FAQ: Measurement and Stability Periods Required Under the Federal Patient Protection and Affordable Care Act

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The Washington Restaurant Association has retained the services of healthcare expert Donna Steward to help educate the restaurant industry and individually answer member questions.

Employers subject to the employer responsibility provision in the federal Patient Protection and Affordable Care Act (ACA) must establish annual measurement and stability periods for determining which variable hour employees are to be offered health care coverage by the employer. The federal rules allow 2013 to be a transition year wherein measurement and stability periods may differ in length. However, beginning with the 2015 coverage year, both the measurement and stability periods must be the same length of time. Due to the staging of the measurement and stability periods, the measurement period established in 2014 determines the stability period in the 2015 coverage year.

What is the "measurement" period?

The measurement or look-back period, is the length of time an employer must evaluate the hours of variable hour employees to determine whether they are eligible for health care coverage in the upcoming coverage year. In 2013, employers may establish measurement periods of 3 to 12 months. Measurement periods in 2014 must coincide with stability periods in 2015 and may not be less than 6 months.

What is the "stability" period?

The stability period is the time during the coverage year that a variable hour employee must be guaranteed access to coverage. For the 2014 coverage year, eligible variable hour employees must be offered coverage for either 6, 9 or 12 months. The stability period in 2014 may not be less than the 2013 measurement period. The stability period in 2015, must be equal to the measurement period established for 2014.

Who are "variable hour" employees?

All employees who are not full-time employees are considered variable hour employees. Full-time employees are those that work 30 or more hours per week, including salaried employees that work more than 30 hours per week. For purposes of the measurement and stability periods, seasonal employees and salaried employees that work less than 30 hours per week are also considered variable hour employees.

Must I include seasonal employees in my measurement period?

Yes, you must evaluate the hours of seasonal employees if they are employed during the measurement period and must offer those employees coverage if they:

- Work more than 120 days during the year;
- Work more than an average of 130 hours per month, as determined by the measurement period; and
- Are still in your employ at the beginning of the coverage year

How do the measurement and stability periods coincide with my health plan open-enrollment period?

Open enrollment periods are typically used to make employees aware of their coverage options and provide them with time to complete necessary enrollment paperwork prior to the beginning of the coverage year. All employees eligible for coverage in the upcoming coverage year must be provided with an opportunity to participate in the open enrollment period. The measurement period thus must end before the open enrollment period begins.

However, employers that choose a 12-month measurement period may include hours worked during the open enrollment period as part of the next measurement period that determines eligibility for coverage in the following year.

EX: Employer has a plan year that runs January – December. The open enrollment period for the upcoming coverage year is in December. The employer chooses a 12-month measurement period. In order for the employer to use December as the open enrollment period, the measurement period for this employer must be November to November. Even though December is the open enrollment month for the upcoming coverage year, the employer is still able to use hours worked in December to determine who may be eligible for coverage in the following coverage year (EX. The current year is 2014, the upcoming coverage year is 2015, and the following coverage year is 2016. In this example, the measurement period for the upcoming coverage year (2015) is November 2013 – November 2014; the enrollment period for the upcoming coverage year is December 2014; and the measurement period for the following coverage year (2016), will be November 2014 – November 2015).

My plan year begins in September 2013. Since the employer mandate doesn't begin until January of 2014, am I exempt from measurement and stability requirements for that year?

No, and your situation is a bit more complex than others. Since the employer responsibility provision is not applicable until January 2014, you need to check with your insurer to determine what options they are providing to employers in this situation. The insurers are allowed to establish separate enrollment periods that would cover newly eligible employees in January. Your insurer could allow a separate open enrollment period in December for the variable hour employees found eligible for 2014 coverage, or they could require that you enroll them during the standard open enrollment period in September 2013. It is possible they may have some other options for you as well. The key will be working with them early to know what is expected. Once you have the answer to this question, you can proceed with determining your measurement and stability periods.

Is this a continuous process?

Yes. Once you begin the process this year you must continue with measurement and stability periods for as long as you are identified as a large employer.

May I have different measurement and stability periods for different employees?

Yes, you may establish different measurement and stability periods for categories of employees such as salary/hourly; collective bargaining/noncollective bargaining; etc, but periods established within the categories must be applied uniformly to all employees within the category.

Are these periods set in stone once I set them or can I change them in the future?

You may change the periods for the following coverage year but may not change them for the upcoming coverage year (EX. The current year is 2013; the upcoming coverage year will be 2014; and the following coverage year will be 2015). Beginning in 2014, once a measurement period begins it is linked to the stability period of the upcoming coverage year. In practical terms, the measurement period used in 2014 determines the stability period in 2015 and so on. All changes must therefore begin by altering the upcoming measurement period. Changes can either increase or decrease the measurement and stability periods as long as the periods are still 6-12 months long.

What happens if the hours of a variable hour employee drop after they are enrolled in the health plan?

The established stability period guarantees employees access to coverage during that time unless the employee notifies the employer they are no longer able to make the required employee premium contributions. An employer may not make an assumption the employee is unable to afford the contributions even though payroll deductions may not be possible. The employee must notify the employer they are unable to make the payments before the employee can be disenrolled during a stability period.

Is there an advantage to having shorter measurement and stability periods?

Given that the stability period for 2015 is linked to the measurement period established for 2014, the shorter periods could reduce both the number of employees eligible for coverage and the required employer contributions to the cost of coverage for the year. If the periods are six months, fewer employees may be eligible, and required employer contributions may be lower due to lower enrollment as well as premium contributions for only six months instead of the full year. However, unless the employer is truly willing to disenroll variable hour employees at the end of the stability period, regardless of on-going health needs or treatments the employees or their dependents must have, the employer will likely find themselves continuing this coverage for all eligible employees for the entire coverage year.

What about full-time employees that drop to part-time status during the year?

If it is your policy that access to coverage is restricted to full-time employees only, you are allowed to transition employees that move to part-time status off of coverage during the plan year (these are full-time employees, not variable hour employees subject to stability periods). To determine eligibility for coverage in the upcoming coverage year, you must include these employees in the measurement period as you would other variable hour employees. Depending on the time of year an employee moves to part-time status, the measurement period may show that they are eligible for coverage in the upcoming coverage year but they would be eligible as a variable hour employee and guaranteed coverage for only the stability period.

Can I just choose my slowest six months as the measurement period?

Perhaps. The rules provide the employer with flexibility to determine the number of months as well as which consecutive months it will use to define the measurement period. The risk you run in selecting the slowest six months will be from employees challenging that they meet the definition of a full-time employee based on average monthly hours worked over the course of the year. Should they be able to demonstrate that they indeed did meet full-time status for six or more months, you could be assessed the responsibility penalty which is $2,000 times the number of full-time employees minus the first 30 ($2,000 X (Full-time employees – 30)).

Given that using any measurement period that is less than 12 months could expose an employer to such a risk, if you would like to use a 6 or 9 month measurement period, the best way to limit your risk is to set your measurement period to include a combination of highs and lows, or to coincide with some other identifiable business practice – health plan renewal date, fiscal year, etc. Establishing some other criteria for the selection of the measurement period other than employee hours will bring credibility to your decision and help to avoid the appearance of merely trying to skirt the requirement.

What if my new plan year begins between February – June 2013?

The advantage of having a current plan year that extends into the first part of 2014 is that you may hold onto a health plan that does not include all of the required ACA benefit mandates for a bit longer than others. However, the date of your health plan renewal does not affect the requirement to establish measurement and stability periods. The rules allow you to establish measurement periods that are not based on the calendar year so a measurement period that begins in 2013 and ends in 2014 is allowed. As with all others, you are also allowed to establish a measurement period of 12 months but in doing so, the coinciding stability period may be no less than 12 months.

Does it benefit me to move hourly employees into salaried positions?

Potentially. The two buckets of employees that must be combined to determine your employer size are bucket one which is full-time employees only; and bucket two which includes the hours worked by all other employees. Combining the hours worked in bucket two to derive an FTE total yields a smaller number of FTEs than the actual number of people employed. This reduces your overall employer size. If the employees you want to move from hourly to salaried are already full-time (working 30 or more hours per week), they must already be included in bucket one and thus your employer size is not affected by moving them to "salaried". However, if these employees work variable schedules and thus are included in bucket two, and you suspect they will always be eligible for health care coverage due to their schedule and results of the measurement period you establish, you could move them to salaried and include them in bucket one.

In this situation, when you move these employees into bucket one, you are moving the hours they worked out of the total number of hours that must be counted to determine the FTEs in bucket two. This lower number of hours may reduce your FTE count in bucket two, but it is not clear that it will reduce your overall size because of the increase in the number of employees in bucket one. If you are an employer that is right on the cusp of 50 FTES, it is theoretically possible that this could help reduce your overall employer size, but not likely.

Also note, it is possible to move an employee to a salaried position that is less than full-time. However, in this situation, the specific hours worked, regardless of whether they are salaried or not, must still be included in both the employer size (bucket two), as well as included for evaluation under the measurement period. Moving employees to a salaried position that is less than full-time thus does not have an impact on the ACA requirement but could have other benefits that are of interest to the employer.

Additional Resources

IRS rules governing variable hour employees: http://www.irs.gov/pub/irs-drop/n-12-58.pdf

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