

# Sample Employee FAQs Explaining Benefits Eligibility

To assist employers in providing an explanation to their employees of how measurement, administrative, and stability periods will be used to determine eligibility for health benefits, Gallagher has developed a set of Frequently Asked Questions that employers may wish to consider distributing to employees when communicating information about measurement, administrative, and stability periods.

## **Instructions:**

Following is sample language that may be used when communicating information about measurement, administrative, and stability periods. Please consider cutting, pasting, and modifying the following FAQs as appropriate. Consider using your organization's preferred header; however, we have provided a generic header. 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. In particular, employers with special circumstances such as educational employees and firefighters should consider some additional optional FAQs, and employers will wish to customize the applicable dates for measurement and stability periods. 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.



## FAQs: Determining Your Eligibility for Health Benefits

Eligibility for our health benefits is determined through the use of measurement and stability periods. We have provided these FAQs to you for the purposes of explaining what measurement and stability periods are, and how we will use them to determine your eligibility for health benefits. Should you have any questions after reading through these FAQs, please contact: **[insert name and phone number and/or email address for individual to contact with questions]**.

### What is the Individual Mandate?

The individual shared responsibility provision of the Patient Protection and Affordable Care Act (sometimes called “PPACA” or “the ACA” or “the Affordable Care Act”) requires you and each member of your family to have qualifying health insurance (called “minimum essential coverage”), qualify for an exemption, or make a shared responsibility payment when filing a federal income tax return.

Recent changes to the tax law have reduced the penalty for failure to comply with the individual shared responsibility to \$0.

### Is my employer-sponsored coverage considered to be “minimum essential coverage” for purposes of the Individual Mandate?

Yes. Coverage offered through our organization meets the requirements for minimum essential coverage under the Individual Mandate. For information about additional types of coverage that qualify, please see the IRS’ [minimum essential coverage chart](http://IRS.gov/aca) on [IRS.gov/aca](http://IRS.gov/aca).

### How do I know if I’m eligible for coverage under our health plan?

You may become eligible for coverage under our plan in one of two ways.

1. You can qualify as a full-time employee eligible for benefits when originally hired **(subject to a waiting period)**; or
2. You can qualify for coverage if you are credited with enough “hours of service” to qualify you as a full-time employee during a period of time called a “measurement period.” This option is available to employees who are initially considered to be variable hour, part-time, or seasonal employees on their dates of hire.

Under our plan, an employee **[who is regularly scheduled to work] [30 or more hours per week]** is considered to be full-time and eligible for health benefits. Check with **[Human Resources]** if you are not certain whether you may be eligible for health benefits.

## Who is a “full-time” employee?

You are a full-time employee if you are credited with at least [130] “hours of service” per month or an average of [30] hours of service per week. If you are a “variable hour” or “seasonal” employee, we will determine the average numbers of hour of service per week or per month that you earn during a [insert length of measurement period: e.g., 12-month, 6-month] period. If you work on average at least [130 hours] per month or [30 hours] per week during the measurement period, you will be a full-time employee for purposes of our health benefits beginning with the next stability period. [For example, if you are a variable hour employee, using a 12-month measurement period, we would count the number of hours worked in those 12 months and divide by 12. If your hours of service per month averaged [130] or more, you would be a full-time employee for purposes of health benefits during the following stability period.]

## Who is a “variable hour” employee?

A variable hour employee is an employee whose hours of service we cannot determine at the time of hire will average at least 30 hours per week. For example, if you are hired and scheduled to work twelve hours one week, thirty-two hours the next week, and an unknown number of hours the following weeks and months, we cannot tell if you would average thirty or more hours per week, and you would be considered a variable hour employee.

## Who is a “seasonal” employee?

[While the IRS has not issued specific guidance on who is a seasonal employee, based on an example provided by the agency, consider using the following language which will be consistent with the sparse guidance issued by the IRS while we await more specific guidance:] A seasonal employee is an employee who is hired into a position for which the customary annual employment is six months or less. This means that, due to the nature of the position, an employee typically works for a period of six months or less, and that period begins each calendar year in approximately the same part of the year, such as summer or winter. [CAUTION: Irrespective of how you define a seasonal employee make sure you are consistent throughout your various plans, programs and documentation.]

## If I am paid on an hourly basis, what hours count when determining if I am a full-time employee?

If you are paid on an hourly basis, your “hours of service” include the hours for which you are paid to work and 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 I am not paid on an hourly basis, what hours count when determining if I am a full-time employee?

If you are paid on a non-hourly basis (e.g., you are a salaried employee), we will calculate your “hours of service” [choose applicable method:]

[in the same manner that we calculate hours of services for hourly employees (i.e., counting your actual hours of service).]

[OR]

[using what is called a “days-worked” equivalency method. Using a days-worked equivalency method, we will credit you with eight hours of service for each day you are credited with at least one hour of service (including hours for which no services were performed such as vacation time).]

[OR]

[using a “weeks-worked” equivalency method. Using a weeks-worked equivalency method, we will credit you with forty hours of service for each week you are credited with at least one hour of service (including hours for which no services were performed such as 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.]

### What is a measurement period?

A measurement period is a period of time during which we will “look back” to see how many hours of service per week [insert types of employees (e.g., hourly employees)] were credited on average. We will use that average to determine the eligibility or continued eligibility for health benefits for those employees.

### What is a stability period?

A stability period is a period of time during which you will either be considered to be a full-time or non-full-time employee for purposes of your eligibility for health benefits. If you are determined to be full-time during the immediately prior measurement period, you will be considered a full-time employee eligible for health benefits for the immediately subsequent stability period. However, if you were determined not to be full-time during the immediately prior measurement period, then you will be considered a non-full-time employee who is not eligible for health benefits for the immediately subsequent stability period, unless you have a change in employment status that causes you to become eligible for health benefits.

For example, if you were determined to work on average [30 or more hours per week] during our standard measurement period from [insert dates of standard measurement period] \_\_\_\_\_ through \_\_\_\_\_, then you would be considered to be a full-time employee from [insert dates of standard stability period; this is most likely the same as your plan year] \_\_\_\_\_ through \_\_\_\_\_ for purposes of health benefits. This means that during the stability period, you are eligible for health benefits so long as you pay your premiums and continue your employment with us. If, however, you were determined not to be a full-time employee during our standard

measurement period from [insert dates of standard measurement period] \_\_\_\_\_ through \_\_\_\_\_, then you would **not** be considered to be a full-time employee from [insert dates of standard stability period; this is most likely the same as your plan year] \_\_\_\_\_ through \_\_\_\_\_ for purposes of health benefits. This means that you would not be eligible for health benefits coverage unless you have a change in employment status that would make you become eligible for health benefits coverage.

### What is an administrative period?

An administrative period is a period of time between the measurement period and the stability period, during which we will determine which employees are eligible for coverage, as well as notify and enroll those employees. For ongoing employees, an “administrative period” occurs after the measurement period ends and before the associated stability period begins. This administrative period will not reduce or lengthen your measurement period or stability period, and it will not be longer than 90 days. It will overlap with the prior stability period; so that, during the administrative period, you will still be offered health benefits coverage until the new stability period begins, if you are considered to be a full-time employee.

For new variable or seasonal employees, the administrative period will not exceed 90 days in total. However, your initial measurement period and administrative period together will not extend beyond the last day of the first calendar month beginning on or after the first anniversary of your start date. [For example, using a 12-month initial measurement period for a new variable hour employee, we will begin that initial measurement period on the first day of the first calendar month following your start date. The administrative period before coverage starts cannot be longer than one month, assuming, of course, you met the full-time hours of service requirement during the initial measurement period.]

### If I’m a newly hired employee, how do the initial measurement, administrative, and initial stability periods work?

If you are a newly hired employee and your hours of service will be determined based upon a measurement period, we will track your hours of service beginning with [insert choice: your date of hire; the first of the month following your date of hire]. This period is called an “initial measurement period.” If you average 30 or more hours of service per week (or 130 hours or more per month) during your initial measurement period, then you will be classified as a “full-time” employee for purposes of health benefits coverage during the following stability period. For example, if you are hired on May 5 and you are credited with an average of 30 or more hours of service per week between [insert date range of initial measurement period], you will qualify as a full-time employee for purposes of health benefits coverage for the period beginning [insert beginning of initial stability period]. You may then elect coverage effective [insert beginning of initial stability period] by timely completing the correct enrollment process. Moreover, if you are eligible for health benefits, you will be notified about the enrollment process.

## At what point would we stop using initial measurement and stability periods and transition you to ongoing status?

Beginning with the first standard measurement period that begins during your employment with us, at the same time and under the same conditions as other ongoing employees, we will begin tracking your hours of service as an “ongoing” employee. For example, if you are hired on May 15, and we begin our standard measurement period on [October 15], then your initial measurement period will last from [June 1] until [May 31] of the [following year], and your hours of service would be calculated based on that period of time. In addition, we would begin tracking your hours of service on [October 15] as part of the standard measurement period to determine if you will be considered as a full-time employee beginning with the next standard stability period. This means that there may be some overlap as we continue to track your hours of service during your initial measurement period and your hours of service during your first standard measurement period while in our employment.

## Who is an “ongoing” employee?

An ongoing employee is an employee who has been employed for a complete standard measurement period. Our standard measurement period(s) extend(s) from [insert date range of your standard measurement period(s)].

## How do measurement and stability periods work if I’m an ongoing employee?

If you are an ongoing employee, we will track your hours of service based upon a measurement period from [insert dates of standard measurement period] \_\_\_\_\_ through \_\_\_\_\_. This period is called a “standard measurement period.” If you average [30 or more hours of service per week (or 130 hours or more per month)] during the standard measurement period, you will be classified as a full-time employee for purposes of health benefits coverage during the next stability period. For example, if you are credited with [an average of 30 or more hours of service per week] from [insert dates of standard measurement period] \_\_\_\_\_ through \_\_\_\_\_, we will classify you as a full-time employee for purposes of health benefits coverage for the period beginning [insert beginning of standard stability period]. You may then elect coverage effective [insert beginning of standard stability period] by timely completing the enrollment process. Moreover, if you are eligible for health benefits, you will be notified about the enrollment process.

## If I’m classified as a full-time employee for purposes of health benefits coverage during a measurement period, when will my coverage begin?

If you are classified as a full-time employee for purposes of health benefits during a measurement period, your coverage will begin after the end of an administrative period. The administrative period may be up to 90 days in length. Your coverage will start with the beginning of your stability period if you choose to elect coverage under our health plan.

## What happens to my eligibility for health benefits if I change positions?

If you change positions within the organization, your eligibility for health benefits could change because some positions may be eligible for health benefits whereas others are



not. If the change in position causes a change in your health benefits eligibility, then you have experienced what is referred to as a “change in employment status.” A change in employment status occurs if you move from a position that is eligible for benefits without using a measurement and stability period to a position that is, or if you move from a position that is eligible for benefits using a measurement and stability period to a position that does not require use of measurement and stability periods. [For example, if you are hired as a variable hour employee and move to a full-time, non-variable hour employee position, you have experienced a change in employment status.]

### **What happens if I take FMLA leave, USERRA leave, or jury duty leave during a measurement period?**

[Choose **one** of the paragraphs below that applies to your organization.]

[For periods of special **unpaid** leave (including leave taken for FMLA, USERRA or on account of jury duty), we will determine your average hours of service per week during the measurement period – excluding the special unpaid leave period – and use that average as the average for the entire measurement period.]

[OR]

[We will credit you with hours of service during your leave for unpaid FMLA, USERRA, or jury duty at a rate equal to your average weekly rate during the weeks in the measurement period that you were not on special unpaid leave.]

### **What happens if my hours as a variable hour employee drop after I’m enrolled in the health plan?**

If your hours of service drop after you are enrolled in our health plan as part of a current stability period, you will nonetheless continue to be covered so long as you continue to make your required employee premium contributions and are an employee. However, your reduced hours of service will count toward the current standard measurement period, and you may lose coverage after the end of the current stability period if your hours drop below the number required to be considered a full-time employee.

### **If I am not eligible for health benefits because I am not a full-time employee, where can I obtain health coverage?**

Coverage may be obtained through the Marketplace during open enrollment or special enrollment periods. In the Marketplace, you may be eligible for a premium tax credit and/or cost-sharing reductions. To enroll in a Marketplace plan, you must contact the [name of entity to contact (e.g., Covered California)] at [phone number or website address].

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**[The following are FAQs will not apply to all employers. Please select the FAQs applicable to your organization.]**

**[For organizations with volunteer firefighters and emergency medical services personnel:]**

**I'm a volunteer firefighter, and I am nominally paid for my expenses, or I may receive a cash award. Do my hours as a volunteer firefighter count as hours of service for purposes of determining whether I may be eligible for health benefits coverage?**

No. Hours of service do not include hours worked as a “bona fide volunteer.” Bona fide volunteers include any volunteer (including a volunteer firefighter) who is an employee of a government entity or an organization described in section 501(c) that is exempt from taxation under section 501(a) whose only compensation from that entity or organization is in the form of (i) reimbursement for (or reasonable allowance for) reasonable expenses incurred in the performance of services by volunteers, or (ii) reasonable benefits (including length of service awards), and nominal fees, customarily paid by similar entities in connection with the performance of services by volunteers.

**I'm a volunteer emergency medical responder, and I am nominally paid for my expenses, or I may receive a cash award. Do my hours as a volunteer emergency medical responder count as hours of service for purposes of determining whether I may be eligible for health benefits coverage?**

No. Hours of service do not include hours worked as a “bona fide volunteer.” Bona fide volunteers include any volunteer (including a volunteer emergency medical responder) who is an employee of a government entity or an organization described in section 501(c) that is exempt from taxation under section 501(a) whose only compensation from that entity or organization is in the form of (i) reimbursement for (or reasonable allowance for) reasonable expenses incurred in the performance of services by volunteers, or (ii) reasonable benefits (including length of service awards), and nominal fees, customarily paid by similar entities in connection with the performance of services by volunteers.

**[For educational employers:]**

**Do only the hours of service worked during the school year count toward determining if I'm a full-time employee?**

No. For employees of academic institutions, a 12-month measurement period is permitted but a special rule applies to employment break periods (e.g., summer breaks) of four or more consecutive weeks.

**[Select one of the applicable paragraphs below:]**

**[We will determine your average hours of service per week during the measurement period excluding the employment break period and use that average as the average for the entire measurement period. For example, if you average 32 hours of service per week during January through May and September through December, we will only include the hours of service 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]**

**[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 in the measurement period that are not part of an employment break period (but no more than 501 hours of service are required to be credited). For example, if you average 32 hours of service per week during January through May and September through December, 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.]

Note: You will not be treated as a seasonal employee solely because you work during the academic year.

**[For higher education employers with adjunct professors:]**

**As an Adjunct Faculty member, how are my hours of service calculated?**

We will credit you with:

- (a) **[2.25]** 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) One 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).

**[Note: Academic employers may credit more than 2.25 hours of service per week, but not less in order to meet the regulatory safe harbor.]**

**[For employers with employees required to perform “on-call” hours of duty:]**

**Do my hours worked “on-call” count as hours of service?**

It will depend on the situation. Generally, we will use a reasonable method for crediting hours of service for any on-call hour for which payment is made or due. 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.