



THE FIVE W's AND ONE H

Affordable Care Act (ACA) measurement methods

Who needs to worry about measurement periods?

- The IRS requires all applicable large employers (ALEs)¹, including nonprofit, and government employers to report to the IRS whether they offered minimum value (MV), affordable coverage to its full-time employees (defined as, for a calendar month, an employee employed on average at least 30 hours of service per week, or 130 hours of service per month) to avoid a penalty, also known as an employer shared responsibility payment or “play or pay” rules.
- Non-ALEs are not subject to the employer shared responsibility regulations.

What is the purpose of Measurement Methods?

- The measurement methods provide minimum standard requirements for the identification of full-time employees as defined by the ACA.
- Two measurement methods are available for an ALE to determine which employees are full-time for ACA employer shared responsibility purposes:

¹ ALE as defined in section 4980H(c) (2) of the Internal Revenue Code, enacted by the Affordable Care Act (ACA), with respect to a calendar year is an employer that employed an average of at least 50 full-time or full-time equivalent employees on business days during the preceding calendar year.

- **Monthly measurement method (MMM)** – the employer determines if an employee is a full-time employee on a month-by-month basis by looking at whether the employee has at least 130 hours of service for each month.
- **Look-back measurement method (LBMM)** – an employee's full-time status during what is referred to as the stability period, is based on their hours of service averaged over a proceeding period, which is referred to as the measurement period.
- All employees of an ALE must be tracked under one of these two measurement methods, the method and the hours worked during the year will dictate how to handle special circumstances that arise during an employee's tenure, such as a reduction in hours, an unpaid leave, and more. Employers cannot track just one population of employees whose hours are more variable, rather, all employees must be tracked at all times under one of the two methods.
- Employers may always treat additional employees as eligible for coverage, or otherwise offer coverage more expansively than would be required to avoid an assessable payment under section 4980H, subject to compliance with any nondiscrimination or other applicable requirements.

Where may an employer use different measurement methods?

- In general, the same measurement method (or measurement periods) must be used for the same category of employee. For example, if the look-back method is used for variable hour employees then all hourly employees must be measured by the look-back method.
- The regulations only permit an employer to use different measurement methods based on the following categories of employees
 - salaried and hourly employees
 - employees whose primary places of employment are in different states
 - collectively bargained and non-collectively bargained employees
 - each group of collectively bargained employees covered by a separate bargaining agreement
- Different applicable large employer entities of the same applicable large employer (i.e. controlled group) may also use different measurement periods.

What is an hour of service?

Each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer, and Each hour for which an employee is paid, or entitled to payment by the employer for a period of time during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. See FAQs 22-28 for information on exclusions and special circumstances.

Key LBMM Terms:

Measurement period – a length of time for counting hours of service. (i.e. standard measurement period (SMP) for ongoing employees & initial measurement period (IMP) for new hires.)

Administrative period – a period of time to enroll/disenroll employees on employer health coverage.

Stability period – the length of time (typically the plan year) an employee's status of full-time or part-time (under the ACA's definition) is maintained based on their average hours measured in the prior measurement period. e.g. if an employee measured full-time during the measurement period they are treated as full time under the ACA and entitled to employer health coverage during the entire stability period regardless of the current number of hours they are working, including if their hours are reduced to zero during a furlough.





When an employee is on an unpaid leave of absence, what happens to their hours under the LBBM?

- **“Unpaid special leave”:**
 - If an employee is on “unpaid special leave” as defined in the final regulations (i.e. FMLA, USERRA, Jury Duty), whose break in service is less than 13 consecutive weeks (26 weeks for an educational organization) the employer must either:
 - Determine the employee’s average hours of service for a measurement period by computing the average after excluding any special unpaid leave during that measurement period and by using that average as the average for the entire measurement period.
 - Treat the employee as credited with hours of service for any periods of special unpaid leave during that measurement period at a rate equal to the average weekly rate at which the employee was credited with hours of service during the weeks in the measurement period that are not part of a period of special unpaid leave.
 - If the employee returns from a special leave of absence that is longer than 13 consecutive weeks (26 weeks for an educational organization) the employer may treat the employee as a “new” hire and the employee’s eligibility for employer health benefits is determined in the same manner as any other new employee.
- **Unpaid Leave of Absence:**
 - If an employee is on an unpaid leave of absence (e.g. furloughed, unpaid sabbatical or personal leave) the employee will generally will remain eligible for coverage during the remainder of the stability period, however, their leave of absence may impact the calculation of hours of service for the existing measurement period. In general, an employer

does not have to credit any hours of service for an employee on an unpaid leave of absence, therefore, it is possible the employee will fail to average 130 hours a month and no longer be deemed full-time for the subsequent stability period.²

Why would an employer choose one measurement method over the other?

- The monthly measurement method is generally used by employers with a salaried workforce or a workforce whose schedules do not vary. Otherwise, employees whose schedules vary could gain or lose eligibility on a monthly basis to employer sponsored health coverage.
- The look-back measurement method is generally used by employers with a workforce whose employee's schedules vary or hours fluctuate. This method generally involves using an employee's average hours of service per week during a period (referred to as a measurement period) to determine if an employee is a full-time employee under the ACA's definition, during a subsequent period (referred to as a stability period). This allows employees with varying schedules to have a stable eligibility status for a consistent period of time (the stability period) on an annual basis.

How are measurement methods used for variable hour, seasonal employees, part-time employees, interns or temporary employees?

- In general, under the ACA, if the employees are hired with the intent to work 30 or more hours a week on average, then they are full-time employees even if their employment is temporary.
 - **Interns or temporary employees:** The ACA does not recognize “interns” nor “temps”. Rather the only ACA categories for a W-2 employee are: full time, part-time, variable hour or seasonal*. Thus, any intern or temporary employee working 30+ hours a week on average, an employer would need to offer coverage after the applicable waiting period but no later than the 91st day of employment to avoid potential penalties.
 - **Newly hired variable hour & seasonal employees:** The ACA provides a different set of rules under the look-back method for newly hired variable hour and seasonal employees. These employees will have his or her status as a full-time employee determined after an initial measurement period.

² If an employer wishes to not have employees lose eligibility due to the lack of hours while furloughed due to COVID-19, it is possible for an employer to amend their plan to exclude from consideration the dates during which an employee was involuntarily furloughed as a result of the 2019 Novel Coronavirus Public Health Emergency.

- ALEs are allowed to use an initial measurement period (IMP) between at least three but no more than 12 consecutive months, to determine whether a newly hired variable hour or seasonal employee is a full-time employee.
- If an employee averages at least 30 hours a week during the IMP, they must be treated as full-time for the subsequent stability period, which cannot be shorter than the IMP and must be at least six consecutive calendar months.
 - An ALE is not exposed to a shared responsibility penalty for an employee who averages at least 30 hours a week during the IMP if coverage is offered during the subsequent stability period.
- If the employee does not average at least 30 hours a week during the IMP, the employer may treat the employee as part-time during the subsequent stability period, which cannot be longer than the measurement period used for other employees, nor can it be more than one month longer than the employee's IMP.
- Coverage must take effect for all variable hour employees who measure full-time, no later than the first day of the first calendar month after the employee's first anniversary with the employer (or roughly 13 months after the employee's date of hire).

Definitions:

Variable hour employee – a newly hired employee whose hours of service vary significantly (e.g. hospitality, retail) so an employer is unable to determine at the start date whether the employee is reasonably expected to be employed on average at least 30 hours of service per week. After completion of a standard measurement period, the employee is no longer a variable hour employee, rather they are classified as either full-time or part-time depending on the measurement results.

Seasonal employee – “an employee who is hired into a position for which the customary annual employment is six months or less, that by the nature of the position an employee in this position typically works for a period of six months or less, and that period should begin each calendar year in approximately the same part of the year, such as summer or winter” (e.g. a ski lift operator). When an employee is on an unpaid leave of absence, what happens to their hours under the LBBM?