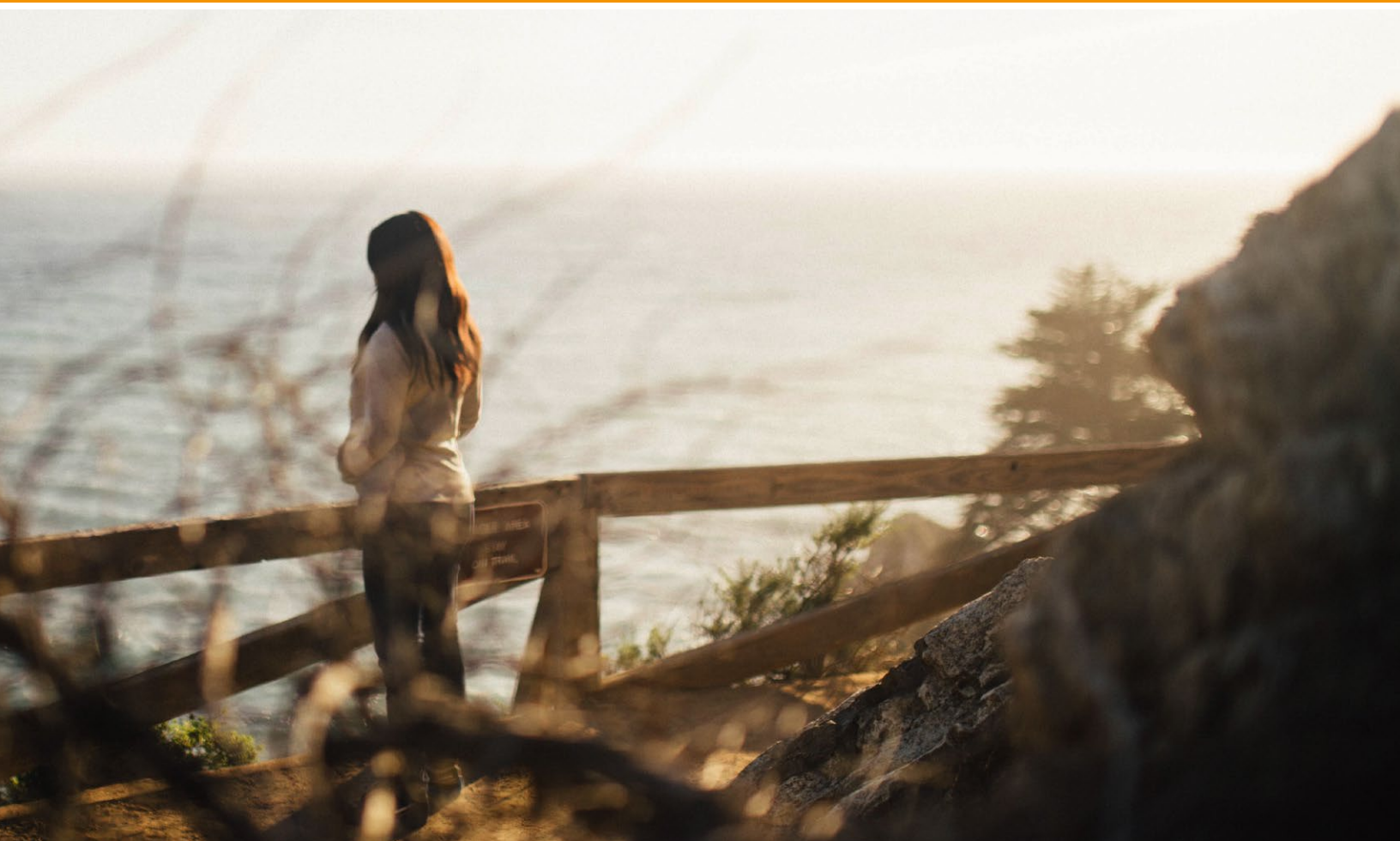


WHITE PAPER

The Employer Mandate: Reporting on Employee Health Coverage for 2016



INTRODUCTION

Planning for healthcare in a new plan or calendar year can be a daunting task, especially for small-to-midsize organizations that may be new to or fluctuate with applicable large employer (ALE) status.

The biggest questions likely center around what constitutes full-time equivalency and all of the individual details that need to be considered for each employee. Determining full-time versus part-time employees can prove maddening especially when variable and seasonal workers enter the fray. In addition, measurement periods play a key role in establishing full or part-time status, and therefore must be utilized properly to ensure compliancy.

This white paper breaks down the details of full-time equivalency, including examples to support different employee scenarios, for organizations that are or may be considered an ALE in the coming year.

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EMPLOYMENT STATUS

To determine employment status, employers need to calculate the number of hours worked by day, week or month for each individual employee. Calculation of hours worked can result from actual hours worked, or days/weeks-worked equivalencies (see Counting Hours below). In addition, employment status also relies on measurement periods called “look back” periods (see Measurement Periods below).

TYPES OF EMPLOYMENT:

- **Full time (FT):** A full-time employee is one who works an average of 30 hours per week or 130 hours per month over at least a 120-day “look back” measurement period (but up to 12 months).
- **Part-time (PT):** A part-time employee works less than an average of 30 hours per week or 130 hours per month over at least a 120-day “look back” period (but up to 12 months).
- **Variable-hour (VH):** A variable hour employee fluctuates below and above 30 hours per week. To determine full-time or part-time status, employers need to use a 3-12 month “look back” period to see if the employee worked an average of 30 hours per week over that time.
- **Seasonal:** Seasonal employees are excluded from full-time or full-time equivalent status only if they work less than 120 days or they only work during seasonal timeframes (i.e. the Winter holidays). Otherwise, seasonal employees are subject to the same rules as variable-hour employees (see above).

DETERMINING FULL-TIME EQUIVALENCY (FTE)

One of the first key things to know with regard to the employer mandate is how to determine full-time equivalency (FTE),

which in turn determines if an organization is considered an applicable large employer (ALE).

Beginning in the 2016 tax year, the employer mandate will apply to all ALEs, meaning those organizations with 50+ FTE employees.

The monthly hours of all part-time employees (PT) are totaled and then divided by 120. If the combination of that resulting number, plus the number of full-time employees (FT) equals 50+, then the organization is considered an ALE and must comply with ACA mandates for group health coverage*.

For example, let's say company ABC employs 25 FT employees (those working 30+ hours/week or 130+ hours/month) and 40 PT workers all of whom work an average of 60 hours per month.

- With a base of 25 FT employees already established, company ABC must now determine if the 40 PT workers total up to another 25 FTE employees.
- Company ABC multiplies 40 (number of PT employees) by 60 (individual monthly hours for each PT) for a total of 2400 hours worked per month by PT employees.
- The 2400 hours are then divided by 120, equaling 20 FTE employees.
- Twenty FTE plus 25 FT employees equals 45 total, meaning company ABC falls below the 50 FTE required by the ACA and therefore is not subject to the employer mandate.

In a second example, company XYZ employs 10 FT employees and 100 PT employees. The PT employees all work an average of 80 hours per month.

- With a base of 10 FT employees already established, company XYZ must now determine if the 100 PT workers total up to another 40 FTE employees.
- Company XYZ multiplies 100 (number of PT employees) by 80 (individual monthly hours for each PT) for a total of 8000 hours worked per month by PT employees.
- The 8000 hours are then divided by 120, equaling 66.7 FTE employees.
- Sixty-seven FTE plus 10 FT employees equals 77 total, meaning company XYZ falls above the 50 FTE required by the ACA and therefore is subject to the employer mandate.

** For the 2015 tax year, the employer mandate only applies to ALEs with 100+ FTE employees. Beginning in the 2016 tax year, the employer mandate will apply to all ALEs, meaning those organizations with 50+ FTE employees.*

COUNTING HOURS

When counting hours for all employees, one of three methods must be used: actual hours worked; days worked equivalency; or weeks worked equivalency.

According to the IRS, an hour of service means “each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer, and 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), layoff, jury duty, military duty or leave of absence.”

Any of these three methods can be used for non-hourly employees. For hourly employees, an employer must use the actual hours worked method.



- **Actual hours worked:**
Each hour of paid and required employment is credited towards the employee.



- **Days worked equivalency:**
Eight hours per required day of employment is credited toward the employee.



- **Weeks worked equivalency:**
Forty hours per required week of employment is credited toward the employee.

According to the IRS, an hour of service means “each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer, and 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), layoff, jury duty, military duty or leave of absence.”

MEASUREMENT PERIODS

Measurement periods (in some cases, called look-back periods) are set amounts of time that employers use to establish FT or PT employment status. Measurement periods must be consistent for all employees in the same category within an organization; employers cannot pick-and-choose the type of measurement period based on each individual employee's employment situation. In addition, measurement periods and administrative periods must be completed before the start of a new plan or calendar year.

Measurement periods must be consistent for all employees in the same category within an organization.

TYPES OF MEASUREMENT PERIODS

- **Month-to-month:** For employees with a stable FT and/or PT workforce where in hours remain consistent from month-to-month, employers can measure FT and PT status on a monthly basis. For new employees who are considered FT, it is reasonably expected that healthcare coverage will be offered within the first three months of the employee's start date.
- **Standard measurement period:** A "look back" period of at least three months and up to 12 months, wherein an employer averages the number of hours an employee works per week or month to determine FT or PT employment status. For employers that primarily have stable hours for FT and PT employees, determining average hours worked using a standard measurement period will likely be a simple task. The difficulty lies with employers who use variable-hour and seasonal employees (see example below).
- **Initial measurement period*:** For new FT or FTE employees, an initial measurement period of 3-12 calendar months is allowed before employees must be enrolled in group health coverage. The initial measurement period must begin on the 1st of the month following the employee's start date and/or on the first day of payroll. Please note that this is different from the 90-day waiting period limits for new employees, which is the threshold for calendar days between when an employee is deemed eligible for group health coverage and when coverage is available.
- **Stability period:** The time after a measurement period when an employee who has met requirements for FT employment can continue to maintain FT status (and therefore health coverage) regardless of hours worked. The stability period must be at least six months; if the standard measurement period was longer than six months, the stability period must be the same duration. At the end of the stability

period, a new measurement period must begin to determine FT or PT status. For new employees who have completed the initial measurement period, their stability period will be the same as for ongoing employees.

- **Administrative period:** The time between determining an employee's FT or PT status using an initial or standard measurement period, and when new health coverage is

offered. Administrative periods are up to 90 days. For ongoing employees (whose employment status has been determined with the standard measurement periods) the administrative period must overlap with the previous stability period to ensure no gaps or loss of coverage for the employee. For new employees*, the administrative period begins on the employee's start date.

** The initial measurement period and subsequent administrative period cannot last longer than the last day of the first month after an employee's first anniversary with the organization.*

USING LOOK BACK PERIODS FOR SEASONAL AND VARIABLE HOUR EMPLOYEES

The biggest challenge in determining FTE will likely apply to organizations with variable hour and seasonal employees.

For example, imagine that company ABC has 40 PT employees – 20 seasonal workers who work 160 hours/month from May-September and 20 variable hour workers who fluctuate between 80-150 hours per month. Company ABC decides to employ a 12-month standard measurement period from October 1, 2015 to September 30, 2016.

- **For each seasonal worker,** company ABC will multiple 160 (number of monthly hours worked) times 6 (number of months worked), and then divide by 12 (number of months in the look back period). This averages to 80 hours per month per employee, meaning that each seasonal employee does not qualify for FT status and therefore does not qualify for group health coverage.
- **For variable hour employees,** company ABC will total up the number of hours each employee worked for each month during the 12-month look back period, and then divide by 12. For an employee who worked 4 months at 80 hours/month, three months at 100 hours/month, and five months at 150 hours/month, company ABC will add $320+300+750$, which equals 1370. The total hours worked (1370) is then divided by 12 for an average of 114 hours worked per month, meaning that this particular employee does not qualify for FT status and therefore does not qualify for group health coverage.

The biggest challenge in determining FTE will likely apply to organizations with variable hour and seasonal employees.

EXCEPTIONS AND SPECIAL CIRCUMSTANCES

When it comes to the employer mandate, there will always be exceptions and special circumstances that will add another layer of challenge to determining full-time equivalency (FTE) – which in turn determines who receives group health coverage. Two particular circumstances are unpaid leave (e.g. FMLA, educational employment breaks) and COBRA.

SPECIAL UNPAID LEAVE

Employees who take unpaid leave under the Family Medical Leave Act (FMLA), Uniformed Services Employment and Reemployment Rights Act (USERRA; military leave), or due to jury duty will not have this time counted against them during the standard measurement period. When employers use the standard measurement period to determine full-time (FT) status for the subsequent stability period, they are required to do one of two things for employees on special unpaid leave:

1. Discount the special unpaid leave time from the average. For example, if company ABC is using a 12-month look back period and an employee has taken three months of FMLA leave, company ABC will only average the employee's hours over 9 months instead of 12; OR
2. Credit the employee with the hours of service they would have worked, according to the number of hours worked during the weeks of the measurement period when the employee was not on special unpaid leave.

This means that employees taking special unpaid leave cannot lose their FT status or group health coverage for the subsequent stability period.

For educational organizations, employment breaks (e.g. summer holiday) are considered special unpaid leave and therefore are not counted towards the average hours worked during a measurement period.

COBRA

Employees who either leave an organization for good or decrease their hours below the average 30-hour/week (or 130-hour/month) mandate for FTE status can still access COBRA coverage under ACA. However, the length of COBRA coverage can vary based on when coverage was lost:

- For employees who terminate their relationship with an organization, COBRA coverage begins from the date the previous coverage ends (most likely the final calendar day of the month of termination) and continues for 18 months.
- Employees who decrease their hours within an organization may still be considered FTE for the specified standard measurement period and receive health coverage for the subsequent stability period. After that stability period ends though, the employee may not be considered FT anymore and therefore qualifies for COBRA coverage. When this happens, employers have two options:
 1. Begin the 18-month COBRA period from the original date of the qualifying event that resulted in loss of coverage; OR
 2. Begin the 18-month COBRA period from the date of loss of coverage

For example, if company ABC's 12-month stability period begins on January 1, 2015 and an employee reduces hours to part-time (PT) status in March 2015, they will retain their health coverage until December 31, 2015. After that, the employer can either begin an 18-month COBRA period from March 1, 2015 (qualifying event that resulted in a loss of employer-sponsored coverage) OR on January 1, 2016 (date of loss of coverage).

SUMMARY

For organizations that are new to ALE status for the upcoming plan or calendar year, there are a number of considerations that need to be taken into account when it comes to planning for employee healthcare. Even for organizations that have been considered an ALE in the past, changes in employee needs, budgets, or plan costs may necessitate a revamped approach to group coverage. As such, it is recommended that organizations enlist the support of a broker who can provide cost-efficient and employee-friendly healthcare options, and help companies determine FTE and prepare for ACA compliance for the subsequent tax year.

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