

## Comparison of Hours of Service for Purposes of Qualified Plans and Employer Shared Responsibility under PPACA

	Qualified Plans	Employer Shared Responsibility under PPACA
Hours of service	Units used for determining an employee's credit toward participation, vesting and benefit accrual entitlements under employee pension benefit plans.	Units used for determining the full time status of an employee for purposes of offering an opportunity to enroll in minimum essential coverage under employer-sponsored plan. An employee is considered full-time if he/she works an average of 30 hours per week.
Relevant Period	Computation Period – generally a period of 12 consecutive months during which an employee earns hours of service towards statutory participation, vesting and benefit accrual entitlements.	Measurement Period – a period of 3 to 12 consecutive calendar months. The employee's hours of service during the measurement period are used to determine whether an employee worked on average at least 30 hours per week.
I. Hours for which employee is paid or entitled to payment for performance of service	DOL Reg. 2530.200b-2(a)(1) Required to be credited	Prop. IRS Reg. 54.4980H-1(a)(21) Required to be credited
II. Period for which employee is paid but no duties are performed	DOL Reg. 2530.200b-2(a)(2)	Prop. IRS Reg. 54.4980H-1(a)(21)
A. Vacation	Required to be credited	Required to be credited
B. Holiday	Required to be credited	Required to be credited
C. Illness	Required to be credited	Required to be credited
D. Incapacity (including disability)	Required to be credited	Required to be credited
E. Layoff	Required to be credited	Required to be credited
F. Jury duty	Required to be credited	Required to be credited
G. Military duty	Required to be credited	Required to be credited
H. Leave of absence	Required to be credited	Required to be credited
III. An hour of service for which back pay is awarded	DOL Reg. 2530.200b-2(a)(3) Required to be credited	Not specifically required under proposed regulations

	Qualified Plans	Employer Shared Responsibility under PPACA
IV. Period for which employee is on unpaid leave		Prop. IRS Reg. 54.4980H-3(e)(4)
A. Maternity or Paternity Leave	Required to be credited solely for purposes of avoiding a break-in-service. Code section 410(a)(5)(E).	<p>An employee is required to treat these periods of special unpaid leave in one of two ways when averaging hours during a measurement period:</p> <ol style="list-style-type: none"> <li>1. Such period of unpaid leave may be excluded from the measurement period when averaging hours; or</li> <li>2. The employer may credit hours of service for such period of unpaid leave at a rate equal to the average weekly rate during the measurement period that was not part of the special unpaid leave.</li> </ol> <p>This rule helps to increase the average hours for those employees who incur one of these leaves during a measurement period.</p>
B. Military leave under USERRA	Required to be credited for purposes of avoiding break-in-service, and for vesting and benefit accruals. Code section 414(u)(8)(A) and (B).	
C. FMLA	Required to be credited in order to avoid a break-in-service. Not required to be credited for purposes of benefit accrual, vesting and eligibility to participate. 20 C.F.R 825.215(d)(4).	
D. Jury Duty	Not Required to be Credited	
V. Rules for determining hours for non-traditional employees	No special rule for non-traditional employees	Section II.B.4 of the Preamble to Prop. IRS Reg. 54.4980H
A. Salespersons compensated on commission		<p>Until further guidance is issued, employers must use a reasonable method for crediting hours for such employees. Such method may not recharacterize as non-fulltime employees whose position involves more than 30 hours of service per week. The preamble gives the following</p>
B. Adjunct faculty whose hours outside of class are not recorded		

	Qualified Plans	Employer Shared Responsibility under PPACA
C. Airline pilots whose flying hours are subject to regulatory limits		guidance: <ol style="list-style-type: none"> <li>1. Travelling salespersons compensated on a commission basis must be credited for travel time.</li> <li>2. Adjunct faculty members must be credited for time outside of classroom, such as preparation time.</li> </ol>
VI. Rules for determining hours of service for periods for which employee is paid but no duties are performed	DOL Reg. 2530.200b-2(b)	Prop. IRS Reg. 54.4980H-3(b)(1)
A. Payments calculated on the basis of units of time	Number of hours of service to be credited shall be the number of regularly scheduled working hours included in the units of time on the basis on which the payment is made (such as hourly, daily, weekly, monthly). <i>Example.</i> An employee, regularly scheduled to work 40 hours a week, is paid for a week of vacation. The employer must credit the employee for 40 hours.	For hourly employees, employers must calculate from records hours for which payment is made or due. For non-hourly employees, employers may use actual hours for which payment is made or due, or use days-worked or weeks-worked equivalencies.

	Qualified Plans	Employer Shared Responsibility under PPACA
B. Payments not calculated on the basis of units of time	<p>Number of hours of service shall equal the total payment divided by the employee's most recent hourly rate of compensation. Hourly rate shall be determined as follows:</p> <ol style="list-style-type: none"> <li>1. If compensation is based on an hourly rate, such hourly rate shall be the most recent hourly rate.</li> <li>2. If compensation is determined on the basis of a fixed rate for specified periods of time (other than hours) such as days, weeks or months, the employee's hourly rate shall be the employee's most recent rate of compensation for that time divided by the number of hours scheduled during that time.</li> <li>3. If compensation is not determined on the basis of a fixed rate, the employees hourly rate of compensation shall be the lowest hourly rate in that job classification.</li> </ol>	There is no specific guidance in the regulations regarding crediting hours for payments not based on units of time.
VII. Crediting hours of service to computation or measurement periods	DOL Reg. 2530.200b-2(c)(1)	Prop. IRS Reg. 54.4980H-3
A. Crediting hours for periods in which duties are performed	Same treatment under both qualified plans and health plans. Hours of service for performance of duties shall be credited to the computation period (in the case of qualified plans) or the measurement period (in the case of health plans) during which the duties are performed.	
VIII. Crediting hours for periods in which no duties are performed	DOL Reg. 2530.200b-2(c)(2)	Prop. IRS Reg. 54.4980H-3
A. Payments calculated on the basis of time	Same treatment under both qualified plans and health plans. Hours of service credited to an employee on account of a payment calculated on the basis of units of time (such as hours, days, weeks or months) shall be credited to the computation period or the measurement period to which the payment relates. <i>Example.</i> An employer, with a calendar year computation and measurement period, pays an employee for 40 hours of service for a week of vacation in 2012. The employer must credit 40 hours of service for the vacation in the 2012 computation and measurement period.	

	Qualified Plans	Employer Shared Responsibility under PPACA
B. Payments not calculated on the basis of time	<p>If a payment is not calculated on the basis of time, hours of service are credited to the computation period in which the period during which no duties are performed occurs.</p> <p><i>Example.</i> In 2012, an employee receives a lump sum payment of \$1,000 as a result of an injury from a disability insurance plan. The employee's rate of pay is \$10 per hour, and the employer uses a calendar year computation period. Under Section VI.B above, the employee must be credited with 100 (<math>\\$1,000 \div 10</math>) hours of service for this period of disability. These 100 hours must be credited to the 2012 computation period.</p>	There is no specific guidance in the regulations regarding crediting hours for payments not based on units of time.
C. Back pay	<p>Any hours of service due to back pay shall be credited to the computation period to which the back pay period pertains.</p> <p><i>Example.</i> In 2013, an employee is awarded back pay for 50 hours of service performed in 2012. The employer, with a calendar year computation period, must credit the employee with 50 hours of service for the 2012 computation period.</p>	The proposed regulations do not require crediting hours for back pay.

	Qualified Plans	Employer Shared Responsibility under PPACA						
D. Adjusting the Periods	<p>If the period (no more than 31 days) to which the hours of service pertain extends beyond one computation period, all such hours of service may be credited to the first or second computation period. Such crediting of hours must be done consistently within the same job classifications, reasonable defined.</p> <p><i>Example.</i> An employee is credited with 80 hours of service for sick leave from December 24, 2012 through January 4, 2013. The employer has a calendar year computation period. The employer has the option to credit all 80 hours of service to either the 2012 or the 2013 computation period, as long as it is done with respect to all employees within the same job classification.</p>	<p>To avoid a measurement period from beginning or ending in the middle of a payroll period, an employer is allowed to start and end a measurement period with certain payroll periods.</p> <p><i>Example.</i> An employer uses a calendar year measurement period and has a two-week payroll period. The first day and the last day of the 2013 measurement period fall on the following payroll periods:</p> <table border="1"> <thead> <tr> <th>Date</th> <th>Payroll Period</th> </tr> </thead> <tbody> <tr> <td>1/1/2013</td> <td>12/22/2012 – 1/4/2013</td> </tr> <tr> <td>12/31/2013</td> <td>12/21/2013 – 1/3/2014</td> </tr> </tbody> </table> <p>So that a measurement period does not start or end in the middle of a payroll period, the employer is permitted to start the 2013 measurement period on 12/22/2012 and end it on 12/20/2013. Or, the employer may start the 2013 measurement period on 1/5/2013 and end it on 1/3/2014.</p>	Date	Payroll Period	1/1/2013	12/22/2012 – 1/4/2013	12/31/2013	12/21/2013 – 1/3/2014
Date	Payroll Period							
1/1/2013	12/22/2012 – 1/4/2013							
12/31/2013	12/21/2013 – 1/3/2014							
IX. Determination of Service to be Credited to Employees	DOL Reg. 2530.200b-3(a)	Prop. IRS Reg. 54.4980H-3(b)						
A. General Rule	Plan must determine hours from records of hours worked and hours for which payment is made or due, or use permitted equivalency below.	For hourly employees, an employer must calculate actual hours of service from records and hours for which payment is made.						

	Qualified Plans	Employer Shared Responsibility under PPACA
B. Use of equivalencies for determining service to be credited to employees	Different equivalencies are permitted for different classifications, as long as they are reasonable. A classification is not reasonable if applied with the intent to preclude employees from attaining statutory entitlements.	Only permitted for employees paid on a non-hourly basis. Different methods of equivalency are permitted for different classifications. May not use equivalencies if the result is to substantially understate an employee's hours of service.
X. Equivalencies based on working time	DOL Reg. 2530.200b-3(d)	Not Permitted
A. Hours worked	This equivalency method allows an employer to only consider hours of service for which an employee is paid for the performance of duties, thereby reducing the administrative burden of tracking hours for vacation, sick leave, holiday, etc. This equivalency method takes into account all hours (regular and overtime) worked for which an employee is paid for performance of duties. Under this method, 870 hours worked are treated as equivalent to 1,000 hours of service, and 435 hours worked are treated as equivalent to 500 hours of service. Hence, if an employee is credited with 870 hours worked, he must be credited with a year of service for purposes of vesting and at least a partial year for purposes of benefit accrual, as if he had been credited with 1,000 hours of service. Conversely, if he is credited with 436 hours worked, he is considered to have earned 501 hours of service for purposes of avoiding a break in service.	

	Qualified Plans	Employer Shared Responsibility under PPACA
B. Regular time hours	This equivalency method is similar to the Hours worked equivalency method described above but takes into account only regular time hours worked for which an employee is paid for performance of duties. Regular time hours do not include overtime hours. Under this method, 750 regular time hours are treated as equivalent to 1,000 hours of service and 375 regular time hours are treated as equivalent to 500 hours of service. Hence, if an employee works 750 regular time hours, he must be credited with a year of service for purposes of vesting and at least a partial year for purposes of benefit accrual, as if he had been credited with 1,000 hours of service. Conversely, if he works 376 regular time hours, he is considered to have earned 501 hours of service for purposes of avoiding a break in service.	
XI. Equivalencies based on periods of employment	DOL Reg. 2530.200b-3(e)	26 CFR 54.4980H-3(b)(2) (only permitted for non-hourly employees)
A. On the basis of days of employment	10 hours of service for each day for which the employee would be required to be credited with at least one hour of service.	8 hours of service for each day for which the employee would be required to be credited with at least one hour of service.
B. On the basis of weeks of employment	45 hours of service for each week for which the employee would be required to be credited with at least one hour of service.	40 hours of service for each week for which the employee would be required to be credited with at least one hour of service.
C. On the basis of semi-monthly payroll periods	95 hours of service for each semi-monthly payroll period for which the employee would be required to be credited with at least one hour of service.	Not Permitted
D. On the basis of months of employment	190 hours of service for each month for which the employee would be required to be credited with at least one hour of service.	Not Permitted



	Qualified Plans	Employer Shared Responsibility under PPACA
E. On the basis of shifts	An employee is credited with the number of hours of service included in a shift for each shift for which the employee would be required to be credited with at least one hour of service.	Not Permitted
F. Adjusting the periods	Periods of time used as a basis for determining service which extend into two computation periods, the plan may credit all hours for such a period to the first computation period or the second computation period, or may allocate such hours on a pro rata basis.	The proposed regulations do not give any guidance on how to allocate hours for periods of time used as a basis for determining service which extend into two measurement periods. However, the proposed regulations allow an employer to adjust the measurement period such that the measurement period does not begin or end in the middle of a payroll period. This is illustrated in more detail in the example in Section VIII.D.
	Can combine equivalencies based on working time and equivalencies based on periods of employment.	Not Permitted

	Qualified Plans	Employer Shared Responsibility under PPACA
XII. Equivalencies based on earnings	DOL Reg. 2530.200b-3(f)	Not Permitted
A. Compensation determined on the basis of an hourly rate	<ol style="list-style-type: none"> <li>1. The employee is credited with the number of hours equal to the employee's earnings during the computation period divided by the employee's:               <ol style="list-style-type: none"> <li>(i) hourly rate as in effect at such times during the computation period; or</li> <li>(ii) lowest hourly rate during computation period; or</li> <li>(iii) lowest hourly rate payable to an employee in the same or similar job classification; and</li> </ol> </li> <li>2. 870 hours are treated as equivalent to 1,000 hours of service and 435 hours are treated as equivalent to 500 hours of service. Hence, if an employee is credited with 870 hours under paragraph 1 above, he must be credited with a year of service for purposes of vesting and at least a partial year for purposes of benefit accrual, as if he had been credited with 1,000 hours of service.</li> </ol>	

	Qualified Plans	Employer Shared Responsibility under PPACA
<p>B. Compensation determined on the basis other than an hourly rate</p>	<ol style="list-style-type: none"> <li>1. The employee is credited with the number of hours equal to the employee's total earnings divided by the employee's lowest hourly rate during the computation period; and</li> <li>2. 750 hours are treated as equivalent to 1,000 hours of service and 375 hours are treated as equivalent to 500 hours. Hence, if an employee is credited with 750 hours under paragraph 1 above, he must be credited with a year of service for purposes of vesting and at least a partial year for purposes of benefit accrual, as if he had been credited with 1,000 hours of service.</li> </ol> <p>For purpose of this equivalency, hourly rate of compensation is determined by taking the employee's lowest rate of compensation for a specified period of time (such as day, week or month) and dividing it by the number of hours regularly scheduled for the performance of duties during such period of time. <i>Example.</i> An employee was paid \$1,000 a month for the first half of 2012 and was paid \$1,100 a month for the second half. During 2012, he was always regularly scheduled to work 100 hours in a month. For purposes of this equivalency, his hourly rate of compensation shall be \$10 per hour (<math>\\$1,000 \div 100</math>).</p>	