



Full-Time Employee Status Determination

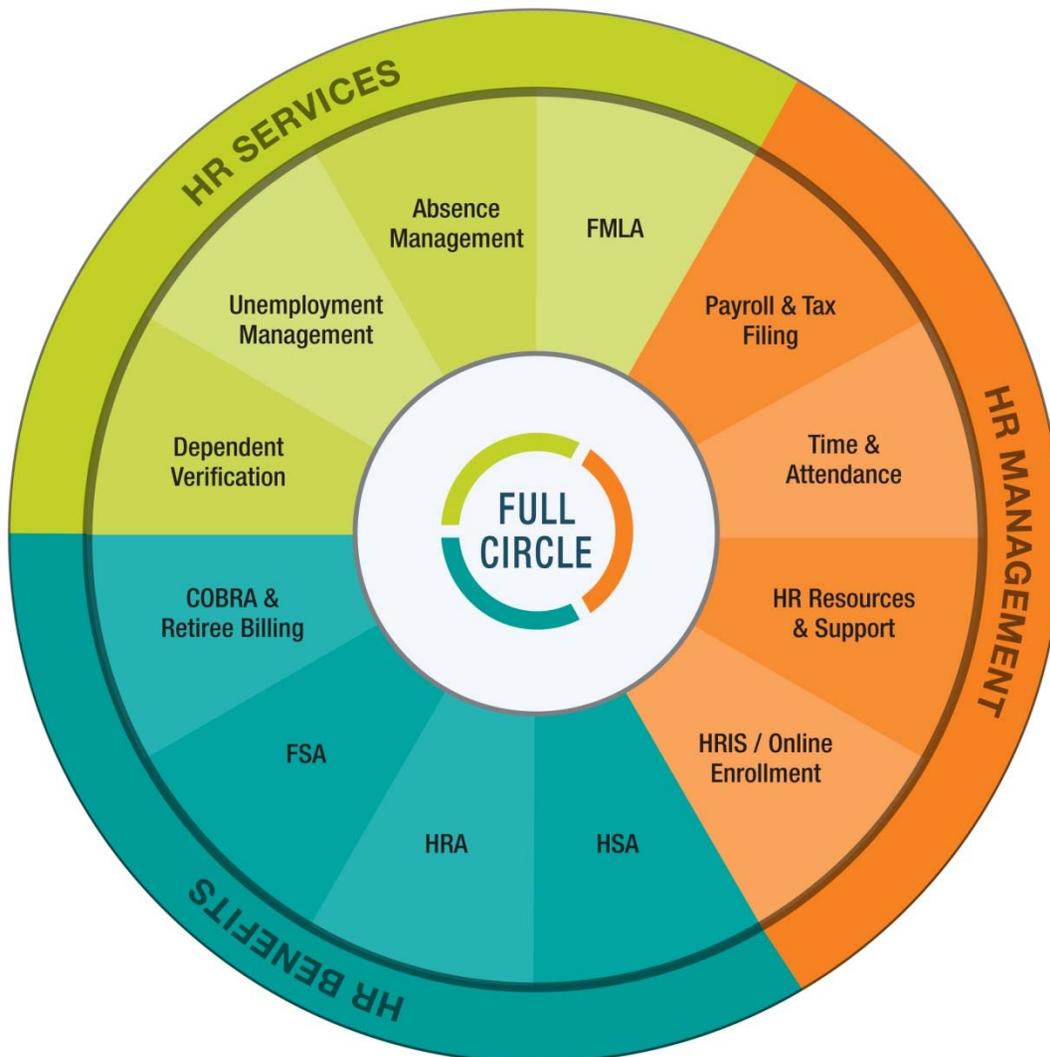
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Who is a Large Employer?



- An employer is large if it employed an average of at least 50 full-time employees on business days during the preceding calendar year.
- In determining the number of full-time employees, an employer must add up the total number of hours worked in a month by part-time employees, divide by 120, and add that number to the number of full-time employees.
- A “full-time employee” for any month is an employee who is employed for an average of at least 30 hours of service per week.

Determining who is a large employer



- An employer must take part-time employees into account to determine whether it is an applicable large employer.
- The number of full-time equivalents the employer employed during the preceding calendar year are taken into account.
- All employees (including seasonal workers) who were not employed on an average of at least 30 hours of service per week for a calendar month in the preceding calendar year are included in calculating the number of full-time equivalents for that calendar month.

Who is a Large Employer?



- The approach for converting part-time employees to full-time equivalents includes two steps:
 - Step 1: Calculate the aggregate hours of service in a month for employees who are not full-time employees for that month. (Do not include more than 120 hours of service for any employee.)
 - Step 2: Divide the total hours of service from Step 1 by 120.
- The result is the number of full-time equivalent employees for the month.

Who is a Large Employer?



- Specifically, the proposed method entails the following steps:
 - Step 1: Calculate the number of full-time employees (including seasonal employees) for each calendar month in the preceding calendar year.
 - Step 2: Calculate the number of full-time equivalents (including seasonal employees) for each calendar month in the preceding calendar year
 - Step 3: Add the number of full-time employees and full-time equivalents obtained in Steps 1 and 2 for each month of the preceding calendar year.
 - Step 4: Add up the 12 monthly numbers from Step 3 and divide the sum by 12. This is the average number of full-time employees for the preceding calendar year.
 - Step 5: If the number obtained in Step 4 is less than 50, then the employer is not an applicable large employer for the current calendar year.

Who is a Large Employer?



Example:

- A firm with 35 full-time employees (30+ hours), also has 20 part-time employees who all work 24 hours per week (so each employee who works 24 hours per week, works a total of 96 hours per month).
- These part-time employees' hours would be counted as the equivalent of having 16 full-time employees, as follows:
 - $20 \text{ employees} \times 96 \text{ hours per month per employee} / 120$
 - $= 1920 / 120$
 - = the equivalent of 16 "full-time" (30+ hours a week) employees.

Introduction



- The Employer Mandate is effective on January 1, 2014, but the IRS has provided three transition rules for noncalendar-year plans:
 - **Relief for employees eligible on Dec. 27, 2012.** An employer will not face penalties for full-time employees who were eligible for coverage as of Dec. 27, 2012, as long as the employer offers them affordable coverage with a minimum 60% value by the first day of the plan year that starts in 2014.
 - **Relief if coverage offered to at least one-third of employees.** For employees not eligible for the above plan as of Dec. 27, 2012, the same penalty relief applies if the employer offered at least one-third or more of its employees coverage during the most recent open enrollment period before Dec. 27, 2012.
 - **Relief if at least one-quarter of employees covered.** The penalty relief also would apply if at least one-quarter of employees were covered under one or more noncalendar-year plans that had the same plan year on Dec. 27, 2012.

Introduction



- The last two safe harbors would be available for employees who are offered affordable coverage with a minimum 60% value by the first day of the plan year that starts in 2014 and were not – or would not have been – eligible for coverage under any calendar-year plan operating on Dec. 27, 2012.
- In all cases, an employer could determine the percentage of covered employees as of the end of the most recent enrollment period or any date between Oct. 31, 2012, and Dec. 27, 2012.

Introduction



- The IRS guidance addresses how to measure full-time status for ongoing employees and new hires, with special rules for new variable-hour or seasonal employees who may work 30 hours per week during some months but not others.
- The guidance creates enforcement safe harbors; employers measuring full-time employee status as described in the relevant safe harbors may avoid paying shared-responsibility penalties.

Safe Harbors



- For the employer mandate purposes, a full-time employee is anyone who works on average at least 30 hours per week or – under expected regulations – 130 hours per month (sometimes referred to as the “minimum-hours threshold”).
- Full-time status is easy enough to determine when an employee is hired to work a regular number of hours each week on an ongoing basis.
- But for variable-hour employees, such as part-time or seasonal staff, the task is more challenging.

Who is a Full-Time Employee



- **Who are considered employees?**
 - Use common law standard, control
- **How are hours of service counted?**
 - Hourly employees. To determine the full-time status of employees paid on an hourly basis, employers must use actual hours of service (including leave) for which payment is made or due.
 - Nonhourly employees. Employers may choose from three methods to determine the full-time status of nonhourly employees:
 - Actual hours of service. Count actual hours of service worked for which payment is made or due.
 - Days-worked equivalency. Credit an employee working at least one hour of service in a day with eight hours of service for that day.
 - Weeks-worked equivalency. Credit an employee working at least one hour of service in a week with 40 hours of service for that week.

Who is a Full-Time Employee?



- Hours of service include paid leave.
- Employers must count all of the hours of service for which an employee is paid or is entitled to payment, including paid leaves of absence such as:
 - Vacations
 - Holidays
 - Leave for illness, disability or other incapacity
 - Layoffs
 - Jury or military duty leave

Safe Harbors



- **Defined time periods.** The safe harbors allow employers to use these time periods to predict whether an employee will qualify as full-time for shared-responsibility purposes:
 - **Measurement period.** Employers select a fixed three- to 12-month measurement period for determining whether an employee has averaged at least 30 hours of service per week.

Safe Harbors



- **Stability period.** After meeting the minimum-hours threshold during the measurement , employees must be treated as full-time – regardless of actual hours worked – during a subsequent “stability period,” provided they remain employed.
- Employees who fail to meet the minimum-hours threshold during the measurement period do not have full-time status during the stability period and will not trigger shared-responsibility penalties.

Safe Harbors



- The stability period can't be shorter in duration (number of months) than its associated prior measurement period.
- If an employee meets the minimum-hours threshold during the measurement period, then the ensuing stability period for coverage availability must last at least six full, consecutive calendar months.
- If the employee did not meet the minimum-hours threshold, the stability period cannot be longer than the measurement period.

Safe Harbors



- **Optional administrative period.** Employers may need time after the measurement period ends to decide which employees must be offered coverage during the ensuing stability period.
- The safe harbor allows an optional “administrative period” between the measurement and stability periods so employers can notify employees qualifying for coverage and handle enrollment tasks.
- The administrative period can’t exceed 90 days or be applied in a way that imposes a gap in employees’ coverage.

Safe Harbors



- **Uniform periods, except between certain employee groups.** An employer generally must apply its selected measurement and stability periods on a consistent basis to employees.
- But an employer's measurement and stability periods can vary in length and/or in starting and ending dates for different specified categories of employees:
 - Collectively bargained versus non-collectively bargained employees,
 - Salaried versus hourly employees, and
 - Employees located in different US states.

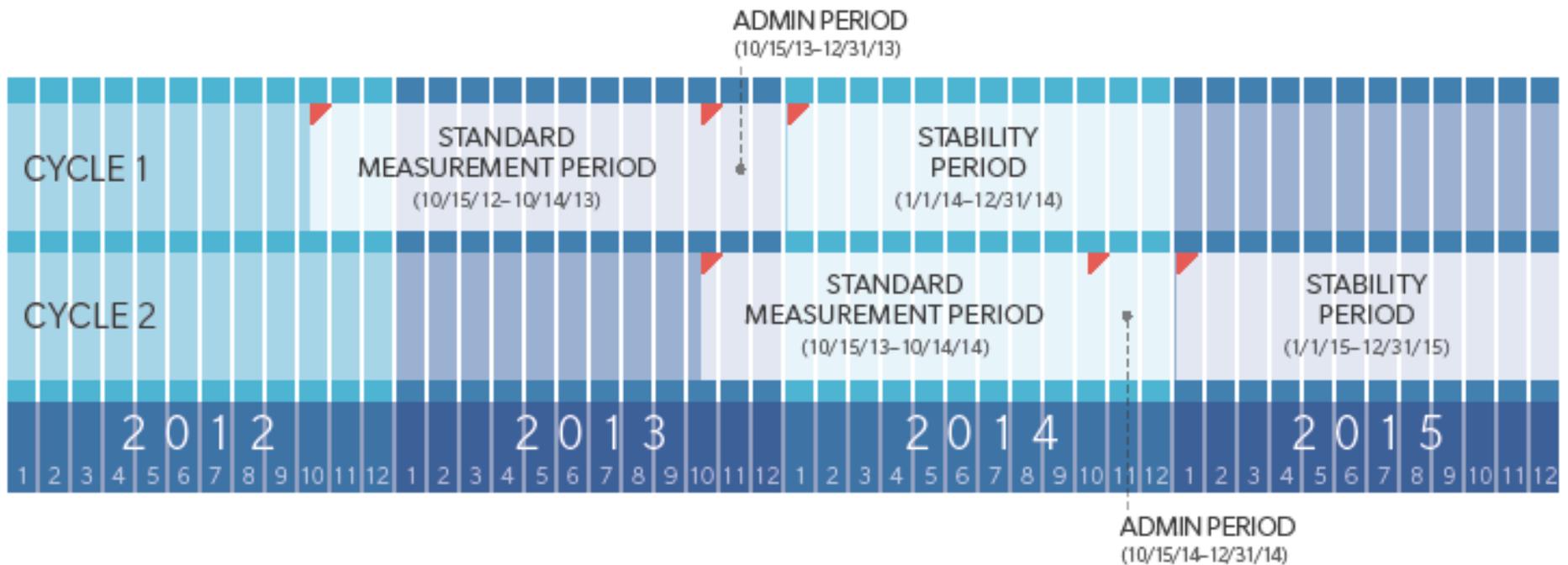
Safe Harbor for Ongoing Employees



- One of two main safe harbors for determining full-time status applies to “ongoing employees”: those who have worked for the employer throughout at least one “standard” measurement period.
- **Standard measurement and stability periods.** The measurement and stability periods that an employer selects to apply to its ongoing employees are called its “standard” measurement and stability periods.
- **Optional administrative period.** Where employers decide to use this option, the administrative period adopted can’t reduce or increase the length of the standard measurement or standard stability period.
- To prevent the administrative period from causing any gaps in a person’s coverage (once the periods have completed a full cycle), the administrative period must overlap with the prior standard stability period.



Safe Harbor for Ongoing Employees



Safe Harbor for New Employees



- A second safe harbor applies for determining which new employees must be treated as meeting the minimum-hours threshold.
- This safe harbor has a simple rule for new hires expected to meet the threshold from their start dates, plus a series of more complex rules for new variable-hour and seasonal employees.
- In addition, an employer must establish separate “initial” measurement and stability periods for new hires that may overlap with its “standard” measurement and stability periods for ongoing employees.

Safe Harbor for New Employees



- **New hires expected to work full time:** If a new employee in an eligible class is reasonably expected to average at least 30 hours of service per week, offering qualifying coverage that takes effect by the end of the employee's initial three full calendar months of employment satisfies the shared-responsibility mandate.
- But that may not satisfy the 90-day cap on waiting periods.
- Interaction with 90-day maximum waiting period.
 - The waiting-period guidance sets stricter timelines than the shared-responsibility safe harbor for these new employees.
 - Coverage for new hires expected to meet the minimum-hours threshold must become effective by the 91st day after the employee becomes eligible (assuming the employee timely completes any enrollment steps).

Safe Harbor for New Employees



- Initial measurement and stability periods. The initial measurement and stability periods are unique to each new variable-hour or seasonal employee, reflecting the individual's actual start date or, alternatively, the start of the first calendar month after that date.
- Many employers might want to have all initial measurement periods start on the first of a calendar month; otherwise, every day of the year potentially could start a new measurement period.

Applicable Rules



- Several limitations, however, must be considered in setting these periods and measuring variable-hour and seasonal employees' status for shared-responsibility purposes.
- These restrictions are highlighted below, followed by examples illustrating the key principles:
 - The initial measurement period and administrative period, combined, can't extend beyond 13 months, plus a fraction of a month. Specifically, the combined periods must end by the last day of the calendar month that starts on or immediately after the first anniversary of an employee's start date.
 - New employees' initial stability periods can't be shorter than the standard stability period for ongoing employees.
 - In operation, this restriction will generally require a 12-month initial stability period for new employees if an employer uses a 12-month standard stability period.

Applicable Rules



- Once a new employee has completed an initial measurement period and stability period must be tested for full-time status using the employer's standard measurement periods.
- Starting with that standard measurement period, the employee's full-time status is determined at the same time and using the same conditions applied to other ongoing employees.
 - An employee who meets full-time status during the initial measurement period must be treated as full-time for the entire initial stability period.
 - This is so even if the employee's hours drop below the full-time threshold during the overlapping or immediately following standard measurement period.

Important Conditions



- If an employee fails to meet full-time status during the initial measurement period, then both of these conditions apply:
 - The initial stability period can't be more than one month longer than the employee's initial measurement period and can't extend beyond the standard measurement period (plus any administrative period) in which the employee's initial measurement period ends.
 - If the employee meets full-time status during the overlapping or immediately ensuing standard measurement period, the employee must be treated as full-time for the entire stability period associated with that standard measurement period.
 - This is so even if that stability period starts before the close of the employee's initial stability period.

90 Day Waiting Period



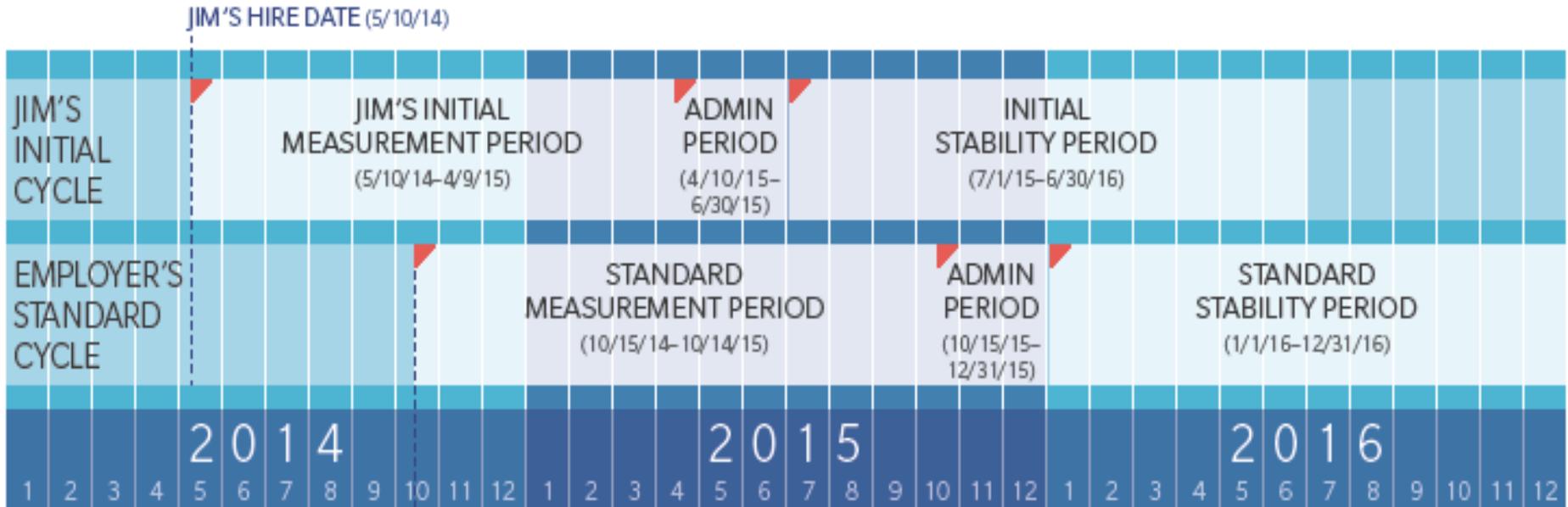
- For a new variable-hour or seasonal employee, calculating the 90-day limit on any administrative period uses total days between the start date and the date the employee is first offered coverage, reduced by the number of days in the initial measurement period.
- This means an employer choosing to simplify tracking by starting all initial measurement periods on the first of a month will have fewer days after the initial measurement period ends to handle the enrollment process before the employee's stability period must begin.



Example



Example of variable-hour employee safe harbor and calendar-year plan: 11-month initial measurement period followed by single administrative period:



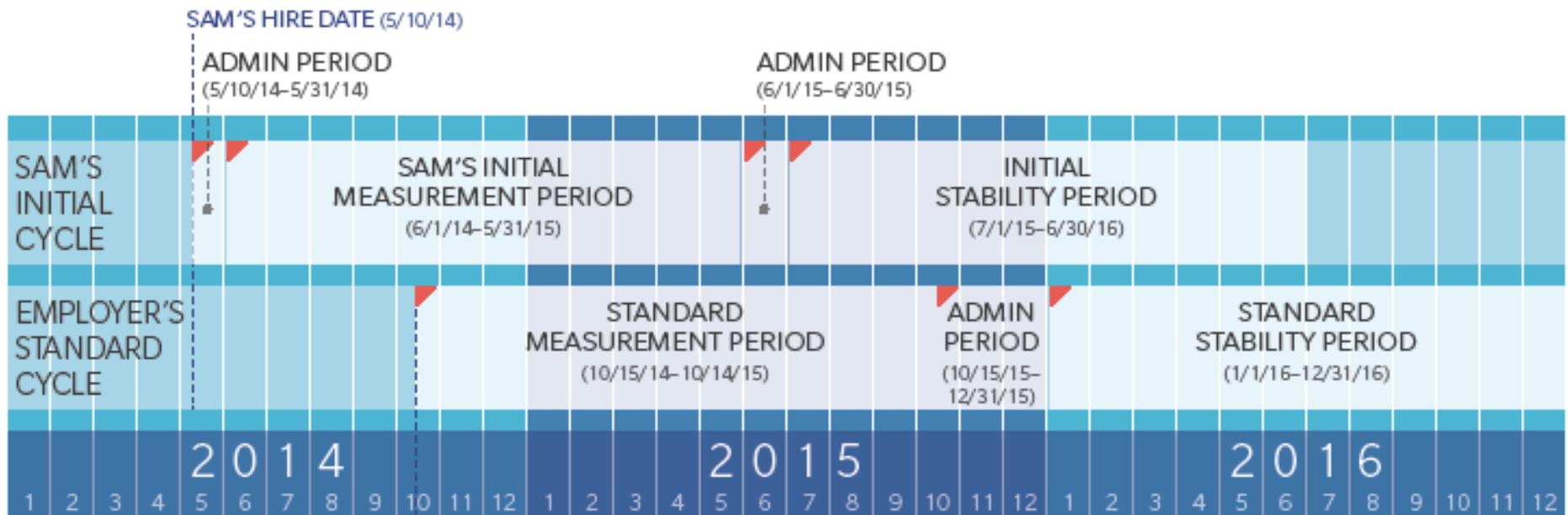
Employer must also begin measuring Jim's hours with its first standard measurement period occurring after his start date.



Example



Example of variable-hour employee safe harbor and calendar-year plan: 12-month initial measurement period using split administrative period



Employer must also begin measuring Sam's hours with its first standard measurement period occurring after his start date.

Special rules for Educational Employers



- IRS has proposed special rules to help educational employers – including governmental, for-profit and nonprofit employers – determine employees' full-time status.
- 501-hour limit. For most periods of absence with zero hours of service, educational employers would need to take into account no more than 501 hours in a calendar year.

Special Rules for Educational Employers



- Employees returning from breaks. Educational employers could use one of two averaging methods for employees treated as continuously employed (rather than terminated and rehired) after an “employment break period.”
- An employment break period is a period of at least four consecutive weeks (disregarding unpaid FMLA, military service or jury duty leave) during which an employee has no hours of service.

Special rules for Educational Employers



- Under the proposal, an educational employer may either:
 - Determine the employee’s average hours of service per week during the measurement period after excluding the employment break period, and use that average for the entire measurement period
 - Credit employees with hours of service for the employment break period at a rate equal to the employee’s average weekly rate during the weeks that weren’t part of an employment break period.

Special Rules for Unpaid Absences



- New rules to prevent certain unpaid absences from inappropriately restarting an employee's initial measurement period or triggering a new 90-day waiting period for coverage.
- Absences of 26 or more weeks. If the period with no hours of service is at least 26 consecutive weeks, the employer may treat the employee as having been terminated and then rehired as a new employee.



Special Rules for Unpaid Absences



- Rule of parity for absences shorter than 26 weeks. An employer may choose to apply a “rule of parity” for periods of no service lasting less than 26 weeks.
- An employee rehired after terminating employment may be treated as a new employee if the break in service is at least four weeks long and exceeds the employee’s period of employment immediately preceding the absence.

Special Rules for Unpaid leave



- IRS has proposed two methods for averaging hours when lookback measurement periods include certain types of unpaid leave – that is, unpaid Family and Medical Leave Act (FMLA) leave, jury duty leave, or military leave under the Uniformed Services Employment and Reemployment Rights Act (USERRA).
- Under the proposal, employers may choose to apply one of these methods:
 - Exclude leave. Exclude the period of special unpaid leave to determine the average hours of service per week during the entire measurement period.
 - Credit hours. Credit an employee’s special unpaid leave with hours of service at a rate equal to the employee’s average weekly rate during weeks when no special unpaid leave is taken.



Establishing safe-harbor time periods



- **When to start measuring hours worked.** Some employers may want to impose a 12-month measurement period followed by an administrative period, with a stability period matching the calendar year.
- To do so, employers need to begin tracking hours of service by **Oct. 15, 2012**, to set the first stability period equal to calendar-year 2014.
- For employers that currently record hours of service, this may simply involve sharing already-captured payroll or workforce management data with benefit staff and enrollment vendors.
- For other employers, however, settling on a strategy and beginning to track needed data this autumn may prove more daunting.



Establishing safe-harbor time periods



- For employers with large numbers of short-term employees, shorter measurement and stability periods may be optimal, at least for certain permitted categories of employees.
- But when designing a health benefit strategy to minimize shared-responsibility penalties, a 12-month stability period generally should be considered before alternative approaches to determine eligibility.



Transition Measurement Period



- Solely for purposes of stability periods beginning in 2014, employers may adopt a transition measurement period that is shorter than 12 months but that is no less than 6 months long and that begins no later than July 1, 2013 and ends no earlier than 90-days before the first day of the plan year beginning on or after January 1, 2014 (90- days being the maximum permissible administrative period).

Employer Next Steps



- Employers may want to consider the following actions:
 - Decide whether or how to adjust plan waiting periods.
 - Gather data to determine whether or how the safe harbors are relevant.
 - Consider safe-harbor approaches for offering 2014 health coverage.
 - If using safe harbors, determine optimal measurement, administrative and stability periods.
 - Amend plan documents and other related materials.



Questions



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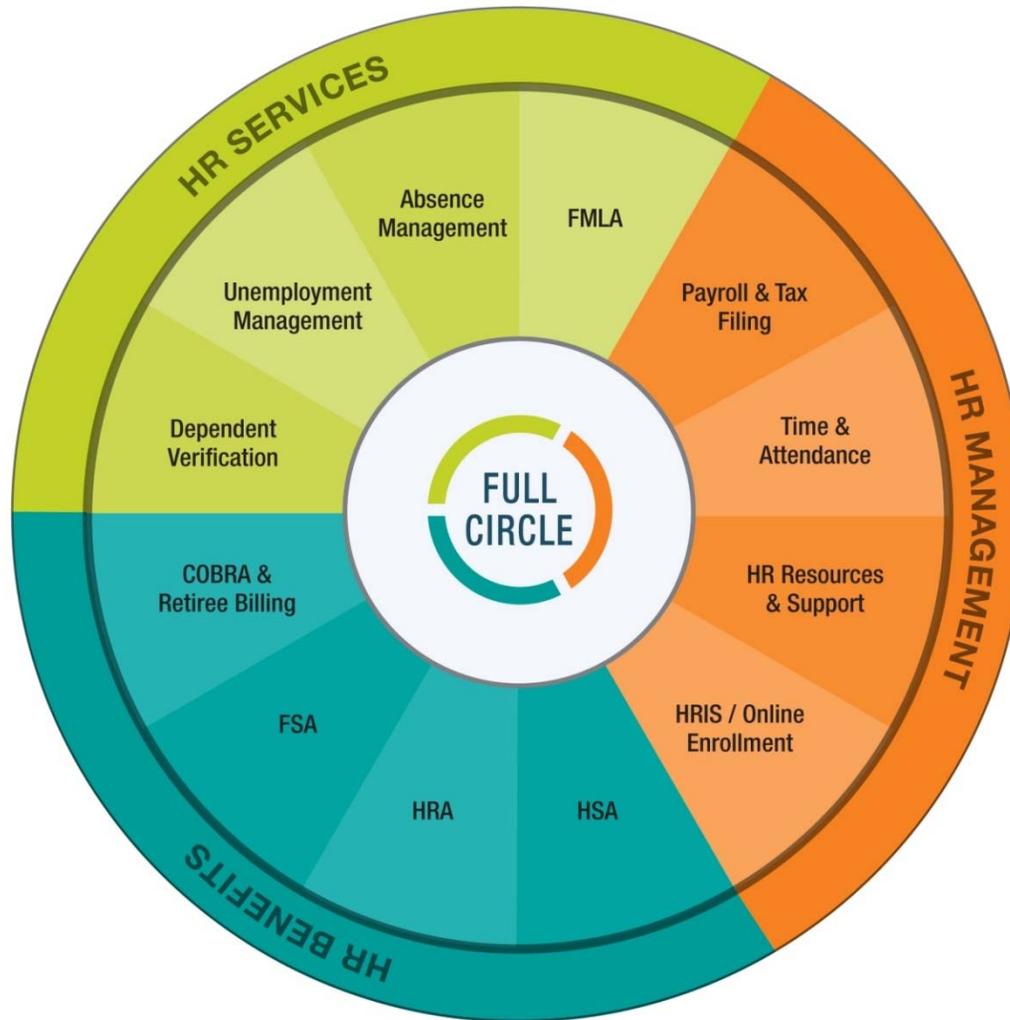
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