



EXPERT UPDATE



Health Reform Update: Additional Information and Clarification for Measuring Hours of Service



HENDERSON
BROTHERS

Many large employers are beginning to set up their process and procedures to begin measuring hours of service for their seasonal and variable hour workforce. It is highly likely that more clarification will be provided, especially since most of the information we are relying upon to construct the measurement period, administration period and stability period have been outlined in proposed regulations released by the Department of Treasury on January 2, 2013. Employers are permitted to rely on the proposed regulations for guidance pending issuance of final regulations or other applicable guidance. Comments for the proposed regulations were due by March 18, 2013 and a public hearing is scheduled for April 23, 2013. We anticipate updated information sometime in May or June following the public hearing.

For now, we are all doing our best to understand the safe harbors employers may adopt to measure hours of service for seasonal and variable hour new hires and ongoing employees.

Using months, days and hours interchangeably

The regulations express time in months, days and hours. In some cases, the regulations or guidance allow us to use these terms interchangeably. For example, the proposed regulations permit us to use 120 days or four calendar months interchangeably for the Seasonal Employee exception (i.e., 120 days is considered equivalent to four calendar months). When employers are adding up their full-time

employees to determine whether they are an Applicable Large Employer, they are to add those employees who have averaged 30 or more hours per week during the month or they may use 130 hours per month as an equivalency. It is important to understand when you may use days, months or hours interchangeably and when it appears you may not.

Measurement Period & Stability Periods - expressing time as "months"

Measurement Period - Employers can choose the months when the standard measurement period starts and ends, such as the calendar year, plan year, or the period ending just before open enrollment starts. As communicated in previous Expert Updates, the measurement period must be at least three consecutive months but no more than 12 consecutive months. Most of our clients are electing the 12 month measurement period for new hires and ongoing/current employees.

The measurement period must be uniform for all employees in the same category. Employers do have latitude to adopt different measurement periods for the following four permissible categories:

- 1) collectively bargained and non-collectively bargained employees,
- 2) employees covered by different collective-bargaining agreements,
- 3) salaried or hourly employees,
- 4) and primary places of employment in different states.

Stability Period - The stability period must be no less than six consecutive calendar months and no greater than the length of the measurement period. Because most of our clients are adopting the 12 month measurement period, they are automatically adopting a 12 month stability period as well.

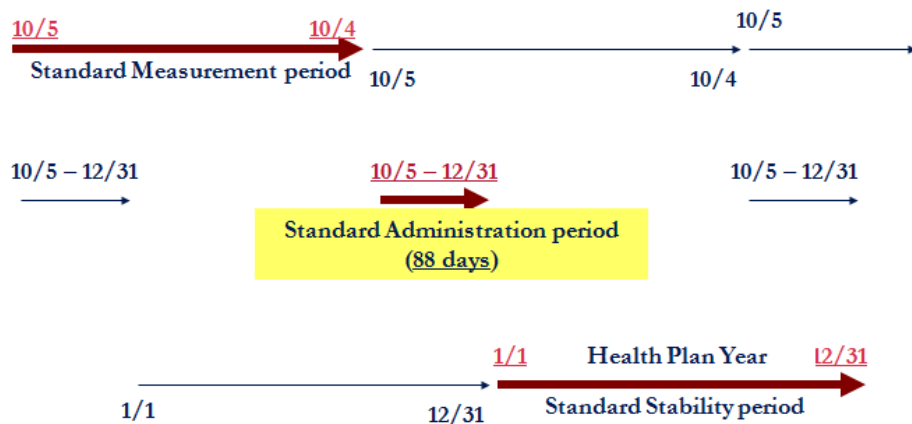
Administration Period - expressing time as "days"

The administration period can be no longer than **90 days**. As communicated in previous documents, to prevent the administrative period from creating a gap in coverage, the administrative period must overlap with the prior stability period. This means that full-time employees enrolled in coverage based on a prior measurement period must continue to be covered through the administrative period connected to a

more recent measurement period. Our exhibits demonstrate how the administration period overlaps with the prior stability period.

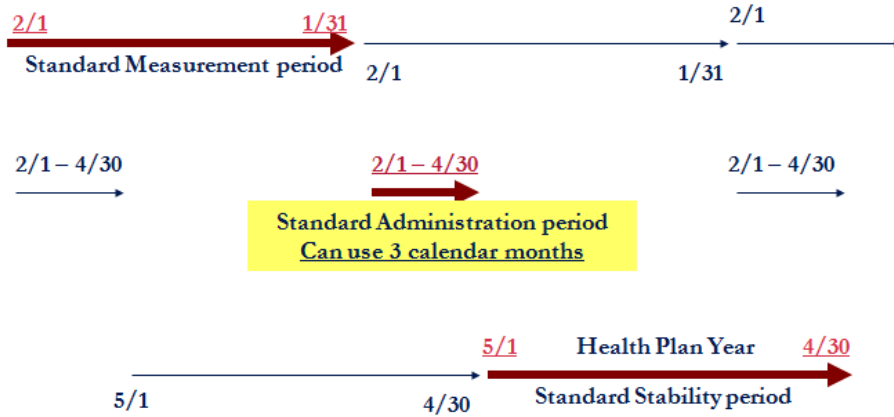
Unfortunately, more often than not, a three consecutive month administration period would exceed the 90 day limit permitted by the proposed regulations. And while there has been speculation additional guidance will provide latitude for employers to use 90 days and three months interchangeably, those who need to begin their measurement period now, should establish an administration period that is at a maximum of 90 days. For the time being, in the absence of any official clarity or guidance, employers who feel they need 90 days or close to 90 days for their administration period could consider developing their measurement, administration period and stability period to reflect something like what is exhibited below. If additional guidance or clarification allows for employers to use 90 days and 3 calendar months interchangeably, most employers will be able to make a simple modification later.

Example of Measurement, Administration and Stability Period for Calendar Year Plan



Employers who have a Plan year early in the calendar year may be able to use three calendar months as their administration period, solely because the month of February is a short month.

Example of Measurement, Administration and Stability Period for May 1 Plan Year



Please stay tuned for more information as additional regulations and guidance are released.

Source: Department of Labor

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