Oregon Educators Benefit Board
Affordable Care Act (ACA) Bulletin #3
Revised April 2014

Spotlight on Health Care Reform
Prepared for Educational Entities Participating in the OEBB Benefits Program

In this third ACA Bulletin for OEBB-participating entities, we will review the various measurement periods that can be used to determine full-time employee status under the ACA's Employer Shared Responsibility Provisions. This bulletin has been revised/updated from the original version to reflect changes and/or clarifications resulting from the final regulations that were published by the IRS on February 10, 2014. Changes from the original OEBB Bulletin are noted in red text.

Bulletins 1 and 2 reviewed the Employer Shared Responsibility Provision (the "pay or play" provision) of the ACA and which entities may be subject to the provision. According to the ACA, employers with more than 100 full-time equivalent employees (FTEEs) (see OEBB ACA Bulletin #1) in 2015 must offer health care benefits to all employees who work an average of 30 or more hours per week. Beginning in 2016, employers with 50 or more FTEEs must offer coverage to employees working an average of 30 or more hours per week. Entities that are subject to the Shared Responsibility Provision need to establish a method to track variable-hour, seasonal or part-time employees to determine eligibility for benefits under the new ACA standards.

Many times, an entity will have a current or new employee, and it will be clear whether the employee is expected to work 30 hours or more per week. However, an entity may also have current or new employees for whom it cannot readily determine whether the employee will work an average of 30 hours or more per week during the measurement period (e.g., coaches, temporary employees, substitutes).

In this bulletin, we will review the ACA requirement for measuring and tracking benefit eligibility for purposes of determining if the employee qualifies as a full-time employee. We will also review options for selecting a measurement period and the corresponding considerations/impacts to the entities based on the measurement period they select.

Under the earlier proposed regulations issued January 2, 2013, it appeared an entity was not required to measure employees who were automatically offered coverage without being subject to measurement or employees who would obviously never measure as a full-time employee. The final regulations issued on February 10, 2014, generally require measurement to be performed for all employees. There are two measurement methods available: (i) monthly measurement; and (ii) look-back measurement. Measurement on a monthly basis is generally viewed as much more administratively difficult and impractical by most employers, and this bulletin will be limited to a discussion of the look-back measurement method.

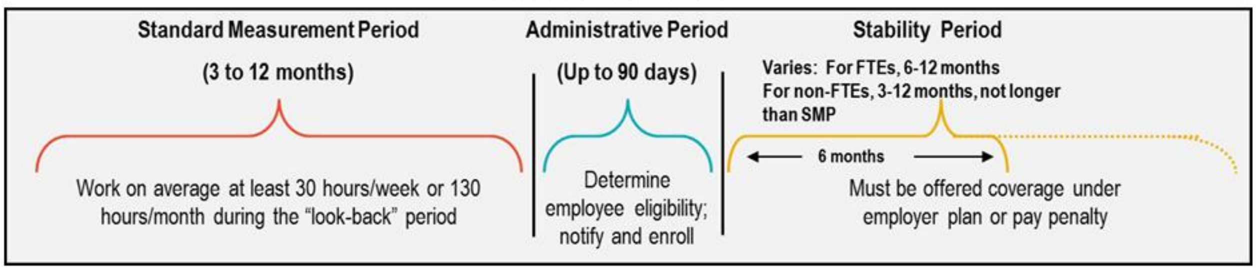
Reminder: Entities that are subject to the Employer Shared Responsibility Provision will need to establish a consistent measurement, administrative and stability period for the look-back measurement method in advance of 2015. The start of the plan year and the length of the measurement period selected will impact when measurement should begin.

Definitions and diagrams: measurement period, administrative period, stability period

- **Measurement Period:** The period of time (three to 12 months) an employer chooses to apply to employees for determining full-time status.
- **Administrative Period:** The period of time during which the employer performs measurement and determines whether coverage should be offered. The employer is permitted to select an Administrative Period of up to 90 days for a period that may begin prior to the Measurement Period and continue for a period beginning immediately following the end of a Measurement Period and ending immediately before the start of the corresponding Stability Period. A special rule can limit the maximum duration when measuring new hires. In other words, the Administrative Period may straddle the Measurement Period.
- **Stability Period:** The period of time an employee must be offered benefits if a determination was made in the Administrative Period that the employee qualified as full-time during the Standard Measurement Period, or the maximum period he/she can be denied benefits if the employee does not qualify as full-time. If the employee qualifies as full-time, the minimum possible Stability Period is six consecutive calendar months, but the Stability Period cannot be shorter in duration than the period chosen by the employer entity as the Standard Measurement Period.

Note: For new hires, the measurement and stability periods are referred to as Initial Measurement Periods and Initial Stability Periods. For ongoing employees, the terms are Standard Measurement Periods and Stability Periods. We sometimes refer to these as simply Measurement Periods and Stability Periods for simplification.

Full-Time Status Determination



Considerations

During the Stability Period, an entity will generally want to offer coverage to employees who satisfied the requirements of a full-time employee during the Standard Measurement Period to avoid potential Employer Shared Responsibility Provision penalties regardless of the employee's actual hours worked during the Stability Period as long as he/she remains an employee. The requirement is to offer coverage; the employee does not have to actually elect the coverage to avoid the penalty. The minimum Stability Period is six months for employees who qualify as full-time.

Likewise, if an employee did not measure as a full-time employee during the Standard Measurement Period, the Stability Period is also a period of time in which the entity does not have to consider the employee as eligible for benefits. However, in the case of an individual who doesn't measure as full-time, the Stability Period cannot be longer than the Standard Measurement Period and there is no six-month minimum period in which coverage has to be offered.

Special rules for educational organizations

Educational organizations get a special rule to deal with extended breaks in hours of service (e.g., winter and summer breaks). You can either:

1. Ignore the break period and calculate full-time employee status on a reduced pro rata basis (i.e., reduce your measurement period accordingly and treat the result as the average for the entire measurement period); or
2. Count the break period by calculating an average hours of service for the non-break months and count that toward the hours of service for the break months (capped at 501 hours).

Most entities have indicated they will use the pro rata method (#1).

What happens if we don't follow this measurement tracking requirement?

Beginning in 2015, if an entity fails to offer coverage to at least 70% of its full-time employees (increased to 95% in 2016), an entity may be subject to a penalty in the amount of $2,000 annually for each full-time employee minus the first 80 employees. Penalties are calculated based on the total number of employees with full-time status during a particular month. With limited exceptions, measurement will also be necessary for the purposes of certain IRS reporting requirements beginning with the 2015 calendar year (this will be discussed in a future bulletin).

Example

To best explain the distinction between a six- and 12-month Standard Measurement Period, it is most helpful to illustrate through an example. We will use an example from the OASBO Health Care Reform Update presented on November 13, 2013. For purposes of this example, we will utilize the pro rata method (#1 above) from the special rule applicable to educational organizations.

John Smith was hired on August 5, 2012, to work as a part-time high school teacher for the school year. He will also coach football in the fall and basketball in the winter. During the school year, John works nine months at 27.5 hours per week. During football and basketball seasons, John works 10 extra hours per week as a coach. For three months of the school year, John has no hours of service. Based on this description, we cannot reasonably determine if John will work an average of 30 hours per week; therefore, John is an employee subject to measurement. The examples below illustrate John's hours measured using both a 12-month and a six-month Standard Measurement Period.

12-Month Measurement Period

Service Hours	
Data Fields	**Descriptions**
Measurement Period	July 1, 2014 – June 30, 2015
Hours Worked	1,230 hours
Vacation	0 hours
Holiday	0 hours
Illness	0 hours
Disability	0 hours
Jury Duty	0 hours
Military Leave	0 hours
FMLA	0 hours
Break Period Hours (three-month break)	Pro rata method (1) = 0 hours
FTE Hours Threshold	1,170 hours; prorated over the course of nine-month measurement period
Total Hours?	1,230 hours; this individual has measured as an FTE
Benefit Start Date	October 1, 2015

Six-Month Measurement Period #1

Service Hours	
Data Fields	**Descriptions**
Measurement Period	July 1, 2014 – December 31, 2014
Hours Worked	600 hours
Vacation	0 hours
Holiday	0 hours
Illness	0 hours
Disability	0 hours
Jury Duty	0 hours
Military Leave	0 hours
FMLA	0 hours
Break Period Hours (two-month break)	Pro rata method (1) = 0 hours
FTE Hours Threshold	520 hours; prorated over the course of four-month measurement period
Total Hours?	600 hours; this individual has measured as an FTE
Benefit Start Date	April 1, 2015

Note: With a six-month Standard Measurement Period, an employee may qualify for coverage based on one measurement period but not qualify in the next measurement period. In the example above, assume John Smith will not be coaching January through June and his hours would decrease by 10 per week. See #2 below:

Six-Month Measurement Period #2

Service Hours	
Data Fields	**Descriptions**
Measurement Period	January 1, 2015 – June 30, 2015
Hours Worked	550 hours
Vacation	0 hours
Holiday	0 hours
Illness	0 hours
Disability	0 hours
Jury Duty	0 hours
Military Leave	0 hours
FMLA	0 hours
Break Period Hours (one-month break)	Pro rata method (1) = 0 hours
FTE Hours Threshold	650 hours; prorated over the course of five-month measurement period
Total Hours?	550 hours; this individual has not measured as an FTE
Benefit Start Date	N/A (and the Stability Period from #1 above could end August 31, 2015)

How to Select the Measurement Period

There are a number of factors to consider in selecting the appropriate measurement period for your entity. Shortening the Measurement Period may increase the likelihood of certain employees qualifying as full-time employees from time to time. It will also increase the monitoring of benefit eligibility and off-cycle enrollment communications to employees. Conversely, lengthening the Measurement Period may decrease the number of benefit-eligible employees by increasing the hours of service threshold and decrease the monitoring of benefit eligibility and minimize off-cycle communications.

Six-Month Standard Measurement Period

Considerations:

1. Employees may be more likely to qualify as benefits eligible with a six-month Standard Measurement Period. Over a six-month Standard Measurement Period, an employee needs only 780 hours of service to obtain coverage during the Stability Period. With a 12-month Standard Measurement Period, the employee would need 1,560 hours of service to earn coverage.
2. With a shortened Standard Measurement Period, employees with additional extracurricular responsibilities (e.g., coaching) may qualify for coverage during one Standard Measurement Period but may not qualify for coverage during a subsequent Measurement Period. This may provide the entities with the opportunity to offer coverage to employees for a shorter time period.
3. With a six-month Standard Measurement Period, an entity will have two opportunities during each plan year when employees may qualify as full-time. This will require additional monitoring and management of enrolling employees in benefits. For example, if an entity selects a six-month measurement period, here is a potential scenario:

Standard Measurement Period: August 1, 2015 – January 31, 2016
Administrative Period: February 1, 2016 – April 30, 2016
Stability Period: Benefits offered May 1, 2016 – October 31, 2016, if the employee qualified as full-time
Standard Measurement Period: The employee would need to begin the Standard Measurement Period again May 1, 2016

12-Month Standard Measurement Period

Considerations:

1. Choosing a 12-month Standard Measurement Period will require employees to obtain the maximum hours of service (1,560 hours) to obtain coverage during the Stability Period.
2. With the 12-month Standard Measurement Period, employees with additional extracurricular responsibilities may not be able to qualify for coverage if their additional responsibilities do not last all year.
3. With a 12-month Standard Measurement Period, an entity will have only one opportunity during the plan year when the employee may qualify as full-time. This will minimize the necessary monitoring and management of enrolling/disenrolling employees. For example, if an entity selects a 12-month Standard Measurement Period and would like the Stability Period to coincide with an annual benefit election period of October 1, here is a potential scenario:

   Standard Measurement Period: July 1, 2014 – June 30, 2015
   Administrative Period: July 1, 2015 – September 30, 2015
   Stability Period: Benefits offered October 1, 2015 – September 30, 2016, if the employee qualified as full-time
   Standard Measurement Period: The employee would need to begin the Standard Measurement Period again July 1, 2016

Note: The Standard Measurement Periods discussed here can be affected by the special break rule for educational organizations and enable prorating as demonstrated in the examples above.

Other Measurement Periods

The ACA allows employers or entities to choose any measurement period length of time between three and 12 months. So, entities could choose a three-, four-, five-, six-, seven-, eight-, nine-, etc. month period of time for measurement purposes as long as it's no longer than 12 months.

Considerations:

1. Shorter measurement periods will increase the amount of benefit administration tracking and communications to employees.
2. Although a three-, four- or five-month measurement period is allowed, the minimum Stability Period is six months if the employee qualifies as a full-time employee.
3. Employers may use Standard Measurement Periods that differ in length or starting/ending dates for the following employee categories:
   a. Collectively bargained and non-collectively bargained employees
   b. Salaried and hourly employees
   c. Employees of different entities
   d. Employees in different states

SPECIAL NOTE on using a measurement period of less than six months: The final regulations clarify that if a full-time employee's stability period is longer than the measurement period (e.g., if an employer uses a three-month measurement period followed by a six-month stability period), the next measurement period must begin during that stability period early enough to avoid a gap between the end of the first stability period and beginning of the next.

Next month, we will review guidelines for employers in ensuring premium contributions are Affordable as defined by the Affordable Care Act.