McGraw Wentworth

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The IRS recently released two notices on key issues that will affect employers in 2014:

- **Notice 2012-58 –** Determining full-time employment status for "play or pay" requirements
- **Notice 2012-59 –** Applying the 90-day waiting period limitation

The Departments of Labor, Health and Human Services and the Treasury (the Departments) are working to develop more substantive guidance on these issues. However, they recognize that employers need direction now. With that in mind, employers can rely on these notices as they plan for 2014. Any guidance issued in the future will include prospective effective dates.

Determining Full-Time Status for "Play or Pay" Requirements

In 2014, employers will be subject to the "play or pay" requirements. This is referred to as the "shared responsibility" requirement by the Affordable Care Act (ACA). Only employers with 50 or more full-time and full-time equivalent employees on more than 120 business days in the preceding calendar year are subject to the shared responsibility requirement. Applicable employers are required to offer a qualifying health plan to full-time employees or to pay a penalty for failing to offer coverage.

Health care reform stipulates that a full-time employee is one that works 30 or more hours per week. Proposed regulations are expected that will treat 130 hours of service in a calendar month as the equivalent of 30 hours of service per week.

Employers need to know how to determine if an employee works 30 or more hours per week. This notice provides details on making that determination:

- Allows employers to use specified measurement and administrative periods for ongoing employees.
- Permits employers to use, as a safe harbor, a look-back measurement period of up to 12 months for new variable-hour employees and seasonal employees.
- Facilitates a transition from a new employee determination method to the ongoing employee determination method.
- Allows employers to rely on this guidance through the end of 2014.
- Gives numerous examples showing how to apply these safe harbors to specific employee situations.

- Confirms that employers will ***not*** be subject to a penalty for any full-time employee if that employee is offered “qualifying coverage.” Qualifying coverage is employer-sponsored coverage that passes the benefits and affordability tests:
  - To pass the benefits test, the plan must have a 60% or better value.
  - To pass the affordability test, the employee contribution for *single* coverage cannot exceed 9.5% of the employee’s household income.
  - This guidance reaffirms that the IRS will issue a safe harbor allowing employers to measure affordability based on the employee’s W-2 wages as provided in Box 1.

The Departments’ intent is to encourage employers to continue offering coverage, and potentially to expand coverage to all full-time employees.

The guidance reiterates when an applicable large employer will be subject to an assessable penalty:

1. The employer fails to offer its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage. Minimum essential coverage is employer-sponsored coverage that passes the benefits and affordability tests. At least one employee must secure subsidized coverage through the Exchange to trigger the penalties. This penalty is $2,000 annually, multiplied by the number of full-time employees, less the first 30.
2. The employer offers its full-time employees (and their dependents) the opportunity to enroll in employer-sponsored health coverage. Assume one or more full-time employees receive a premium tax credit and purchases coverage through the Exchange. In this case, the employer health plan either failed the benefits or affordability test for any employee eligible for subsidized coverage in the Exchange. The penalty is $3,000 annually, but applies only to the number of employees that actually purchase subsidized coverage in the Exchange.

Interestingly, the ACA language speaks only to applying the penalty if the employer does not extend coverage to ***employees***. In this latest guidance, it appears that the IRS may be extending the statute parameters by requiring employers to offer employees ***and*** their dependents coverage or be subject to the penalty. Industry groups are already pushing back on the wording of this guidance.

It is critical that employers understand the safe harbor parameters, in order to determine which employees are considered full-time and working 30 hours per week. These employees must be offered minimum essential coverage, or a penalty will be assessed. If the employer offers all full-time employees a group health plan that passes both the benefits and affordability tests, no penalties will apply.

If employers have employees that are expected to work 30 hours or more per week, the employer can simply deem these employees full-time. The challenge occurs when employees are not expected to work 30 or more hours per week consistently. For these employees, employers will need to evaluate hours worked. Employers are given some flexibility when setting look-back and stability periods for making the full-time assessment. However, limits do apply. In addition, different rules can be established for ongoing and newly hired employees.

Ongoing Employees

An ongoing employee is generally one who has been employed for at least one standard measurement period, which is a look-back period defined by the employer. This period must be at least three, but not more than 12, consecutive calendar months. The employer has the ability to determine the months in which the standard measurement period starts and ends. This determination must be made on a uniform and consistent basis for all employees in the same category.

Employers can consider a number of options when setting a standard measurement period. An employer could select a standard measurement period of 12 months, which could be the calendar year. Similarly, the employer could choose less than 12 months, as long as it is at least three months. For example, an employer may choose a 10-month period from January through October of each year. This may be done to coincide with the plan's annual open enrollment period.

The employer must also set a stability period for ongoing employees. This stability period must be at least six months and **cannot** be any shorter than the standard measurement period. The stability period begins after the measurement period. If an employee is determined to be full-time during the measurement period, then that same employee must be covered during the subsequent stability period. The employee should be covered regardless of the average hours worked per week during the stability period. The sole requirement is that the individual remain an employee throughout the stability period.

Employers are allowed up to a 90-day administrative period between the measurement and stability periods, in order to communicate benefits and to secure enrollment. This administrative period can neither lengthen nor reduce the measurement or stability periods. However, to prevent gaps in coverage, it will overlap with the prior stability period. This is complicated, but is designed to keep continuous coverage for ongoing employees who meet the full-time threshold during measurement periods.

Examples in the guidance will help to clarify the complexities of this process. For the following situations, the sample employer has these standard measurement, stability and administrative periods:

Measurement period:	12-month period, from October 15 through October 14 each year
Stability period:	12-month period, from January 1 through December 31 each year
Administrative period:	2.5-month period, from October 15 through December 31 each year

The sample employer offers health plan coverage to employees working 30 or more hours per week. For the purpose of these examples, we assume the employer-sponsored coverage passes the affordability and benefits tests.

Employees A and B have been employed by the sample employer for several years. In the first year, Employee A works 30 or more hours per week during the measurement period that runs from October

15, 2012 through October 14, 2013. Employee A must be offered health coverage for the period of January 1, 2014 through December 31, 2014, the stability period for the employer. The employer has from October 15 through December 31 to communicate coverage and enrollment information.

In the next year, the measurement period would run from October 15, 2013 through October 14, 2014. If Employee A works 30 or more hours per week during that measurement period, then he would be eligible for coverage from January 1, 2015 through December 31, 2015. The employer can communicate open enrollment information, but the administrative period runs concurrently with the stability period in the second year. Therefore, Employee A would have continuous coverage from January 1, 2014 through December 31, 2014. Employee A would also have continuous coverage from January 1, 2015 through December 31, 2015.

Employee B works 30 hours or more per week during the first measurement period. As with Employee A, Employee B is eligible for coverage during the first stability period, January 1, 2014 through December 31, 2014. However, Employee B averages only 25 hours per week during the second measurement period, running from October 15, 2013 through October 14, 2014. In this case, Employee B is not eligible for coverage in the second stability period, which is from January 1, 2015 through December 31, 2015.

This example illustrates an employer arrangement that meets the safe harbor. The measurement, stability, and administrative periods all satisfy the IRS requirements.

Employers will have some flexibility in setting measurement and stability periods for different classes of employees:

- Collectively bargained and non-collectively bargained employees
- Salaried employees and hourly employees
- Employees of different entities
- Employees located in different states

New Employees

Newly eligible employees must be handled differently, because they may not be employed for the entire measurement period, which can affect results. The IRS includes a different approach for employers to use with newly hired employees.

If employees at their start date are reasonably expected to work full-time, then an employer, offering group health plan coverage at or before the conclusion of the initial three calendar months of employment, will not be subject to any penalty for failing to offer coverage. As of 2014, any time spent in an ACA-compliant waiting period will not generate an employer penalty for failure to offer coverage. At the end of the potential 90-day new hire waiting period, however, the employer will have either to offer qualifying coverage or be subject to a penalty.

The IRS also offers a safe harbor for new variable-hour and seasonal employees. The safe harbor is designed to determine full-time status. It is conceptually similar to the ongoing employee determination method, but the parameter options are different.

The guidance provides a definition for variable-hour employees and seasonal employees:

- A variable-hour employee is one whom the employer, based on the facts and circumstances on the start date, cannot reasonably determine will work an average of 30 hours or more per week. For example, the guidance indicates that a retail worker who is hired to work 30 or more hours per week during the holidays, and then drops below 30 hours after the holiday season, would be treated as a variable-hour employee.
- A seasonal employee is defined in the context of whether the employer is subject to the shared responsibility requirements. These requirements indicate that a seasonal employee is one who works 120 days or less during the calendar year. The guidance references the definition of a "seasonal employee" in the Code of Federal Regulations, which is as follows:

  > *Labor is performed on a seasonal basis where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year. A worker who moves from one seasonal activity to another, while employed in agriculture or performing agricultural labor, is employed on a seasonal basis even though he may continue to be employed during a major portion of the year.*

  The IRS guidance allows employers, through at least 2014, to use a good faith interpretation of these provisions to determine seasonal employees. Employers should be mindful of the 120-day limitation. However, it does not appear that an employee working more than 120 days automatically would lose seasonal status. More guidance is definitely needed.

First, the employer must determine an "initial" measurement period. This initial period must be between three and 12 months. The employer will measure the hours of service completed by the new employee during this initial period to determine if the employee has worked an average of 30 hours or more per week. The employer will also have to designate an initial stability period for new employees. The stability period must be the same time period as the stability period for ongoing employees. If a new employee is determined to be full-time during the initial measurement period, then coverage must be offered under the health plan for the initial stability period. If the employer does not offer qualifying coverage, the employer will be subject to the penalty. If an employee is determined not to work full-time during the initial measurement period, then coverage does not have to be offered during the initial stability period.

Employers are also permitted to specify an administrative period of up to 90 days for new variable-hour and seasonal employees. The combined measurement and administrative periods, however, must not extend beyond the last day of the first calendar year month beginning on or after the one-year anniversary of the employee's start date.

Once an employee is employed, the ongoing status will be determined by the first standard measurement period that begins after the date of hire. If the employee is determined to be working 30 hours per week in the standard measurement period, then the plan must offer coverage for the following standard stability period. The initial measurement period is measured from the start date of employment, and the ongoing standard measurement period is applied as of the set time during every year. This means a number of interesting results can occur:

- A new employee that is determined to be full-time during the initial measurement period must be offered coverage during the initial stability period. The next determination will be made during the first ongoing standard measurement period occurring after the start date. If the employee is determined to be full-time during that measurement period, then the employee should be offered coverage for the standard stability period that follows. These measurement and stability periods can overlap for newly hired employees.
- A new employee may be determined to be full-time during the initial measurement period, but not full-time for the ongoing standard measurement period. In this case, the employer must offer coverage for the entire initial stability period, but not for the first ongoing standard stability period. Thus, even if the initial stability period and the ongoing stability period overlap, the employer must continue coverage for the **full initial stability period**.
- The opposite may occur as well. A new hire may be determined not to be full time during the initial measurement period, but determined to be full-time in the first ongoing standard measurement period. In this situation, coverage does not have to be offered in the initial stability period, but must be offered for the **full ongoing standard stability period.** This applies even if the stability periods overlap.

The guidance provides a number of examples to assist with the understanding of variable-hour and seasonal employees. In the examples below, the sample employer has the following standard measurement, stability and administrative periods for **ongoing** employees:

Measurement period:	12-month period, from October 15 through October 14 each year
Stability period:	12-month period, from January 1 through December 31 each year
Administrative period:	2.5-month period, from October 15 through December 31 each year

The sample employer offers health plan coverage to employees working 30 or more hours per week. For the purposes of these examples, we assume the employer coverage passes the affordability and benefits tests.

<u>Example 1</u>:
This employer has a 12-month **initial measurement period** that begins on the start date. It also has a 1+ partial month administrative period that is measured 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. The **initial stability period** is also a 12-month period running from the end of the administrative period.

Employee Y is a variable-hour employee who has a start date of May 10, 2014. Employee Y's initial measurement period runs from May 10, 2014 through May 9, 2015. Employee Y works an average of 30 hours per week during the initial measurement period. The employer offers coverage to Employee Y for the initial stability period running from July 1, 2015 through June 30, 2016.

In this example, the employer meets all the shared responsibility requirements for a variable-hour employee:

1. The initial measurement period does not exceed 12 months.
2. The administrative period does not exceed 90 days. The combined initial measurement period and the administrative period does not last beyond the final day of the first calendar month beginning on or after the one-year anniversary of Employee Y's start date.
3. Because the employer offers qualifying coverage to Employee Y, no penalty is assessed.

Let's take this example one step further. Employee Y continues employment with the employer. Her first standard measurement period will begin on October 15, 2014 and run through October 14, 2015. She is determined to work 30 or more hours per week during that measurement period, so she is offered coverage from January 1, 2016 through December 31, 2016. There is overlap in the initial measurement period and the ongoing measurement period, as well as overlap in both stability periods. As long as she is offered coverage continuously through December 31, 2016, then the employer has met the requirements. Her coverage eligibility for 2017 will be determined by the October 15, 2015 through October 14, 2016 measurement period.

Example 2:
In this example, the employer has an 11-month initial measurement period that begins on the start date. It is followed by a 2+ month administrative period. The administrative period is measured from the end of the initial measurement period to the end of the second calendar month beginning after the end of the initial measurement period.

Employee Y starts employment on May 10, 2014. Her initial determination period runs from May 10, 2014 through April 9, 2015. Employee Y works 30 or more hours on average per week during the initial measurement period. She is offered coverage from July 1, 2015 through June 30, 2016, the initial stability period.

In this example, the employer meets all the shared responsibility requirements for a variable-hour employee:

1. The initial measurement period does not exceed 12 months.
2. The administrative period does not exceed 90 days. The combined initial measurement period and administrative period does not last beyond the final day of the first calendar month beginning on or after the one-year anniversary of Employee Y's start date.
3. Because the employer offers qualifying coverage to Employee Y, no penalty is assessed.

Example 3:
In this example, the employer has a 12-month initial measurement period that begins on the first of the month following the start date. It is followed by a 2+ month administrative period. The administrative period is measured from the end of the initial measurement period to the end of the second calendar month beginning after the end of the initial measurement period.

Employee Y starts employment on May 10, 2014. Her initial determination period runs from June 1, 2014 – May 31, 2015. Employer Y works 30 or more hours on average during the initial measurement period. She is offered coverage from August 1, 2015 through July 31, 2016, the initial stability period.

In this example, the employer **does not** meet all the shared responsibility requirements for a variable-hour employee:

1. The initial measurement period does not exceed 12 months.
2. The administrative period does not exceed 90 days. However, the combined initial measurement period and administrative period does last beyond the final day of the first calendar month beginning on or after the one-year anniversary of Employee Y's start date. That is a month too long.
3. The employer can be assessed a penalty under the shared responsibility requirement. Unfortunately, the guidance does not stipulate how the penalty will be assessed. Previous guidance noted that penalties would be determined on a monthly basis. In this case, it appears that 1/12 of the annual penalty amount would be assessed for the month of July. By August, Employee Y is offered qualifying coverage, so the penalty would not apply for August and the rest of the months in the stability period.

Example 4:

In this example, we will use the same facts from Example 1. However, now Employee Y only averages 28 hours per week during the initial measurement period. Therefore, Employee Y is not eligible for coverage in 2015.

Since Employee Y is not considered a full-time employee, the shared responsibility penalty will not apply to the employer. The employer should use the ongoing employer measurement period for October 15, 2014 through October 14, 2015 to determine eligibility going forward. If Employee Y works 30 or more hours per week during that measurement period, then the employer would have to offer coverage for the next stability period, January 1, 2016 through December 31, 2016. However, if Employee Y works fewer than 30 hours per week during that measurement period, then the employer is not required to offer coverage for 2016, and will not be subject to the penalty.

Example 5:

In this example, the employer has a 12- month initial measurement period that begins on the start date. It also has a 1+ partial month administrative period that is measured 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. The employer hires Employee S to be a ski instructor on November 15, 2014, and intends for Employee S to work until March 15, 2015. The employer determines that Employee S should be considered a seasonal employee. Employee S works 60 hours per week from November 15 through March 15, but is not expected to work 30 hours per week for the entire initial measurement period (November 15, 2014 through November 14, 2015). Therefore, the employer does not treat Employee S as a full-time employee and does not offer him coverage.

The employer meets the requirements of this guidance. The measurement period and administrative period meet the requirements for a variable-hour employee. The employer used good faith compliance, based on the issued guidance, to determine that Employee S is a seasonal worker.

Additional examples with shorter standard measurement and stability periods were provided. In the next two examples, the sample employer uses the following standard measurement periods for ongoing employees:

Measurement period:	Six-month period, starting on May 15 and November 15 each year
Stability period:	Six-month period, starting on January 1 and July 1 each year
Administrative period:	Two per year, from the end of the measurement period until beginning of the stability period

Example 6:
For a new variable-hour employee, an employer uses a six-month initial measurement period that begins on the employee's start date. The administrative period runs from the end of the measurement period through the end of the first full calendar month following the end of the measurement period. The initial stability period is six months, starting at the end of the administrative period.

Employee K has a start date of May 10, 2014. Her initial measurement period lasts from May 10, 2014 to November 9, 2014. During this time she works 30 or more hours per week. The employer offers coverage from January 1, 2015 to June 30, 2015.

This is acceptable because:

1. The initial measurement period does not exceed 12 months.
2. The administrative period does not exceed 90 days.
3. The combined initial measurement period and administrative period does not last beyond the final day of the first calendar month beginning on or after the one-year anniversary of Employee K's start date.

This employer will continue to evaluate employees' full-time status twice during the year. Once Employee K is done with initial measurement period, her hours will continue to be evaluated twice a year during the standard measurement periods.

Example 7:
This example discusses how Employee K from the previous example fares during the first standard measurement period. Employee K is covered under the health plan from January 1, 2015 through June 30, 2015. Her hours are measured again under the standard measurement period that starts November 15, 2014 and ends on May 14, 2015. During this time period, Employee K only works 28 hours per week. She keeps coverage until June 30, 2015, when coverage is canceled because she is no longer eligible. Employee K's hours will be measured again from May 15, 2015 through November 14, 2015. The hours worked during that time frame will determine if she is eligible for coverage from January 1, 2016 through June 30, 2016.

Using shorter measurement and stability periods will result in more administrative work. However, some employers may find these shorter periods beneficial because of workforce issues.

Ideally, these examples will clarify the safe harbor approach allowed by the Departments in 2014. The guidance specifies that the safe harbor will apply to measurement periods beginning in 2013 and 2014. Subsequently, it will apply to stability periods that may extend to 2014, 2015 and possibly 2016. More guidance is expected, as this does not address many of the unusual situations that can arise when trying to determine hours worked.

The Departments are seeking input on how to determine the shared responsibility requirements in the following situations:

1. Whether safe harbors can be developed and, if so, what types, for employers to use when determining the full-time status of:
    - employees with short-term assignments
    - temporary staffing employees
    - employees hired into high turnover positions
    - other categories of employees that may present special issues.
2. Whether to develop additional guidance to assist employers and employees in determining, as of the employee's start date, if the employee is reasonably expected to work an average of 30 hours per week.
3. What rules should be established to address the coordination of different measurement and stability periods in mergers and acquisitions?
4. How should the term "seasonal employee" be formally defined? Is it practical to use different definitions that apply to different situations? For example, should one definition be adopted for determining if an employer is subject to the shared responsibility requirements, and a different definition used to determine if such employees are full-time employees?

It is clear that more guidance is both needed and expected. With 2014 quickly approaching, employers can rely on this safe harbor to determine which employees are considered full-time for health plan eligibility and penalty calculation purposes.

Applying the 90-Day Waiting Period Limitation

Health care reform requires that employers with plan years beginning on or after January 1, 2014 not apply a new hire waiting period that exceeds 90 days. The guidance addressing the new hire waiting periods is considered temporary guidance, and will remain in effect through the end of 2014. While additional guidance is expected, employers can rely on this information as they make compliance plans for 2014.

A waiting period is defined as the period of time that must pass before coverage takes effect. It applies to employees and dependents who are otherwise eligible for coverage. For this purpose, "eligibility" means having met the plan's substantive eligibility requirements, such as being in an eligible job classification or achieving job-related licensure requirements as specified in the plan's terms.

Eligibility conditions based solely on the passage of time are permissible for no more than 90 days. Other conditions for eligibility are permitted, unless the condition is designed to avoid compliance with the 90-day new hire waiting period limitation. If an employee can elect coverage that would begin on a date not exceeding the 90-day limitation, then the 90-day limitation is considered satisfied. This speaks to situations where an employer may require an employee to make elections before coverage goes into effect. If the coverage effective date is more than 90 days from the start date solely because an employee takes additional time to enroll, then the 90-day rule will not be considered violated.

This guidance also discusses how to handle employees that must be working full-time or for a specified number of hours to be eligible for coverage. For certain employees, an employer may not be able to determine if they are meeting the eligibility requirements for coverage. The plan may take a reasonable period of time to make this determination. The measurement timeframe must be consistent with the timeframes, discussed earlier, for determining full-time eligibility. The employer can then apply the 90-waiting period after the measurement period, as long as coverage is made effective no later than 13 months from the employee's start date. If the employee's start date is not the first of the month, then the employer can measure the 13 months from the beginning of the first of the month following the start date.

A number of examples are provided in the guidance to assist employers in understanding how new hire waiting periods may be affected by the 90-day limitation:

- **Example 1:** An employer plan provides coverage for new hires as of the first day of the first pay period falling on or after the date of hire. The plan requires the completion of applicable enrollment forms. Coverage is effective on the first day of the first pay period after the enrollment forms are submitted. In this example, a new employee starts on October 31 and submits completed enrollment forms on November 2. Coverage is effective on November 14, the first day of first pay period following submission of the enrollment forms. This waiting period does not exceed the 90-day waiting period. Coverage is dependent on when the enrollment forms are completed. However, the waiting period is really just two weeks if enrollment forms are completed on a timely basis. Remember, if the plan requires completion of enrollment forms, and that is the only reason the 90-day period is surpassed, then the plan did not violate the 90-day limitation.
- **Example 2:** An employer's group health plan limits eligibility for coverage to full-time employees. Coverage becomes effective on the first day of the calendar month following the date an employee becomes eligible. Employee A works part-time for the employer, but moves to full-time status on April 11. Employee A enrolls in the plan, and coverage is effective on May 1. This is acceptable because the waiting period is less than 90 days. The time spent working part-time does not count, because Employee A was not eligible for coverage as a part-time employee.
- **Example 3:** Under this employer's health plan, only full-time employees (working 30 or more hours per week) are eligible. Employee B starts employment on November 26, 2014, and will have work hours varying between 25 and 40 per week. It cannot reasonably be determined at Employee B's start date if he will meet the full-time hours requirement. Under the terms of the plan, variable-hour employees, like Employee B, will be eligible to enroll in the plan if they are determined to be full-time after a 12-month

measurement period. Coverage is made effective no later than the first day of the first calendar month after the measurement period. This employer also requires enrollment forms to be completed before coverage goes into effect. Employee B is subject to the measurement period that ends November 25, 2015, and is considered full-time and eligible for coverage effective January 1, 2016. This situation is consistent with the time periods allowed in the guidance. Because the measurement period is not considered to be designed to avoid compliance with the 90-day waiting period, this is an acceptable approach for variable-hour employees.

- **Example 4:** This employer offers coverage to part-time employees after they have completed 1,200 hours of service. Employee C works part-time, averaging 25 hours per week. Employee C completes 1,200 hours of service on December 15, 2014. In this example, the guidance provides additional details. First, Employee C must be offered coverage within 90 days of December 15 in order for the employer to be compliant with the 90-day limitation. Next, the guidance indicates that if the service hours requirement exceeds 1,200 hours, it would be viewed as designed to circumvent the 90-day waiting period limitation.

This guidance did not answer all employer questions, and appears to have raised new ones. In previous guidance, the Departments said that the 90-day waiting period limitation would not apply to part-time employees if the employer offers them coverage. However, Example 4 suggests that the 90-day limitation does, in fact, apply to part-time employees.

Employers are interested in clarifying whether “the first of the month following 90 days of employment” meets the 90-day waiting period limitation. This issue is not directly addressed, although it appears such a waiting period will not satisfy the 90-day limitation.

Again, employers can rely on this guidance until the end of 2014. The Departments are requesting comments, and will issue additional guidance on the waiting period limitation.

The IRS Notices provide short-term guidance to assist employers in preparing for 2014. Employers can reasonably rely on this guidance until the end of 2014. The Departments reiterate that any time an individual is not eligible for minimum essential coverage he or she may be eligible for subsidies in the Exchange. For example, variable-hour employees could be eligible for subsidized coverage through the Exchange during measurement periods, if their household income met subsidy requirements.

More guidance will be welcomed, as many employers struggle with unusual employment situations that may not be dictated by hours worked. However, these safe harbors should assist many employers with their strategic planning for 2014.

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