

HEALTH CARE REFORM NEWS

...From the Employer Perspective

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ACA Look-Back Measurement Method – Impact of Employment Status Changes on Health Plan Eligibility

If you're like many employers using the look-back method measurement method to determine employee full-time or non-full-time status for Affordable Care Act purposes ("ACA status"), you're feeling as though you've finally mastered your processes for using measurement and stability periods. Unfortunately, you now must also manage the finer points of the process, such as position changes and leaves of absence. For example, when an employer uses the look-back measurement method to determine ACA status and an employee experiences an employment status change, when exactly is eligibility for health care coverage affected and what ripple effects are there on matters such as COBRA, Section 125 plan, and benefits administration? Well, it depends. It depends upon the type of status change, when in the employment relationship the status change occurs, and whether the employer is using the look-back measurement method only for ACA administration or is also using it to define health plan eligibility.

It is important to understand this latter point that employee status for ACA purposes can differ from employee status for health plan eligibility purposes. While ACA employer shared responsibility is commonly referred to as "the employer mandate", it is not mandatory that employers offer coverage to full-time employees – employers could simply be at risk for a penalty for not doing so. Thus, an employee for whom an employer is subject to the employer mandate is not automatically synonymous with an employee who is eligible for an employer's health plan, unless an employer chooses to synchronize its plan's eligibility terms with ACA status administration. In other words, an employee's ACA status does not override a plan's eligibility terms – if a plan states that an employee is not eligible for coverage, the look-back measurement process is relevant only for determining whether an employer could be at risk for

an employer mandate penalty.

Background

Under ACA employer shared responsibility provision 4980H(a), a large employer (50 or more full-time and/or full-time equivalent employees) can be subject to a penalty if it does not offer minimum essential coverage to “substantially all” (at least 70% in 2015 and at least 95% thereafter) of its full-time employees and their children and at least one employee receives a premium tax credit for Marketplace coverage. Large employers that meet the 4980H(a) standard can still be subject to a penalty under employer shared responsibility provision 4980H(b) if one or more full-time employees are not offered coverage that meets ACA affordability and minimum value standards and at least one such employee receives a premium tax credit.

By ACA standards, a full-time employee is one who averages at least 30 hours of service per week, which is the equivalent of 130 hours per calendar month under the monthly measurement method for determining an employee’s ACA status. Because hours of service are difficult to predict for employees with fluctuating schedules, employers are permitted to determine employees’ ACA status using the look-back measurement method, wherein employees’ hours are calculated during a specified period of time (“measurement period”) and ACA status based on those results is locked in for a prospective period of time (“stability period”). This look-back measurement process alleviates significant administrative concerns around non-full-time employees, but managing status changes can be tricky. Note that if an employer decides to use the look-back method to determine full-time status of certain hourly employees, it must apply the look-back method to all of its hourly employees working in that state.

What happens when an employee changes from a full-time to a non-full-time position?

- **With regard to ACA status**, the impact of the position change depends upon when in the employment relationship the change occurs and the type of position:

	If position change occurs <i>before an employee has completed a standard measurement period</i> (“new employee”)	If position change occurs <i>after an employee has completed a standard measurement period</i> (“ongoing employee”)
Impact of Position Change on ACA Status	The employee’s ACA status will continue to be determined based on the monthly measurement method until the employee has completed a standard measurement period.	Generally, the employee’s ACA status for the current stability period is not affected and the change in hours will be captured in subsequent measurement and stability periods. However, if the employee is expected to average fewer than 30 hours per week in the new position and does average fewer than 30 hours per week for the first three calendar months following the position change (and minimum value health coverage is offered continuously since at least the first day of the fourth full calendar month of employment), the employer has the option to revoke the employee’s full-time stability period at the start of the fourth month following the change and apply the monthly measurement method until the end of the first full measurement period to begin after the employee’s change to part-time.

- **With regard to plan eligibility status**, the impact of the position change depends upon whether the health plan provisions treat all non-full-time employees equally or differentiate between different types of non-full-time positions:

	If plan eligibility rules are <i>synchronized with ACA status</i>	If plan eligibility rules are <i>not synchronized with ACA status</i>	If plan eligibility rules are <i>partially synchronized with ACA status</i>
Eligibility Rule	All ongoing employees who are in full-time stability periods are eligible (as well as new	Only employees regularly scheduled to work a certain number of hours (i.e., “full-time” as defined	Ongoing employees who are in full-time and variable hour positions and are in full-time

	employees in full-time positions who have not yet completed a standard measurement period).	by the plan) are eligible.	stability periods are eligible (as well as new employees in full-time positions who have not yet completed a standard measurement period), but employees in non-full-time positions the plan defines as “part-time” (e.g., regularly scheduled hours are below a threshold set by the plan) are not eligible.
Impact of Position Change on Plan Eligibility Status	An ongoing employee moving to a non-full-time position would remain eligible for coverage for as long as he or she is in a full-time stability period, while a new employee moving to a non-full-time position would become ineligible for coverage at the time of the position change and would regain eligibility only if he or she later qualifies for a full-time stability period (an employer could design plan terms to allow a new employee to remain eligible until results of a standard measurement period can be determined).	An employee moving to a position not meeting the plan’s definition of full-time would become ineligible for coverage at the time of the position change and remain ineligible for as long as he or she is not in a full-time position, regardless of whether he or she is in a full-time stability period.	An employee moving to a part-time position would become ineligible for coverage at the time of the position change, regardless of whether he or she is in a full-time stability period, while an ongoing employee moving to a position that is non-full-time but not “part-time” by plan standards would remain eligible for coverage for as long as he or she is in a full-time stability period.

An employer that chooses to exclude employees in part-time and/or variable hour positions from eligibility should

What happens when an employee changes from a non-full-time to a full-time position?

- **With regard to ACA status**, the impact of the position change depends upon when in the

employment relationship the change occurs:

	If the position change occurs <i>before an employee has completed an initial measurement period</i>	If the position change occurs <i>after an employee has completed an initial or standard measurement period</i>
Impact of Position Change on ACA Status	The employer would not be subject to the employer mandate with regard to the employee until the first day of the fourth month following the position change or, if earlier and the employee averaged 30 or more hours per week during the initial measurement period, the date the initial stability period would have begun, provided health coverage is offered as of the applicable date (if not offered by the applicable date, the employer would be subject to the employer mandate with regard to the employee as of the date of the position change).	The employee's ACA status for the current stability period is not affected and the change in hours will be captured in subsequent measurement and stability periods (i.e., employee's ACA status does not change to full-time until he or she averages 30 more hours per week during a standard measurement period and the associated stability period begins).

- **With regard to plan eligibility status**, for either new or ongoing employees in these situations, an employer is not prohibited from designing its health plan terms such that employees become eligible for coverage sooner than the timeframes outlined above. Similarly, it is not required that health plan terms provide for an offer of coverage in those timeframes, but an employer could be assessed a 4980H penalty after that point if an employee receives a premium tax credit.

What happens when an employee has a period of extended leave while in a full-time stability period?

A break in service is a period of at least four consecutive weeks (disregarding FMLA, USERRA, or jury duty leave) during which an employee is not credited with any hours of service.¹ ACA regulations provide very specific guidelines for how an employee must be regarded for ACA purposes upon returning from a break in service, but how must an employee be regarded *during* the break in service?

- **With regard to ACA status**, under employer mandate regulations, a stability period is not suspended during a break in service unless an employee is terminated from employment. Thus, if an employee is in a full-time stability period, the employee's ACA status in the current stability period would be unaffected by a period of extended unpaid leave. If the period of unpaid leave continues into the next stability period, the employee's status for that new stability period is based on the results of the associated measurement period.²
- **With regard to plan eligibility status**, if the health plan terms provide that eligibility is suspended during an extended period of leave, the employer could be assessed a 4980H penalty if an employee receives a premium tax credit for a month in which he or she is in a full-time stability period and is not offered affordable minimum value coverage.

As noted previously, an offer of COBRA continuation is recognized as an employer offer of coverage, but determination of affordability is based on the full COBRA premium for self-only coverage. Similarly, if an employee remains eligible for coverage under the terms of the plan but is required to pay a greater portion of the premium cost while on leave, affordability is determined based on the higher contribution rate the employee would have to pay for self-only coverage.

¹ *Different standards apply for educational organizations – see Employer Shared Responsibility Final Rule for more information.*

² *Special rules apply for calculating average hours when measurement period includes a break in service – see Employer Shared Responsibility Final Rule for more information.*

What COBRA considerations are associated with status changes?

When an employer uses the look-back measurement method and health plan eligibility is tied to ACA stability period status, it can complicate matters such as identifying exactly when a COBRA qualifying event occurred or when the maximum coverage period begins. For example:

- If an employee moves from a full-time to a non-full-time position but loss of coverage doesn't occur until sometime later because the employee is in a full-time stability period, the plan administrator must determine whether to deem that the qualifying event is the date the reduction in hours occurs, the last day of the measurement period in which the employee averages fewer than 30 hours per week, or the date the corresponding stability period begins and coverage is lost. Similarly, if an employee loses coverage because his or her ACA status

changes from one stability period to the next without a position change (e.g., a continuously variable hour employee averages 30 or more hours per week in one measurement period but averages fewer than 30 hours per week in the next), the plan administrator must determine whether the qualifying event occurs the last day of the applicable measurement period or the date the corresponding stability period begins and coverage is lost.

- If the qualifying event occurs prior to the date coverage is lost (i.e., either reduction in hours date or measurement period end date), COBRA deferred loss of coverage rules allow a plan administrator to decide whether it will begin the maximum coverage period on the qualifying event date or the date COBRA coverage actually begins. Deferred loss of coverage rules require that coverage loss occur within 18 months of the qualifying event, or the participant is not entitled to COBRA continuation. While not likely an issue with regard to employees moving from full-time to part-time positions, recognizing the reduction in hours date as the qualifying event for employees moving from full-time to variable hour positions could be a concern if an employee were to continue averaging 30 or more hours per week for more than 18 months.

COBRA regulations did not contemplate the ACA, nor did the ACA directly amend COBRA regulations, so specific guidance from the governing agencies regarding the interaction of COBRA and the look-back measurement method would be welcome. In the meantime, we recommend plan sponsors that synchronize plan eligibility with ACA administration review their COBRA policies and procedures with legal counsel.

What payroll/HRIS & benefits administration considerations are associated with status changes?

While synchronizing health plan eligibility with ACA status can reduce administrative complexities, it does not eliminate them entirely. An employee might be assigned full-time status for both ACA and health plan eligibility purposes, but an employee's status may differ for other employment purposes (e.g., paid time off accruals or eligibility for non-health benefits). Employers should keep in mind where and how status indicators are used and the impact on data administration (e.g., in which information systems or data fields does an employee's status need to reflect the employee's employment status and in which does it need to reflect the employee's ACA status), particularly when an employer utilizes automated or outsourced benefits administration services. For example, when an employee in a full-time position moves to a part-time position but is in an ACA full-time stability period and remains eligible for health coverage under the terms of the plan, an employer should ensure that changing an employee's status indicator to part-time for employment or payroll purposes doesn't inadvertently signal to a

benefits administration system that the employee is not eligible for health coverage.

What Section 125 plan administration considerations are associated with status changes?

The timing of eligibility loss also has implications with regard to an employer's Section 125 cafeteria plan. While it is understandable an enrolled employee might wish to drop coverage if he or she experiences a reduction in hours, if a health plan's eligibility rules provide that the employee remains eligible if in a full-time stability period, the change in hours is not a Section 125 change in status event that would allow the employee to drop coverage at that time. The IRS has provided a limited remedy for this situation wherein an employer is permitted to amend its Section 125 plan to allow an employee to revoke a group health plan election if the employee has changed from full-time to part-time, is reasonably expected to remain part-time, and the employee and any enrolled family members enroll in another plan no later than the first day of the second full month following the revocation. An employer that wishes to offer this accommodation must amend its plan by the last day of the plan year in which the changes are allowed.

Whether due to a reduction in hours or unpaid leave, if an employee's pay is insufficient to cover the employee's required contribution and the employee does not remit payment for amounts that could not be deducted from pay, an employer is permitted to terminate the employee's coverage. Employees in this situation should be aware that termination of employer coverage due to non-payment is not a Marketplace special enrollment event, so Marketplace coverage would not be a viable alternative until the next Marketplace open period (unless another special enrollment event occurs).

What Employers Should Do

As this discussion shows, employer plan sponsors have some choices around the interaction of ACA and health plan administration. An employer should review and document its decisions with regard to items such as (but not limited to):

- Whether health plan eligibility is fully synchronized with ACA status or whether variable hour and/or part-time employees are excluded from coverage regardless of current ACA status;
- If not offering coverage to part-time employees, whether the employer exercises the option to revoke stability periods after an employee moves to a part-time position;
- Whether coverage is offered sooner than is required when an employee moves from a non-full-

time to a full-time position;

- Whether health plan eligibility terms regarding employees on extended leave of absence are synchronized with ACA status;
- How the interaction of the employer's ACA administration and health plan terms affect its COBRA procedures and/or general data management processes; and
- Whether the Section 125 plan election revocation option is offered for employees who move to part-time positions and enroll in other coverage.

Employers that have changed how they administer health plan eligibility in order to comply with the employer mandate should ensure their plan documents clearly and accurately reflect how they determine eligibility and how it affects COBRA and Section 125 plan administration. The rules discussed here are often fact sensitive, so we encourage employers to consult with their legal counsel for clarification regarding specific situations.###

Your Trion Strategic Account Managers are here to answer any questions you might have as you prepare to comply with upcoming ACA requirements. If you are not currently a Trion client and would like assistance navigating the changes required by health care reform, please contact us today by emailing trionsales@trion-mma.com.

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