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Handling Changes in Employment Status When First Position is Subject to the Look-Back Method

In February 2014, the Department of the Treasury issued final Employer Shared Responsibility regulations providing methods to count employee hours of service for purposes of determining who is a “full-time employee” under the Patient Protection and Affordable Care Act (“PPACA”). Under these rules, employers may use either the look-back method or monthly measurement method to determine who is a full-time employee for purposes of the Employer Shared Responsibility mandate and the IRS reporting requirements.

In September 2014, the IRS issued Notice 2014-49 which contained proposed guidance addressing the application of the look-back method in certain situations. Although proposed, the IRS has indicated that employers may rely upon the proposed methods outlined in Notice 2014-49 until further guidance is issued or until the end of calendar year 2016.

This article contains a summary of the change in employment status rules that apply when the first position is subject to the look-back method under the final regulations and proposed rules under IRS Notice 2014-49. (For information regarding change in employment rules that apply when the first position is subject to the monthly measurement method, please use this link.)

Background

Under the look-back method, an employer may determine the status of an employee as a full-time employee during a future period (referred to as a stability period), based upon the employee’s hours of service in a prior period (referred to as a measurement period). Under the monthly measurement method, an employer will determine each employee’s status by counting that employee’s hours of service for each calendar month. Employers should be cautious in using the monthly measurement method to determine actual eligibility for health insurance benefits, because doing so may create unnecessary administrative hassles due to monthly changes in eligibility for some employees based upon those employees’ fluctuating hours of service.

Generally, employers must use the same method (e.g., look-back method or monthly measurement method) for all employees within a given category. Employers are only allowed to divide employees into the following categories: (1) collectively bargained employees and non-collectively bargained employees, (2) groups of collectively bargained employees covered by separate Collective Bargaining Agreements, (3) salaried employees and hourly employees, and (4) employees whose primary places of employment are in different States. This means, for example, that an employer may use the look-back method for hourly employees and the monthly measurement method for salaried employees, but it cannot use the
look-back method for some hourly employees and the monthly measurement method for other hourly employees (with limited exceptions such as when a full-time employee is hired).

Employers using the look-back method may apply different measurement periods to the four categories of employees above, which may vary either in length or starting and ending dates. Thus, for example, an employer may have a standard measurement period for employees in Texas that begins on October 15 and extends for twelve months and a different measurement period for employees in Illinois that begins on November 15.

Special rules apply when employees transfer positions and experience a change in employment status, which are discussed below.

**Newly-Hired Part-Time, Variable Hour, or Seasonal Employee Experiences a Change in Status during Initial Measurement Period to a Full-Time Position**

If a part-time, variable hour, or seasonal employee moves during the initial measurement period into a full-time position (i.e., the employee is reasonably expected to provide, on average, at least 30 hours of service per week), then in general, the employer will not be subject to a penalty under the Employer Mandate for that employee until the first day of the fourth full calendar month following the change in employment status, as long as, the employer provides coverage at the end of that period that is both affordable and meets minimum value.

However, if the employee who experiences a change in employment qualifies as a full-time employee based on the employee’s hours of service during the initial measurement period, then coverage that provides minimum value must be offered by the first day of the first month following the end of the initial measurement period (including any initial administrative period), if it is earlier than the first date of the fourth full month following the change in employment status, in order to avoid any penalty for that employee under the mandate. As such, employers are not required to offer coverage at the time of a change in employment status.

**REVISED Example 1:** For example, Gold and Silver Pawn Shop hires Austin on May 15, 2015 as a variable hour cashier. His initial measurement period begins on June 1, 2015 and is scheduled to end on May 31, 2016. On January 15, 2016, Austin is promoted to a full-time position eligible for benefits as a store manager. In order to avoid an Employer Shared Responsibility penalty for Austin, Gold and Silver must offer him coverage that is affordable and provides minimum value as of May 1, 2016. If Gold and Silver Pawn Shop fails to offer him coverage as of May 1, 2016, it may be subject to penalties from the date of Austin’s change in status on January 15, 2016, if Austin obtains coverage through the Marketplace and is eligible for premium assistance.

**Comment:** As noted in Example 1, the rule is that an employer must offer coverage the earlier of one of two dates in order to avoid penalties under the Employer Mandate – (1) the first day of the fourth full month following the change in employment status, or (2) the first day of the first month following the end of the initial measurement period plus any applicable administrative period. In the example, the first day of the fourth full month after Austin’s change in status to a full-time position is May 1, 2016; whereas, the
first day of the first month following the end of the initial measurement period plus one-month administrative period would be July 1, 2016. Because May 1, 2016 is earlier, that is the date by which Gold and Silver must offer coverage in order to avoid penalties. See Example 2 for information on when July 1, 2016 would be the applicable date.

**REVISED Example 2:** Gold and Silver Pawn Shop hires Austin on May 15, 2015 as a variable hour cashier. His initial measurement period begins on June 1, 2015 and is scheduled to end on May 31, 2016. However, in this example, Austin is promoted to a full-time position eligible for benefits as a store manager on March 1, 2016. In order to avoid an Employer Shared Responsibility penalty, Gold and Silver must offer him coverage that provides minimum value as of July 1, 2016. If Gold and Silver Pawn Shop fails to offer Austin coverage as of July 1, 2016, then Gold and Silver Pawn Shop may be subject to a penalty under the Employer Mandate from the date of Austin’s change in status on March 1, 2016, if Austin obtains coverage through the Marketplace and is eligible for premium assistance. Beginning on July 1, 2016, Gold and Silver Pawn Shop must offer coverage that provides minimum value and is affordable in order to avoid a penalty.

**Newly-Hired Employee Transfers to a New Position Subject to a Different Measurement Period during an Initial Measurement Period (Proposed Guidance)**

If an employee is in an initial measurement period (and not in a stability period or in an administrative period), then the employee’s status as full-time or non-full-time is determined solely based upon the look-back method as applied to the second position at the date of transfer. Pursuant to the proposed guidance, following a transfer of position, the employer shall include the hours of service from the first position (i.e., the original position) by either: (1) counting the hours of service using the counting method applied to the employee in the first position (e.g., using a weeks-worked equivalency method for a non-hourly employee), or (2) recalculating the hours of service earned in the first position using the hours of service counting method applicable to the employee in the second position (e.g., days-worked equivalency method for non-hourly employees), so long as the employer treats all similarly situated employees in the same manner.

**Example 3:** Alpha, Inc. uses the look-back method to track hours of service for hourly employees. Brian was hired on January 1, 2017 as a variable hour employee for Alpha, Inc.’s Ohio Division. The Ohio Division uses twelve-month initial measurement and stability periods. The Indiana Division uses six-month initial measurement and stability periods. Brian transfers from the Ohio Division to the Indiana Division on March 3, 2017 while still in his initial measurement period and remains as a variable hour employee. Because Brian has not yet been determined to be either full-time or non-full-time, the Indiana Division will simply continue to count his hours of service during an initial measurement period, but will use its six-month initial measurement period to make the determination. Assuming Brian averages 30 or more hours per week during that six-month period, he will be considered as a full-time employee for the Indiana Division during an initial stability period from August 1, 2017 through January 31, 2018.
Seasonal Employee Experiences a Change in Status to a Full-Time Position

It is not uncommon for a seasonal employee to be promoted or transferred into a permanent full-time position. For example, a ski instructor could be moved to a grounds manager position, which is expected to work year round and average at least 30 hours of service per week. Under the final regulations, in general, if a seasonal employee experiences a change in employment status before the end of the initial measurement period into a full-time position, then the employer has until 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 period (plus any applicable administrative period) if the employee averaged 30 hours of service per week or more during the initial measurement period, to treat the employee as a full-time employee.

Example 4: Change in status for seasonal employee to full-time year round employee. Scott is hired as a water ski instructor by the Shores Hotel Resort on May 1, 2017. Initially, Scott is an hourly seasonal employee. The resort uses a look-back method to calculate hours of service for hourly employees and the monthly measurement method to calculate hours of service for salaried employees. The resort uses a twelve-month initial measurement period. Scott’s initial measurement period begins on May 1, 2017 and ends on April 30, 2018. Scott is promoted to resort manager on July 1, 2017. Scott averaged 30 or more hours per week during the period from May 1, 2017 through June 30, 2017. In order to avoid Employer Mandate penalties, the resort must offer him coverage as of October 1, 2017. However, the resort will likely offer Scott coverage sooner in order to comply with the 90-day limitation on waiting periods under PPACA.

Ongoing Employee Experiences a Change in Status that Solely Results in a Change in the Level of Hours of Service before the End of the Standard Stability Period

If an ongoing employee experiences a change in employment status before the end of a stability period, the change itself will not affect the status of the employee as a full-time employee (or a non-full-time employee) for the remainder of the stability period, if the result of the change in employment status is solely an increase or decrease in the number of hours worked and not a change to a position that would be eligible for benefits if the employee were originally hired into that position. For example, if an ongoing employee (e.g., a waiter working 22 hours per week) is not treated as a full-time employee during a stability period because the employee’s hours of service during the prior measurement period were insufficient for full-time-employee treatment, and the employee experiences a change in employment status that involves an increased level of hours of service (e.g., a waiter working 34 hours per week), the treatment of the employee as a non-full-time employee during the remainder of the stability period is unaffected.
Similarly, if an ongoing employee is treated as a full-time employee during a stability period because the employee’s hours of service during the prior measurement period were sufficient for full-time-employee treatment (e.g., a cashier working 37 hours per week), and the employee experiences a change in employment status that involves a lower level of hours of service (e.g., a cashier experiencing a reduction in hours to 25 hours per week), the treatment of the employee as a full-time employee during the remainder of the stability period is unaffected.

**Example 5: Change in status resulting solely in an increase in hours of service.** Max is a server for the Waverly Sub Station. During the last standard measurement period (October 15, 2015 through October 14, 2016), Max averaged 27 hours per week. He was not offered coverage as of January 1, 2017, which is the beginning of the Waverly’s following stability period. In January 2017, Max increases his hours of service per week to 37 hours per week. Because Max was in a stability period, his status as a non-full-time employee from January 1, 2017 through December 31, 2017 is unaffected. Thus, Waverly is not required to offer him coverage from January 1, 2017 through December 31, 2017 in order to avoid penalties, so long as, Max does not have a change in employment status that would move him into a position that is benefits eligible upon hiring (e.g., a full-time management position). However, because Max had an increase in his hours of service during the standard measurement period from October 15, 2016 through October 15, 2017, he will likely gain status as a full-time employee for purposes of the Employer Mandate as of January 1, 2018, which is the beginning of the next standard stability period.

**Example 6: Change in status resulting solely in a decrease in hours of service.** Justin is a server for the Waverly Sub Station. During the last standard measurement period (October 15, 2015 through October 14, 2016), Justin averaged 37 hours per week. He is offered coverage as of January 1, 2017. In January 2017, Justin decides to go back to school to complete his college degree, and works 15 hours per week from January 1, 2017 until December 31, 2017. Because Justin was in a stability period, his status as a full-time employee from January 1, 2017 through December 31, 2017 is unaffected. Thus, the Waverly Sub Station must continue to offer Justin coverage through the end of the standard stability period, so long as he remains employed and pays his premiums. However, because Justin had a substantial decrease in his hours of service during the standard measurement period from October 15, 2016 through October 15, 2017, he will lose his status as a full-time employee for purpose the Employer Shared Responsibility mandate as of December 31, 2017, which is the end of the standard stability period during which he experienced a change in employment status.

**Ongoing Employee Transfers to a New Position Subject to a Different Measurement Period during Initial Administrative Period or Standard Measurement Period (Proposed Rules)**

Pursuant to the proposed guidance, following a transfer of position, the employer shall include the hours of service from the first position (i.e., the original position) by either: (1) counting the hours of service using the counting method applied to the employee in the first position (e.g., using a weeks-worked
equivalency method for a non-hourly employee), or (2) recalculating the hours of service earned in the first position using the hours of service counting method applicable to the employee in the second position (e.g., days-worked equivalency method for non-hourly employees), so long as the employer treats all similarly situated employees in the same manner.

If the employee was in an initial administrative period immediately following the end of an initial measurement period as of the date of the transfer, the employee’s status as full-time or non-full-time based on his or her hours of service during the initial measurement period under the first position would apply from the start of the initial stability period following the end of that initial administrative period through the end of that initial stability period.

**Example 7:** Alpha, Inc. uses the look-back method to track hours of service for hourly employees. Brian has been an hourly employee for Alpha, Inc.’s Ohio Division since January 1, 2017. The Ohio Division uses twelve-month measurement and stability periods. Based upon his hours of service, Brian would be considered to be a full-time employee for the Ohio Division from February 1, 2018 through January 31, 2019. The Indiana Division uses six-month initial measurement and stability periods. Brian transfers from the Ohio Division to the Indiana Division on January 1, 2018. Because he was in an initial administrative period at the time of the transfer, Brian will retain the status he would otherwise have had for the remainder of the initial stability period for the Ohio Division (i.e., he would be considered a full-time employee until January 31, 2019).

If an employee is in a stability period related to the first position as of the date of the transfer to the second position, the employee’s status as a full-time or non-full-time employee for the first position remains in effect until the end of that stability period.

After the end of the stability period in which the transfer occurred (or if the employee had been in an administrative period at the time of the transfer, the end of the stability period associated with the administrative period), the employee assumes the full-time or non-full-time status that the employee would have had under the look-back method applicable to the second position. However, in determining the employee’s status for the second position, any hours of service credited during the first position occurring within the measurement period for the second period should be included in the measurement period for the second position.
Example 8: Acme, Inc. uses the look-back method to track hours of service for hourly employees. Austin has been an hourly employee for Acme, Inc.’s Texas Division since January 1, 2009, which has a standard stability period from January 1 through December 31. Based upon his hours of service during the standard measurement period beginning October 15, 2016 and ending October 14, 2017, Austin would be considered to be a full-time employee for the Texas Division from January 1, 2018 through December 31, 2018. The Illinois Division has a different standard stability period, which runs from August 1 through July 31. Austin transfers from the Texas Division to the Illinois Division on July 1, 2018. Because he was in a stability period at the time of the transfer, he will retain the status he would otherwise have had for the remainder of the stability period for the Texas Division (i.e., until December 31, 2018). To determine his status from January 1, 2019 through July 31, 2019, Acme must use his hours of service from May 15, 2017 through May 14, 2018 (the Illinois Division standard measurement period). Assuming Austin is determined to be full-time during that period, he will continue to be considered as full-time during remainder of the Illinois standard stability period until July 31, 2019.

Ongoing Employee Experiences a Change in Status during Standard Measurement Period to a Position Subject to the Monthly Measurement Method

When an employee moves from a position for which the look-back method is used (e.g., an hourly employee) to a position for which the monthly measurement method is used (e.g., a salaried employee), the following rules apply:

1. If the employee is in a stability period under which the employee is considered to be a full-time employee at the time of the change in employment status, then the employer must continue to treat the employee as a full-time employee for the remainder of the stability period;

2. If the employee is in a stability period under which the employee is not considered to be a full-time employee, then the employer may continue to treat the employee as a non-full-time employee for the remainder of the stability period; or, the employer may apply the monthly measurement method starting in the month in which the change in employment status occurred and continuing until the end of the stability period;

3. For the stability period associated with the measurement period during which the change in employment status occurred, the employer must treat the employee as a full-time employee for any calendar month during which the employee qualifies as a full-time employee in the stability period, either based on the measurement period in which the change in employment status occurred or the monthly measurement method; and

4. For any calendar month following the stability period identified in (3) above, the monthly measurement method must be applied.
Example 9: Charlie is a variable hour assembly worker employed by the Wonka Chocolate Factory since 2009. Charlie is also an hourly employee. Wonka uses a look-back method to calculate hours of service for hourly employees and the monthly measurement method to calculate hours of service for salaried employees. Wonka’s standard measurement period is October 15 of one year through October 14 of the following year, and its standard stability period begins on January 1 and ends on December 31. Based on his hours of service from October 15, 2015 through October 14, 2016, Charlie qualifies to be treated as a full-time employee from January 1, 2017 through December 31, 2017. However, Charlie is promoted to assembly line manager, a full-time salaried position, on July 1, 2017.

From January 1, 2017 through December 31, 2017, Wonka must treat Charlie as a full-time employee for purposes of the employer mandate and the IRS Reporting requirements based on his status earned in the measurement period from October 15, 2015 through October 14, 2016. Furthermore, even if Charlie had not accumulated enough hours of service to qualify as a full-time employee in 2017, Wonka, due to his change in position from variable hour hourly employee to salaried employee, would be required treat him as a full-time employee from July 1, 2017 through December 31, 2017.

Furthermore, because of his move from a position subject to the look-back method during a standard measurement period, Wonka must continue to track Charlie’s hours of service under the look-back method for the measurement period from October 15, 2016 through October 14, 2017. Lastly, because Charlie’s new salaried position is a full-time position, he will qualify as a full-time employee (i.e., one that averages 30 or more hours of service per week) and will be treated as a full-time employee during the stability period from January 1, 2018 through December 31, 2018 under the look-back method. Thus, Wonka must treat Charlie as a full-time employee for purposes of the employer mandate and IRS reporting for all of 2017 and 2018 (so long as he remains employed with Wonka). For 2019, Wonka will determine Charlie’s potential full-time status using the monthly measurement method.
Here’s an illustration of Example 9:

Special Rule for Employees who have been Continuously Offered Coverage

If an employee has been continuously offered coverage that provides minimum value from the first day of the calendar month following the employee’s initial three months of coverage through the date that he or she has a change in employment status, a special rule applies that permits the employer to use the monthly measurement method beginning with the first day of the fourth full calendar month following the change in employment status under which the employee transfers to a position for which the employee is not reasonably expected to be employed on average 30 hours of service per week (e.g., the employee changes to a part-time position with only 20 hours of service per week). This special rule applies regardless of whether the employee is initially offered coverage as a new variable hour employee or a new full-time employee.
For the first three months following the change in employment status, the employee’s status will be determined based upon the employee’s status during the applicable stability period(s). The employer may continue to use the monthly measurement method until the end of the first full measurement period (and any applicable administrative period) that would have applied had the employee’s hours of service remained subject to the look-back method. Employers may use this rule even if the employee moves to a position that the employer does not otherwise use the monthly measurement method (i.e., if the employer uses the look-back for hourly employees, and the new position is an hourly position, the employer may still use the monthly measurement method for this interim period). After the end of the first full measurement period, the employer must apply the look-back method.

**Example 10:** On May 15, 2015, Wilbur is hired as a full-time hourly groundskeeper employee for Zuckerman’s Farm. Zuckerman’s Farm uses the monthly measurement method to determine hours of service for salaried employees and the look-back method to determine hours of service for hourly employees. For ongoing employees, Zuckerman’s Farm uses a measurement period that begins October 15 of one year and ends October 14 of the following year.

Zuckerman’s Farm offers Wilbur coverage as of September 1, 2015 (i.e., the first day of the fourth month following Wilbur’s date of hire). On February 12, 2021, Wilbur moves to a part-time hourly gatekeeper position and is not expected to be employed for more than 20 hours of service per week. Zuckerman Farm’s offers Wilbur coverage with minimum from September 1, 2015 through May 31, 2021 (i.e., from the time he was first eligible for coverage until the end of the third month following his change in employment status). On June 1, 2021, Zuckerman’s Farm begins using the monthly measurement method to determine Wilbur’s possible status as a full-time employee and continues to use the monthly measurement method through the end of 2021 (i.e., through the end of the stability period) and for all of 2022.

Using the stability period beginning January 1, 2021, Zuckerman’s Farm treats Wilbur as a full-time employee from January 1, 2021 through May 31, 2021 (the end of the third month following Wilbur’s move to the part-time position). However, because Zuckerman’s Farm is allowed to use the monthly measurement method for the period beginning June 1, 2021, it begins to treat Wilbur as a non-full-time employee from June 1, 2021.
Here’s an illustration of Example 10:

Employer-Initiated Changes in Length of Measurement or Stability Periods (Proposed)

Employees may also experience a change in measurement or stability period due to an employer-driven change. For instance, an employer may change the applicable measurement period for any of the four different categories of employees (noted on page 1) so long as a transition period occurs during which the status is determined in accordance with the rules set forth in IRS Notice 2014-49.

The status of any employee impacted by an employer-initiated change of a measurement period under the look-back method should be determined as if the employee transferred from a position to which the original measurement period applied to a position in which the revised measurement period applies as of the effective date of the change. Thus, if an employer changes the duration or start date of a measurement period under the look-back method, the status of each impacted employee is determined as of the date each employee is considered to have transferred from the first position to the second.
Example 11: Beta, Inc. uses the look-back method to track hours of service for all of its employees covered by a particular collective bargaining agreement. Beta uses two six-month standard measurement periods from April 1 through September 30 and October 1 through March 31 to determine full-time employee status for those employees. All other employees are subject to a twelve-month standard measurement period beginning on January 1 and ending on December 31. Beta begins using these timeframes on January 1, 2015. On April 1, 2017, Beta changes the standard measurement period for the employees not covered under the collective bargaining agreement to that used for employees covered by the collective bargaining agreement (i.e., April 1 through September 30 and October 1 through March 31). For a transition period beginning on April 1, 2017, the status of the employees not covered by the collective bargaining agreement and who are in a stability period will retain their status as full-time or non-full-time until the end of the applicable stability period (i.e., until December 31, 2017). Thereafter, their statuses will be determined based upon the measurement periods beginning April 1 and October 1.

Conclusion

The rules related to changes in status can be complex, but with care, employers can adjust their eligibility for health benefits to correspond. Employers should take care to evaluate their potential changes in status to correspond with these new rules and develop appropriate policies and procedures for handling changes in employment status.

Gallagher Benefit Services, through its compliance experts and consultants, will continue to monitor developments on healthcare reform legislation and regulation and will provide you with relevant updated information as it becomes available. In the interim, please contact your Gallagher Benefit Services Representative with any questions that you may have.

The intent of this analysis is to provide general information regarding the provisions of current healthcare reform legislation and regulation. It does not necessarily fully address all your organization’s specific issues. It should not be construed as, nor is it intended to provide, legal advice. Your organization’s general counsel or an attorney who specializes in this practice area should address questions regarding specific issues.