



Employer Shared Responsibility Mandate
A Primer on Measurement Period Methods

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INTRODUCTION

Under the Affordability Care Act (the “ACA”), ‘Applicable Large Employers’ (“employers”) must offer substantially all full-time employees a certain level of group health plan coverage. Failing to meet that requirement can result in substantial penalties. However, in many cases determining if an employee is considered ‘full-time’ as defined by the ACA can be difficult.

One of the most challenging aspects of the ACA is determining full-time status of employees who do not work a traditional full-time schedule. Such employees generally include those initially employed to work a flexible schedule, work in multiple positions or different parts of the organization, or work a part-time schedule (fewer than 30 hours of service). The nature of their employment is such that at the time of their initial employment, based on the facts and circumstances on the employee's start date, the employer cannot determine whether the employee is reasonably expected to work an average of at least 30 hours of service per week during the initial measurement period. These employees are called *variable hour employees* (VHE). Special rules apply in determining the full-time status of VHE for employers that have adopted the “look back measurement” method for determining full-time status. These special rules allow an employer to count a new VHE’s hours over an *initial measurement period*. If, during the initial measurement period,

When considering whether a new employee is a variable-hour employee under the look-back measurement method an employer may not consider that employment will end during the initial measurement period—even if the employee has a short-duration employment contract. For example, if an employee is hired to work 40 hours per week for 6 months (an average of 20 hours per week over the employer's 12-month initial measurement period), the employee cannot be treated as a variable-hour employee.

the VHE is determined to have worked an average of 30 hours of service per week, the VHE is considered full-time for the duration of the *initial stability period*. If, during the initial measurement period, the VHE is determined to have not worked an average of 30 hours of service per week, the VHE is determined to be not full-time during the stability period.

After the initial measurement period determination, the employer reevaluates the employee’s hours of service each year during the employer’s annual *ongoing measurement period*. Just as with the initial measurement period, once the ongoing measurement period ends the employee’s hours of service are calculated to determine if the employee worked an average of 30 hours of service. If yes, the employee is considered full-time during the associated ongoing stability period provided the employee remains employed.

The purpose of this information booklet is to provide an easy to read guide on using the look-back measurement method for variable hour employees. Remember, there are more rules that are not discussed in this booklet. These rules address what happens when an employee changes status under multiple different scenarios.

WHAT REPRESENTS FULL-TIME EMPLOYEE STATUS?

A full-time employee is an employee who works an average or at least 30 hours of service per week.

Employers must choose one *method* of determining an employee's full-time status for each *category of employees*. The following explains the permissible methods and categories of employees.

1. Available Methods
 - a. Monthly Measurement Method
 - b. Look-back Measurement Method
2. Permissible Categories of Employees. There are four permissible categories of employees:
 - a. collectively bargained and noncollectively bargained employees,
 - b. employees covered by different collective bargaining agreements,
 - c. salaried and hourly employees, and
 - d. employees whose primary places of employment are in different states.

Employers Must Choose One Method for Each Permissible Category of Employees.

Either the look-back or monthly measurement method of tracking full-time employees must apply uniformly for each permissible category of employees. An employer cannot apply two different methods to the same category of employees.

There are four categories of employees identified in the rules: collectively bargained and non-collectively bargained employees, employees covered by different collective bargaining agreements, salaried and hourly employees, and employees whose primary places of employment are in different states.

There are detailed rules for determining full-time status when employees transfer from one measurement method to the other.

COUNTING HOURS OF SERVICE

What is an Hour of Service?

An hour of service is defined as each hour for which an employee is paid, or entitled to payment by the employer:

1. for the performance of duties for the employer; and
2. for a period of time during which no duties are performed due to:
 - a. vacation,
 - b. holiday,
 - c. illness,
 - d. incapacity (including disability),
 - e. layoff,
 - f. jury duty,
 - g. military duty, or
 - h. leave of absence.

Note: Short-term or long-term disability leaves generally result in credited hours of service for periods during which the employee retains employee status and receives disability benefits directly or indirectly funded by the employer. (There is no limit on the number of paid non-work hours that must be taken into account.) However, disability benefits from coverage purchased with after-tax employee dollars are not counted as hours of service.

Counting the Service of Hourly Employees

The employer is required to calculate actual hours of service from records of hours worked and non-worked hours for which payment is made or due (vacation, holiday, illness, incapacity, etc., as described above).

Counting the Service of Non-Hourly Employees

For employees not paid on an hourly basis, the employer must calculate hours of service using one of the following three methods:

1. counting actual hours worked and non-worked hours for which payment is due, as described above;
2. using a days-worked equivalency method - eight hours of service for each day for which the employee is entitled to pay for worked or non-worked time, as described above; or
3. using a weeks-worked equivalency - 40 hours of service per week for each week for which the employee is entitled to pay for worked or non-worked time, as described above.

Employers are not permitted to use the days-worked equivalency or the weeks-worked equivalency if the result substantially understates an employee's hours of service causing that employee not to be treated as full-time.

Employers are not required to use the same method for all non-hourly employees, and may apply different methods for different classifications of non-hourly employees, provided the classifications are reasonable and consistently applied. Employers are permitted to change the equivalency for calculating hours of service for non-hourly employees (or one or more categories of non-hourly employees) each calendar year.

Hours that can be Excluded for Certain Types of Work

Bona Fide Volunteer Employees

Bona fide volunteers include any volunteer who is an employee of a governmental entity or a tax-exempt organization whose only compensation from that employer is reimbursement (or an allowance) for reasonable expenses incurred in the performance of volunteer services, or reasonable benefits (including length of service awards) and nominal fees customarily paid by similar entities in connection with performance of services by volunteers.

Student Employees

"Hours of service" do not include hours of service performed by students in positions subsidized through the federal work study program or a substantially similar program of a state or a political subdivision. However, there is no general exception for student employees. All hours of service for which a student employee of an educational organization (or of an outside employer) is paid or entitled to payment in a capacity other than through the federal work study program (or a state or local government's equivalent) are required to be counted as hours of service.

"Hard to Track" Hours

Until further guidance is issued, employers are required to use a "reasonable" method to track hours of service that are otherwise difficult to track (e.g., coaching staff). A method of crediting hours is not reasonable if it takes into account only a portion of an employee's hours of service that results in the employee being determined to be a non-full-time employee for an employee in a position that traditionally involves at least 30 hours of service per week. For example, it is not a reasonable method of crediting hours to fail to take into account hours of service performed by a teacher who is also receiving compensation for hours of service during which the teacher is also coaching an athletic team or other non-teaching positions.

MEASUREMENT METHODS

Monthly Measurement Method (MMM)

Under the monthly measurement method, the employer determines each employee's status as a full-time employee by counting the employee's hours of service for each calendar month. If an employee averages 30 or more hours of service during a month, the employee is considered full-time for that month. To provide additional flexibility and reduce administrative burden on employers, the rules allow an employer to determine an employee's full-time employee status for a calendar month based on the hours of service over successive one-week periods.

Employers using the Monthly Measurement Method must remember the maximum employment waiting period is 90-days. An employee can only be required to satisfy this waiting period once during a period of employment. Employees returning from a period of inactive service are deemed a continuing employee and coverage must be reinstated as soon as administratively practicable (offering coverage by no later than the first day of the calendar month following resumption of services is deemed to be as soon as administratively practicable).

Monthly determinations can create unpredictability and administrative challenges if an employer has flexible or variable work schedules. Employers with flexible or variable employees will likely choose to use the look-back measurement method, discussed below.

Note: Many of the rules explained in more detail under the look-back measurement method also apply to the monthly measurement method. For example, the rehire rules directly affect whether an employer can apply an employment waiting period for a rehired employee. The employment waiting period can apply only once for each employee's period of employment. Therefore, if an employee stops working for the employer and then returns, it is necessary to determine whether the employee is considered to be (1) a continuing employee, or (2) a terminated and rehired employee. Refer to the subsection below, *Leaves of Absence and Rehires*.

Look-Back Measurement Method (LBMM)

Employers employing individuals in positions where hours of service may vary generally will elect to use the LBMM to determine if the employees in these position are considered full-time under the ACA (averaging 30 hours of service per week).

Terms Used with the Look-Back Measurement Method

The look-back measurement method uses the following defined terms:

- **New Employee** - A "new employee" is an employee who has not been employed for at least one complete ongoing measurement period, **or** who is treated as a new employee following a 26-week period during which the employee was credited with zero hours of service (applies to both inactive employees and rehired terminated employees).
- **Variable Hour Employee** - An employee is a "variable-hour employee" if, based on the facts and circumstances on the employee's start date, it cannot be determined whether the employee is reasonably expected to work an average of at least 30 hours per week during the initial measurement period because the employee's hours are variable or uncertain.
- **Seasonal Employee** - The term "seasonal employee" means an employee who is hired into a position for which the customary annual employment is six months or less.¹ "Customary" means that by 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.
- **Ongoing Employee** - An "ongoing employee" is an employee who has been employed for at least one complete standard measurement period.
- **Measurement Period** - A "measurement period" is the look-back period over which hours are calculated to determine whether an employee has averaged at least 30 hours per week. There are two types of measurement periods: ongoing measurement periods and initial measurement periods.
- **Initial Measurement Period** - The "initial measurement period" is used for new employees.
- **Ongoing Measurement Period** - The "ongoing measurement period" is used for ongoing employees.
- **Administrative Period** - The "administrative period" is a period after the end of a measurement period-and before the beginning of the stability period associated with the measurement period-during which the employer can perform administrative tasks, such as calculating the hours for the measurement period, determining eligibility for coverage, providing enrollment materials to eligible employees, and conducting open enrollment. The maximum *initial* administrative period is different than the maximum *ongoing* administrative period.

¹ In certain unusual instances, the employee can still be considered a seasonal employee even if the seasonal employment is extended in a particular year beyond its customary duration (regardless of whether the customary duration is less than six months). For example, if ski instructors at a resort have a customary period of annual employment of six months, but are asked in a particular year to work an additional month because of an unusually long or heavy snow season, they would still be considered seasonal employees. Treas. Reg. § 54.4980H-1(a)(38).

- **Stability Period** - The "stability period" is the period that follows, and is associated with, a measurement period (either initial or ongoing). An employee's full-time or part-time status (determined based on hours credited during the measurement period) generally is locked in for the full stability period, regardless of the employee's actual hours during the stability period (provided that the employee continues to be an employee during the stability period). The stability period begins at the end of the measurement period and any administrative period.
- **Employment Break Periods** - An employment break period is a period of at least four consecutive weeks (disregarding special unpaid leave) during which an employee of an educational organization is not credited with hours of service for a large employer. This includes, but is not limited to, the breaks outlined in the organization's academic calendar.
- **Special Unpaid Leave** - Special unpaid leave is unpaid leave under the Family and Medical Leave Act of 1993, under the Uniformed Services Employment and Reemployment Rights Act of 1994, or for jury duty.

Leaves of Absence and Rehires

Rehired employees and employees returning from an unpaid leave of absence (other than a *special unpaid leave described below*) must be evaluated to determine if they are deemed to be a new employee or a continuing employee.

An employee will be considered to have terminated employment-and may be treated as a new employee upon return-if the employee has a period of 26 consecutive weeks during which the employee is not credited with an hour of service.

Note: As an alternative to the flat 26-week period, an employer may choose to use a "rule of parity". Under the rule of parity, the employer chooses a period, measured in weeks, of at least four consecutive weeks during which the employee is not credited with any hours of service that exceeds the number of weeks of that employee's period of employment with the employer immediately preceding the period with no hours of service. For example, if an employer uses a four-week rule of parity, an employee who works for five weeks and then has no credited hours for six weeks may be treated as a new employee. This rule of parity allows an employer to treat an employee as terminated following absences shorter than 26 weeks.

Example. Bob is a VHE of Great School District. Bob terminated employment with the District on January 5, 2018. At the time Bob terminated he was in a stability period and was considered full-time and eligible for health plan coverage. Bob is rehired on April 12, 2018 into the same position he previously held. Since less than 26-weeks have elapsed since Bob was credited with an hour of service Bob is reinstated to his prior status. Bob is offered health plan coverage that must be effective no later than May 1, 2018. In addition, Bob is credited with hours of service earned during the current measurement period before his termination.

If Bob's break in employment was longer than 26-weeks Bob could be treated as a new employee rather than as a continuing employee.

Employees treated as a continuing employee who begin accumulating hours of service (terminated and resuming hours of service) are reinstated to the same status they held previously, provided they return during the same measurement and stability period in which they stopped accumulating hours of service.

Averaging Service for Special Unpaid Leaves

The final rules contain an averaging requirement to prevent periods of *special unpaid leave* from reducing an employee's hours of service during a measurement period. Special unpaid leave is defined as unpaid leave under the Family and Medical Leave Act of 1993, under the Uniformed Services Employment and Reemployment Rights Act of 1994, or for jury duty. The employer must neutralize the effect of special unpaid leave in either of two ways:

- the employer can determine the employee's average hours of service by excluding any periods of special unpaid leave during the measurement period and applying the average for the entire measurement period, or
- the employer can impute hours of service during the periods of special unpaid leave at a rate equal to the average weekly hours of service for weeks that are not part of a period of special unpaid leave.

There is no limit on the number of hours attributable to special unpaid leaves that must be excluded (under the first method) or imputed (under the second method).

Special Rules for Educational Organizations

Educational organizations must not reduce an employee's average hours for employment break periods falling within a measurement period. To prevent these periods from artificially reducing an employee's average hours of service during a measurement period, the rules use an averaging rule similar to the rule for special unpaid leaves. The employer must neutralize the effect of employment break periods in either of two ways:

- the employer can determine the employee's average hours of service by excluding any employment break period occurring during the measurement period and applying that average for the entire measurement period; or
- the employer can impute hours of service for the employment break period at a rate equal to the average weekly hours of service for weeks that are not part of an employment break period.

An educational organization is not required to take into account more than 501 hours of service for all employment break periods occurring in a single calendar year.

BEST PRACTICES - DESIGN

Look-Back Measurement Method

The final rules provide flexibility for employers implementing the LBMM as part of the health plan's eligibility provisions. However, most employers adopt a 12-month measurement and stability period that integrates into the employer's annual open enrollment period and allows sufficient time for the administrative period to review hours worked and to notify participants of their status (both those averaging 30-hours of service as well as those failing to meet the requirement), and, where applicable, time to enroll in coverage. The design on the following pages is not the only design available. If you would like more information, contact GBS_VEHlhelp@ajg.com for more information.

January Cafeteria Plan Year Plans

Ongoing Variable Hour Employees

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

VHE - Ongoing Look-Back Measurement Eligibility

<i>Ongoing Look-Back Measurement Period:</i>	12-month measurement period that begins each October 15 and ends the following October 14.
<i>Ongoing Administrative Period:</i>	The ongoing administrative period begins immediately following the close of the measurement period, October 15, and runs through December 31.
<i>Ongoing Stability Period:</i>	12-month stability period that begins on January 1, immediately after the end of the administrative period, and runs through December 31.
<i>Offer of Coverage</i>	If the employee is determined to work an average of at least 30 hours per week during the look-back measurement period, 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.

Newly Hired VHE - Initial Measurement Period

To determine if a newly hired VHE works an average of 30 or more hours of service per week (and thus eligible for an offer of group health plan coverage) the SD/SU establishes an **Initial look-back measurement period** specific to the newly hired VHE. During this Initial Measurement Period all of the new VHE's hours of service are counted. The SD/SU applies the following period to determine eligibility:

VHE - Initial Look-Back Measurement Eligibility

<i>Initial Look-Back Measurement Period:</i>	The initial measurement period is 12-months and 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).
<i>Initial Administrative Period:</i>	The length of the initial administrative period depends, in part, on the date-of-hire. In general, the initial administrative period 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). The administrative period for employees hired on the first day of a calendar month will be one-month long.

Initial Stability Period: The initial 12-month stability period begins immediately after the initial administrative period.

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

Transition from New Hire LBMM to Ongoing LBMM

As previously explained in this booklet, newly hired VHEs are first subject to an *Initial look-back measurement period* based on the VHE’s date of hire. However, these new VHEs need to also transition to the health plan’s *Ongoing* look-back measurement period. This transition results in some of the new VHE’s hours being counted toward both the *Initial* and the *Ongoing* measurement period. Let’s look at an example.

School District X has a calendar plan year. The District adopts the ‘best practice’ Ongoing LBMM:

Look-Back Measurement Period	October 15 through October 14
Administrative Period	October 15 through December 31
Stability Period	January 1 through December 31

A new employee, Alex, is hired on September 19, 2018. Alex’s position is such that he is considered a VHE. Alex’s *Initial* measurement period runs from September 19, 2018 through September 18, 2019. The initial administrative period immediately follows the measurement period, September 19, 2019 through the first full **calendar month**, ending on October 31, 2019. If Alex averaged 30 hours of service during the Initial measurement period Alex is offered the opportunity to enroll in the District’s health plan with coverage effective beginning November 1. Alex remains eligible through the stability period ending October 31, 2020. However, if Alex did not average 30 hours of service during the Initial measurement period Alex is not eligible for an offer of coverage through the District’s health plan during the stability period. Note that Alex’s stability period ends on October 31, 2020, 2 months before the beginning of the next **Ongoing** stability period. Without some way to transition Alex to the **Ongoing** LBMM Alex could have a 2 month gap in his eligibility (November and December 2020).

To prevent this potential ‘gap’, the **Ongoing** measurement period overlaps Alex’s **Initial** measurement period. Alex’s hours of service beginning October 15, 2018 through September 18, 2019 (the end of Alex’s **Initial** measurement period) are counted toward his **Initial** measurement period and the health plan’s **Ongoing** measurement period. That way, Alex has the opportunity to obtain coverage twice in a period of less than two full measurement periods.

I LBMP = 9/19/2018 – 9/18/2019	=	Stability period =	11/1/2019 – 10/31/2020
O LBMP = 10/15/2018 – 10/14/2019	=	Stability period =	1/1/2020 – 12/31/2020

The **Ongoing** stability period begins before the end of the **Initial** stability period. Alex has a second opportunity to meet the 30 hours of service requirement. This ensures there is no gap in Alex’s opportunity for coverage. From that point forward Alex’s hours of service are measured as part of the health plan’s **Ongoing** measurement period.

July Cafeteria Plan Year Plans

Ongoing Variable Hour Employees

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

VHE - Ongoing Look-Back Measurement Eligibility

<i>Ongoing Look-Back Measurement Period:</i>	12-month measurement period that begins each April 15 and ends the following April 14.
<i>Ongoing Administrative Period:</i>	The ongoing administrative period begins immediately following the close of the measurement period, April 15, and runs through June 30.
<i>Ongoing Stability Period:</i>	12-month stability period that begins on July 1, immediately after the end of the administrative period, and runs through June 30.
<i>Offer of Coverage</i>	If the employee is determined to work an average of at least 30 hours per week during the ongoing measurement period, 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.

Newly Hired VHE - Initial Measurement Period

To determine if a newly hired VHE works an average of 30 or more hours of service per week (and thus eligible for an offer of group health plan coverage) the SD/SU establishes an **Initial look-back measurement period** specific to the newly hired VHE. During this Initial Measurement Period all of the new VHE's hours of service are counted. The SD/SU applies the following period to determine eligibility:

VHE - Initial Look-Back Measurement Eligibility

<i>Initial Look-Back Measurement Period:</i>	The initial measurement period is 12-months and 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).
<i>Initial Administrative Period:</i>	The length of the initial administrative period depends, in part, on the date-of-hire. In general, the initial administrative period 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). The administrative period for employees hired on the first day of a calendar month will be one-month long.
<i>Initial Stability Period:</i>	The initial 12-month stability period begins immediately after the initial administrative period.

Initial Offer of Coverage

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

Transition from New Hire LBMM to Ongoing LBMM

As previously explained in this booklet, newly hired VHEs are first subject to an *Initial look-back measurement period* based on the VHE’s date of hire. However, these new VHEs need to also transition to the health plan’s *Ongoing* look-back measurement period. This transition results in some of the new VHE’s hours being counted toward both the *Initial* and the *Ongoing* measurement period. Let’s look at an example.

School District X has a July 1 plan year. The District adopts the ‘best practice’ Ongoing LBMM:

Look-Back Measurement Period	April 15 through April 14
Administrative Period	April 15 through June 30
Stability Period	July 1 through June 30

A new employee, Alex, is hired on September 19, 2018. Alex’s position is such that he is considered a VHE. Alex’s **Initial** measurement period runs from September 19, 2018 through September 18, 2019. The initial administrative period immediately follows the measurement period, September 19, 2019 through the first full **calendar month**, ending on October 31, 2019. If Alex averaged 30 hours of service during the Initial measurement period Alex is offered the opportunity to enroll in the District’s health plan with coverage effective beginning November 1. Alex remains eligible through the stability period ending October 31, 2020. However, if Alex did not average 30 hours of service during the Initial measurement period Alex is not eligible for an offer of coverage through the District’s health plan during the stability period. Note that Alex’s stability period ends on October 31, 2020, 9 months before the beginning of the next **Ongoing** stability period. Without some way to transition Alex to the **Ongoing** LBMM Alex could have a 9 month gap in his eligibility (November 2020 through June 2021).

To prevent this potential ‘gap’, the **Ongoing** measurement period overlaps Alex’s **Initial** measurement period. Alex’s hours of service beginning October 15, 2018 through September 18, 2019 (the end of Alex’s **Initial** measurement period) are counted toward his **Initial** measurement period and the health plan’s **Ongoing** measurement period. That way, Alex has the opportunity to obtain coverage twice in a period of less than two full measurement periods.

I LBMP = 9/19/2018 – 9/18/2019	=	Stability period =	11/1/2019 – 10/31/2020
O LBMP = 4/15/2019 – 4/14/2020	=	Stability period =	7/1/2020 – 6/30/2021

The **Ongoing** stability period begins before the end of the **Initial** stability period. Alex has a second opportunity to meet the 30 hours of service requirement. This ensures there is no gap in Alex’s opportunity for coverage. From that point forward Alex’s hours of service are measured as part of the health plan’s **Ongoing** measurement period.

LOOK-BACK MEASUREMENT PERIOD - EXAMPLES

Introduction

In the following examples, it is assumed the employer:

- is a large employer
- offers all of its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under the employer's health plan. The coverage is affordable under the rate of pay affordability safe harbor and provides minimum value.

Initial Measurement/Stability Period Provisions – For new variable hour employees, the employer:

- uses a 12-month initial measurement period that begins on the start date,
- applies an administrative period from the end of the initial measurement period through the end of the first calendar month beginning on or after the end of the initial measurement period,
- uses a 12-month stability period, which begins immediately following the administrative period,
- the employer offers coverage no later than the first day of the fourteenth month after the start date if an employee averages 30 or more hours of service per week during the initial measurement period.

New, non-variable hour (full-time) teachers are eligible for coverage on the first day of the calendar month following their date of employment.

The period of medical plan coverage provided once the variable hour employee is determined to be eligible.

Ongoing Measurement/Stability Periods. The school district administers its cafeteria plan on a calendar year basis. Thus, the measurement/stability periods are administered as follows:

Ongoing Measurement Period:	October 15 – October 14
Ongoing Administration Period:	October 15 – December 31
Ongoing Stability Period:	January 1 – December 31

New Hire Substitute Teacher - Change in employment status

A school district hires Katy as a substitute teacher on October 10, 2018. Katy's initial measurement period runs from October 10, 2018, through October 9, 2019, with the optional administrative period ending November 30, 2019. At Katy's October 10, 2018 start date Katy is a variable hour employee. However, on March 15, 2019, the school district offers Katy a long term substitute teaching position that can reasonably be expected to average at least 30 hours of service per week. Because of this change, Katy is offered health plan coverage with an effective date of April 1, 2019 (first day of the month following the change to long-term substitute).

Katy's long-term substitute position ends with the end of the school year, June 7, 2019. Katy returns to the regular substitute teacher position. Katy's eligibility for health plan coverage ends June 30, 2019 (the end of the month following her change to regular substitute teacher). Katy is offered COBRA coverage effective July 1, 2019.

Katy continues to be employed by the school district and Katy's Initial Measurement Period ends on October 9, 2019. During the Initial Administrative Period the school district will count all of Katy's hours of service, including the hours of service as a full-time. The school district uses this weekly average for weeks during the school break period, but no more than 501 hours. If Katy's hours of service during the initial measurement period average at least 30 hours, Katy is considered 'full-time' for purposes of the ACA and is eligible for an offer of coverage effective on the date of her Initial Stability Period, December 1, 2020 (through November 30, 2021). If she did not average 30 hours of service, Katy would be determined not full-time for the duration of the stability period.

Transition from Initial Look-Back Measurement Period (LBMP) to Ongoing LBMP

Using Katy from the example above, the school district needs to transition Katy's LBMP from the Initial LBMP to the Ongoing LBMP applied to all employees. From the example above, we know that Katy's Initial Stability Period ends November 30, 2021.

Katy's first Ongoing LBMP begins October 15, 2018 and ends October 14, 2019. During the Ongoing Administrative Period beginning October 15, 2019 and ending December 31, 2019 the school district counts Katy's hours of service. This means that some of Katy's hours of service will count toward both the Initial LBMP and her first Ongoing LBMP (October 15, 2019 through October 9, 2019). If Katy averages at least 30 hours of service during the Ongoing LBMP she will be considered full-time and receive an offer of coverage for the Ongoing stability period (the 2021 calendar year).

This overlap of the Initial and Ongoing LBMPs generally avoids a gap between stability periods.

Application of the Employment Break Rule - #1

John is an ongoing employee of a school district. John is employed for 38 hours of service per week on average from October 10, 2018, through May 17, 2019, and then does not provide services (and is not credited with an hour of service) during the summer break beginning June 8, 2019 when the school is generally not in session. John resumes providing services for School district on September 7, 2019, when the new school year begins.

Because the period from May 17, 2019 through September 6, 2019 (a total of 16 weeks), during which John is not credited with an hour of service does not exceed 26 weeks, and also does not exceed the

number of weeks of John's immediately preceding period of employment, John is not treated as having terminated employment on May 17, 2019, and having been rehired on September 7, 2019. Also, for purposes of determining John's average hours of service per week for the measurement period, John is credited, under the averaging method for employment break periods applicable to educational organizations, as having an average of 38 hours of service per week for the 16 weeks between May 17, 2019 and September 6, 2019, during which John had no hours of service. However, School district is not required to credit more than 501 hours of service for the employment break period (16 weeks x 38 hours = 608 hours).

Application of the Employment Break Rule - #2

Using the same facts as the example above, except that John does not resume providing services for School district until December 5, 2019.

Because the period from May 17, 2019 through December 5, 2019, exceeds 26 weeks, John may be treated as having terminated employment on May 17, 2019, and having been rehired on December 5, 2019. Because John is treated as a new employee on December 5, 2019, John's hours of service prior to termination are not taken into account for purposes of the measurement period (including the hours that would have been granted during the employment break period), and the period between termination and rehire with no hours of service is not taken into account in the new measurement period that begins after John is rehired. The averaging method for employment break periods that applies to educational organizations does not apply because John is treated as a new employee rather than a continuing employee as of the date he resumes services.

Ongoing Substitute Teacher

Laura is a substitute teacher and has been employed for two years so she is an Ongoing variable hour employee. Laura's hours of service during the LBMP ending 2017 did not average at least 30 hours, so Laura was determined not full-time for the 2018 stability period (calendar plan year). However, beginning with the Ongoing LBMP that started October 15, 2017, Laura began working whenever she received a call to sub for a teacher. She also started working some part-time hours as a para-professional in the district. All of these hours will count during the LBMP October 15, 2017 through October 14, 2018, including up to 501 hours during the school break time. During the administrative period Laura's hours will be counted and if her average hours of service equal at least 30 hours, she will be considered full-time for the 2019 stability period and must be offered health plan coverage. If Laura initially waives coverage she still has the opportunity to enroll during the year if she has a special enrollment opportunity or a qualified change in status. For example, if Laura becomes divorced in April 1, 2019 she is allowed to enroll in the plan beginning April 1 and is eligible for coverage through at least December 31, 2019. Whether Laura is eligible for coverage beyond December 31, 2019 will depend on her average hours of service during the LBMP for the 2020 stability period (plan year).