ACA Essentials

A Guide to ACA Regulations, Requirements & More

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Summary of ACA Employer Mandates

Last Updated
July 18, 2013

Preventive Care

Effective Date: Plan years beginning on or after 8/1/12

- Services include care such as mammograms, cancer screenings, prenatal care, domestic violence counseling, contraceptives, immunizations, and other services.
- Plans can no longer charge a copayment, coinsurance or deductible for these services when delivered by a network provider.

Summary of Benefits & Coverage (SBC)

Effective Date: 9/23/12

- Employers are required to provide participants a HHS-approved summary of benefits and coverage explanation prior to enrollment, re-enrollment, or if material modifications are made.
- For each willful violation, $1,000 penalty.
- Plan sponsor or insurance company must submit certain information to HHS.
- This requirement is in addition to summary plan description and summary of material modification requirements under ERISA.

Payroll Tax Increases

Effective Date: 1/1/13

- Medicare Part A tax rate increases by 0.9% (from 1.45% to 2.35%) on earnings over $200,000 for individual taxpayers, $250,000 for married couples filing jointly and $125,000 for married taxpayers who file separately.
- Employer is responsible for withholding the Additional Medicare Tax from wages or compensation it pays to an employee in excess of $200,000 in a calendar year.
- A 3.8% surtax will be added to all investment income (interest, dividends, cap. gains, annuity withdrawals, passive rent, and royalties) for individual taxpayers earning over $200,000; $250,000 for married couples.

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Health Flexible Spending Account Limits

Effective Date: 1/1/13

- Limits the amount of contributions to a flexible spending account for medical expenses to $2,500 per year, increased annually by the cost of living adjustment.
- Limit based on plan year, not tax year.

W-2 Reporting

Effective Date: 1/1/12 optional; 1/1/13 required

- Applies to employers that issue 250+ W-2's in a year.
- Employers must report the aggregate cost of employer-sponsored health care coverage on the Form W-2.
- The amount reported is not taxable.
- The reporting is informational only and intended to provide greater transparency into overall health care costs.

90-Day Waiting Period

Effective Date: 1/1/14

- Group health plans cannot apply a waiting period of longer than 90 days.
- Waiting period doesn't begin until an employee is "otherwise eligible" for coverage.
- Certain conditions apply to newly-hired variable hour employees.

Comparative Effectiveness Fees (PCORI fee)

Effective Date: plan/policy years ending on or after 10/1/12 and before 10/1/19

- Applies to fully-insured and self-funded group health and accident plans (with some exceptions) as well as individual fully-insured policies.
- Does not apply to HIPAA accepted benefits or most health FSAs.
- Fees will be used to fund the Patient-Centered Outcomes Research Institute.
- Fully insured group health plans – insurer is responsible for calculating and paying the fee.

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- Self-funded health plans – plan sponsor is responsible for calculating and paying the fee:
  - Year 1 (2012) - $1 per covered life per year under the plan (including dependents).
  - Year 2 (2013) - $2 per covered life per year under the plan (including dependents).
  - Years 3 – 7 (2014 – 2018) – to be indexed.
- Payment due by 7/31 of the calendar year immediately following the end of the plan year via fax form 720.
- For calendar year plans, 2012 plan year fees must be paid by 7/31/13.

Reinsurance Fee

Effective Date: 2014 – 2016 benefit years

- Temporary "reinsurance" payments to insurers who cover higher-risk populations.
- Fully insured group health plans – insurer is responsible for calculating and paying the fee.
- Self-funded health plans – plan sponsor is responsible for calculating and paying the fee:
  - Self-funded plan sponsors should submit 2014 plan enrollment data to HHS by 11/15/13.
  - Within 15 days HHS will notify the plan sponsor of the amount due.
  - Payment is due to HHS within 30 days of notification.
- 2014 fee is $5.25 per covered life per month ($63 per year). This could change under final regulations.
- Fee ***does*** apply to COBRA participants; ***does not*** apply to retirees who are also enrolled in Medicare.
- ***Does not*** apply to HIPAA accepted benefits or most health FSAs.
- Benefit year is based on calendar year; not an employer's actual plan year.

Exchange Notice

Effective Date: 10/1/2013

- Employers required to provide written notice to employees about the Marketplace (Exchanges) offered in 2014.
- Notice must contain the specific information regarding exchanges and eligibility for premium tax credits and cost sharing reductions, if applicable.
- Model notices posted at www.dol.gov/ebsa. Notices must be provided:
  - Regardless of plan enrollment status or part-time or full-time status
  - To all current employees prior to 10/1/13 Marketplace open enrollment
  - To all new employees within 14 days of hire date
  - Free of charge

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Employer Shared Responsibility (Play or Pay; Free Rider)

Effective Date: 1/1/15

- Employers with 50+ employees that do not offer coverage and have at least one full-time employee who receives a premium tax credit will be assessed a fee of $2,000* per full-time employee, excluding the first 30 employees
- Employers with 50+ employees that offer coverage (but is unaffordable or does not provide the minimum value) and have at least one full-time employee receiving a premium tax credit, will pay the lesser of $3,000 for each employee receiving a premium credit or $2,000 for each full-time employee, excluding the first 30 employees.
- Coverage must be offered to 95% of 'full-time employees' and their dependents
  - Spouses are not included in definition of 'dependent' but adopted and foster children are
  - FTE = average of 30 hrs/week or 130 hrs/calendar month
- Coverage must be affordable
  - EE only contribution not greater than 9.5% of household income
  - Affordability Safe Harbor permits determination based on employee W-2 income, OR hourly rate of pay*130, **OR** monthly salary
- Coverage must provide minimum value
  - Minimum value = pays for at least 60% of all plan benefits excluding co-pays, deductibles, co-insurance and employee contributions
  - MV Actuarial calculator to be developed by Agencies to measure 4 categories of benefits:
    1. Physician and mid-level practitioner care
    2. Hospital and emergency room services
    3. Pharmacy benefits
    4. Laboratory and imaging services

* The penalty is determined on a monthly basis (1/12 of $2,000 for any month in which the penalty applies)

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Summary of Benefits & Coverage
ACA Requirements

Updated: May 1, 2013

ACA requires an employer to distribute a Summary of Benefits and Coverage ("SBC") to all eligible individuals under the employer's group health plans. The SBC describes the benefits and coverage available under the Plan in a consistent 8 page format. Insurers of fully insured group health plans are responsible for creating the SBC; however, the Plan sponsor is ultimately responsible for their distribution. There are certain restrictions on how and when the SBC must be delivered.

When must the SBC be distributed?

- Upon initial enrollment – with enrollment materials.
- At open enrollment – with enrollment materials, but if renewal is automatic – within 30 days before the beginning of the plan year.
- Upon special enrollment – within 90 days after enrollment.
- Upon request – within 7 business days.
- Material Modification – if there is a change that impacts the SBC, the SBC must be provided to eligible employees and dependents 60 days prior to the effective date of the change.

How may the SBC be distributed?

- Printed forms mailed to the participant's home. If any dependents reside at a different address, a separate mailing to that address is required.
- Electronically via email or intranet access at work, as long as :
  - You can ensure receipt of the email which includes the document or a link to the document;
  - The format is readily accessible (HTML, Word, PDF);
  - They are advised them of their right to a paper copy at no cost;
  - If posted to an intranet site, a separate notice is sent alerting them of the SBC's importance and location
- For those individual's that don't have intranet or email access, it is recommended that a paper copy be sent to their home.

You should contact your insurers to ensure that you and your employees receive the SBC's in time for your annual open enrollment period.

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Points to Consider…

Before You Redesign or Discontinue Offering Employer Group Health Coverage

Pro's to Maintaining Coverage

- Insurance premiums are tax deductible
- Employee attraction and retention

Con's to Discontinuing Coverage

- ACA "Play or Pay" penalties are not tax deductible
- If the Employer's plan is to give Employees money to buy coverage through the exchange:
  - Stand-alone HRA's are not permissible as of 1.1.14
  - Money put into an Employee's paycheck will be considered taxable income
  - Not tax deductible for the Employer
- Employees driven to the Exchanges are still going to come to the Employer with frustrations/questions

Warning on workforce redesign

- Potential ERISA and ACA claims if significant redesign of workforce
  - Ex. A class of Employees are currently working 40 hours/week and are benefit eligible. The Employer cuts their hours to 28/week to make them non-benefit eligible to avoid the "Play or Pay" penalty. This could be considered an 'adverse employment action' and trigger a class action lawsuit far more expensive than the penalty and/or just continuing a minimum value plan.

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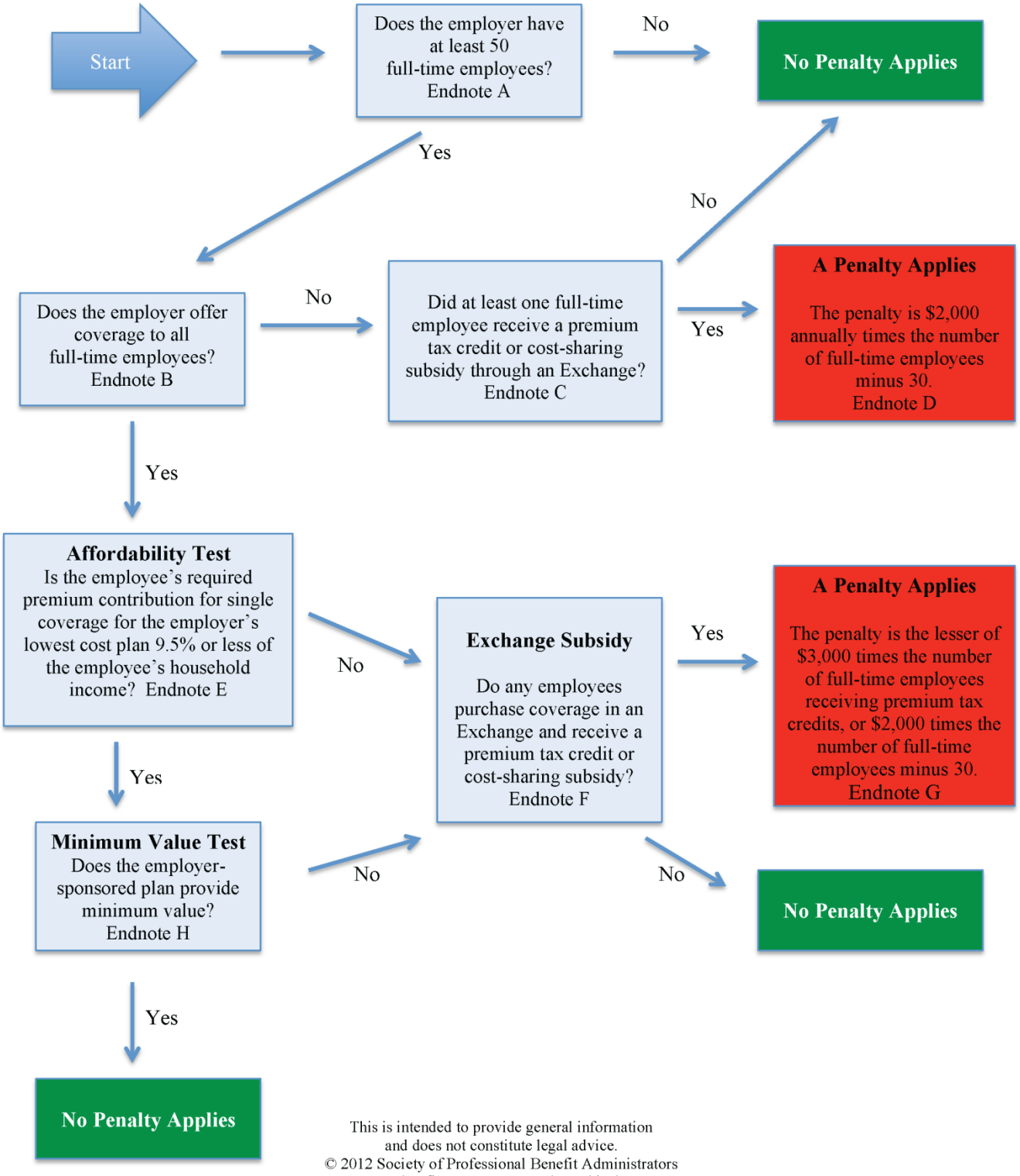
PPACA "Play or Pay" Penalties Flowchart

Beginning in 2015



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“Play or Pay” Flowchart Endnotes

Endnote A – Employers count full-time employees (or full-time equivalents) on business days during the preceding calendar year. According to IRS Notice 2011-36, the “Patient Protection and Affordable Care Act” (called ACA by the agencies) treats an employee who has an average of at least 30 hours of service per week as a full-time employee. IRS contemplates that proposed regulations would provide that 130 hours of service in a calendar month would be treated as the monthly equivalent of at least 30 hours of service per week.

An employee’s hours of service would include each hour for which an employee is paid, or entitled to payment by the employer on account of a period of time during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. IRS further contemplates that no more than 160 hours of service would be counted for an employee on account of any single continuous period during which the employee was paid or entitled to payment but performed no duties. See IRS Notice 2012-58 for more.

Endnote B – The current interpretation of the statutory language requires the offering of single-only coverage to avoid the penalty. However, there are discussions that the interpretation could change to include the offering of dependent coverage to avoid the penalty. A penalty could be triggered if even one full-time employee in a controlled group is not offered health coverage. IRS contemplates in IRS Notice 2011-36 that the proposed regulations to be released at some future date on the employer shared responsibility provisions will make clear that an employer offering coverage to “all, or substantially all” of its full-time employees will not be subject to the §4980H(a) provision. The definition of “substantially all” will be important, especially for employers who have plans that are in compliance with IRC section 105(h), but do not offer coverage to all full-time employees.

Endnote C - Two types of subsidies are required to become available in 2014: health premium tax credits and cost- sharing reductions. These subsidies are available to individuals with household income starting at 100% of the federal poverty level up to 400% of the federal poverty level. 400% of the federal poverty level in 2014 for a family of four is estimated to be approximately $91,000. Household income includes the income of the taxpayer and all individuals for whom the taxpayer can claim a personal exemption.

Health premium tax credits operate on a sliding scale. The tax credit begins at 2% of household income for taxpayers at 100% of the federal poverty level and phases out at 9.5% of household income for those above 400% of the federal poverty level. For example, an individual at 100% of the federal poverty level would be expected to pay 2% of their household income for coverage; the premium tax credit would equal the balance of the cost of coverage for a “benchmark plan” (defined as the second-lowest-cost plan in the Exchange). No one would receive a credit that is larger than the amount they actually pay for their plan.

Cost-sharing reductions lower the annual out-of-pocket expenditures for deductibles, coinsurance, copayments and similar charges. Cost-sharing reductions do not include premiums, balance billing amounts for non-network providers or spending for non-covered services. They phase out after household income exceeds 400% of the federal poverty level.

Endnote D – This is the §4980H(a) penalty; it is calculated on a monthly basis. No level of employer contribution is required to avoid this penalty. Employers are not subject to this penalty for failing to offer coverage to an employee for the initial three calendar months of employment.

Endnote E - IRS’ current interpretation of the affordability test (for purposes of calculating an employer penalty) is based on the required contribution for single coverage. This could change. An employee’s W-2 wages may be used to determine affordability through 2014 (IRS Notice 2012-58).

Endnote F - In a proposed regulation, the IRS stated that family members would **not** be eligible for the advance premium tax credits when affordable coverage was available to the employee but not to the family. The final IRS regulations on the premium tax credits (released in June 2012) have placeholders for addressing the issue of affordability for family members. The issue remains under discussion. The cost estimates of the premium tax credits to the American taxpayers were based on the assumption that only employees would be eligible for the premium credits when unaffordable coverage was offered.

Endnote G - This is the §4980H(b) penalty; it is calculated on a monthly basis.

Endnote H - Under the minimum value rule, an employer must pay at least 60% of the cost of a basket of health care expenses. The agencies are in the process of deciding what health care expenses will be in the basket. The IRS released a request for comments (Notice 2012-31) on several possible approaches to determining whether health coverage under an employer-sponsored plan provides “minimum value.” These approaches include an actuarial value calculator, safe harbors in the form of checklists, or certification by an actuary. Most employer-sponsored plans, excluding mini-meds, are expected to meet the minimum value requirements, according to a report released by HHS.

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The State of Health Reimbursement Accounts

Under ACA

Health Reimbursement Accounts (HRA's) have been a popular healthcare funding approach for employers for years. However, that may all come to an end under health care reform. HRA's have typically been paired with a high deductible health plan to help employees offset expenses that fall under the health plan deductible, but some employers offer stand-alone HRA's. The HRA plan limits the amount of benefits the employee can use in a given plan year. However, as of January 1, 2014, health care reform bans annual and lifetime dollar coverage limits on health care expenses.

Many employers intended to use stand-alone HRA's as the vehicle to fund employees who choose to elect coverage through the federal Marketplace (the Exchange). With the ban on coverage limits, these employers are left wondering how - and if - to restructure their HRA plan. These questions were addressed in the 11th set of FAQ's issued by the Departments of Labor, Treasury and Health and Human Services on January 24, 2013. Questions 2 – 4 provide clarification of how HRA's can (or cannot) work with the Federal Exchanges.

What we learned:

- Stand-alone HRA's will no longer be permitted as of 2014 since they will violate the annual dollar limits.
- HRA's cannot be integrated with individual market coverage or an employer plan that provides coverage through individual policies.
- An HRA will not be treated as "integrated with other coverage" unless the employee receiving the HRA is actually enrolled in the other coverage. Any HRA that credits additional amounts to an individual who is not enrolled in the primary employer provided coverage will violate the limit requirement.

To view the full set of 'FAQS ABOUT AFFORDABLE CARE ACT IMPLEMENTATION (PART XI)', click here.

The Departments anticipate issuing future guidance addressing HRA's. BCC will keep you apprised as updates are released.

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Full-Time Employee Determination

The ACA's Employer Shared Responsibility rules require large employers (50+ employees) to offer affordable health coverage to at least 95% of its full time employees and their dependents. Due to the potential penalties for non-compliance, it is important for employers to understand who is considered a full-time employee.

The Employer Shared Responsibility rules apply month-by-month. Recognizing that a month-by-month application would be administratively challenging, the proposed IRS guidance offers employers an optional safe harbor to determine an employee's full-time status.

Hours of Service Rules Apply

Before you can calculate if an employee works 30 hours of service per week, you need to understand what constitutes an hour of service.

Hours of service include each hour for which an employee is paid (or entitled to be paid) for performing a service. This includes periods of time for which an employee is entitled to be paid but duties are not performed (i.e. paid leave):

- Holidays
- Layoffs
- Military Leave
- Disability Leave
- Jury Duty
- Leave of Absence
- Sick Days
- Vacation

On-Going Employee Safe Harbor

Standard Measurement Period (SMP)
A look-back period to determine an on-going employee's full time status. The SMP must be no less than 3 and no more than 12 months and is used to determine if the employee averaged at least 30 hours of service per week.

Stability Period
A period of at least six consecutive calendar months following the SMP. It cannot be longer the SMP.

Administrative Period
A period of up to 90-days, between the SMP and stability period, to identify full-time employees, notify and enroll employees. The Administrative period must overlap the prior SMP to avoid gaps in coverage.

- For on-going employees, employers can use a SMP of 3 to 12 months
- Employers can choose the months in which the SMP starts and ends, but must do so on a uniform and consistent basis for all employees in the same category
- If an employee works full-time during the SMP, employer must treat as full-time during stability period of 6 to 12 months (and not shorter than SMP) even if the employee's number of hours decrease during the stability period
- If employee does not work full-time during the SMP, employer may treat as not full-time during the stability period that is no longer than the SMP
- Different rules may apply to employees moving into full-time status during year

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New Employee Safe Harbor

Types of New Employees

Non-Variable Hour Employee	If, at his/her start date, it **can** be determined that the employee is reasonably expected to work an average of 30 hours or more per week.
Variable Hour Employee	If, at his/her start date, it **cannot** be determined that the employee is reasonably expected to work an average of 30 hours or more per week.
Seasonal Employee	Through 2014, employers can use a reasonable, good faith interpretation of the term "seasonal employee".

Initial Measurement Period (IMP)

A look-back period to determine a newly hired employee's full time status. The IMP must be no less than 3 and no more than 12 months and is used to determine if the employee averaged at least 30 hours of service per week.

** The initial measurement period must be the same as the standard measurement period.*

Stability Period

A period of at least six consecutive calendar months following the IMP. It cannot be longer the IMP.

- For new employees reasonably expected at start date to work full-time, employer will not be subject to penalties if it offers coverage within employee's first three months of employment
- For new "variable hour" and "seasonal employees," an employer can:
    1. use an "initial measurement period" of 3 to 12 months,
    2. a stability period that is same length as for on-going employees, and
    3. an administrative period of up to 90 days to determine plan eligibility, notify and enroll employees
- If new employee works full-time during the IMP, the employer must treat as full-time during stability period that is at least 6 months and is not shorter than the IMP
- If new employee does not work full-time during the IMP, employer may treat as not full-time during stability period that is not more than one month longer than the IMP
- Once a new employee has been employed for an entire SMP, they must also be tested for full-time status under the On-Going Employee method, beginning with that SMP
- An employee who works full-time during an initial or standard measurement period must be treated as full-time for the entire associated stability period
- If the employer uses an administrative period, the measurement period and administrative period combined may not extend beyond the last day of the first month beginning on or after 1-year anniversary of start date (i.e., approximately 13 months)

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Useful Links

We want to make things quick and easy for you to get to the facts you need. We've compiled a list of online resources where we often turn for the most UP-TO-DATE information.

The Henry J. Kaiser Family Foundation

An interactive ACA timeline:
http://healthreform.kff.org/timeline.aspx

IRS

ACA related tax provisions:
http://www.irs.gov/uac/Affordable-Care-Act-Tax-Provisions

Department of Labor

ACA regulations, guidance and FAQs:
http://www.dol.gov/ebsa/healthreform/

ERISA Self-Compliance tool for Health Care Reform and HIPAA:
http://www.dol.gov/ebsa/healthlawschecksheets.html

Department of Health and Human Services

Private health insurance related provisions (exchanges, SBC's, essential health benefits, etc.):
http://marketplace.cms.gov/
http://cciio.cms.gov/

US Chamber of Commerce

Resources including calculators, timeline, charts and FAQ's:
http://www.uschamber.com/health-reform

BCC Benefits Blog

Get all of our updates to "ACA Quick Essentials" and current news you can use:
http://benxcel.wordpress.com/

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About Us

BCC is a leading provider of outsourced solutions connecting Human Resources, Benefit Management, Specialty Administration and now, Private Benefit Exchanges.

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