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REFORM Update

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On September 18, 2014, the Internal Revenue Service (IRS) released proposed regulations on the look-back measurement method. These regulations address the different situations an employer may face when an employee changes positions that impact the look-back measurement parameters. Specifically, the regulations address the following two scenarios:

1. An employee transfers into a **different position** that has a different measurement period start date or a shorter and/or longer measurement period than that of the previous position; and
2. Employers who choose to change a measurement period to a different start date or who have chosen to shorten and/or lengthen the look-back measurement method **within a prescribed employee category**.

These proposed regulations detail very specific situations that will not affect all employers. For the first situation to apply, the employer must be using the look-back measurement period and have different measurement periods for different segments of employees. For the second situation to apply, the employer needs to make changes to their measurement periods.

**Background**

Beginning in 2015, certain large employers may be subject to penalties for failing to offer coverage to full-time employees (defined as those employees who average 30 or more service hours per week). Employers may use the monthly measurement method or the look-back measurement method to determine an employee's full-time status.

Employers may only differentiate among measurement methods based upon the following five categories:

1. Collectively bargained employees (i.e., union) and non-collectively bargained employees (i.e., non-union)
2. One collectively bargained group of employees and a group subject to a different collectively bargained agreement
3. Salaried employees and hourly employees
4. Employees in different states
5. Employees of different entities with different federal tax identification numbers

The new guidance is specific to employees who are measured using a look-back measurement method.

In general, if employees average 30 or more hours per week during a look-back measurement period, they should be considered full-time during the subsequent stability period. The employer must either offer coverage to full-time employees during the stability period or potentially face a penalty. The newly proposed rules address a number of scenarios where an employee may experience employment changes that affect the look-back measurement process.

## Proposed Regulations

The proposed regulations address a number of scenarios involving employees in a look-back measurement period. The scenarios are outlined below.

### *Employees who transfer between positions that result in a move from one measurement period to a different measurement period*

Some employees may be hired into a position requiring them to complete a measurement period before being eligible for the health plan. The new guidance describes how to handle an employee who transfers into a new position (either within the company, or to a company under common ownership). The new position may have either a different measurement period start date or a shorter and/or longer measurement period than the previous position. This affects how the employer determines the employee's status as a full-time or part-time employee during the stability period. The process by which the employee is determined full-time is contingent upon when the employee was transferred to a new position.

- ***For employees who transfer to new position during an administrative period or stability period***
    1) If an employee transfers to a new position during either an administrative period or a stability period, then his or her status as a full-time employee will be governed by the *immediately preceding* measurement period that the employee recently completed (the one associated with *Position 1*). Therefore, that employee's stability period would begin and end, as if the employee had never transferred positions.
    2) At the end of the stability period (associated with *Position 1*), if the employee transferred to a full-time position (*Position 2*), then benefits would need to be offered to that employee after the stability period. Going forward, the employee would be measured in the look-back measurement period associated with *Position 2.*
    3) If the employee is transferred into another variable-hour position during the stability period connected to the *immediately preceding* measurement period (the one associated with *Position 1*), and if the employee has already completed the measurement period associated with *Position 2* (including any months that may include hours of service from *Position 1*), then the transferred employee would be considered full- or part-time for the stability period associated with *Position 2*.
    4) If the employee has not yet completed the full initial measurement period associated with *Position 1*, then an employer would calculate the hours already completed from the *Position 1* initial measurement period, and add those to the employee's *Position 2* hours until the completion of the initial measurement period associated with *Position 2*. Thereafter, the employee would simply transition into the standard measurement, administrative, and stability periods associated with *Position* 2.
- ***For employees who do not transfer during an administrative period or stability period***
    1) If an employee is transferred into a new position during the initial measurement period, the required offer of coverage would depend on the measurement, administrative and stability periods associated with Position 2.
    2) If the employee transfers into a full-time position, the offer of coverage would need to occur either by the day following the end of Position 1's initial measurement period, or

the first day of the fourth month following the transfer to Position 2, whichever occurs first.

3) If an employee transfers to a variable-hour position, then the hours of service the employee already completed during the initial measurement period for Position 1 will be credited towards the employee's Position 2 initial measurement period. This will govern whether that employee is or is not offered coverage during *Position 2's* subsequent stability period.

These proposed rules are fairly complicated. They included a number of examples to help clarify these situations.

*Examples:*

**Example 1:** **<u>Ongoing Employees</u>**

**Employer uses a 12-month measurement period that begins on January 1, and a stability period for *Position 1* that begins on January 1 of every year. For *Position 2,* employer uses a 12-month measurement period that begins on July 1, and a stability period for *Position 2* that begins on July 1 of every year. Employer does not use an administrative period.**

**Employee A is considered an ongoing employee because he has worked for the Employer for more than five years in *Position 1.* Employee A, in *Position 1,* averages less than 30 hours of service per week, during the standard measurement period from January 1, 2015 until December 31, 2015. This means Employee A is considered part-time for the stability period from January 1, 2016 until December 31, 2016.**

**On August 15, 2016, Employee A transfers to *Position 2.* Because Employee A is still in the stability period associated with the January 1, 2015 through December 31, 2015 standard measurement period, Employee A continues to be ineligible for benefits until December 31, 2016.**

**However, looking at the measurement period for *Position 2* from July 1, 2015 through June 30, 2016, Employee A averaged 30 or more hours of service per week. Employer would look at Employee A's hours for the *Position 2* measurement period, even though the employee worked some of those hours in *Position 1.* As of January 1, 2017, because Employee A averaged 30 or more hours during the standard measurement period for *Position 2* (even though Employee A was hired in *Position 1*) and averaged 30 or more hours of service per week during that time, Employee A is eligible for benefits until June 30, 2017. Employee A's status continues to be determined using the applicable standard measurement period associated with *Position 2.***

**Example 2:** **<u>New Variable-Hour Employee in Initial Measurement Period, Transfers to a Position Having Completed Initial Measurement Period</u>**

**Employer does not use an administrative period. Employer uses a 12-month measurement period that begins on January 1, and a stability period for *Position 1* that begins on January 1 of every year, with a 12-month initial measurement period for newly hired employees.**

**For *Position 2,* Employer uses a six-month standard measurement period that begins on January 1, and a six-month stability period that begins on July 1, with a six-month initial measurement period for newly hired employees.**

**Employee B is hired into *Position 1* as a new variable-hour employee on January 1, 2015. Employee B is averaging 30 or more hours of service per week during *Position 1's* initial measurement period.**

**On October 1, 2015, Employee B is still in his 12-month initial measurement period for *Position 1,* and transfers positions on this date to *Position 2,* which is another variable-hour position. Looking back at Employee B's hours of service during the initial measurement period for *Position 2* from January 1, 2015 through June 30, 2015, Employee B averaged 30 or more hours.**

**Employee B, despite not being in a stability period for *Position 1* (because Employee B has not yet completed 12 months of service), is benefits-eligible as of October 1, 2015 through December 31, 2015, because Employee B averaged 30 or more hours of service under the applicable measurement period for *Position 2,* even though such hours were completed when Employee B was still employed for *Position 1.* Employee B's status continues to be determined using the applicable standard measurement period for *Position 2* going forward.**

**Example 3:** **<u>New Variable Hour Employee in Initial Measurement Period, Transfers to a Position in the Middle of Transferred Position's Initial Measurement Period</u>**
**For *Position 1,* Employer uses a three-month initial measurement period that begins on the first day of the first month following a new employee's date of hire. Thereafter, a new hire would have a six-month stability period immediately following the initial measurement period, with no administrative period.**

**For Position 2, Employer has a 12-month initial measurement period which begins on an employee's hire date, and applies an administrative period that runs from the date of hire until the end of that hiring month, and a 12-month stability period that begins on the day immediately following the administrative period.**

**Employee C is hired into *Position 1* as a new variable-hour employee on February 15, 2015. On May 1, 2015, Employee C transfers from *Position 1* to *Position 2,* which is another variable-hour position.**

**Employee C, as of the date of the transfer, is not in a stability period (or administrative period). Employee C's status, therefore, would be determined by the initial measurement period of hours of service in *Position 1* <u>and</u> in *Position 2,* from February 15, 2015 through February 14, 2016.**

**Employee C does not average 30 or more hours of service per week during February 15, 2015 through February 14, 2016; therefore, Employee C is not a full-time employee for the stability period beginning March 1, 2016 through February 28, 2017. Employee C's status continues to be determined using the applicable standard measurement period thereafter associated with *Position 2.***

**Example 4:** **<u>New Variable-Hour Employee in Initial Measurement Period, Transfers to Full-Time Position</u>**
**Employer does not use an administrative period. Employer uses a 12-month measurement period that begins on January 1 and a stability period for *Position 1* that begins on January 1 of every year, with a 12-month initial measurement period for newly hired employees.**

**For *Position 2,* Employer uses a six-month standard measurement period that begins on January 1, and a six-month stability period that begins on July 1, with a six-month initial measurement period for newly hired employees.**

**Employee B is hired into *Position 1* as a new variable-hour employee on January 1, 2015.**

**On October 1, 2015, Employee B is still in his 12-month initial measurement period for *Position 1,* and Employee B transfers positions on this date to *Position 2,* a <u>full-time</u> position.**

**Employee B, despite not being in a stability period for *Position 1* (because Employee B has not yet completed 12 months of service), must have coverage effective as of January 1, 2015, because his initial measurement period ended December 31, 2015. The effective date for coverage is the earlier of the day following the end of *Position 1's* initial measurement period, or the first day of the fourth month following the transfer.**

***Employer changes to measurement periods for employee classifications***

Employers have discretion to change the measurement method applicable to the prescribed category of employees, as allowed by the final regulations regarding the employer mandate. The final regulations, however, failed to address what occurs when the duration or the start date of the measurement period is modified during the year by the employer.

Simply put, when an employer modifies its measurement period, the same rules will apply as if the employee transferred to a position with a different measurement period, as described in the previous section. Examples were provided to help employers understand how to handle the situation.

**Example 5:** **<u>Employer-Initiated Change in Measurement Periods</u>**
**On January 1, 2015, Employer will begin using a six-month standard measurement period starting April 1, with a consecutive six-month stability period beginning October 1 for all employees covered by a collective bargaining agreement (CBA). For non-CBA employees, Employer uses a 12-month standard measurement period, with a 12-month stability period, which both begin on January 1.**

**On April 1, 2017, Employer changes the standard measurement and stability periods for non-CBA employees to the same measurement and stability periods for CBA employees. How each employee will be handled depends on whether the employee is in the non-CBA initial measurement period or the non-CBA stability period.**

**Each employee in the non-CBA stability period as of April 1, 2017 will continue to be treated as full-time or part-time employee based on the employee's status in the non-CBA stability period. They will have this status until the end of the stability period. In**

**determining full-time status after the end of that stability period, the employer will look to the immediately preceding measurement period under the CBA rules.**

**Any employee who is not in a stability period as of April 1, 2017 will be determined to be a full-time or part-time employee under the standard measurement period of the CBA employees.**

The examples provide practical advice regarding how to handle look-back measurement periods if the employee transfers into a different position or the employer changes the measurement periods.

**Concluding Thoughts**

Many employers are struggling with the complicated rules for determining hours worked and full-time status. A key aspect of the employer mandate is determining which employees should be considered full-time. Employers sometimes offer unique work arrangements in which it can be challenging to determine full-time status.

As employers worked through their strategies, they discovered that the final regulations did not provide enough detail about employment changes and employer alterations of the measuring metrics. These proposed regulations apply only to look-back measurement periods. Employers can rely on this guidance until the end of 2016, or until final regulations are issued.