



# **Final Regulations Implementing Employer Shared Responsibility Rules: Key Issues For Employers**

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American Benefits Council  
P4P... "Preparing for  
PPACA" Webinar

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# 4980H Final Regulations

## Key Changes

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- Adds new monthly measurement method for employers not using look-back method
- No special rules for interns or short-term employees employed more than 3 months
- 26 break in service rule shortened to 13 weeks
- New definition of Seasonal Employee
- “Dependent” doesn’t include foster children, stepchildren, and certain non-U.S. citizen children
- Clarifies “offer of coverage” rules
- Keeps affordability safe harbors, with some changes

# Full-Time Employee Status

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- “Employee” means common law definition of employee
- “Full-Time” means an average of at least 30 hours of service/week or 130 hours of service/calendar month and includes:
  - Each hour for which an employee is paid, or entitled to payment, for performance of duties for any member of employer’s controlled group
  - Paid leave for vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence is counted– no limit to hours in these categories

# NEW! Full Time Employee Status Clarifications

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- Must use reasonable method of crediting hours for categories of employees with unique hours of service (E.g. commissioned salespeople, adjunct faculty, airline employees, layover or on-call hours)
- Hour of service as bona fide volunteer does not count
- No special rules for short-term and high-turnover employees
- No general exception for student interns
  - But if full-time interns are unpaid, hours are not counted as hour of service
- International employees – May treat as terminated if position anticipated to continue indefinitely or at least 12 months, and substantially all compensation treated as foreign-sourced income

# NEW! Monthly Measurement Method

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- Adds new monthly measurement method for employers not using look-back method
- FT status determined on monthly basis – Count hours during a particular month
- Special rule for employee first eligible for coverage
  - 3 month rule – No 4980(H) penalty if offers coverage by 1<sup>st</sup> day of 4<sup>th</sup> full calendar month after employee otherwise eligible
- “Weekly rule” to accommodate payroll periods
  - 4-week period: FT if 120 hours of service
  - 5-week period: FT if 150 hours of service

# Look-Back Method

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- **NEW!** Specifies factors to determine if variable hour employee
  - (1) Is employee replacing FT employee or non-FT employee?
  - (2) Have ongoing employees in same/comparable position varied above/below average of 30 hours of service per week?
  - (3) Was job advertised, communicated, or documented as requiring hours of service that would average 30 or more/less?
- **NEW!** Defines seasonal employee
  - Employee in position for which customary annual employment is 6 months or less
- **NEW!** New category of part-time employee
  - New employee who is reasonably expected at his/her start date to not be full-time and not variable hour or seasonal
  - Rules that apply to variable hour and seasonal apply

# Measurement Methods

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- **NEW!** Must use same method for all employees in same category
  - Salaried v. hourly
  - Employees working in different states
  - Collectively bargained v. not
  - Each group of collectively bargained covered by separate CBA
  - Cannot use look-back method for variable hour/seasonal v. monthly measurement for employees with more predictable hours
- **NEW!** Complex rules for transferring between types of measurement methods

# Change in Employment Status

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- Special rule for new variable hour or seasonal employees who experience material change in position of employment during initial measurement period
- If employee would have been reasonably expected to work full-time if in new status at hire date, employee generally must be treated as full-time as of first day of fourth month following change
- **NEW!** Extends rule to (1) seasonal employees who change employment status to position that would not have been seasonal, and (2) employees who change employment status from part-time to FT during initial measurement method



# Break in Service/Leave of Absence Rules

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- Rules on application of safe harbor to employees rehired after termination or returning after leaves of absence
- Treat as new employee –
  - **NEW!** If period of no service was 13 weeks or more (except 26 weeks for educational organizations); or
  - Under optional "rule of parity"
    - Otherwise, treat as continuing employee with same status for that stability period
    - For employees returning after special unpaid leave (FMLA, USERRA, jury duty) –
      - Exclude special unpaid leave period; or
      - Credit hours of service for leave period at average weekly rate outside period
      - Special rule for continuing employees of educational organizations

# Dependents

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- The employer is required to offer coverage to “dependents”
- Does not include spouse
- **NEW!** Does not include foster children, stepchildren, and certain children who are not U.S. citizens or nationals

# Offer of Coverage

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- Employee must have an effective opportunity to accept coverage at least once during the plan year to be treated as having been “offered coverage”
- **NEW!** Effective opportunity to decline coverage *not* required for offer of coverage that:
  - Provides minimum value; and
  - Is offered either at no cost to employee or at a cost, for any calendar month, or no more than 9.5% of monthly federal poverty line amount for single individual
- **NEW!** Employee’s election of coverage from prior year that continues for every year unless employee opts out is considered an offer of coverage.
- **NEW!** Third party offer of coverage
  - Offer of coverage made by PEO or other employer organization on behalf of client employer is offer of coverage in some cases

# Affordability Safe Harbors

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- Coverage is affordable if required employee contribution for self-only coverage for the lowest cost option that provides minimum value does not exceed 9.5% of:
  - W-2 Wages for that calendar year
  - **NEW!** Hourly rate of pay x 130 (even if wages reduced), or Hourly rate of pay x monthly salary (does not apply if wages reduced)
  - **NEW!** The most recently published federal poverty level for a single individual (level in effect six months prior to beginning of plan year)

# Questions?

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