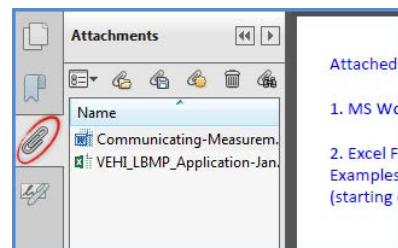


Attached for your use:

1. MS Word Version of this communication;
2. Excel File with two worksheet tabs illustrating Examples 1 & 2 used in this communication (starting on page 4).



## Sample Employee Communication and Procedures: Employer Shared Responsibility Compliance/Measurement Periods

August 2019

July Plan Years

### IMPORTANT

**Best Practice:** Employers should inform employees of how hours of service are counted for purposes of the employer shared responsibility mandate.

The attached communication and sample procedure may be used to inform employees, of how a SD or SU will determine eligibility and comply with the employer shared responsibility mandate. These documents can be provided to employees with the Benefit Description Document.

**This memo is for general guidance purposes only—it is NOT legal advice.**

Rules relating to employment-based health coverage changed under the health care reform. In general, large employers can avoid potential penalties under health care reform by offering substantially all full-time employees group health plan coverage that:

- Meets a minimum value standard, and
- Is considered affordable to the employee as to the contribution required for employee-only coverage.

Generally, employees who average at least 30 hours of service per week are considered full-time for purposes of health plan coverage only. In most cases it is not difficult to determine if an employee will average 30 hours of service per week. However, there are certain employment positions where an employer cannot reasonably make that determination in advance. For example, substitute teaching positions. When an employer *cannot reasonably make the determination in advance*, there is a special rule that applies to offering health coverage to employees in those positions. Employees in these positions are considered *variable hour employees* under the health plan eligibility rules. Note that *seasonal employees* are always considered variable hour employees under this rule.

This special rule allows an employer to defer offering health plan coverage until after an employee has worked for a specific period of time, referred to as a look-back measurement period.

A newly hired variable-hour employees' **Initial** look-back measurement period will begin on the employee's date of hire and end 12-months later on the day before the employee's first employment anniversary. The **Initial** measurement period is followed by a short **Initial** Administrative period allowing the employer time to count the average hours of service the employee worked. If the employee averaged at least 30 hours of service during the **Initial** look-back measurement period the employee becomes eligible to enroll in the employee health plan coverage. When using a measurement period, the variable-hour employee's coverage must be made effective no later than 13 calendar months from the employee's start date, including the **Initial** Administrative Period.

When a variable hour employee becomes eligible for health plan coverage based on a look-back measurement period, the employee remains eligible for coverage for a minimum duration, called a stability period. The employee remains eligible for coverage regardless of the number of weekly hours of service the employee works during the stability period, as long as the employee remains employed.

A variable-hour employee who has already completed at least one **Ongoing** look-back measurement will continue to have their hours of service measured during each successive **Ongoing** look-back measurement period to determine if the employee is eligible for coverage during the related stability period.

The information on the following pages explains how [SD/SU] will apply this rule for variable hour employees.

## Measuring Variable Hour Employee Hours of Service:

### Employer with a July Cafeteria Plan Year

#### Ongoing Variable Hour Employees<sup>1</sup>

To determine if a variable hour employee works an average of 30 or more hours of service per week (and thus eligible for an offer of group health plan coverage) [SD/SU] establishes an Ongoing **look-back measurement period** during which all variable hour employees' hours of service are counted each year. The Plan Sponsor applies the following periods to determine eligibility:

*Look-Back Measurement Period:* **12-Month Measurement Period - Ongoing.** The Ongoing Measurement Period begins each April 15 and ends the following April 14. This Ongoing Measurement Period is used to determine variable hour employee eligibility beginning the following July 1.

*Administrative Period:* **Administrative Period - Ongoing.** The Ongoing Administrative Period begins immediately following the close of the Measurement period, April 15, and runs through June 30. This is the period employers use to determine the hours of service credited to each variable hour employee during the Measurement Period.

*Stability Period:* **12-Month Stability Period - Ongoing.** Each year the Ongoing Stability Period begins July 1 and runs through the following June 30. Employees averaging 30 hours of service are deemed full-time and become eligible for an offer of health plan coverage as a full-time employee. Generally, the coverage is available to these employees for the full 12-month stability period, provided the employee remains employed. Employees who do not average 30 hours of service during the Ongoing measurement period are not eligible for health plan coverage during the Stability Period unless the employee changes status to a non-variable hour employee position eligible for coverage.

*Offer of Coverage* If the employee is determined eligible for health plan coverage, the employee must be offered coverage with sufficient time to make a decision, with coverage effective as of the first day of the Stability period.

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<sup>1</sup> An **Ongoing** variable hour employee is an employee who previously worked through at least one **Ongoing** Measurement Period.

## Newly Hired Variable Hour Employees

When a new employee is hired into a variable hour employee position, they are not required to wait to complete a full **Ongoing** look-back measurement period. Instead, the employee's hours of service will be counted during an **Initial** 12-month look-back measurement period based on their date of hire. The Plan Sponsor elects to apply the following periods to determine a newly hired employee's eligibility:

*Look-Back Measurement Period:*      **12-Month Measurement Period - Initial.** The **Initial** measurement period begins on the day the employee is hired (example, May 4) and runs 12-months ending on the day before the employee's first employment anniversary (example, May 3 of the following year).

*Administrative Period:*      **Administrative Period - Initial.** The length of the **Initial** administrative period depends, in part, on the date-of-hire. In general, it cannot exceed one calendar month PLUS the balance of the calendar month during which the 1-year anniversary occurred (example, the administrative period begins May 4 and ends on June 30). Just as with the Ongoing Administrative period, this is the when employers determine the hours of service credited to the variable hour employee during the **Initial** Measurement Period.

*Stability Period:*      **12-Month Stability Period – Initial.** Immediately follows the end of the Initial Administrative Period. Employees averaging 30 hours of service are deemed full-time and become eligible for an offer of health plan coverage as a full-time employee. Coverage must be offered immediately following the Initial Administrative Period (example, July 1). Employees who do not average 30 hours of service during the Initial measurement period are not eligible for health plan coverage during the **Initial** Stability Period unless (1) they average 30 hours of service during the overlapping Ongoing Measurement Period or (2) the employee changes status to a non-variable hour employee position eligible for coverage.

*Offer of Coverage*      The offer of coverage must be made no later than 13 calendar months from the employee's start date.

### **Example 1:**

[SD/SU] has a cafeteria plan with a January plan year. Bob, a variable hour employee, is hired on September 19, 2018. To determine if Bob is considered a full-time employee eligible for group health plan coverage, [SD/SU] applies an **Initial** Measurement Period to count Bob's hours of service and determine if Bob should be considered a full-time employee based on his hours of service. The **Initial** Measurement Period begins September 19, 2018 and ends September 18, 2019.

Next, the **Initial** Administrative Period for Bob begins September 19, 2019 and ends October 31, 2019. It is during the **Initial** Administrative Period [SD/SU] counts Bob's hours of service during the **Initial** Measurement Period to determine if he is eligible for an offer of coverage during the **Initial** Stability Period. If Bob averaged at least 30-hours of service during the **Initial** measurement period [SD/SU] notifies Bob and provides Bob with the necessary enrollment materials and information about how to apply for coverage. As long as Bob completes the enrollment process in a timely fashion his coverage (and coverage for his dependents, if enrolled) begins on November 1, 2019. Bob will remain eligible and enrolled in the health plan through at least October 31, 2020 (the **Initial** Stability Period) even if Bob does not maintain an average of 30-hours of service per week, as long as Bob makes the required contribution for coverage and Bob's employment does not terminate.

Bob's continued eligibility for coverage beginning November 1, 2020 is determined based on his average hours of service using the overlapping **Ongoing** look-back measurement period, April 15, 2019 through April 14, 2020. During the **Ongoing** Administrative Period Bob's hours of service are counted to determine his full-time status. If Bob averaged 30 hours of service during the **Ongoing** Measurement Period for plan year 2020/2021 coverage (the **Ongoing** Stability Period), his coverage will continue through June 30, 2021 rather than terminating at the end of the **Initial** Stability Period. If not, his eligibility for coverage ends October 31, 2020. Bob must be offered COBRA.

The **Ongoing** look back periods set by [SD/SU] begin and end on the same dates each year. While the dates are subject to change by [SD/SU] in the future, the look-back measurement period cannot change during the middle of a measurement period.

**Example 2:**

[SD/SU] has a cafeteria plan with a January plan year. Mary, hired on September 1, 2018 is considered a variable hour employee. Mary's **Initial** Measurement Period is September 1, 2018 through August 31, 2019. Mary's hours of service are counted during her **Initial** Administrative Period, September 1, 2019 through September 30, 2019 and she did **NOT** average 30 hours of service per week. During Mary's **Initial** Stability Period, October 1, 2019 through September 30, 2020, she is not eligible for health plan coverage as a full-time employee. [SD/SU] notifies Mary about her eligibility status.

However, Mary has the opportunity to become eligible for health plan coverage for part of the 2020/2021 plan year because her hours of service are also counted based on her average hours worked during the overlapping **Ongoing** Measurement Period, April 15, 2019 through April 14, 2020. During the plan's **Ongoing** Administrative Period beginning April 15, 2020 through June 30, 2020, [SD/SU] counts Mary's hours of service and determines she averaged 30 hours of service during the overlapping **Ongoing** Measurement Period and determine she is considered a full-time employee. [SD/SU] notifies Mary about her new eligibility status and provides Mary with the necessary enrollment materials and information about how to apply for coverage. During the **Ongoing** Stability Period, July 1, 2020 through June 30, 2021, Mary is eligible for group health plan coverage even if Mary sometimes averages fewer than 30-hours of service for one or more weeks. This is true even though Mary was not eligible during the **Initial** Stability Period ending September 30, 2020.

(For employees that DO NOT meet eligibility for coverage, you may provide the following information.)

**Sample Notice of Eligibility Determination**

**[SD/SU] Group Health Plan  
Determination of Eligibility**

To: *[name & address of variable hour employee]*

Date of Notice:

Name of Plan: [SD/SU] Group Health Plan (the "Plan")

Address:

Telephone:

Fax:

Website/Email Address:

**This document contains important information that you should retain for your records.**

Dear *[variable hour employee name]*:

Under the Affordable Care Act, an employee who is not reasonably expected to work an average of 30 or more hours of service per week is not required to be offered employer-sponsored health coverage. However, these employees are entitled to have their average hours of service worked over a 12-month look-back measurement period to determine potential eligibility for group health plan coverage at a later date. An employee who averages 30 or more hours of service per week during this period is considered eligible for the [SD/SU] group health plan offered to other employees of the same classification. If you think this determination was made in error, you have the right to appeal (this notice includes information about your appeal rights).

This serves as notice of the plan's determination of your status based on the most recent *[initial]* or *[ongoing]* look-back measurement period, *[enter period]*. We have carefully reviewed all of the hours of service for which you are entitled to credit in making the determination as to whether you are considered full-time based on having worked an average of 30 hours of service during the look-back measurement period. Hours of service that must be included in this determination include:

**Note- Employer inserts the appropriate information:**

**[Hourly (Non-Exempt) Employees]**

*An employee is entitled to be credited with an hour of service for each hour for which the employee is paid, or entitled to payment by the employer. This includes any period of time during which no duties are performed due to vacation, holiday, illness, disability, layoff, jury duty, military duty or leave of absence, but where the employee is entitled to payment (e.g., vacation time, paid sick leave, paid jury duty time, etc.).*

[Salaried (Exempt) Employees – employer chooses one of the following methods, includes the method as part of the notice]

*The employee's actual hours of service from records of hours worked and hours for which payment is made or due.*

OR

*An employee's hours of service as determined by using a days-worked equivalency. The employee is credited with eight hours of service for each day for which the employee must be credited with at least one hour of service (hour of service for which payment is made or entitled to payment).*

OR

*An employee's hours of service using a weeks-worked equivalency. The employee is credited with 40 hours of service for each week for which the employee must be credited with at least one hour of service (hour of service for which payment is made or entitled to payment).*

[SD/SU] has determined that during the measurement period your average weekly hours of service equaled [enter average hours of service]. This is less than the required average of 30 or more hours of service per week to be determined eligible as a full-time employee. For that reason, you are not eligible for employer-sponsored health coverage at this time. If you remain employed by [SD/SU] and remain in the same position, [SD/SU] will continue to track your average hours for future eligibility. Other than during an employee's first year of employment, average hours of service are determined during the Ongoing Look-Back Measurement period, April 15 through the following April 14.

### **Important Information about Your Appeal Rights**

**What If I Need Help Understanding This Denial?** Contact us (using the contact information provided below) if you need assistance understanding this notice or our decision.

**What If I Don't Agree With This Decision?** You have a right to appeal the decision.

**How Do I File an Appeal?** You may appeal this determination to [enter name/title, mailing address and telephone number of the individual to whom the appeal must be made], by filing a request for review under the procedure described below. You must file your request for review within 180 days of the date you receive this Notice. Note that the appeal may be filed by you or someone you name to act for you (your authorized representative). You may write or call [enter name/title] using the contact information above to request a form for Appointment of Authorized Representative.

You must file your appeal by submitting a written request by hand or by first-class mail to:

[Enter name/title,  
Organization,  
Mailing address and

telephone number  
of the individual to whom the appeal must be made]

**Can I Provide Additional Information About My Claim?** Yes. In connection with your appeal, you may submit written comments, documents, records, evidence, testimony, and other information related to this determination.

**Can I Request Copies of Information Relevant to My Claim?** Yes, you may request copies (free of charge) by contacting the [Enter name/title, Organization] using the contact information provided above. You can request copies of hours worked information by contacting us using the above information.

**What Happens Next?** If you appeal, we will review our decision and provide you with a written determination.

### **Plan Review Procedures**

When you file an appeal as described above, [SD/SU] will provide a full and fair review of this determination under the following procedures.

1. The review will take into account all comments, documents, records, evidence, testimony, and other information submitted that relates to your eligibility. The review on appeal will be a "fresh" look at your eligibility without deference to this initial determination. It will be conducted by a person who was not involved in this initial determination and who is not a subordinate of the individual involved in this initial adverse benefit determination.
2. Upon request, and at no charge, you may obtain reasonable access to and copies of all documents, records, and information relevant to your eligibility.

### **Time Period for Appeal Decisions**

The Plan will notify you of the decision on your request for review within a reasonable period of time but not later than 30 days after the Plan receives your request for review.

Please carefully review the above information. If you decide to appeal this determination by requesting a review as described above, your appeal should be sent within the prescribed time period to the person named above. **Failure to file a timely appeal will bar you from any further review of this determination under these procedures or in a court of law.**

Sincerely,

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Plan Administrator  
For the [SD/SU] Group Health Plan



**Sample Affordable Care Act Employer-Shared Responsibility Procedures  
Effective January 1, 2016**

**Definitions:**

<b>Ongoing Measurement/Stability Periods</b>	
<b>Ongoing Measurement Period:</b>	April 15 – April 14
<b>Ongoing Administration Period:</b>	April 15 – June 30
<b>Ongoing Stability Period:</b>	July 1 – June 30 The period of medical plan coverage provided once the variable hour employee is determined to be eligible. The Ongoing Stability Period is the same as our plan year.
<b>New Hire Initial Measurement/Stability Periods</b>	
<b>New Hire Initial Measurement Period:</b>	The first 12 months of employment [Date of hire through the day before the employee's first anniversary of employment]
<b>New Hire Initial Administration Period:</b>	Period used to determine eligibility and offer coverage to eligible employees. The employee will generally be given 30 days to enroll. Coverage effective date will be the 1 <sup>st</sup> day of the month following the Administration Period, not to exceed 13 calendar months from date of hire.
<b>New Hire Initial Stability Period:</b>	The 12-month coverage period starting on the 1 <sup>st</sup> day of the month following the Administration Period.

### **Coverage Eligibility: To be Modified as Appropriate**

- New employees who are reasonably expected to work 30 or more hours per week regardless of employment status (i.e. Temporary) must be offered medical coverage under the same eligibility rules of regular full-time employees.
- New employees hired on a part-time basis (less than 30 hours of service) should be administered as variable hour employees under the Initial Measurement and Stability period.
- Ongoing Variable hour employees will be evaluated during the Ongoing Measurement Period (4/15 – 4/14). Eligible employees will be offered medical coverage effective July 1 of the next Stability Period.

*The intent of this communication is to provide you with general information regarding the status of, and/or potential concerns related to, your organization's current employee benefits environment. It does not necessarily fully address all of your organization's specific issues. It should not be construed as, nor is it intended to provide, legal advice.*