, under the ACA, this rule applies only to non-grandfathered plans. But under Massachusetts Minimum Creditable Coverage (MCC) rules, it applies to all plans, regardless of grandfather status.

To satisfy this rule, a plan may apply the out-of-pocket maximum limits ***separately*** to prescription expenses and to all other medical expenses. For example, a plan with a current individual out-of-pocket limit of $2,000 on medical expenses could apply a separate individual limit of $4,600 to prescription drugs. Any combination of separate limits is permitted as long as the combined total does not exceed the statutory maximum.

The regulations also allow for ***combined*** medical and prescription drug expense limits; however, this method requires daily data feeds between the plan's Prescription Benefit Manager (PBM) and medical claims administrator to ensure that both cover services at 100% as soon as the out-of-pocket maximum has been reached. If the out-of-pocket limit is reached during the period between data feeds, it is possible that prescription and/or medical claims would need to be reprocessed. In addition, in some cases PBMs will charge fees for these data exchanges, thereby increasing a client's plan administration costs.

Due to the complications and increased cost of administration under the combined method, Health Plans recommends the separate limits approach since it is a more seamless process and may also be easier to communicate to covered members given that prescription drug expenses historically have had no impact on medical out-of-pocket limits.

The rule takes effect on the first day of the plan year that begins in 2015. Plans with calendar year benefit accumulation periods but non-calendar plan years may (but are not required to) implement the change as of January 1, 2015 in order for all out-of-pocket costs to accumulate on the calendar year basis. Otherwise, prescription expenses would not accumulate until the plan year start date for such plans.

This rule represents a change for all plans except those currently operating as HSA-qualified HDHPs.

ACA Benefits and Eligibility Action Plan

Among the tasks at hand for employers is establishing new eligibility and participation criteria before the 2015 plan year begins. The *Participation Supplement*, and the Checklists available through these links are designed to help guide employers through the process of establishing new plan participation criteria.

ACA action plan for employers

Employer Actions Required	When	Next Steps
Determine status as applicable large employer *See pages 12-13*	In 2014	• Determine minimum six-month consecutive period during which measurement will be made • Work with payroll vendor to track hours and evaluate full-time status
Establish participation criteria for coverage *See pages 14-19; 46-64*	By beginning of open enrollment period for the plan year that begins in 2015	Decide whether to use monthly or look-back system for determining eligibility Decide whether to use different methods for different categories of employees Decide length of initial and standard measurement, administrative and stability periods Decide whether to have different length periods for different categories of employees Work with payroll vendor to track and evaluate all employees' hours
Based on the plan's new participation criteria • Identify current employees as either full-time or part-time for 2015 plan year • Under the look-back method, classify new employees as either full-time (eligible for coverage) or part-time, variable hour or seasonal (subject to initial measurement period) • Under the monthly method, classify new employees as either full-time (eligible for coverage) or part-time (not eligible for coverage) *See pages 19; 50*	By beginning of open enrollment period for plan year that begins in 2015 Under look-back method, may need to use hours data attributable to periods beginning no later than July 1, 2014 to establish status of current employees	• Work with Health Plans Account Manager to establish new eligibility criteria for inclusion in plan document The Checklists posted on Health Plans' web site provide details of the information required and will help guide discussions on plan provisions • Establish internal systems for generating reports and taking appropriate actions to enroll full-time employees

Employer Actions Required	When	Next Steps
Based on the plan's new participation criteria , *cont'd* • Offer coverage to full-time employees *See pages 20-23* • Terminate coverage of part-time employees, as applicable	Effective by the plan year that begins in 2015	• Hold open enrollment in advance of plan year that begins in 2015 • Offer coverage to at least 70% of full-time employees for 2015 plan year to avoid potential Part A penalty under look-back; offer coverage to all full-time employees under monthly method • Determine whether to offer at least one employee-only coverage option that is affordable and provides minimum value to avoid Part B penalty under look-back method • Notify COBRA administrator of employees who become ineligible for coverage as the result of new eligibility criteria
Determine amount for prescription drug expense out-of-pocket maximum and medical expense out-of-pocket maximum *See page 33*	Complete by the beginning of the open enrollment period for plan year that begins in 2015	Work with Health Plans Account Manager to amend plan
Distribute Exchange Notices to all newly hired employees (regardless of eligibility for coverage) *See page 29*	Within two weeks of hire	Model notices are available at http://www.dol.gov/ebsa/healthreform/
Submit/distribute applicable Forms 1094/1095 B and C to IRS and employees *See pages 30-31*	Beginning in 2014, track data on plan membership to establish status as applicable large employer On and after January 1, 2015, track employee hours of service and coverage under health plans Beginning January 2016 submit /distribute applicable forms to IRS and employees	• Review IRS model Forms 1094B, 1095B, 1094C and 1095C, and their instructions, and begin planning implementation • Health Plans will notify clients when final forms and instructions have been issued

ACA action plan for Health Plans

***Health Plans* Actions Required**	**When**	**Next Steps**
Draft updated SBCs for 2015 plan year *See page 28*	For upcoming open enrollment periods in 2014 and 2015	Incorporate: • Mandated benefit changes (see below) • Client-initiated benefit changes
Incorporate new Exchange language in COBRA notices *See page 29*	Going forward	Amend plan document and update Election notices for clients for whom Health Plans is the COBRA Administrator
Amend plans for mandated and optional changes for 2015 plan year *See pages 32-33*	As each client notifies Health Plans of the coverage they are requesting for the 2015 plan year	Include the following, as applicable, for all plans: • Extend coverage to children through month of 26th birthday, with no exceptions • Specify new ACA-compliant eligibility and participation criteria Include the following as applicable for non-grandfathered plans and for grandfathered plans complying with Massachusetts MCC requirements: • Apply 2015 statutory out-of-pocket maximums to all plans • Count all out-of-pocket costs, including prescription drug deductibles, coinsurance and copayments, toward out-of-pocket maximum

Federal Fee Assessments

PCORI Fees

Health Plans advised clients of this fee in our August 2012 *Compliance Bulletin*, and again in the 2013 version of this *Guide*.

To recap:

The ACA created the Patient-Centered Outcomes Research Institute (PCORI). PCORI is charged with promoting research to evaluate and compare health outcomes and clinical effectiveness related to medical treatments, services, procedures and drugs in order to help patients, clinicians, purchasers and policymakers make informed health care decisions.

PCORI will be funded in part by fees assessed on sponsors of self-funded group health plans and on insurers, hence the PCORI fee. The fee will be assessed annually for a seven year period, based on the average number of covered individuals — employees and dependents ("covered lives") — in a plan for each plan year ***ending*** on or after October 1, 2012 and before October 1, 2019.

Important

This fee must be filed on a plan sponsor's tax form and must be paid directly to the IRS by the plan sponsor.

Clients will want to work with their tax advisors to calculate and pay this assessment, which is due by July 31 each year.

The chart on the next page outlines how the PCORI fee will work for self-funded group health plans.

PCORI Fee Summary Chart

Topic	Regulatory Details
Applicable plans	Medical plans covering employees and/or retirees, including HRAs that are not integrated into the medical plan, without regard to whether the plan is grandfathered *But not* excepted benefits, such as limited scope dental and vision plans and most flexible spending accounts; or expatriate plans and stop loss coverage
Applicable plan years	Each plan year ending on or after October 1, 2012, and before October 1, 2019.
Fee due date	By July 31 of the calendar year immediately following the last day of the plan year, for example, If plan year ends between 1/1/14 and 12/31/14 –fee due by July 31, 2015
Fee amount	Plan years ending between 10/1/12 and 9/30/13: $1 times average number of covered lives Plan years ending between 10/1/13 and 9/30/14: $2 times average number of covered lives Plan years ending between 10/1/14 and 9/30/15: $2.08 times average number of covered lives Plan years ending between 10/1/15 and 9/30/19: Prior year amount + adjustment indexed to national health expenditures
Reporting method	Annually by plan sponsors on federal excise tax Form 720
Defining "average covered lives"	Employers may choose from three methods of counting covered lives: Actual Count Method Add all covered lives for each day of plan year, then divide by number of days in plan year (usually 365) Snapshot Method Add covered lives on one day from each quarter and divide by 4 *Note:* At your request, *Health Plans can provide you with a quarterly census report to use with this method* Form 5500 Method For plans that provide coverage to employees and dependents, the sum of number of participants on Form 5500 at beginning and at end of plan year For plans that provide employee only coverage, the sum of number of participants on Form 5500 at beginning and at end of plan year, divided by 2

Transitional Reinsurance Fee

Health Plans issued a *Compliance Bulletin* on October 6, 2014, that advised clients regarding their obligations under the transitional reinsurance program.

To recap:

The transitional reinsurance program was established under the ACA to help stabilize premiums in the individual health insurance market from 2014 to 2016. The statute specifies that the program will be funded by contributions from insurers in the individual, small group and large group markets, as well as by self-insured group health plans. Health and Human Services (HHS) has set an annual per capita rate of $63 for 2014 and $44 for 2015. The fee for 2016 has not yet been determined. The fee applies to all participants – subscribers and dependents – in group health plans that provide major medical coverage, except Medicare supplemental plans.

The ACA requires specific amounts to be collected on a national basis to pay reinsurance payments to insurers in the individual market. "Contributing entities" are required to provide HHS with the data necessary to calculate the fee by November 15 each applicable year. [18] The entire fee may be submitted in one payment by January 15 of the following year, or in two payments, by January 15 and November 15 of the following year. For self-funded plans, the contributing entity is the plan sponsor. The chart below outlines how the fees will be assessed and collected.

Transitional Reinsurance Fee Summary Chart

Topic	Regulatory Details
Applicable plans	• Medical plans covering current and former employees and/or retirees not yet eligible for Medicare • *But not* Medicare supplemental plans, stand-alone HRAs or excepted benefits, such as limited scope dental and vision plans and most flexible spending accounts; or stop loss coverage
Applicable reporting years	Calendar years 2014, 2015 and 2016
Target assessments	For the reinsurance pool: $10 billion in 2014, $6 billion in 2015 and $4 billion in 2016 For the general funds of the U.S. Treasury: $2 billion in 2014, 2015; $1 billion in 2016
Fee amount	$63 per average covered life for 2014; $44 for 2015 and TBD for 2016
Reporting method	By November 15 of the applicable reporting year, the plan sponsor must register with pay.gov and enter the average covered lives ("annual enrollment count") for their plan, based on plan membership between January 1 and September 30 Health Plans will provide plan sponsors with covered lives data for the period of time during the applicable year that Health Plans administered claims under the plan.
HHS assessment process	When the plan sponsor submits the data required to pay.gov, the program will generate a fee due and require the plan sponsor to schedule the payment(s).
Plan sponsor payment process	The only permitted method of payment is through an ACH withdrawal by HHS from the plan sponsor's checking account. The account information will be requested during the initial registration process on pay.gov

[18] For the 2014 reporting year, HHS extended the registration and reporting deadline to December 5, 2014. Fee due dates were not extended.

Topic	Regulatory Details
Fee due to HHS	Plan sponsors will schedule payment date(s) when they submit covered lives data to pay.gov. HHS requests that payments be made at least 30 days after the covered lives data is entered, but not later than the applicable deadlines: January 15 if one payment is made; January 15 and November 15 if two payments are made.
Defining "Annual Enrollment Count"	Self-funded plans may calculate the Annual Enrollment Count using any of three methods[19]: Snapshot Method Actual Count Method Form 5500 Method **Note:** Health Plans will use the Snapshot Method to calculate average covered lives. See the October 6, 2014 *Compliance Bulletin* for more detail about the data HPI will provide to clients to generate the annual enrollment count and what additional steps clients may need to take.

[19] Each method is defined in the Contributing Enitites and Counting Method Slides dated July 22, 2014 that is posted in the www.REGTAP.info Library under the Program Area Reinsurance Contributions.

The chart below provides a recommended timetable for completing the Transitional Reinsurance Program online registration, data submission, and payment requirements.

When and Who	What
Recommended by October 17 – 2014 only (registration is only required once) **By Employer/** (Employer's designated staff)	Register on www.pay.gov and www.regtap.info and learn the steps involved in paying the Transitional Reinsurance Fee: • Determine who will be responsible for registering and submitting data to HHS • Register on **pay.gov** to establish an account if the employer does not already have an account on pay.gov (only one account per legal business entity permitted) • Register at **www.REGTAP.info** to access training presentations, tools and FAQs; find the relevant information by filtering for "Reinsurance- Contributions"
Recommended by October 24 – all years **Health Plans** – will provide clients with covered lives reports for January through September, as well as information about how to calculate the Annual Enrollment Count if your plan was not administered by Health Plans for the entire nine-month period **Employer** – if covered by a different TPA at any point between January 1 and September 30 of the applicable year, contact that TPA for the covered lives data or use employer records to determine covered lives[20]	Gather covered lives data for the first nine months of the applicable year to generate the Annual Enrollment Count. (see Determining the Annual Enrollment Count, following this chart)
Recommended by October 29 – all years **Employer**	Estimate fee due using Annual Enrollment Count. Decide whether to make one or two payments. 2014 fee: $63.00 per average covered life 2015 fee: $44.00 per average covered life 2016 fee: TBD **One installment:** Total payment due by 1/15 of following year **Two installments:** 1st payment of 80% due by 1/152nd payment of 20% due by 11/15 of following year

[20] If the plan was fully insured for any period between January 1 and September 30, the insurer is responsible for reporting and paying the fee for that period, but may pass the fee on to plan sponsors either in the overall rate or as a separate fee.

When and Who	What
Recommended by October 31 – all years **Employer**	Confirm that ACH transfer initiated by HHS will be accepted by your bank. HHS will withdraw the contribution from the bank account on the payment date scheduled. HHS will send an email several days in advance of the withdrawal to the contact named in the Form. No other payment method is permitted by HHS.
Recommended by November 4 – all years **Employer**	Access the Supporting Documentation Job Aid in the REGTAP library to create the required Supporting Documentation CSV file (see Preparing the Required Supporting Documentation, following this chart)
Required by November 15 – all years except 2014[21]; recommended by November 7 in case there are any unexpected delays in the process **Employer**	Log on to www.pay.gov Access and complete ACA Transitional Reinsurance Program Annual Enrollment and Contributions Submission Form ("The Form") Upload the Supporting Documentation CSV file(The fee amount will be auto-calculated and shown on your computer screen) Schedule payment(s) when prompted for any date at least 30 days after submission, but no later than January 15 of the following year

Health Plans will use the Snapshot Method to provide our clients with covered lives data, counting membership for each plan as of the first day of each month, January through September. Clients will receive their covered lives data from Health Plans each year by October 24th. The data will separately list the numbers of employees and covered dependents for each month, as well as the total covered lives for each month.

If your plan was administered by Health Plans for the entire nine-month period (January 1-September 30), the report will also show the total covered lives for the entire period, as well as the Annual Enrollment Count (calculated as total covered lives ÷ 9 months).

Otherwise, the report will show the membership for each month the plan was administered by Health Plans, and will include instructions about how to calculate the Annual Enrollment Count depending on whether the plan was fully insured or self-funded during the months Health Plans was not the TPA.

[21] In 2014, HHS extended the deadline for filing to December 5, 2014. Payment deadlines have not been changed.

Clients should then take action to:

- Complete the *ACA Transitional Reinsurance Program Annual Enrollment and Contributions Submission Form*,
- Upload the Supporting Documentation, and
- Schedule payment of the fee.

Preparing the Required Supporting Documentation

The Centers for Medicaid and Medicare (CMS) will compare the data submitted on the Form to the data submitted on the Supporting Documentation file, including the Annual Enrollment Count, entity's legal business name, TIN, billing address, etc. If there are differences, CMS will require correction and resubmission as applicable. The Supporting Documentation must be submitted as a CSV (comma separated value) file, and must meet detailed file specifications exactly or the entire submission will be rejected.

To help avoid having submissions rejected, CMS has posted a Supporting Documentation Job Aid on the www.regtap.info web site. The Job Aid is an Excel spreadsheet that permits users to enter data and then produce a correctly formatted CSV file to upload with the completed Form. The Job Aid helps promote compliance with the file specifications by alerting users to inconsistencies and errors in formatting before the CSV file is produced.

If your questions regarding the Transitional Reinsurance Program are not answered in the materials posted in the www.REGTAP.info site, you can submit a question by clicking on the *Submit an Inquiry* icon on the www.REGTAP.info Dashboard, the first screen that pops up after logging in.

Appendix 1 – Individual Mandate

Under the **individual mandate**, most individuals are required to obtain **minimum essential coverage**, unless it is not **affordable**.

For the purposes of the **individual mandate**, these terms are defined as follows:

> **Affordable** for 2015 means that premiums for coverage are not more than 8.05 percent (8.05%) of household income
>
> **Minimum essential coverage** means coverage that is compliant with the ACA benefits and eligibility mandates, and includes the following types of coverage:
>
> - Most employer-sponsored medical coverage (including COBRA and retiree coverage) that satisfies the benefits and eligibility mandates of the ACA
> - Coverage purchased in the individual market
> - Medicare coverage
> - Medicaid coverage
> - Children's Health Insurance Program (CHIP) coverage
> - Certain types of Veterans coverage
> - TRICARE
>
> But not including:
>
> - Specialized coverage, such as dental-only or vision-only plans
> - Disease-specific plans, such as those for cancer
> - Disability policies
> - Workers' compensation

Exemptions from the individual mandate

There are limited exemptions from the **individual mandate** which are granted to individuals who:

- Have household income below the minimum threshold for filing a tax return
- Have been certified by an Exchange as having a hardship which makes the individual unable to obtain coverage[22]
- Belong to religious sects recognized under federal rules as conscientiously opposed to accepting any insurance benefits
- Belong to a recognized health care sharing ministry
- Are members of a federally recognized Indian tribe
- Are incarcerated
- Are not lawfully in the United States

22 The IRS has issued, and may continue to issue, guidance regarding certain circumstances under which individuals may claim a hardship without being certified by an Exchange.

Individual penalties

Individuals who are not exempt from the **individual mandate** will be subject to a penalty tax calculated as shown in the chart below if they:

- Have **affordable**, **minimum essential coverage** available
- But are **not** enrolled in a plan

Individual Mandate Penalty Tax

Year	Annual penalty is greater of	
2014	1% of income	$95 x uncovered individuals in family, capped at $285
2015	2% of income	$325 x uncovered individuals in family, capped at $975
2016 and thereafter	2.5% of income	$695 x uncovered individuals in family, capped at $2,085

More about the individual penalty

- No penalty is assessed if a coverage gap is less than 3 consecutive months in any calendar year; this exception is available only once a year, so a second coverage gap would result in a penalty.
- Although expressed as an annual amount, the penalty will be prorated to apply only to those months the individual had no **minimum essential coverage**.
- The penalty for individuals under age 19 is 50% of the adult penalty shown in the chart above.

Appendix 2 – Tracking Hours and Classifying Employees

Whether or not an employee is **full-time** governs whether that employee must be offered coverage in order for an **applicable large employer** to avoid a potential **Part A** or **Part B penalty**. (See pages 10-11 for an explanation of the employer penalties). This section covers the two methods for tracking hours and identifying **full-time employees**, as well as the rules that govern when an employee's position change requires a change in the method of tracking hours.

There are two methods for identifying **full-time employees**:

- **Look-back method**
- **Monthly method**

All employees must be subject to one of the two methods. Each method has significantly different approaches for determining which employees are **full-time** and eligible for coverage, and how long those employees will retain their eligibility. The details of each method begin on page 21.

The chart on page 18 compares the **look-back** and **monthly methods**, highlighting the differences, potential advantages and potential disadvantages of each.

Common to both methods, however, are the rules for counting **hours of service**.

Counting Hours of Service

Whether an employer uses the **monthly method** or **look-back method**, each employee's **hours of service** must be counted and tracked as described below.

Definition: An **hour of service** is any hour for which an employee is paid, including, but not limited to, work time, vacation, sick pay and jury duty.

Below are the different options available under the regulations for counting **hours of service**, depending on whether the employee is hourly or salaried**.**

Hourly employees – Count all hours for which the employee was paid, whether it was for actual work or for paid time off such as vacation, sick time or jury duty

Salaried employees – Use any method below:

a) Count all hours for which the employee was paid, whether it was for actual work or for paid time off such as vacation, sick time or jury duty (same as hourly, above)
b) Use a days-worked equivalency method and count 8 **hours of service** for each day for which the employee is entitled to pay for worked or non-worked time
c) Use a weeks-worked equivalency method and count 40 **hours of service** for each week worked for which the employee is entitled to pay for worked or non-worked time

IMPORTANT: Employers may not use either b) or c) above if the result substantially understates an employee's **hours of service** (e.g., a weeks worked equivalency would apply to a manager who works four 10-hour days (accurately reflecting a 40-hour week), not a days worked equivalency which would understate the **hours of service** if only 8 hours per day was counted (inaccurately producing a 32 hour week).

Counting hard to track hours (e.g., airline pilots, truck drivers, commissioned employees, adjunct faculty)

The final rule instructs employers to use a "reasonable method" to count hours for employees working non-traditional schedules, and includes the following rules of thumb:

- Adjunct faculty – count 2.25 hours for every hour of class time, plus hours spent on other non-classroom time, such as office hours and faculty meetings
- Layover and on-call hours – count if paid (any amount) or counted toward employee's required hours; also count if employee's activities are subject to significant restrictions such as being away from home overnight

  IMPORTANT: As an example of an unreasonable method, the IRS specifically stated that it would be unreasonable to fail to consider travel time for a traveling salesman paid on commission.

Monthly Method of Identifying Full-time Employees

Identifying **full-time employees** under the **monthly method** requires that employers count **hours of service** for all employees every month. Employers may use either the **calendar month rule** or the **weekly rule**.

If an employee who was determined to be **full-time** under either rule received subsidized Exchange coverage for a given month, and had not been offered coverage in an **applicable large employer's** plan, that employer would be subject to a **Part A penalty**, unless the employee was in a **limited non-assessment period** as described on page 15.

Calendar month rule

Under this rule, **full-time employees** are those who had 130 or more **hours of service** during the calendar month, regardless of whether the month was 28, 29, 30 or 31 days long, and regardless of whether the calendar month includes partial pay periods at the beginning and/or end.

Weekly rule

The **weekly rule** allows an employer to determine an employee's **full-time** status based on **hours of service** over the course of 52 weeks by dividing that period into four-week and five-week "months".

The general rule for establishing four- and five-week "months" is that the period measured for the "month" must contain either the full week that includes the first day of the calendar month, or the full week that contains the last day of the calendar month, but not both.

For the purposes of this rule, a week is defined as any period of seven consecutive calendar days applied consistently for the year. For example, each of the 52 weeks could begin on a Wednesday and end on a Tuesday. Using this approach, employers may be able to align the "months" they create for the **weekly rule** with their pay periods.

In four-week "months", a **full-time employee** is one who had 120 **hours of service**. In five-week "months", a **full-time employee** is one who had 150 **hours of service**.

Example

For 2015, Employer X identifies **full-time employees** by using the **monthly method** and the **weekly rule** for all employees. Company pay periods run from Sunday through Saturday. The company defined the months as including the week with the first day of the month, and excluding the week with the last day of the month, unless the last day of the month falls on a Saturday (also the last day of the pay period).

The chart below shows the dates for the months created for 2015, based on the assumptions above. Note that the "year" is 52 weeks long, the same as a calendar year.

Defining Months under the Weekly Rule for 2015

Month	Dates included	Duration of month
January	Sunday, December 28, 2014 – Saturday, January 31	5 weeks
February	Sunday, February 1 to Saturday, February 28	4 weeks
March	Sunday March 1 to Saturday, March 28	4 weeks
April	Sunday, March 29 to Saturday, April 25	4 weeks
May	Sunday, April 26 to Saturday, May 30	5 weeks
June	Sunday, May 31 to Saturday, June 27	4 weeks
July	Sunday, June 28 to Saturday, July 25	4 weeks
August	Sunday, July 26 to Saturday, August 29	5 weeks
September	Sunday, August 30 to Saturday, September 26	4 weeks
October	Sunday September 27 to Saturday, October 31	5 weeks

Month	Dates included	Duration of month
November	Sunday, November 1 to Saturday, November 28	4 weeks
December	Sunday, November 29 to Saturday, December 26	4 weeks

Look-back Method of Identifying Full-time Employees

Employers with workforces whose hours fluctuate may want to use the look-back method of identifying **full-time employees**. This method enables the employers to use **hours of service** over a specified past period to lock-in status as either **full-time** or **part-time** for a specified period going forward.

Making the **full-time** vs. **part-time** determination under the **look-back method** requires employers to follow the steps outlined below. More detailed information for completing each step begins on page 50.

1. Identify every employee as either an **ongoing employee or new employee**

2. Identify whether **new employees** are **full-time**, **part-time**, **variable hour** or **seasonal employees**

3. Establish

a. **Standard measurement**, **administrative** and **stability periods** for **ongoing employees** for the first year of implementation if using the special transition rule for the first year

b. **Standard measurement**, **administrative** and **stability periods** for **ongoing employees** for plan years beginning on and after January 1, 2015

c. **Initial measurement**, **administrative** and **stability periods** for **new employees**

Decide whether to have different **measurement**, **administrative** and **stability periods** based on the categories of employees below:

a. Salaried/hourly
b. Union /non-union
c. Subject to different collective bargaining agreements
d. Working in different states

4. Count **hours of service** accumulated during the **measurement period** using the rules summarized on page 46-49 and 54 that are applicable to**:**

a. Hourly employees
b. Salaried employees
c. Employees paid under other arrangements (such as commissions)
d. Employees who work non-traditional schedules (such as nurses or firefighters)

Using the rules described on pages 22-23 and 55, factor in unpaid breaks in service and leaves of absence as applicable, applying:

i. Either the rule of parity or 13-week rule (26 weeks for employees of educational organizations), and
ii. The rule applicable to protected FMLA, USERRA and jury duty leaves

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5. Classify all employees as either **full-time** or **part-time** for the following **stability period** based on the results of the **measurement period** under 4 above

a. Apply the special rule for hours changes during a **new employee's initial measurement period** described on page 51, as applicable
b. Apply the exception for changing between the **monthly method** and **look-back method** described on page 57, as applicable

1. Identify every employee as either an ongoing *or* new employee

An **ongoing employee** is an employee who has been employed for at least one entire **standard measurement period.** (See Step 3 for information about the **standard measurement periods**.)

Everyone else is a **new employee** who will fall into one of the four sub-categories described in Step 2.

How it works for the first year
To transition current employees to the new participation rules, please refer to page 19, *Classifying Current Employees for 2015*. Once the **transition measurement period** has been defined, then anyone hired after the first **measurement period** has begun will be treated as a **new employee**, and classified as **full-time**, **part-time**, **variable hour** or **seasonal** as described under 2 below**.**

2. *Identify whether* new employees *are* full-time, part-time, variable hour *or* seasonal employees

The rules for determining **full-time status** for **new employees** under the **look-back method** depend on whether they are hired as **seasonal employees** or, if not seasonal, on how many hours they are expected to work when first hired.

How it works for the first year

As described on page 19, to implement these rules, employers will determine when the first **measurement period** begins for current employees. Anyone hired after that date would be a **new employee**, subject to the rules below.

Classifications of new employees

Classifications	As of the first day of work:
Full-time employee	The employee is not a seasonal employee and is reasonably expected to average at least 30 hours per week or 130 hours per month.
Part-time employee	The employee is reasonably expected to average fewer than 30 hours per week or 130 hours per month
Variable-hour employee	The employee's expected average hours cannot reasonably be determined, and the employee is not a seasonal employee.
Seasonal employee	The employee is employed in a position for which the customary annual employment is six months or less and which begins and ends about the same time each year. If a new employee is classified as a seasonal employee, it doesn't matter how many hours the employee is expected to average

Special rule for part-time, variable hour and seasonal employee status changes

If a new **part-time, variable hour** or **seasonal employee** changes to being a **full-time employee** – i.e., becomes reasonably expected to average 30 or more hours per week or 130 hours or more per month during the **initial measurement period** (described in the following section) in a position which is not **seasonal**, the employee must be treated as a **full-time employee** by the earlier of the following:

- The first day of the fourth month following the change in employment status, or
- If the employee actually averaged at 30 hours per week during the **initial measurement period**, the first day of the month following the end of the **initial measurement period** and associated **administrative period**

3. *Establish* measurement, administrative *and* stability periods *for* ongoing *and* new employees

The following is a high-level overview of how the **measurement**, **administrative** and **stability periods** work under the **look-back method**. The specific rules that govern the length of each type of period are included in the *Look-back Rules Summary* on page 54.

- **Measurement period** = **look-back period** during which employee hours are tracked – may be 3-12 months long; there are three types of **measurement periods**:
  - **Standard measurement period (SMP)** for all **ongoing employees** that starts on the same day(s) each year
  - **Transition measurement period (TMP)** an optional **measurement period** for **ongoing employees** that applies only for the first year of tracking employee hours (see page 19)
  - **Initial measurement period (IMP)** for new **part-time**, **variable hour** and **seasonal employees** that must begin for each **new employee** between the date of hire and the first of the following month, or by the first day of the first complete pay period, if later, as determined by the employer
- **Administrative period** = **evaluation period** during which the data collected during the **measurement period** is assessed and **full-time employees** are offered coverage and others are notified of termination of coverage (would generally correspond to the open enrollment period) – may be up to 90 days long
- **Stability period = lock in period** during which the status established during the **measurement period** generally cannot change – length is driven by length of **measurement period**

Employers may use the same periods for all employees, or may vary the periods among the categories listed below. Note that the same **measurement**, **administrative** and **stability periods** must apply to all employees in a given category.

- Salaried/hourly
- Union /non-union
- Subject to different collective bargaining agreements
- Working in different states

The decision about whether to measure and lock in status on different schedules for different categories of employees would be made by each employer based on the unique nature of each employer's workforce and business needs. For administrative simplicity, many employers may elect to use 12-month **measurement** and **stability periods** which are tracked to their plan years for all employees.

The Participation Checklists help alert employers to the criteria to consider.

The *Look-back Rules Summary* on the next page outlines the rules that apply to determining the length of the **measurement**, **administrative** and **stability periods**. Illustrations of different length periods are in Appendix 3, beginning on page 58.

Look-back Rules Summary

Type of employee	Type of measurement period	Administrative Period (AP)	Stability Period (SP) for full-time employees	Stability period (SP) for part-time employees
Ongoing employee* **Special transition rule for the first year** *Available only for plan years that begin in 2015*	**Transition measurement period (TMP):** • May be as few as 6 months • Must begin by July 1, 2014 • Must end no earlier than 90 days before first day of plan year that begins in 2015	• May be up to 90 days long • Must end before stability period begins	Must be at least as long as the TMP, but no longer than 12 months	Must be no longer than SP for full-time employees
Ongoing employee An employee who has been employed for an entire SMP	**Standard measurement period (SMP)** May be 3-12 months long	• May be up to 90 days long • Must end before stability period begins	Must be longer of: • 6 months • Length of SMP If the SMP is less than 6 months, then the FT SP = 6 months If the SMP is 6 months or longer, then the FT SP = SMP	Must be no longer than SMP
New full-time employee Upon hire is not seasonal and is reasonably expected to work an average of at least 30 hrs/wk or 130 hrs/mo	N/A - (new full-time employees are treated as full-time employees from date of hire; offer coverage and enroll by 1st day of the 4th full calendar month of employment)	N/A	Same length as **SP** for ongoing full-time employees**	N/A
New part-time, variable hour or **seasonal employee***** Upon hire is reasonably expected to average less than 30 hrs/wk or 130 hrs/mo; or cannot reasonably determine what average hours will be; or is seasonal	**Initial measurement period (IMP):** • May be 3-12 months long • Must start by 1st of month after date of hire, or first day of first complete pay period, if later • IMP and corresponding AP must end by the last day of 1st calendar month beginning after the employee's 1st anniversary	• May be up to 90 days long • Must end before SP begins • Must end no later than last day of 1st calendar month that begins after the employee's one year anniversary of employment	Longer of 6 months or length of IMP	• No longer than 1 month longer than IMP or • The end of the SMP and corresponding AP for ongoing employees which begins during the IMP

*Note that when the first **measurement period** is implemented, an **ongoing employee** is anyone working on the date the **first measurement period** begins.

**New full-time employees retain their full-time status at least until the beginning of the SSP following completion of their first SMP.

***See page 51 for the special rule governing a change in status from **variable hour** or **seasonal** to **full-time employee**.

4. Count hours of service *accumulated during each* measurement period

An employee's status as either **full-time** or **part-time** is based on the **hours of service** for which the employee is paid during the applicable month (under the **monthly method**) or **measurement period** (under the **look-back method**). While the **hours of service** rules described on pages 46 and 47 apply to both methods, the exceptions below apply only to the **look-back method**.

Protected Leaves – FMLA, USERRA, jury duty

If an employee returns from an unpaid **protected leave**, the employer may choose one of the following methods to average the absence into the applicable **measurement period**:

A. Disregard the period of leave for the purpose of the **measurement period** during which the employee returns to work (i.e., reduce the **measurement period** for that individual by the duration of the unpaid absence), or
B. Impute the average hours from the period before the leave to the period of leave

Educational Organizations

The same averaging rules that apply to **protected leaves** also apply to the employees of educational organizations who experience "employment break periods" of at least four weeks during which the employee is not credited with an hour of service. Such breaks in service may occur over summer breaks or extended holiday periods.

However, an educational organization is not required to take into account more than 501 **hours of service** for all employment break periods that occurring in a single calendar year. For example, if an employee worked an average of 32 hours per week before the employment break period, the employer would only have to credit 15.7 weeks of the absence at 32 hours per week (501 hours ÷ 32 hours). Any remaining unpaid absence during that calendar year would be averaged in at 0 hours per week.

5. *Classify all employees as either* full-time *or* part-time *for the following* stability period *based on their* hours of service

Based on each employee's **hours of service** during the **measurement periods**, employers will use the **administrative period** to classify them as:

Full-time – averaged 30 or more hours per week or 130 or more hours per month during the previous **measurement period**

Full-time employees retain that status for the duration of the following **stability period**, and remain eligible to participate in the medical plan.

During the **administrative period**, they should be notified of their eligibility for coverage and permitted to enroll or continue their participation in the medical plan effective the first day of the following **stability period**.

Part-time – average less than 30 hours per week or 130 hours per month during the previous **measurement period**

Part-time employees retain that status for the duration of the following **stability period**, and remain ineligible to participate in the medical plan.

During the **administrative period**, those employees who were participating in the plan during the **measurement period** and have lost **full-time status** should be notified of their change in status and offered COBRA effective the first day of the following **stability period**.

Gaps between initial stability period and first standard stability period

In the event of a gap in time between the end an employee's initial stability period and the beginning of the employee's first standard stability period, the final regulation clarifies that the employee's status for the **initial stability period** should be continued until the beginning of the **standard stability period**. Then, the status as determined by average **hours of service** during the first **standard measurement period** would apply for the first **standard stability period**.

The **full-time** or **part-time** status of employees is generally locked in for the following **stability period**, regardless of whether the employee's expected **hours of service** change, except under the two circumstances described below:

Special Rule for New Part-time, Variable hour and Seasonal Employee Status changes

If a **new part-time, variable hour** or **seasonal employee** becomes reasonably expected to average 30 or more hours per week, or 130 hours or more per month – during the **initial measurement period**, the employee must be treated as a **full-time employee** by the earlier of the following:

- The first day of the fourth month following the change in employment status, or
- If the employee actually averaged at 30 hours per week during the **initial measurement period**, the first day of the month following the end of the **initial measurement period** and associated **administrative period**

> This special rule applies only to **new employees** subject to the **look-back method** of determining **full-time** status.
>
> The status for **ongoing employees** is based only on their average **hours of service** during the **standard measurement periods**.

Changing between the Monthly and Look-back Methods

As noted above, employers may use different methods of tracking hours and identifying **full-time employees** for different categories of employees. The transition rules below apply when an employee changes to another category (e.g., from hourly to salaried) which uses a different method.

Change from *monthly method* to *look-back method*

1. For the remainder of the **stability period** in which the change occurs, continue **monthly method** unless the employee would have had full-time status for the **stability period** if the **look-back method** applied
2. For the next **stability period** in the new position, use both methods and treat as full-time if the employee would have been full-time under either method
3. Thereafter, the **look-back method** applies

Change from *look-back method* to *monthly method*

1. For remainder of the **stability period** in which the change occurs:
    a. If the status was **full-time**, continue as **full-time**
    b. If the status was **part-time**, then employer may choose between continuing as **part-time** or beginning the **monthly method**
2. To determine status for the next stability period, measure under both methods and treat as **full-time** if the employee was full-time under either method
3. Thereafter, the **monthly method** applies

Appendix 3 – Illustrations of Measurement, Administrative and Stability Periods

The examples on the following pages illustrate how 12-month and 6-month **stability periods** would play out over several years.

Key:

TMP = **transition measurement period** (optional for first year of implementation)
SMP = **standard measurement period** (for all **ongoing employees**)
IMP = **initial measurement period** (for new **part-time**, **variable hour** or **seasonal employees**)
AP = **administrative period**
SP = **stability period**

Example 1: 12-month stability periods for new and ongoing full-time employees

- **Transition rule for ongoing employees**
- **Standard rules for ongoing employees**
- **Initial rules for new employees**

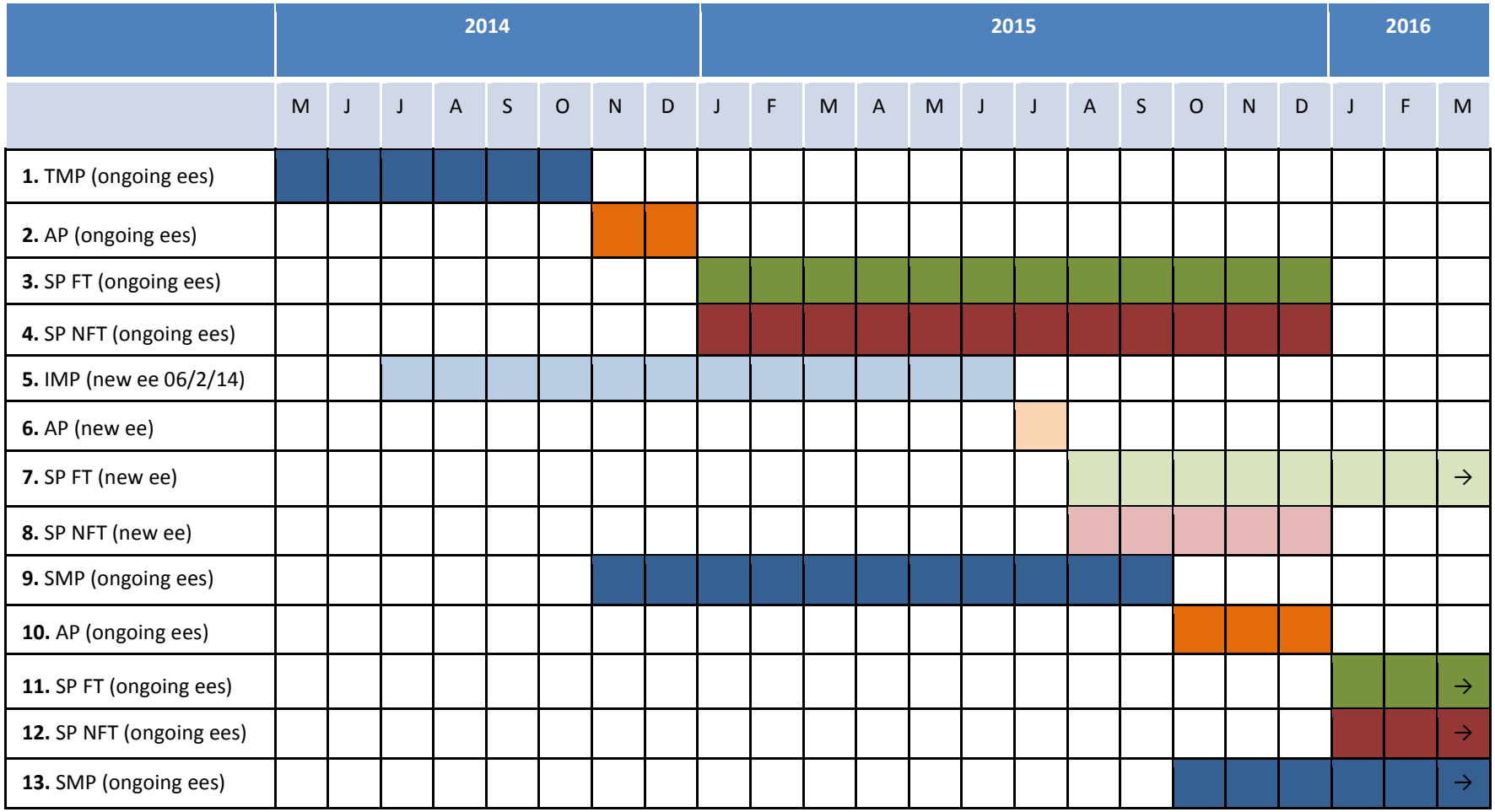
The transition rule permits employers to establish 12-month **stability periods** in the first year of implementation by using shorter **measurement periods**. The transition rule differs from the standard rule because it does not require that the 12-month **stability period** be linked to the length of the **initial measurement period**.

To use the special transition rule, the **transition measurement period** (TMP) must:

- Be at least six consecutive months
- Begin no later than July 1, 2014
- End no more than 90 days before the first plan year that begins in 2015

Assumptions:

- Plan year begins on January 1
- Employer wants a 12-month **stability period** beginning with the first day of the plan year.
- Employer wants a 2-month **administrative period** the first year and 90 day **administrative periods** the following years



To satisfy the transition rule, for all employees who were employed on May 1, 2014 (i.e., **ongoing employees**):

Row	Explanation
1	The transition measurement period during which employee hours are tracked runs from May 1 through October 31, 2014. The period satisfies the transition rule because the transition measurement period: • Is at least six consecutive months long • Began by July 1, 2014 • Will end no more than 90 days before the first plan year in 2015 begins on 1/1/15
2.	The administrative period during which average employee hours are calculated, employees are notified of status and enrollment is conducted runs from November 1 through December 31, 2014. The period satisfies the transition rule because: • The administrative period is no more than 90 days long
3. 4.	The stability periods during which both full-time and part-time ongoing employee status is locked in runs from January 1 through December 31, 2015. The period satisfies the rule because: • The stability period is 12 months long as required to use the transition measurement period
9.	The standard measurement period for ongoing employees to establish eligibility for the 2016 plan year runs from October 1, 2014 through September 30, 2015. The period satisfies the rule after the first year of implementation because: • The standard measurement period is between 3 and 12 months long
10.	The administrative period associated with (9) runs from November 1 through December 31, 2016
11.	The stability period for full-time employees runs from January 1 through December 31, 2017 • The stability period for full-time employees is the longer of 6 months or the standard measurement period
12.	The stability period for part-time employees runs from January 1 through December 31, 2017 • The stability period for non-full-time employees is no longer than the standard measurement period

To apply the **initial measurement** and **stability periods** to **new employees** (assumes an employee hired on June 15, 2014)

Row	Explanation
5.	The initial measurement period (IMP) for a new part-time, variable hour or seasonal employee hired during June 2014 begins on July 1, 2014, and runs for 12 months • Because the stability period for new employees who are found to be full-time during the measurement period is the longer of the IMP or 6 months, and because the employer wants a 12-month stability period for full-time employees, the IMP must also be 12 months long
6.	The administrative period is limited to one month so that the combined initial measurement period (5) and administrative period (6) are over no later than the last day of the month following the month of the employee's anniversary of employment (July 31, 2015)
7.	The stability period for new part-time, variable hour and seasonal employees hired in June 2014 and found to be full-time after the initial measurement period begins August 1, 2015 and continues through July 31, 2016 – again, the stability period must be the longer of 6 months or the initial measurement period
8.	The stability period for new part-time, variable hour and seasonal employees hired in June 2014and found to be non-full-time during the initial measurement period begins August 1, 2015 and ends on December 31, 2015, the earlier of one month longer than the length of the initial measurement period (5) or the end of the standard measurement and associated stability periods (9 and 10) during which the initial measurements period (5) ends – status as of January 1,2016 will be based on the standard measurement period that ran from November 1,2014 through October 31, 2015

Example 2: Six-month stability periods for new and ongoing full-time employees

Assumptions:

- Plan year begins on April 1
- 6 month **initial** and **standard measurement periods** for **new** and **ongoing employees**
- 6 month **stability period** (SP) for **ongoing full-time** and **part-time employees**
- **Stability period** for **new employees** is 1 month longer than the IMP, but must end no later than the end of the SMP and corresponding **administrative period**
- 90 day **administrative period** for **ongoing employees**
- 2 month **administrative period** for **new employees**

	2014			2015												2016		
Dark shades = ongoing ee Light shades = new ee	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M
1. SMP (began 7/1/14 for anyone employed on that date)	←																	
2. AP (ongoing ee)																		
3. SP FT (ongoing ee)																		
4. SP NFT (ongoing ee)																		
5. IMP (ee hired 10/2014)																		
6. 1st AP (new ee)																		
7. 1st SP FT (new ee)																		
8. 1st SP NFT (new ee)																		
9. SMP (ongoing ee)																		
10. AP (ongoing ee)																		
11. SP FT (ongoing ee)																		
12. SP NFT (ongoing ee)																		
13. SMP (ongoing ee)																		

Row	Explanation
1	The standard measurement period began on July 1, 2014 because: • The employer wanted a six-month stability period for ongoing employees • The employer wanted a 90 day administrative period for ongoing employees • The plan year begins on April 1
2	The 90 day administrative period during which hours were totaled and open enrollment held began on January 1 and ran through March 31
3	The stability period for full-time employees began on April 1, and must be the longer of six months or the length of the SMP – which in this case is six months
4	The stability period for ongoing part-time employees also begins on April 1 and cannot be any longer than the stability period for full-time employees
5	The initial measurement period for new part-time, variable hour and seasonal employee hired during October 2014 • Must begin by November 1, no later than the 1st of the month following the first day of work • Needs to be six months long, ending on April 30, 2015, if the employer wants the first stability period to be six months long for those who turn out to be full-time
6	The administrative period is, as the employer specified, two months long for new part-time, variable hour and seasonal employees
7	The first stability period following the initial measurement period for full-time employees is the longer of six months or the initial measurement period
8	The first stability period following the initial measurement period for part-time employees may be no longer than: • One month longer than the initial measurement period, or • The end of the standard measurement period (row 9) and corresponding administrative period (row 10) in which the initial measurement period (row 5) ends
9	This is the standard measurement period for ongoing employees that determine status for the stability period that begins on October 1, 2015
10-13	These rows illustrate how the standard measurement, administrative and stability periods play out over time

Glossary

The provisions of the shared responsibility rules to which certain terms apply are noted below in italics.

Term	Definition/Explanation
Administrative period – *look-back method*	The time permitted for an employer to compile the data collected during the measurement period, make determinations, provide enrollment materials as applicable and enroll newly eligible employees. For ongoing employees, this period will usually include the open enrollment period. Administrative periods: • May be up to 90 days long, but • Must be completed by the end of the prior stability period to avoid a gap in coverage going forward (see chart on page 54) Different length administrative periods may apply for new and ongoing employees.
Affordable – *employer mandate*	The employee's monthly contribution for coverage is no more than: 9.56% of household income 9.5%[23] of the employee's W-2 earnings for the prior calendar year 9.5% of the employee's rate of pay (for hourly employees, the hourly rate × 130; for salaried employees, the monthly salary) 9.5% of the federal poverty guideline for an individual in effect as of the first day of the plan year, divided by 12
Affordable – *individual mandate*	The employee's contribution for coverage is no more than 8.05% of household income

[23] The 9.5% tests are the safe harbor measurements of affordability. It is our understanding that even though the basic rule regarding affordability changed from 9.5% to 9.56% of household income, the safe harbor options continue to be 9.5% of the applicable amounts.

Term	Definition/Explanation
Applicable large employer	An employer who: o Employed an average of 50 full-time employees + full time equivalents on business days during the prior calendar year, or o Is a member of a controlled group of employers that collectively employed an average of 50 full-time employees + full time equivalents on business days during the previous calendar year
Calendar month rule – *monthly method*	A way to measure hours of service under the monthly method where full-time employees would be those who had 130 hours of service during a calendar month, regardless of whether the month had 28, 29, 30 or 31 days
Employer mandate	A label to identify the rule that subjects applicable large employers to penalties if one of their full-time employees obtains subsidized Exchange coverage and the employer either: o Failed to offer substantially all employees participation in a plan that provides minimum essential coverage, or o Offered a plan that was not affordable and/or failed to provide minimum value coverage
Full-time employee – *look-back method*	An employee who: o Upon hire is reasonably expected to average at least 30 hours of service per week or 130 hours of service per month, or o After completion of a measurement period has been determined to have averaged at least 30 hours of service per week or 130 hours of service per month
Full-time employee – *monthly method*	An employee who has been paid for 130 hours of service in a month
Full-time equivalents	The sum of all hours of service of non-full-time employees, up to a maximum of 120 for any individual in a month, divided by 120; used to help determine whether an employer is an applicable large employer

Term	Definition/Explanation
Hours of service	All hours for which an employee is paid, including work time, vacation time, sick pay, jury duty, etc. (see page xx for details on valuing hard-to-count hours of service)
Individual mandate	The requirement that essentially all individuals in the United States be covered under a health plan that provides minimum essential coverage or face a potential tax penalty
Initial measurement period – *look-back method*	The first period of time during which a new part-time, variable hour or seasonal employee's hours of service are measured to determine future eligibility for coverage
Limited non-assessment period	The period ending on the first day of the fourth full calendar month of full-time employment during which Part A and Part B penalties generally would not apply (this period is analogous to a waiting period) (See pages xx, xx for more information about the conditions under which limited non-assessment periods would apply)
Look-back method	A way to identify full-time employees by measuring and averaging hours works over specified prior periods and then locking in the full-time or part-time status during future specified stability periods
Measurement period – *look-back method*	*See separate listings for:* Initial measurement period Standard measurement period Transition measurement period

Term	Definition/Explanation
Minimum essential coverage	Coverage that is deemed by the ACA as providing sufficient coverage to satisfy the individual mandate, including the following: • Most employer-sponsored medical coverage (including COBRA and retiree coverage) that satisfies the coverage mandates of the ACA • Coverage purchased in the individual market • Medicare coverage • Medicaid coverage • Children's Health Insurance Program (CHIP) coverage • Certain types of Veterans coverage • TRICARE But not: • Specialized coverage, such as dental-only or vision-only plans • Disease-specific plans, such as those for cancer • Disability policies • Workers' compensation
Minimum value coverage	A health plan that provides substantial coverage for in-patient and physician services, and covers 60% of the total allowed cost of services provided under the plan
Monthly method	A method of identifying full-time employees based on actual hours of service during any given month
New employee – *look-back method*	An employee who has not completed an entire standard measurement period
New employee – *monthly method*	A newly hired employee
Ongoing employee – *look-back method*	An employee who has completed a standard measurement period or was an employee on the first day of the transitional measurement period

Term	Definition/Explanation
Part A penalty	The penalty applied when a full-time employee obtains subsidized Exchange coverage and the applicable large employer has not offered a plan with minimum essential coverage to substantially all full-time employees; the penalty equals: (Total employees – 30*) x $2,000 *80 for 2015 only
Part B penalty	The penalty applied when a full-time employee obtains subsidized coverage through an Exchange and the plan offered to substantially all full-time employees by an applicable large employer is not affordable and/or fails to provide minimum value coverage; the penalty equals: (Number of employees with subsidized coverage) x $3,000
Part-time employee – *look-back method*	A new employee reasonably expected to average fewer than 30 hours of service per week or 130 hours of service per month An ongoing employee who averaged fewer than 30 hours of service per week or 130 hours of service per month during the previous measurement period
Part-time employee – *monthly method*	An employee who had fewer than 130 hours of service during a given month
Play or pay provisions	Another term for employer mandate
Protected leave – *look-back method*	Leaves of absence under the FMLA, USERRA, and jury duty
Seasonal employee – *look-back method*	An employee hired into a position for which the customary annual employment is six months or less and which begins and ends at about the same time every year
Stability period – *look-back method*	The period of time during which an employee's status as full-time or non-full-time, and as eligible or ineligible to participate in the medical plan, is locked in

Term	Definition/Explanation
Standard measurement period – *look-back method*	The period of time during which an ongoing employee's hours of service are measured to determine whether the employee will be considered to be full-time or part-time for the subsequent stability period
Substantially all	For 2015: 70% of full-time employees; for all subsequent years: 95% of full-time employees
Transition measurement period – *look-back method*	A special, one-time measurement period to permit plans to use a shorter measurement period for the first stability period for ongoing employees that begins in 2015. Under the transition rule, the transition measurement period can be no less than six consecutive months and must begin no later than July 1, 2014, and end no more than 90 days before the beginning of the first plan year that begins on or after January 1, 2015. See page xx for a chart that illustrates when the transition measurement periods must start and end, depending on the length of the corresponding administrative period.
Variable hour employee – *look-back method*	A new employee for whom the expected average hours of service cannot reasonably be determined
Weekly rule – *monthly method*	A way to measure hours of service under the monthly method by using four- and five-week periods to determine "months" instead of calendar months