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Sample Employee Communications Explaining Eligibility for Health Benefits Using Measurement, Administrative, and Stability Periods

In February 2014, final rules were issued regarding how to count employee hours and determine employee full-time status for purposes of the Employer Shared Responsibility mandate. Under the final rules, employers have the option of using the look-back method to determine the status of an employee as a full-time employee during a future period (referred to as a stability period), based upon the hours of service of the employee in a prior period (referred to as a measurement period).

To assist employers who have chosen to use the look-back method to communicate the implications to their employees and their eligibility for benefits, Gallagher has developed numerous sample communications. One sample communication is for newly hired employees subject to initial measurement, administrative, and initial stability periods. We also have a second sample communication for ongoing employees. Lastly, to assist employers with unique employee populations, we have taken these two pieces and have customized them for higher education employers with adjunct faculty and employers with employees who are subject to “on-call hours.”

Sample Communications

1. Instructions:

To assist employers, we have drafted language that you may consider using when communicating information about how measurement, administrative, and stability periods will be used to determine employees' eligibility for health benefits. As you will notice, we have highlighted the areas of the draft that must be customized by using a red font. Moreover, we understand that every situation is different and that the draft language may not meet your particular needs. As such, we advise that your Legal and/or HR Departments review the suggested language and modify it to meet your particular needs.

Disclaimer

We share this information with our clients and friends for general informational purposes only. It does not necessarily address all of your specific issues. It should not be construed as, nor is it intended to provide, legal advice. Questions regarding specific issues and application of these rules to your plans should be addressed by your legal counsel.

2. Sample communication for newly hired employees:

[Date]

Re: How Your Eligibility for Health Benefits will be Determined as a New Hire

Dear [Employee],

Welcome to [insert name of organization]; we are excited to have you onboard. To help you become familiar with our benefits during this orientation process, we would like to provide a brief explanation about your eligibility for health insurance. Your initial eligibility for health benefits will be determined by tracking your hours of service during an "initial measurement period."

Your initial measurement period runs from [insert start date of initial measurement period] through [insert end date of initial measurement period]. To be eligible for health benefits, you must have at least an average of [30] hours of service per week (or an average of at least [130] hours of service per month) during the initial measurement period. Hours of service that count towards your eligibility for health benefits are: (1) those hours for which you are paid to work, and (2) the hours for which you are paid for vacation, holiday, illness, incapacity (including in some cases disability), layoff, jury duty, military duty, or leave of absence. [(Include the following sentence only if short term and/or long term disability is paid for in whole or in part by your organization) In the event you become entitled to short-term [or long-term] disability benefits and are not working, we will credit you with hours of service for your time on disability provided that you remain under our employment.]

If you average at least [30] hours of service per week (or an average of at least [130] hours of service per month) during the initial measurement period, then you will be eligible for health benefits from [insert start date of initial stability period] through [insert end date of initial stability period]. You must elect coverage, pay your share of premiums, and continue to be an employee during this period in order to maintain coverage.

If you do not average at least [30] hours of service per week (or an average of at least [130] hours of service per month) during the initial measurement period, then you will not be eligible for health benefits from [insert start date of initial stability period] through [insert end date of initial stability period] unless you have a change in employment status that makes you eligible for benefits.

Should you have any questions, please contact [Human Resources] at [phone number or email address].

Thank you.

3. Sample communication to ongoing employees:

[Date]

Re: How Your Eligibility for Health Benefits will be Determined as an Ongoing Employee

Dear [Employee],

We'd like to provide you with an overview on how you become eligible for health insurance benefits. In general, we will track your hours of service during what is called a "measurement period" to determine your eligibility for health benefits from [insert start date of standard stability period] through [insert end date of standard stability period].

The measurement period runs from [insert start date of standard measurement period] through [insert end date of standard measurement period]. To be eligible for health benefits, you must have at least an average of [30] hours of service per week (or an average of at least [130] hours of service per month) during the measurement period. Hours of service that count towards your eligibility for health benefits are: (1) those hours for which you are paid to work, and (2) the hours for which you are paid for vacation, holiday, illness, incapacity (including in some cases disability), layoff, jury duty, military duty, or leave of absence. [(Include the following sentence only if short term and/or long term disability is paid for in whole or in part by your organization) In the event you become entitled to short-term or long-term disability benefits and are not working, we will credit you with hours of service for your time on disability provided that you remain under our employment.]

If you average at least [30] hours of service per week (or an average of at least [130] hours of service per month) during the measurement period, then you will be eligible for health benefits from [insert start date of standard stability period] through [insert end date of standard stability period]. You must elect coverage, pay your share of premiums, and continue to be an employee during this period in order to maintain coverage.

If you do not average at least [30] hours of service per week (or an average of at least [130] hours of service per month) during the measurement period, then you will not be eligible for health benefits from [insert start date of standard stability period] through [insert end date of standard stability period] unless you have a change in employment status that makes you eligible for benefits.

Should you have any questions, please contact [Human Resources] at [phone number or email address].

Thank you.

4. Sample communication to newly hired employees for higher education employers:

[Date]

Re: How Your Eligibility for Health Benefits will be Determined as a New Hire

Dear [Employee],

Welcome to [insert name of organization]; we are excited to have you onboard. To help you become familiar with our benefits during this orientation process, we would like to provide with a brief explanation about your eligibility for health insurance. Your initial eligibility for health benefits will be determined by tracking your hours of service during an "initial measurement period."

Your initial measurement period runs from [insert start date of initial measurement period] through [insert end date of initial measurement period]. To be eligible for health benefits, you must have at least an average of [30] hours of service per week (or an average of at least [130] hours of service per month) during the initial measurement period. Hours of service that count towards your eligibility for health benefits are: (1) those hours for which you are paid to work, and (2) the hours for which you are paid for vacation, holiday, illness, incapacity (including in some cases disability), layoff, jury duty, military duty, or leave of absence. [(Include the following sentence only if short term and/or long term disability is paid for in whole or in part by your organization) In the event you become entitled to short-term [or long-term] disability benefits and are not working, we will credit you with hours of service for your time on disability provided that you remain under our employment.]

If you are an adjunct faculty member, you also will be credited with:

- (a) [2.25] [note that this is the minimum amount to use the regulatory safe harbor] hours of service per week for each hour of teaching or classroom time (representing a combination of teaching or classroom time and time performing related tasks such as class preparation and grading of examinations or papers); and
- (b) 1 hour of service per week for each additional hour outside of the classroom you spend performing required duties (such as required office hours or required attendance at faculty meetings).

[Select one of the applicable paragraphs below:]

[To account for breaks in the academic calendar that are greater than four weeks, but less than twenty-six weeks, we will determine your average hours of service per week, excluding the employment break period, and use that as the average for the entire initial measurement period. For example, if you average 32 hours of service per week during January through May and September through December and have a period without any hours of service during June, July, and August, we will only include the hours of service



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credited for January through May and September through December in determining whether you qualify as a full-time employee for purposes of health benefits coverage.]

[OR]

[To account for breaks in the academic calendar that are greater than four weeks, but less than twenty-six weeks, we will credit you with hours of service for the employment break period at a rate equal to the average weekly rate at which you were credited with hours of service during the weeks of the measurement period that are not part of an employment break period (but no more than 501 hours of service will be credited). For example, if you average 32 hours of service per week during January through May and September through December and have a period without any hours of service during June, July, and August, we will credit you with 32 hours of service per week for June, July, and August in determining whether you are a full-time employee for purposes of health benefits coverage.]

If you average at least [30] hours of service per week (or an average of at least [130] hours of service per month) during the initial measurement period, then you will be eligible for health benefits from [insert start date of initial stability period] through [insert end date of initial stability period]. You must elect coverage, pay your share of premiums, and continue to be an employee during this period in order to maintain coverage.

If you do not average at least [30] hours of service per week (or an average of at least [130] hours of service per month) during the initial measurement period, then you will not be eligible for health benefits from [insert start date of initial stability period] through [insert end date of initial stability period] unless you have a change in employment status that makes you eligible for benefits.

Should you have any questions, please contact [Human Resources] at [phone number or email address].

Thank you.

5. Sample communication to ongoing employees for higher education employers:

[Date]

Re: How Your Eligibility for Health Benefits will be Determined as an Ongoing Employee

Dear [Employee],

We'd like to provide you with an overview on your possible eligibility for health insurance benefits. In general, we will track your hours of service during what is called a "measurement period" to determine your eligibility for health benefits from [insert start date of standard stability period] through [insert end date of standard stability period].

The measurement period runs from [insert start date of standard measurement period] through [insert end date of standard measurement period]. To be eligible for health benefits, you must have at least an average of [30] hours of service per week (or at least an average of [130] hours of service per month) during the measurement period. Hours of service that count towards your eligibility for health benefits are: (1) those hours for which you are paid to work, and (2) the hours for which you are paid for vacation, holiday, illness, incapacity (including in some cases disability), layoff, jury duty, military duty, or leave of absence. [(Include the following sentence only if short term and/or long term disability is paid for in whole or in part by your organization) In the event you become entitled to short-term [or long-term] disability benefits and are not working, we will credit you with hours of service for your time on disability provided that you remain under our employment.]

If you are an adjunct faculty member, you also will be credited with:

- (a) [2.25] [note that this is the minimum amount to use the regulatory safe harbor] hours of service per week for each hour of teaching or classroom time (representing a combination of teaching or classroom time and time performing related tasks such as class preparation and grading of examinations or papers); and
- (b) 1 hour of service per week for each additional hour outside of the classroom you spend performing required duties (such as required office hours or required attendance at faculty meetings).

[Select one of the applicable paragraphs below:]

[To account for breaks in the academic calendar that are greater than four weeks, but less than twenty-six weeks, we will determine your average hours of service per week, excluding the employment break period, and use that as the average for the entire initial measurement period. For example, if you average 32 hours of service per week during January through May and September through December and have a period without any hours of service during June, July, and August, we will only include the hours of service



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credited for January through May and September through December in determining whether you qualify as a full-time employee for purposes of health benefits coverage.]

[OR]

[To account for breaks in the academic calendar that are greater than four weeks, but less than twenty-six weeks, we will credit you with hours of service for the employment break period at a rate equal to the average weekly rate at which you were credited with hours of service during the weeks of the measurement period that are not part of an employment break period (but no more than 501 hours of service will be credited). For example, if you average 32 hours of service per week during January through May and September through December and have a period without any hours of service during June, July, and August, we will credit you with 32 hours of service per week for June, July, and August in determining whether you are a full-time employee for purposes of health benefits coverage.]

If you average at least [30] hours of service per week (or an average of at least [130] hours of service per month) during the measurement period, then you will be eligible for health benefits from [insert start date of standard stability period] through [insert end date of standard stability period]. You must elect coverage, pay your share of premiums, and continue to be an employee during this period in order to maintain coverage.

If you do not average at least [30] hours of service per week (or an average of at least [130] hours of service per month) during the measurement period, then you will not be eligible for health benefits from [insert start date of standard stability period] through [insert end date of standard stability period] unless you have a change in employment status that makes you eligible for benefits.

Should you have any questions, please contact [Human Resources] at [phone number or email address].

Thank you.

6. Sample communication to newly hired employees with on-call hours:

[Date]

Re: How Your Eligibility for Health Benefits will be Determined as a New Hire

Dear [Employee],

Welcome to [insert name of organization]; we are excited to have you onboard. To help you become familiar with our benefits during this orientation process, we would like to provide with a brief explanation about your eligibility for health insurance. Your initial eligibility for health benefits will be determined by tracking your hours of service during an “initial measurement period.”

Your initial measurement period runs from [insert start date of initial measurement period] through [insert end date of initial measurement period]. To be eligible for health benefits, you must have at least an average of [30] hours of service per week (or an average of at least [130] hours of service per month) during the initial measurement period. Hours of service that count towards your eligibility for health benefits are: (1) those hours for which you are paid to work, and (2) the hours for which you are paid for vacation, holiday, illness, incapacity (including in some cases disability), layoff, jury duty, military duty, or leave of absence. [(Include the following sentence only if short term and/or long term disability is paid for in whole or in part by your organization) In the event you become entitled to short-term [or long-term] disability benefits and are not working, we will credit you with hours of service for your time on disability provided that you remain under our employment.]

Generally, we will use a reasonable method for crediting hours of service for any on-call hour for which you are paid. This may include hours for which you are required to remain on-call on our premises, or for which your activities while remaining on-call are subject to substantial restrictions that prevent you from using the time effectively for your own purposes.

If you average at least [30] hours of service per week (or an average of at least [130] hours of service per month) during the initial measurement period, then you will be eligible for health benefits from [insert start date of initial stability period] through [insert end date of initial stability period]. You must elect coverage, pay your share of premiums, and continue to be an employee during this period in order to maintain coverage.

If you do not average at least [30] hours of service per week (or an average of at least [130] hours of service per month) during the initial measurement period, then you will not be eligible for health benefits from [insert start date of initial stability period] through [insert end date of initial stability period] unless you have a change in employment status that makes you eligible for benefits.



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Should you have any questions, please contact [Human Resources] at [phone number or email address].

Thank you.

7. Sample communication to ongoing employees with on-call hours:

[Date]

Re: How Your Eligibility for Health Benefits will be Determined as an Ongoing Employee

Dear [Employee],

We'd like to provide you with an overview on your possible eligibility for health insurance benefits. We will track your hours of service during what is called a "measurement period" to determine your eligibility for health benefits from [insert start date of standard stability period] through [insert end date of standard stability period].

The measurement period runs from [insert start date of standard measurement period] through [insert end date of standard measurement period]. To be eligible for health benefits, you must have at least an average of [30] hours of service per week (or at least an average of [130] hours of service per month) during the measurement period. Hours of service that count towards your eligibility for health benefits are: (1) those hours for which you are paid to work, and (2) the hours for which you are paid for vacation, holiday, illness, incapacity (including in some cases disability), layoff, jury duty, military duty, or leave of absence. [(Include the following sentence only if short term and/or long term disability is paid for in whole or in part by your organization) In the event you become entitled to short-term [or long-term] disability benefits and are not working, we will credit you with hours of service for your time on disability provided that you remain under our employment.]

Generally, we will use a reasonable method for crediting hours of service for any on-call hour for which you are paid. This may include hours for which you are required to remain on-call on our premises, or for which your activities while remaining on-call are subject to substantial restrictions that prevent you from using the time effectively for your own purposes.

If you average at least [30] hours of service per week (or an average of at least [130] hours of service per month) during the measurement period, then you will be eligible for health benefits from [insert start date of standard stability period] through [insert end date of standard stability period]. You must elect coverage, pay your share of premiums, and continue to be an employee during this period in order to maintain coverage.

If you do not average at least [30] hours of service per week (or an average of at least [130] hours of service per month) during the measurement period, then you will not be eligible for health benefits from [insert start date of standard stability period] through [insert end date of standard stability period] unless you have a change in employment status that makes you eligible for benefits.



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Should you have any questions, please contact [Human Resources] at [phone number or email address].

Thank you.