

SUBJECT: Patient Protection and Affordable Care Act **NUMBER:** 50.070.01
DIVISION: Chief Human Resource Office **EFFECTIVE DATE:** 11/5/14

APPROVED: Signature on file with Chief Human Resources Office

POLICY

STATEMENT: For most permanent employees, Oregon state government offers health coverage through PEBB. Effective January 1, 2015, many temporary employees, appointed under ORS 240.309, will be entitled to coverage under Patient Protection and Affordable Care Act (ACA).

AUTHORITY: 26 U.S. Code § 4980H

APPLICABILITY: Employees of all state agencies

ATTACHMENTS: FAQ
Newly Hired Temporary Employee Worksheet
Temporary Employee Fact Sheet
Insurance Payment Letter

DEFINITIONS:

- (a) "Administrative Period" means the two-month period after the Standard Measurement Period (November and December) or the period of time ending at the end of the first full month following the Initial Measurement Period that allows time for enrollment and disenrollment.
- (b) "Hours of Service" means each hour for which an employee is paid or entitled to payment for duties performed for the state. Hours of service also include each hour for which an employee is paid or entitled to payment for a period of time during which no duties are performed due to vacation, holiday, illness, incapacity (including disability and workers' compensation leave), being on-call, or military duty. Note that three types of Special Unpaid Leave also count as hours of service: OFLA/FMLA leave, USERRA leave, and jury duty leave.
- (c) "Initial Measurement Period" means the 12 consecutive month period starting with the first day of the employee's employment.
- (d) "Ongoing Employee" means an employee who has been employed in state service for at least one complete Standard Measurement Period.
- (e) "New Employee" means an employee who has not been employed in state service for at least one complete Standard Measurement Period.
- (f) "Stability Period" means the 12 consecutive month period after any Standard or Initial Measurement Period and Administrative Period during which employees are entitled to keep coverage, no matter what their Hours of Service are.
- (g) "Standard Measurement Period" means the 12 consecutive month period starting November 1 and ending October 31.

Patient Protection and Affordable Care Act

(h) "Variable Hour Employee" means a New Employee if, based on the facts and circumstances at the New Employee's start date, the agency cannot determine whether the employee is reasonably expected to be employed on average at least 30 hours of service per week during the Initial Measurement Period because the employee's hours are variable or otherwise uncertain.

POLICY:

I. BENEFITS UPON HIRING

A New Employee should be made eligible for PEBB benefits unless the employee is a new temporary appointment under ORS 240.309 or is otherwise excluded from eligibility under PEBB rules. Temporary employees who are expected to work 30 or more hours per week should be made eligible for PEBB benefits the first of the fourth month of employment. Variable hour temporary employees shall be evaluated following an initial measurement period to determine if benefits should be offered. A New Employee engaged as an independent contractor, e.g., through "GALT," and others who are not considered employees of Oregon state government, will not be eligible for PEBB benefit plans. A New Employee who is employed on less than a half-time basis will not be eligible for benefits unless he or she is in a position classified as a job-sharing position.

Example of a Variable Hour Employee: The Public Utility Commission hires a student law clerk, employed under ORS § 240.309(10), to initially work full-time during the summer months. His or her employment continues during the school year, but the employee's hours are uncertain and are reduced to a few afternoons per week from September through November. The student law clerk works full time again in December and switches to fewer hours during January through May. The student law clerk then works full time again during the summer months.

The above example most likely fits the definition of a Variable Hour Employee and so the student law clerk should not be offered benefits upon hiring. However, after completing the Initial Measurement Period (as discussed in more detail below), the agency would count the hours of the Variable Hour Employee in order to determine whether to offer benefits on an ongoing basis.

An agency must document in writing the facts and circumstances used to determine that the employee was a Variable Hour Employee; use the ACA Newly Hired Temporary Employee Offer of Coverage Worksheet and place it in the employee's file.

II. INITIAL MEASUREMENT PERIOD – VARIABLE HOUR EMPLOYEES WHO ARE NOT BENEFITS ELIGIBLE

- (a) Starting November 1, 2014, for all new Variable Hour Employees not made eligible for benefits upon hire or by the first of the fourth month following hire, an agency must calculate, at the end of the Variable Hour Employee's Initial Measurement Period, whether such employee had sufficient hours of service to qualify as eligible for benefits. A sufficient number of Hours of Service is 1,560 over the 12 month Initial Measurement Period (or 30 hours/week on average over the 12 month Measurement Period). Agencies can determine an employee's average Hours of Service by excluding any periods of Special Unpaid Leave that occurred during the Initial Measurement Period, and then apply the average hours for the resulting Initial Measurement Period. If the agency determines that a Variable Hour Employee had 1,560 Hours of Service during the Initial Measurement Period, then the agency must make the Variable Hour Employee eligible within the electronic HR personnel database.

Patient Protection and Affordable Care Act

- (b) If, during the Initial Measurement Period, a New Employee experiences a change in status that makes the employee eligible for health benefits, or is placed in a position that is classified as benefits eligible, the agency shall make the New Employee eligible for benefits. A change in employment status before the end of the Initial Measurement Period such that would result in the employee being benefit eligible is a change that if the employee had begun employment in the new position or status, the employee would not have been a Variable Hour Employee and the employee would have reasonably been expected to be employed on average at least 30 hours of service per week. If such change occurs, then the agency must make the employee eligible for benefits effective the first of the fourth month following such change in employment.

III. STABILITY OF BENEFITS – NEW AND ONGOING EMPLOYEES

- (a) A New Employee or Ongoing Employee who qualifies as benefit eligible during a Measurement Period will remain eligible for health benefits for the duration of a Stability Period (12 months) that follows the Measurement Period and Administrative Period, regardless of the number of hours actually worked in a given month of that Stability Period, as long as that employee remains employed by Oregon state government. The amount of the premium payable by the employee will be deducted from the employee's pay unless the employee is on leave without pay.
- (b) If the employee is on leave without pay, the employee will be asked in writing for payment. The employee must provide payment within the required time, or coverage will terminate and the next opportunity for re-enrollment is when the employee returns to work.

IV. BREAK IN SERVICE – IMPACT ON MEASUREMENT AND STABILITY PERIODS

If an employee qualifies as a benefits eligible employee for a given Stability Period, then has a break in service during that Stability Period, but resumes employment in state service (to the same agency or to another agency) in less than 13 weeks, the agency may not treat the returning employee as a New Employee. The agency must reinstate the returning employee to his or her previous Stability Period. The returning employee becomes eligible for health benefits by the first day of the calendar month following the month in which the employee resumes employment.

- (a) When calculating the time period in a Stability or Measurement Period during which an employee has not accrued hours of service under this subsection, periods of Special Unpaid Leave do not count as a break in service.
- (b) If the employee was employed immediately prior to his or her break in service for a period of less than 13 weeks, then the agency may treat the employee as a New Employee upon rehire for purposes of a Stability or Measurement period, as long as the period during which the employee did not accrue any hours of service was at least four weeks long. For example, an employee who works for five weeks and then has no hours of service for six weeks may be treated as a New Employee.
- (c) Notwithstanding the above, a permanent benefit eligible employee returning to a benefit eligible position within any consecutive 12 month period is to be reinstated to PEBB Benefits.