

# Legislative Brief

## Health Care Reform - Employer Responsibility Sept. 30, 2014

### Employer Shared Responsibility—New Guidance re Measurement Period Changes

#### Quick Facts:

- The IRS released IRS Notice 2014 to propose approaches for identifying full-time employees in situations where the measurement period applicable to an employee changes.
- The Notice addresses application of the look-back measurement method to the following situations:
  - Changes in the duration or start date of a measurement period under the look-back method because an employee transfers positions within the same applicable large employer (or part of the same controlled group); and
  - An employer's election to change: (1) the duration or start date of the measurement period applicable to the look-back method, or (2) the measurement method from the look-back method to the monthly method (or vice versa).
- The Notice fills some important gaps in the existing guidance and may be relied upon until further guidance is issued (and in any case through the end of the 2016 calendar year).

#### BACKGROUND

Under the Code § 4980H [final regulations](#) for employer shared responsibility, published on February 12, 2014, applicable large employers may identify full-time employees using either a look-back measurement method or a monthly measurement method (see our [article](#) for more information about the employer shared responsibility mandate). Under the **look-back method**, hours are tracked during a measurement period of up to 12 months starting on a date selected by the employer, are counted during an optional administrative period immediately after the measurement period, and are used to “lock in” full-time or part-time status during a stability period of up to 12 calendar months. The **monthly method** identifies full-time employees each calendar month by counting hours only during that month. Employers can choose different measurement periods—and different methods—for specified categories of employees (e.g., salaried and hourly).

#### *Proposed Approach*

The IRS released [Notice 2014-49](#) to propose approaches for identifying full-time employees in situations where the measurement period applicable to an employee changes. The Notice addresses: (1) changes in the duration or start date of a measurement period under the look-back method because an employee transfers positions within the same applicable large employer (or part of the same controlled group), and (2) an employer's election to change, for a category of employees, the duration or start date of the measurement period applicable to the look-back method, or the measurement method from the look-back method to the monthly method (or vice versa).

#### CHANGE IN MEASUREMENT PERIOD UNDER THE LOOK-BACK METHOD DUE TO EMPLOYEE TRANSFER

##### *Employees in a Stability Period*

- Employees in a stability period at the time of transfer will retain their full-time or part-time status for the remainder of that stability period.
- At the end of that stability period the employees' status will be based on hours during the measurement period for their second position and will be locked in for the associated stability period.
- To the extent the measurement period for the second position overlaps the measurement period for the first position, the employer would count all hours during the second position's measurement period, including those

overlapping hours that were credited during the first position's measurement period.

- If an employee's status in the second position cannot be determined under the measurement period applicable to that position (e.g., a new variable-hour employee who has not yet been employed for a full initial measurement period applicable to the second position), then the rules for employees not in a stability period apply (see below).

#### **Employees Not in a Stability Period**

- If an employee is not in a stability period for the first position at the time of transfer, the employee's status will be determined solely under the second position's measurement period.
- The employer will take into account all hours credited during the second position's measurement period, including hours that overlap with the first position's measurement period.

The Notice emphasizes that the rules generally applicable to the look-back measurement method will continue to apply (e.g., whether a new employee is a variable hour, part-time, seasonal or full-time employee is determined based on the applicable large employer's reasonable expectations at the time of hire in accordance with the final regulation). A new employee who is not a variable or seasonal employee, and who is reasonably expected to average at least 30 hours of service per week at the time of hire (and such is expected to be a full-time employee), is not subject to an initial measurement period and continues to be determined on the basis of hours of service in each month.

#### **EMPLOYER-INITIATED CHANGE IN MEASUREMENT METHOD**

The final regulations do not specifically address whether, or under what conditions, an employer can switch between the look-back and monthly measurement methods for a category of employees. The Notice provides:

- Change in measurement methods for a category of employees: **Employers may switch between methods provided that they adhere to the same transition rules that apply when individual employees have a method change due to a change in employment status.** Generally, the rules for method changes, which are included in the final regulations, require a transition period intended to protect employees who have earned full-time status and requires all employees in a particular category of employees to be treated the same.
- Change in duration or start date of the look-back measurement method for a category of employees: The status of any employee whose applicable measurement period under the look-back measurement method is changed by the employer is determined as if the employee had transferred from a position to which the original measurement method applies to a position to which the revised measurement method applies as of the effective date of the change.

#### **RELIABILITY OF NOTICE AND REQUEST FOR COMMENTS**

Until further guidance is issued, and at least through December 31, 2016, employers can rely on guidance contained in the Notice.

The IRS has requested comments on the proposed approaches, particularly as they might apply to mergers and acquisitions where the parties to the transaction use different measurement periods or methods—until then, employers involved in a corporate transaction may rely on the approaches described in the Notice. Comments can be submitted until December 29, 2014.

The health care reform law—the Affordable Care Act (ACA)—has many complex requirements for employers and health plans. Please contact Kapnick Insurance Group with any questions about how you can prepare for any of the health care reform requirements. This Kapnick Insurance Group Update is not intended to be exhaustive nor should any discussion or opinions be construed as legal or tax advice. The information contained in this communication is intended to provide general information regarding health care reform and related topics, and is based on general information available at the time it was prepared. Readers should contact their tax and/or legal counsel for advice that is appropriate to their specific circumstances. This information cannot be used by any taxpayer to avoid tax penalties.

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