

LOOK BACK MEASUREMENT METHOD VARIABLE HOUR EMPLOYEES

The Affordable Care Act requires large employers to count the hours of service of their employees to verify which employees are full-time and must be offered coverage. This outline contains illustrations of the Look Back Measurement Method which can be used when an employee's working hours vary weekly.

How to use the Look Back Measurement Method

- **Standard Measurement Period:** It can begin and end on any day during the month, such as the beginning and ending of a pay period.
 - The employer chooses the time period for counting employees, which can be as short as 3 months or as long as 12 months.
 - The first time employees are counted is called the **Initial Measurement Period**.
- **Administrative Period:** It is 90 calendar days maximum. To ensure the 90 days is not exceeded, this period is usually a partial month plus the next entire month (e.g., June 15 to July 31). This period must be set to allow the Stability Period to begin on the first day of a month.
- **Stability Period:** It must begin on the first day of the month and end on the last day of the month (e.g., August 1 to July 31). The Stability Period must be at least 6 months or the same length as the Standard Measurement Period.

Choosing a counting period for the Standard Measurement Period

- Employers should choose a Measurement Period and an Admin Period that coordinates well with the group health plan's renewal date. That way the Stability Period can match the plan year.
- Example of an employer with a July 1 renewal date:
 - Standard Measurement Period: May 15 to May 14 (12 months)
 - Admin Period: May 15 to June 30 (*partial + 1 month; includes annual open enrollment in June*)
 - Stability Period: July 1 to June 30 (12 months; *begins when plan year begins*)
- Once established, these time periods should stay the same every year.

The examples below are taken from the Employer Penalty final regulation (published 2/12/2014)

Variable Hour Employees – Examples 1 - 8

Information applicable to Examples 1 – 8:

Employer following counting periods for current or on-going employees:

- **Standard Measurement Period: Oct15 to Oct 14 (12 months)**
- **Admin Period: Oct 15 to Dec 31**
- **Stability Period: Jan 1 to Dec 31 (12 months)**

Example 1: (12-month initial measurement, 1+ partial month admin period)

New variable hour employee – hire date May 10, 2015

- Initial Measurement Period: May 10, 2015 to May 9, 2016 (12 months)
 - Employee averages 30 hours/week
- Admin Period: May 10, 2016 to June 30, 2016 (partial & one full month)

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- Stability Period: July 1, 2016 to June 30, 2017 (12 months)
 - Employee offered coverage by July 1, 2016

Conclusion: Employer not subject to employer penalty on this variable hour employee

Example 2: *(11-month initial measurement, 2+ partial month admin period)*

New variable hour employee – hire date May 10, 2015

- Initial Measurement Period: May 10, 2015 to April 9, 2016 (11 months)
 - Employee averages 30 hours/week
- Admin Period: April 10, 2016 to June 30, 2016 (end of 2nd month after Initial Measurement Period ends)
- Stability Period: July 1, 2016 to May 30, 2017 (11 months)
 - Employee offered coverage by July 1, 2016

Conclusion: Employer not subject to employer penalty on this variable hour employee

Example 3: *(partial month admin period, 11-month initial measurement, 2-month admin period)*

New variable hour employee – hire date May 10, 2015

- Initial Measurement Period: June 1, 2015 to April 30, 2016 (11 months)
 - Employee averages 30 hours/week
- Admin Period: May 1, 2016 to June 30, 2016 (includes May 10 – 30, 2015)
- Stability Period: July 1, 2016 to May 30, 2017 (11 months)
 - Employee offered coverage by July 1, 2016

Conclusion: Employer not subject to employer penalty on this variable hour employee because the Initial Measurement Period & Admin Period ends 13 months after hire date.

Example 4: *(partial month admin period, 12-month initial measurement, 2-month admin period)*

New variable hour employee – hire date May 10, 2015

- Initial Measurement Period: June 1, 2015 to May 30, 2016 (12 months)
 - Employee averages 30 hours/week
- Admin Period: June 1, 2016 to July 31, 2016
- Stability Period: August 1, 2016 to July 31, 2017
 - Employee offered coverage by August 1, 2016

Conclusion: The coverage is offered too late. Coverage must be offered by the first day of the 2nd month after the employee's anniversary date. So coverage should have been offered by July 1, 2016. In this example, the employer may be liable for a penalty in each full calendar month of the initial measurement period & admin period (e.g., June 2015 to July 2016)

Example 5: *(Continuous full-time employee; retesting)*

New variable hour employee - hire date May 10, 2015

- Initial Measurement Period: May 10, 2015 to May 9, 2016 (12 months)
 - Employee averages 30 hours/week
- Admin Period: May 10, 2016 to June 30, 2016 (partial & one full month)
- Stability Period: July 1, 2016 to June 30, 2017 (12 months)
 - Employee offered coverage by July 1, 2016

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Retest variable hour employee - when employer's next Standard Measurement Period begins (the first measurement period after the employee is hired)

New variable hour employee – hire date May 10, 2015

Retested on hours from Oct 15, 2015 to Oct 14, 2016

- Standard Measurement Period: Oct 15, 2015 to Oct 14, 2016
 - Employee averages 30 hours/week
- Admin Period: Oct 15, 2016 to Dec 31, 2016
- Stability Period: Jan 1, 2017 to Dec 31, 2017
 - Employee offered coverage for July 1, 2017 to Dec 31, 2017

Conclusion: Employee offered coverage for Jan 1 – June 30, 2017 because full-time under Initial Measurement Period and is now offered coverage for July 1 – Dec 31, 2017 under retesting because full-time. The employer is not subject to a penalty for this employee during 2017. In addition, this new variable hour employee is now on the same counting cycle as other on-going employees.

Example 6: *(Initially full-time employee becomes a part-time)*

New variable hour employee – hire date May 10, 2015

- Initial Measurement Period: May 10, 2015 to May 9, 2016 (12 months)
 - Employee averages 30 hours/week
- Admin Period: May 10, 2016 to June 30, 2016 (partial & one full month)
- Stability Period: July 1, 2016 to June 30, 2017 (12 months)
 - Employee offered coverage by July 1, 2016

Retest variable hour employee - when employer's next Standard Measurement Period begins (the first measurement period after the employee is hired)

New variable hour employee – hire date May 10, 2015

Retested on hours from Oct 15, 2015 to Oct 14, 2016

- Standard Measurement Period: Oct 15, 2015 to Oct 14, 2016
 - Employee averages 28 hours/week
- Admin Period: Oct 15, 2016 to Dec 31, 2016
- Stability Period: Jan 1, 2017 to Dec 31, 2017
 - Employee is not offered coverage for July 1, 2017 to Dec 31, 2017

Conclusion: Employee offered coverage for Jan 1 – June 30, 2017 because full-time under Initial Measurement Period. Employee is not offered coverage for July 1 – Dec 31, 2017 under retesting because is now part-time. The employer is not subject to a penalty for this employee during 2017. In addition, this new variable hour employee is now on the same counting cycle as other on-going employees.

Example 7: *(Initially part-time)*

New variable hour employee - hire date May 10, 2015

- Initial Measurement Period: May 10, 2015 to May 9, 2016 (12 months)
 - Employee averages 28 hours/week
- Admin Period: May 10, 2016 to June 30, 2016 (partial & one full month)
- Stability Period: July 1, 2016 to June 30, 2017 (12 months)

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- Employee not offered coverage for any month in 2016

Conclusion: Employer not subject to penalty during any month of 2016 because the employee was always part-time.

Example 8: *(Initially part-time becomes full-time)*

New variable hour employee - hire date May 10, 2015

- Initial Measurement Period: May 10, 2015 to May 9, 2016 (12 months)
 - Employee averages 28 hours/week
- Admin Period: May 10, 2016 to June 30, 2016 (partial & one full month)
- Stability Period: July 1, 2016 to June 30, 2017 (12 months)
 - Employee not offered coverage for any month in 2016

Retest variable hour employee - when employer's next Standard Measurement Period begins (the first standard measurement period after the employee is hired)

New variable hour employee – hire date May 10, 2015

Retested on hours from Oct 15, 2015 to Oct 14, 2016

- Standard Measurement Period: Oct 15, 2015 to Oct 14, 2016
 - Employee averages 30 hours/week
- Admin Period: Oct 15, 2016 to Dec 31, 2016
- Stability Period: Jan 1, 2017 to Dec 31, 2017
 - Employee is offered coverage for all months in 2017

Conclusion: Employer not subject to penalty during any month of 2017 because the employee was offered coverage as a full-time employee.

Employment Status Changes – Examples 9 & 10

Information applicable to Examples 9 & 10:

Employer following counting periods for current or on-going employees:

- **Standard Measurement Period: May 1 to Nov 1 (6 months)**
- **Admin Period: Nov 2 to Dec 31**
- **Stability Period: Jan 1 to July 1 (6 months)**

Example 9: *(Initially full-time employee)*

New variable hour employee – hire date May 10, 2015

- Initial Measurement Period: May 10, 2015 to Nov 9, 2015 (6 months)
 - Employee averages 30 hours/week
- Admin Period: Nov 10, 2015 to Dec 31, 2015
- Stability Period: Jan 1, 2016 to June 30, 2016 (6 months)
 - Employee offered coverage by Jan 1, 2016

Retest variable hour employee – when employer's next Standard Measurement Period begins (the first standard measurement period after the employee is hired)

New variable hour employee – hire date May 10, 2015

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- (Next) Standard Measurement Period: Nov 1, 2015 to April 1, 2016 (6 months)
- Admin Period: Apr 2, 2016 to May 30, 2016
- Stability Period: June 1, 2016 to Dec 31, 2016 (6 months)

Conclusion: Employer not subject to penalty on this employee for any calendar month from June to December 2015 because employee is by offered coverage by the end of the Initial Measurement Period & associated Admin Period (i.e., by the first day of the Stability Period). Employer not subject to penalty for May 2015 because there's no penalty in the month of hire if the hire date is after the first of the month (i.e., employee hired on 5/10/15, after first day of the month). Finally, employee must be retested for the period Nov 1, 2015 to April 1, 2016.

Example 10: *(Initially full-time becomes part-time)*

New variable hour employee – hire date May 10, 2015

- Initial Measurement Period: May 10, 2015 to Nov 9, 2015 (6 months)
 - Employee averages 30 hours/week
- Admin Period: Nov 10, 2015 to Dec 31, 2015
- Stability Period: Jan 1, 2016 to June 30, 2016 (6 months)
 - Employee offered coverage by Jan 1, 2016 for the period Jan 1 – June 30, 2016

Retest variable hour employee in next 6 months Standard Measurement Period

New variable hour employee – hire date May 10, 2015

- (Next) Standard Measurement Period: Nov 1, 2015 to April 1, 2016 (6 months)
 - Employee averages 28 hours/week
- Admin Period: Apr 2, 2016 to May 30, 2016
- Stability Period: June 1, 2016 to Dec 31, 2016 (6 months)
 - Employee not offered coverage for July 1, 2016 to Dec 31, 2016

Conclusion: Employer not subject to penalty during any month of 2016 because the employee was offered coverage from Jan 1 – June 30, 2016 when full-time and not offered coverage when hours dropped to part-time July 1 – Dec 2016.

Seasonal Employees – Example 11

Example 11: *(seasonal employee; 12-month initial, 1+ partial month admin)*

Seasonal employee – hire date Nov 15, 2015 (expected to work through March 15, 2016)

- Initial Measurement Period: Nov 15, 2015 to Nov 14, 2016 (12 months)
- Admin Period: Nov 15, 2016 to Dec 31, 2016
- Stability Period: Jan 1, 2017 to Dec 31, 2017

Conclusion: Employee hired for a seasonal position lasting less than 6 months and so is treated as a seasonal employee during the Initial Measurement Period. (Example implies that seasonal new hire would not be offered coverage.)

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Temp Staffing Agencies – Examples 12, 13 & 14

Example 12: (*variable hour employee; temp staffing agency*)

Variable hour employee – hire date Jan 1, 2015

- Factors to be considered by the temp staffing agency (i.e., employer)
 - Other employees in similar positions typically work 40 hours/week for less than 13 weeks. There are often breaks between assignments. New hire's employment is expected to follow this pattern.

Conclusion: At hire date, employer can't determine if new hire will average 30 hours/week during a 12-month Initial Measurement Period, so new hire treated as a variable hour employee. (See Examples 1 - 8 on counting hours & eligibility for coverage.)

Example 13: (*variable hour employee; temp staffing agency*)

Variable hour employee – hire date Jan 1, 2015

- Factors to be considered by the temp staffing agency (i.e., employer)
 - Other employees in similar positions typically work varying hours each week (sometimes more than 30 hours/week, sometimes less). There are often breaks between assignments ranging from 4 to 12 weeks during the calendar year. New hire's employment is expected to follow this pattern.

Conclusion: At hire date, employer can't determine if new hire will average 30 hours/week during a 12-month Initial Measurement Period, so new hire treated as a variable hour employee. (See Examples 1 - 8 on counting hours & eligibility for coverage.)

Example 14: (*variable hour employee; temp staffing agency*)

Variable hour employee – hire date Jan 15, 2015

- Factors to be considered by the temp staffing agency (i.e., employer)
 - Other employees in similar positions typically work 40 or more hours per week in assignments lasting from 3 – 12 months. There are rarely breaks between each assignment (so it's like continuous employment). New hire's employment is expected to follow the same pattern.

Conclusion: At date of hire, employer would reasonably expect the new hire to work an average of 30 hours/week over a 12-month Initial Measurement Period. So the new hire should not be treated as a variable hour employee. The employee is expected to be a full-time employee.

Example 15: (*variable hour employee; hourly worker*)

Variable hour employee – hire date not specified in example

- New hire is an hourly worker expected to fill in for absent employees and to provide additional staffing during peak hours.
- New hire expected to average 30 hours/week during the first few months of employment while assigned to a specific project. After that assignments will vary by the amount of hours worked, the length of each assignment, and the amount of time between assignments.

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Conclusion: At hire date, employer can't determine if new hire will average 30 hours/week during the Initial Measurement Period (length of this is not specified in example), so new hire treated as a variable hour employee. (See Examples 1 - 8 on counting hours & eligibility for coverage.)

Gap Between Stability Periods

Example 16: *(period between initial stability period and standard stability period)*

Variable hour employee – hire date Oct 20, 2015

Employer's Standard Measurement Period (for current & on-going employees):

- Standard Measurement Period: Oct 15 to Oct 14
- Admin Period: Oct 15 to Dec 31
- Stability Period: Jan 1 to Dec 31

Employer uses an 11-month Initial Measurement Period for new variable hour, seasonal and part-time employees:

Variable hour employee – hire date Oct 20, 2015

- Initial Measurement Period: Oct 20, 2015 to Sep 19, 2016 (11 months)
- Admin Period: Sep 20, 2016 to Nov 30, 2016
- Stability Period: Dec 1, 2016 to Nov 30, 2017 (11 months)

The next Standard Measurement Period (for current & on-going employees) that applies to this new hire:

- (Next) Standard Measurement Period: Oct 15, 2016 to October 14, 2017
- Admin Period: Oct 15, 2017 to Dec 31, 2017
- Stability Period: Jan 1, 2018 to Dec 31, 2018

Problem: There is a gap between the new hire's Initial Stability Period that ends on Nov 30, 2017 and the beginning of the Stability Period for the next Standard Measurement Period.

- Initial Stability Period ends: Nov 30, 2017
- Stability Period (for Standard Measurement Period) begins: Jan 1, 2018
- Gap: Dec 1 – Dec 31, 2017

Conclusion: The new hire keeps the same status (full-time or part-time) that was established in the Initial Measurement Period and its associated Stability Period during the "gap" month of Dec 2017.

- Meanwhile, during the Standard Measurement Period (that began on Oct 15, 2016) the employee's hours would have been counted and so the results (full-time or part-time) would apply to the associated Stability Period (that begins on Jan 1, 2018).
- This also means that the new hire is now on the same measurement cycle as all other current and on-going employees.