

IRS Proposes Approach to Changes in Measurement Methods

Final ACA regulations set out two measurement methods — the look-back and the hourly — that employers may use to determine the full-time status of their employees for purposes of the shared responsibility mandate. A recently issued notice proposes an approach for determining full-time status if the measurement period for a particular employee changes or if the employer changes the measurement method that applies to a category of employees.

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Background

Beginning in 2015, the ACA requires a large employer to either offer its full-time employees affordable health coverage providing minimum value or be subject to an “assessable payment” if even one of its full-time employees purchases subsidized marketplace coverage. A full-time employee is an employee who works, on average, at least 30 hours per week. The final regulations provide two methods for identifying full-time employees:

- Look-back measurement method — under this method, the status of new variable hour, seasonal, and part-time employees as well as on-going employees is determined by counting the employees’ hours of service during a specified measurement period. If an employee averages at least 30 hours per week during the measurement period, he or she is considered to be a full-time employee during the subsequent “stability period.”
- Monthly measurement method — under this method, employees are identified as full-time using their hours of service for each calendar month rather than averaging over a prior measurement period.

Although an employer generally must use the same measurement method for all employees, it may apply either the look-back measurement method or monthly measurement method or, if using the look-back measurement method, may use different measurement and stability periods for the following categories of employees:

- Each group of collectively bargained employees covered by a separate bargaining agreement
- Collectively bargained and non-collectively bargained employees
- Salaried and hourly employees

- Employees whose primary places of employment are in different states

An employer may change its measurement and stability periods each year but cannot make a change for a given year once the standard measurement period has begun. (See our [April 17, 2014 For Your Information](#).)

The final regulations also set out rules that apply when an employee changes employment from a position for which the look-back measurement method is used to a position for which the monthly measurement method is used (or vice versa).

- If an employee transfers from a position using the look-back measurement method to a position using the monthly measurement method:
 - If the employee is in a stability period at the time of transfer, the employee's status as full-time or not full-time generally continues for the remainder of that stability period. However, the employer may choose to apply the monthly measurement period to a non-full-time employee.
 - For the next stability period (associated with the measurement period in which the transfer occurs), the employer must treat the employee as full-time throughout that stability period if he or she would be full-time either under the previously applicable look-back method or under the monthly measurement method.
 - Once that stability period ends, the employer may determine full-time status solely using the monthly measurement method.
- If an employee transfers from a position using the monthly measurement method to a position using the look-back measurement method:
 - The employer must continue to determine the employee's status under the monthly measurement method unless his or her hours of service prior to the change in employment would have resulted in the employee being treated as a full-time employee during the stability period (if the look-back method had been used). In that case, the employer must treat the employee as full-time for that stability period.
 - For the next stability period (associated with the measurement period in which the transfer occurs), the employer must treat the employee as full-time for any calendar month during which the employee would be treated as full-time based on either the measurement period during which the change in employment status occurred or the monthly measurement method.
 - Once that stability period ends, the employer may determine full-time status solely using the look-back measurement method.

Additionally, the final regulations provide that if a new variable hour, part-time, or seasonal employee has a change in employment status during the initial measurement period, so that he or she is now reasonably expected to work at least 30 hours a week, the employee must be treated as full-time beginning on the first day of the calendar month following the change.

In the preamble to the final regulations, Treasury and the IRS stated that they would issue additional guidance to address situations in which an employee whose status as a full-time employee is determined under one look-back measurement period transfers to another position to which a different look-back measurement period applies. Recently issued [IRS Notice 2014-49](#) provides this guidance by proposing an approach for applying the look-back measurement method if the duration or start date of the measurement period applicable to a particular employee changes due to a change in position. It also proposes an approach for situations where an employer changes the

measurement method (look-back measurement method or monthly measurement method or duration or start date of measurement period) for one or more categories of employees.

Transfer Involving Change in Look-Back Measurement Period

The notice proposes an approach that an employer using the look-back measurement period can use when an employee transfers from one position to another and the measurement period is different for the two positions. This may occur when an employee transfers from one category of employees (as described above) to another or when an employee transfers from one applicable large employer member to another.

Employee in a Stability Period or Administrative Period at Time of Transfer

If an ongoing employee is in a stability period on the date of the transfer, the employee's status as a full-time employee or as a non-full-time employee continues until the end of that stability period. Additionally, if a new employee is in an administrative period at the time of transfer, the employee's status, based on his or her hours of service during the initial measurement period, will apply from the start of the stability period associated with the initial measurement period through the end of that stability period.

In either case, at the end of that stability period, the employee's status will be determined under the measurement period applicable to the new position, but including the employee's hours of service in his or her former position during that measurement period. If an employee's status cannot be determined under the method applicable to the new position (e.g., if the employee is a variable hour employee and has not yet been employed for a full initial measurement period for the new position), the rule for employees not in a stability period, described below, applies.

Example

Position	Standard Measurement Period	Stability Period
Position 1	12-month period beginning January 1	12-month period beginning January 1
Position 2	12-month period beginning July 1	12-month period beginning July 1

An employee in Position 1 averaged fewer than 30 hours per week during the measurement period of January 1, 2015 through December 31, 2015 and, therefore, would be treated as a non-full-time employee during the subsequent stability period (January 1, 2016 through December 31, 2016). On August 15, 2016, the employee transfers to Position 2 with the same employer. Her status as not full-time will continue until the end of the stability period that applies to Position 1 (December 31, 2016). As of January 1, 2017, her status will be determined under the measurement period for Position 2 (July 1, 2015 through June 30, 2016), including the employee's hours of service in Position 1 during that period. Because she averaged at least 30 hours per week during the period from July 1, 2015 through June 30, 2016, she will be treated as a full-time employee as of January 1, 2017 through the end of the stability period associated with Position 2 (i.e., June 30, 2017). After June 30, 2017, her status will be determined based on the measurement period that applies to Position 2.

Employee in Initial Measurement Period at Time of Transfer

The status of an employee in an initial measurement period at the time of transfer is determined under the measurement method applicable to the new position as of the date of transfer, including the employee's hours of service in the former position during the new position's initial measurement period.

Example

Position	Initial Measurement Period	Administrative Period	Stability Period
Position 1	3-month period beginning on first of month following start date	None	If full-time, 6-month period immediately following initial measurement period
Position 2	12-month period beginning on employee's start date	From end of initial measurement period until end of month in which the initial measurement period ends	12-month period beginning the day after end of administrative period

A new variable hour employee is hired into Position 1 on February 15, 2015. On May 1, 2015, while in the initial measurement period, the employee transfers to Position 2 where he is not reasonably expected to average at least 30 hours per week. Because the employee is in an initial measurement period at the time of transfer, his status is determined based on the measurement period that applies to Position 2, including hours of service during Position 1. The employee does not average at least 30 hours of service during the period from February 15, 2015 through February 14, 2016 and thus is not treated as full-time during the stability period for Position 2.

Change in Measurement Method for Category of Employees

The notice confirms that an employer may change the measurement method applicable to a category of employees as long as the employer applies the method to all employees affected by the change.

Change in Duration or Start Date of Measurement Period

If an employer changes the duration or start date of a measurement period for a category of employees, the status of each employee in that category must be determined as if he or she had transferred from one position to another and the positions had different measurement and/or stability periods. Thus, the employer should apply the approach described in "Transfer Involving Change in Look-back Measurement Period" above to each employee in the category for which the measurement period has changed.

Change from Look-Back Measurement Method to Hourly Measurement Method (or vice versa)

If an employer changes the measurement method used, the status of each affected employee as of the date of change is determined under the method set out in the final regulations (described in the background section above).

Comment. The proposed approach explained in this *For Your Information* could also be used in mergers and acquisitions involving employers using different measurement methods. Until further guidance is issued (or at least until the end of 2016), employers may use the proposed approach to determine the status of employees as full time or not full-time following a corporate transaction.

In Closing

The IRS and the Treasury Department expect to issue further guidance on this matter and request comments on the proposed approach, specifically on application of the proposed method to situations involving corporate transactions, such as a merger of corporations using different measurement methods. Until further guidance is issued, and at least until the end of 2016, employers may rely on the method proposed in the notice.

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