

Health Care Reform

2016+

(95% of 50+ FTEs)

PAY or PLAY

This document is intended to provide you with a high-level understanding of the compliance requirements facing you and your employees. Please note that all details are a best interpretation of information available as of the print date and should not be construed as tax or legal advice. Due to continual legislative updates, details within this document are likely to change. This document will be revised frequently so please contact us periodically to determine if a revision is available.

Please note that the calendar year(s) used within illustrations and examples on pages 14-19 may be changed to reflect any timeframe. All examples were developed prior to the first delay issued July 3, 2013.

Pay or Play	Page
• What is Pay or Play	4
• Who Does it Affect?	4
• When is it Effective?	4
• Why Must You Comply?	4
Determining Company Size	Page
• Steps to Determine Company Size	5-6
• Worksheet Sample – Blank	7
• Worksheet Sample – Without Seasonal Employees	8
• Worksheet Sample – With a Seasonal Employee Exemption	9
• Worksheet Sample – Without a Seasonal Employee Exemption	10
Determining Which Employees are Full-Time	Page
• Steps to Determine Which Employees are Full-Time	11
• Definitions – Full-Time Employees and Dependents	12
• Definitions – Employee Categories	12
• Definitions – Time Periods Relevant to Ongoing Employees	13
• Illustration – Time Periods Applied to Ongoing Employees	14
• Definitions – Time Periods Relevant to New Employees	15
• Illustration – Time Periods Applied to a New Employee (qualifying as a full-time employee)	16
• Illustration – Time Periods Applied to Ongoing & New Employees	17
• Illustration – Time Periods Applied to a New Employee (not qualifying as a full-time employee)	18
• Example – Different Initial Measurement Periods on a Seasonal Employee	19
• Example – How to Determine if a Rehire is a New or Ongoing Employee	19
Penalties	Page
• Determining / Calculating Penalties	20-22

Initial Delay

On July 3, 2013 the U.S. Treasury Department delayed the Pay or Play mandate from January 1, 2014 to January 1, 2015 for all employers with 50 or more full-time equivalent employees.

Second Delay

On February 12, 2014 the U. S. Treasury Department delayed the Pay or Play mandate from January 1, 2015 to January 1, 2016 for all employers with 50-99 full-time equivalent employees.

Effective January 1, 2015

Only employers with 100 or more full-time equivalent employees will be subject to the Pay or Play mandate in 2015. These employers must offer coverage to at least 70% of their full-time employees (and their dependents). If the offered coverage is deemed unaffordable or as not meeting a 60% actuarial value, the employer will be subject to a fine if an employee receives a subsidy when purchasing coverage through Covered California.

Effective January 1, 2016

Employers with 50 or more full-time equivalent employees must comply with the Pay or Play mandate. Coverage must be offered to at least 95% of their full-time employees (and their dependents). If the offered coverage is deemed unaffordable or as not meeting a 60% actuarial value, the employer will be subject to a fine if an employee receives a subsidy when purchasing coverage through Covered California.

Transition Relief – Look Back Timeframe

For employers determining their options for 2015 and 2016, transition relief is available for employers close to the minimum full time employee threshold. Rather than being required to use a full 12 months to measure whether you meet the full-time employee minimum (or an equivalent number of part-time and full-time employees), you may measure using any 6-consecutive-month period. *[For example, you may use the period from January 1, 2014 through June 30, 2014 and then use the next six months to analyze results and determine next steps.]* However, if an employer is relying on the seasonal worker exception to determine their applicable large employer status, they must measure full-time and full-time equivalent employees over all of 2014, not the shorter 6-month period.

Transition Relief – Measurement & Stability Period

Additionally, on a one-time basis, in 2014 preparing for 2015, employers may use a measurement period of six months even with respect to a stability period – the time during which an employee with variable hours must be offered coverage – of up to 12 months.

Transition Relief – Non-Calendar Year Plans

An employer that maintains a play year policy may wait to comply with Pay or Play upon their renewal if they offered plan year coverage prior to December 27, 2012 AND if the coverage was offered to at least one third of its employees (full-time and part-time) at the most recent open enrollment OR the plan covered at least one quarter of the employees. If these conditions were not in place, an employer may be required to meet the compliance requirements of Pay or Play beginning January 1, 2015.

What is Pay or Play?

- Pay or Play, also known as Employer Shared Responsibility, is a provision of The Patient Protection and Affordable Care Act of 2010 (PPACA). Pay or Play requires employers who employ at least 50 full-time and full-time equivalent employees during the prior calendar year to offer health plan coverage to their full-time employees or pay a penalty.
- The offer of health plan coverage must meet minimum requirements. Coverage must be offered to at least 95% of all full-time employees (and their children) and it must offer minimum essential coverage that is both affordable and provides minimum value.

Who Does it Affect?

- Any employer that employed at least 50 full-time and full-time equivalent employees during the prior calendar year. For the purpose of defining 50 full-time employees, non-full-time employees are converted into full-time equivalents and included in the total.
- It should be noted that shared ownership of one or more employers can cause the employer to be part of a controlled group under Internal Revenue Code Section 414. Employees of all employers within the controlled group are taken into account in determining whether any member of the controlled group is an applicable employer.

When is it Effective?

- The requirements generally become effective beginning January 1, 2016. However, an employer who maintains a fiscal year plan (aka plan year) will not be subject to a penalty before the first day of its 2016 plan year, if requirements are met. For example, if your health plan renews September 1st, you will be subject to the compliance requirements of Pay or Play on September 1, 2016. *See previous page for guidelines.*

Why Must I Comply?

- You don't have to, but if you want to avoid a penalty, possibly a substantial penalty, you will need to comply with the Pay or Play provision.

How Do I Comply?

- First things first. How big is your company? Once you know this, you can worry about the next steps.

What Size is Your Company?

While following Steps 1-6, use the worksheet to determine if your company employed 50 or more full-time employees and full-time equivalents during the previous calendar year. If so, you will be subject to the Pay or Play provision.

1 Count your full-time employees (FT)

- A full-time employee is one who is employed, on average, for at least 30 hours of service per week (or at least 130 hours per month); seasonal employees should be counted as full-time employees during each month they meet these hours of service.
- Hours of service are generally determined based on the hours which an individual is entitled to payment. This may include performance of duties or time which the employee is paid but no duties are performed such as vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty, or leave of absence
- Final regulations generally retain the definition listed above, but specify that an hour of service does not include any hour of service performed by bona fide volunteers for a government or tax-exempt entity, such as volunteer firefighters and emergency responders.
- A full-time employee is determined on a monthly basis over the 12-month period.
- Pending further guidance, a religious order can, for purposes of determining if an employee is a full-time employee for the purpose of Pay or Play, exclude from "hours of service" any work performed by an individual who is subject to a vow of poverty as a member of that order when the work is in the performance of tasks.

2 Count the hours worked by full-time equivalents (FTE)

- A full-time equivalent is one who is employed, on average, less than 30 hours of service per week; seasonal employees should be counted as full-time equivalents during each month they meet these hours of service; however, seasonal employees in positions for which the customary annual employment is six months or less generally will not be considered full-time employees.
- As with full-time employees, hours of service are generally determined based on the hours which an individual is entitled to payment.
- A full-time equivalent is also determined on a monthly basis over the 12-month period.
- Count the number of hours worked by all full-time equivalents for each month. NOTE the maximum number of hours considered per month for a full-time equivalent is 120, even if the employee worked more. For example, if an employee worked 125 hours, the extra five hours (125-120) are ignored.
- Once you have the total hours worked each month by all full-time equivalents, divide that number by 120 to know how many full-time equivalents you employed each month. Keep the fraction!

3

Total FTs and FTEs for each month

- For each of the 12 months, add the number of full-time employees to the number of full-time equivalents to come up with the total number of employees you employed during each month. You still need to keep the fraction!

4

Sum months 1 through 12

- Now you need to add months 1 – 12 together for a grand total.

5

Determine the average number of employees

- When you have the grand total, divide that number by 12 to see the average number of employees you employed during the 12 months. You can drop the fraction!
- **SEE PAGE 7 FOR AN EXAMPLE WITHOUT SEASONAL EMPLOYEES.**

6

Did you have any seasonal employees during months 1 through 12?

- *Seasonal Employee Exemption:* If you exceed 50 full-time employees for 120 days or less during the previous calendar year AND the employees in excess of 50 during that 120-day period were seasonal employees THEN you may exclude the numbers associated with the seasonal employees.
- It is important to remember that a seasonal employee may be counted as a full-time employee and/or a full-time equivalent. It all depends on how many hours they work each month.
- For the purpose of Pay or Play, a seasonal employee is an employee who performs labor or services on a seasonal basis as defined by the Secretary of Labor, including seasonal workers covered by 29 CFR Section 500.20(s)(1) and retail workers employed exclusively during holiday seasons.
- **SEE PAGE 8 FOR AN EXAMPLE OF AN EMPLOYER THAT EMPLOYS SEASONAL WORKERS FOR 120 DAYS OR LESS DURING A 12-MONTH PERIOD.**
- **SEE PAGE 9 FOR AN EXAMPLE OF AN EMPLOYER THAT EMPLOYS SEASONAL WORKERS FOR MORE THAN 120 DAYS DURING A 12-MONTH PERIOD.**

Worksheet

click "worksheet" to open a working copy

1 Full-Time Employees (FT) <i>(Working ≥ 30 Hrs/Wk or 130 Hrs/Mo)</i>		2 Full-Time Equivalent Employees (FTE) <i>(Working < 30 Hrs/Wk with a Recognized Maximum of 120 Hrs/Mo)</i>		3 Total EEs
Month	Enter the # of FTs for Each Month	Enter the # of Hours Worked by All FTEs for Each Month	Total FTEs	FT+FTE
Jan			÷ 120 =	
Feb			÷ 120 =	
Mar			÷ 120 =	
Apr			÷ 120 =	
May			÷ 120 =	
June			÷ 120 =	
July			÷ 120 =	
Aug			÷ 120 =	
Sept			÷ 120 =	
Oct			÷ 120 =	
Nov			÷ 120 =	
Dec			÷ 120 =	
			4 Sum Month 1 through Month 12	
5 Divide by 12 to Determine the Company's Average (drop the fraction!)				

6 Can you apply the seasonal employee exemption?

EMPLOYER WITHOUT SEASONAL EMPLOYEES

January through December 2016, ABC Company has 41 full-time employees plus 10 employees that work 100 hours per month. Will ABC Company be subject to the Pay or Play in 2017? REFER TO PAGES 4-5 FOR GUIDANCE ON STEPS 1-5.

1 Full-Time Employees (FT) <i>(Working ≥ 30 Hrs/Wk or 130 Hrs/Mo)</i>		2 Full-Time Equivalent Employees (FTE) <i>(Working < 30 Hrs/Wk with a Recognized Maximum of 120 Hrs/Mo)</i>			3 Total EEs
Month	Enter the # of FTs for Each Month	Enter the # of Hours Worked by All FTEs for Each Month		Total FTEs	FT+FTE
Jan	41	1000	÷ 120 =	8.33	49.33
Feb	41	1000	÷ 120 =	8.33	49.33
Mar	41	1000	÷ 120 =	8.33	49.33
Apr	41	1000	÷ 120 =	8.33	49.33
May	41	1000	÷ 120 =	8.33	49.33
June	41	1000	÷ 120 =	8.33	49.33
July	41	1000	÷ 120 =	8.33	49.33
Aug	41	1000	÷ 120 =	8.33	49.33
Sept	41	1000	÷ 120 =	8.33	49.33
Oct	41	1000	÷ 120 =	8.33	49.33
Nov	41	1000	÷ 120 =	8.33	49.33
Dec	41	1000	÷ 120 =	8.33	49.33
4 Sum Month 1 through Month 12					591.96
5 Divide by 12 to Determine the Company's Average (drop the fraction!)					49

ABC Company has less than 50 full-time equivalent employees and is NOT subject to Pay or Play.

EMPLOYER WITH SEASONAL EMPLOYEES

January through December 2016, ABC Company has 41 full-time employees plus 10 employees that work 100 hours per month AND they hired seasonal employees for January through April consisting of 2 full-time and 30 part-time working 120 hours per month. Will ABC Company be subject to Pay or Play in 2017? REFER TO PAGES 4-5 FOR GUIDANCE ON STEPS 1-6.

1 Full-Time Employees (FT) <i>(Working ≥ 30 Hrs/Wk or 130 Hrs/Mo)</i>		2 Full-Time Equivalent Employees (FTE) <i>(Working < 30 Hrs/Wk with a Recognized Maximum of 120 Hrs/Mo)</i>			3 Total EEs
Month	Enter the # of FTs for Each Month	Enter the # of Hours Worked by All FTEs for Each Month		Total FTEs	FT+FTE
Jan	43	4600	÷ 120 =	38.33	81.33
Feb	43	4600	÷ 120 =	38.33	81.33
Mar	43	4600	÷ 120 =	38.33	81.33
Apr	43	4600	÷ 120 =	38.33	81.33
May	41	1000	÷ 120 =	8.33	49.33
June	41	1000	÷ 120 =	8.33	49.33
July	41	1000	÷ 120 =	8.33	49.33
Aug	41	1000	÷ 120 =	8.33	49.33
Sept	41	1000	÷ 120 =	8.33	49.33
Oct	41	1000	÷ 120 =	8.33	49.33
Nov	41	1000	÷ 120 =	8.33	49.33
Dec	41	1000	÷ 120 =	8.33	49.33
4 Sum Month 1 through Month 12					719.96
5 Divide by 12 to Determine the Company's Average (drop the fraction!)					59

Even though ABC averages 59 full-time employees, they are **not subject to Pay or Play** due to the seasonal employee exemption. Why? Did ABC exceed 50 during four (4) or fewer months in 2016? Yes. Were the employees in excess of 50 seasonal employees? Yes. Since the answer to both of these questions is yes, then ABC may exclude only the seasonal employees in each of the four (4) months. This drops the average to 49.

EMPLOYER WITH SEASONAL EMPLOYEES

January through December 2016, ABC Company has 41 full-time employees plus 10 employees that work 100 hours per month AND they hired seasonal employees to work January through May consisting of 2 full-time and 30 part-time working 120 hours per month. Will ABC Company be subject to Pay or Play in 2017? REFER TO PAGES 4-5 FOR GUIDANCE ON STEPS 1-6.

1 Full-Time Employees (FT) <i>(Working ≥ 30 Hrs/Wk or 130 Hrs/Mo)</i>		2 Full-Time Equivalent Employees (FTE) <i>(Working < 30 Hrs/Wk with a Recognized Maximum of 120 Hrs/Mo)</i>			3 Total EEs
Month	Enter the # of FTs for Each Month	Enter the # of Hours Worked by All FTEs for Each Month		Total FTEs	FT+FTE
Jan	43	4600	÷ 120 =	38.33	81.33
Feb	43	4600	÷ 120 =	38.33	81.33
Mar	43	4600	÷ 120 =	38.33	81.33
Apr	43	4600	÷ 120 =	38.33	81.33
May	43	4600	÷ 120 =	38.33	81.33
June	41	1000	÷ 120 =	8.33	49.33
July	41	1000	÷ 120 =	8.33	49.33
Aug	41	1000	÷ 120 =	8.33	49.33
Sept	41	1000	÷ 120 =	8.33	49.33
Oct	41	1000	÷ 120 =	8.33	49.33
Nov	41	1000	÷ 120 =	8.33	49.33
Dec	41	1000	÷ 120 =	8.33	49.33
4 Sum Month 1 through Month 12					751.96
5 Divide by 12 to Determine the Company's Average (drop the fraction!)					62

Pay or Play will apply to ABC in 2017. Even though ABC employs seasonal workers, they are not eligible for the seasonal employee exemption. Why? Were the employees in excess of 50 seasonal employees? Yes. Did ABC exceed 50 during four (4) or fewer months in 2016? No. Since the answer to both of these questions was not yes, then ABC is not able to exclude their seasonal employees. The average will remain 62.

What Employees are Full-Time?

- Now that you know Pay or Play applies to your company, minimum essential coverage must be offered to at least 95% of all full-time employees (and their dependents). Since you may have employees with variable hours and/or seasonal employees, it is important to understand how to determine which employees are considered full-time. The next several pages will provide general guidance in making these determinations.

1

Separate employees into categories

- Ongoing Employees
- New Employees
- New Variable Hour Employees
- New Seasonal Employees
- Rehired Employees

2

Establish time periods

- Standard Measurement Period
- Administrative Period
- Stability Period

3

Determine length of time periods for different classes of employees

- Union and non-union employees
- Salaried employees and hourly employees
- Employees of different entities
- Employees located in different states

4

Analyze the hours worked by employees during the Standard Measurement Period and/or Initial Measurement Period to determine whether they are full-time.

DEFINITIONS – Full-Time Employee & Dependent

- A **full-time employee** is one who is employed, on average, for at least 30 hours of service per week (or at least 130 hours per month).
- Per the Internal Revenue Code Section 152(f)(1) a **dependent** is defined as a child of an employee who has not attained age 26. 26 CFR 54.4980H-1(a)(11). A "dependent" does not include a spouse or a domestic partner.
- **NOTE:** Per a special transitional rule, an employer is not responsible for offering dependent coverage in 2015 as long as they take reasonable steps in 2016 to offer dependent coverage for the 2016 plan year. "Reasonable steps" is unclear as is the documentation an employer should maintain to prove they have taken such steps.

DEFINITIONS – Employee Categories

- **Ongoing Employee:** A full-time or part-time employee that has been employed by the employer through at least one Standard Measurement Period.
- **New Employee:** A full-time or part-time employee that has not been employed by the employer through at least one Standard Measurement Period.
- **New Full-Time Employee:** An employee that is reasonably expected to work full-time upon his or her start date and must be offered coverage within the required timeframe. Neither a Standard Measurement Period nor an Initial Measurement Period is required if they are expected to work full-time, indefinitely.
- **New Variable Hour Employee:** As of their start date, this is an employee whose average hourly work week can not reasonably be determined to be at least 30 hours per week. A variable hour employee may also include an employee that is expected to work 30 or more hours per week in the beginning but not during the entire Initial Measurement Period. Since full-time status can not be immediately determined, an Initial Measurement Period between 3 to 12 months must be conducted.
- **New Seasonal Employee:** An employee that only does work during a season. The IRS provides an example of a ski instructor who works 5 months as a seasonal employee. An Employer could look to the definition of seasonal employee in 29 CFR Section 500.20(s)(1) for further guidance. *The definition seems to overlap with Variable Hour Employee.* Since full-time status cannot be immediately determined an Initial Measurement Period between 3 to 12 months must be conducted.
- **New Part-Time Employee:** An employee that is reasonably expected to work less than 30 hours per week.
- **Rehired Employee:** There are two scenarios in which a rehired employee will be viewed a new employee.
 1. If they left their job for more than 13 weeks, the employee must be considered a new employee.
 2. If the employee left their job for at least 4 weeks AND the time in which they were away exceeds the amount of time they worked, they must be considered a new employee.

DEFINITIONS – Relevant to Ongoing Employees

- **Standard Measurement Period (SMP):** This period of time is used to look back at ongoing employees and determine whether they averaged at least 30 hours of service per week, and if they do, you must treat those employees as full-time and extend an offer of coverage.
 - **Applies to:** Ongoing employees; apply consistently for all employees in a class.
 - **Length:** Between 3 - 12 months.
 - **Start Date:** The employer may determine the start and stop dates. It may begin on the first of the month, the middle of the month and may even be based on payroll periods.
- **Standard Administrative Period (SAP):** This period of time is often referred to as open enrollment for ongoing employees. It is the timeframe in which an employer will analyze ongoing employee's hours from the Standard Measurement Period, distribute health plan materials, answer questions pertaining to benefits, and collect the enrollment forms from those that elect coverage.
 - **Applies to:** Ongoing employees; apply consistently for all employees in a class.
 - **Length:** A SAP is not required, but if one is selected it must meet waiting period requirements.
 - **Start Date:** The start date of the SAP immediately follows the SMP.
 - **NOTE:** It is important to note that ongoing employees currently covered by your health plan will remain covered during the Standard Administrative Period.
- **Standard Stability Period (SSP):** This period of time is the future period in which an employer must maintain an employee's status. If measured as full-time, they will remain full-time during the Standard Stability Period regardless of a change in their hours of service (and vice versa).
 - **Applies to:** Ongoing employees; apply consistently for all employees in a class.
 - **Length:** The SSP must be the greater of 6 consecutive months OR the length of the SMP.
 - **Start Date:** The start date of the SSP immediately follows the SAP.

NOTE: An employer may use a Standard Measurement Period and Standard Stability Period that vary in length or starting and ending dates for these classes of employees:

- Collectively bargained employees and non-collectively bargained employees;
- Salaried employees and hourly employees;
- Employees of different entities;
- Employees located in different states.

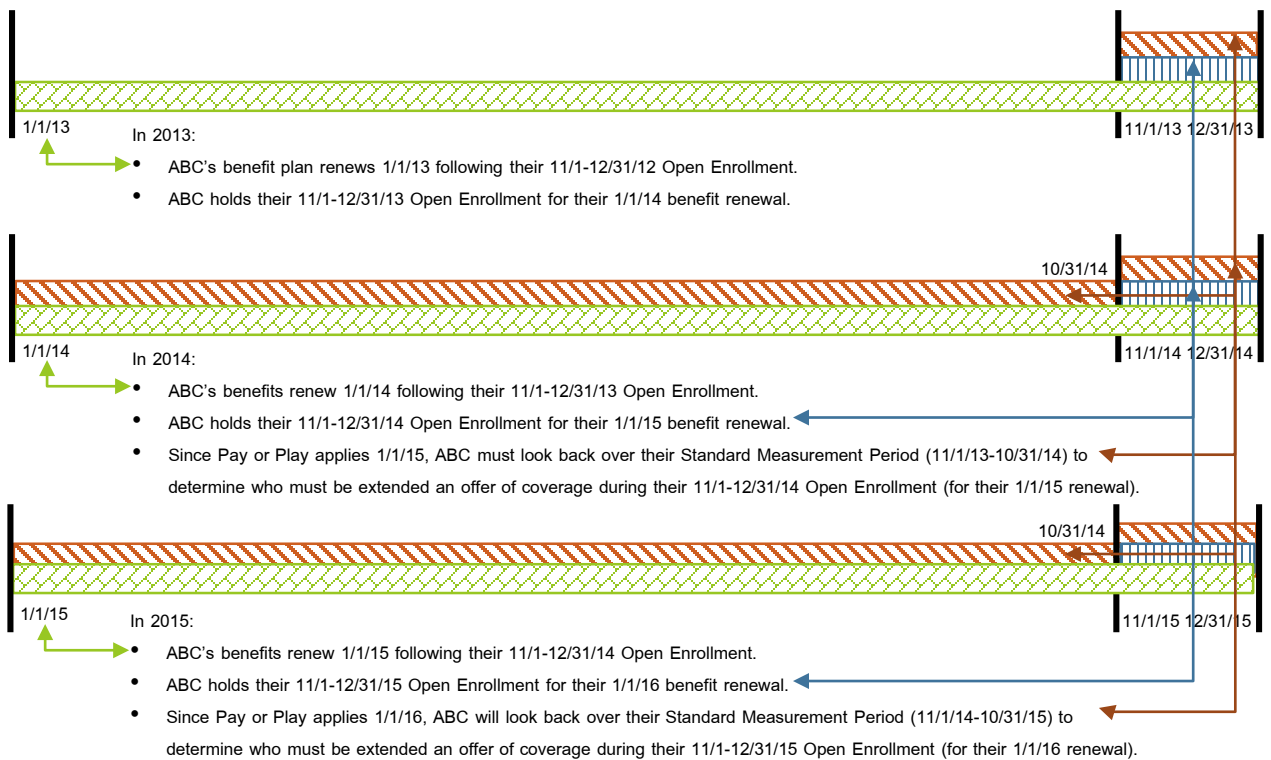
PERIODS OF TIME APPLIED TO ONGOING EMPLOYEES


To illustrate periods of time for ongoing employees we will use ABC Company's (ABC) defined measurement periods. The measurement periods below, as well as the illustration, apply only to ongoing employees.


The illustration below is based on the following:


- HEALTH PLAN RENEWAL DATE: 1/1 of every year.
- STANDARD MEASUREMENT PERIOD: 12 months (11/1 – 10/31 of every year).
- STANDARD ADMINISTRATIVE PERIOD: 60 days (11/1 – 12/31 of every year).
- STANDARD STABILITY PERIOD: 12 months.

Please note that the calendar year(s) used within illustrations and examples on pages 14-19 may be changed to reflect any timeframe. All examples were developed prior to the first delay issued July 3, 2013.



 ABC Standard Measurement Period
(12 months 11/1-10/31)

 ABC Standard Admin Period
(60 days)

 ABC Standard Stability Period
(12 months)

DEFINITIONS – Relevant to New Employees

- **Initial Measurement Period (IMP):** This period of time is used to determine if a new employee averages at least 30 hours of service per week, and if they do, the employer must treat the new employee as full-time and extend an offer of coverage.
 - **Applies to:** New employees; apply consistently for all employees in a class.
 - **Length:** Between 3 - 12 months; must match the SMP.
 - **Start Date:** Any time between the date of hire and the first of the month following the date of hire.
 - **NOTE:** It is important to note that the IMP does not need to be applied if you know the new employee will average 30 or more hours of service per week. The same is true if you know that a part-time employee will never average more than 30 hours of service per week, e.g. they will never work more than 10, 15, 20 hours per week.
- **Initial Administrative Period (IAP):** This period of time is often referred to as the waiting period for new hires that are eligible for benefits. It is the timeframe in which an employer will analyze a new employee's hours from the Initial Measurement Period, distribute health plan materials, answer questions pertaining to benefits, and collect the enrollment forms from those that elect coverage.
 - **Applies to:** New employees; apply consistently for all employees in a class.
 - **Length:** An IAP is not required, but if one is selected it must meet waiting period requirements.
 - **Start Date:** The start date of the IAP immediately follows the IMP.
 - **NOTE.** If after the end of the IMP, the new employee is not eligible for coverage, the employee transitions to the SMP for ongoing employees.
- **Initial Stability Period (ISP):** This period of time is the future period in which an employer must maintain an employee's status. If measured as full-time during their Initial Measurement Period, they will remain full-time during the Initial Stability Period regardless of a change in their hours of services (and vice versa).
 - **Applies to:** New employees: apply consistently for all employees in a class.
 - **Length:** The ISP must be the greater of 6 consecutive months OR the length of the IMP.
 - **Start Date:** The start date of the ISP immediately follows the IAP.

NOTE: IRS guidance requires that the combined IMP and IAP may not extend beyond the last day of the first calendar month beginning on or after the one-year anniversary of the employee's start date (totaling, at most, 13 months and a fraction of a month).

- *Example 1: A new employee is hired 4/20/15 and their IMP is 12 months. Her hours will be measured from 4/20/15-4/19/16. If she is determined to be a full-time employee during the IMP she will be extended an offer of coverage, and if elected, the IAP must not be longer than 6/1/16.*
- *Example 2: A new employee is hired 4/20/15 and their IMP is 9 months. Her hours will be measured from 4/20/15-1/19/16. If she is determined to be a full-time employee during the IMP she will be extended an offer of coverage, and if elected, the IAP must not be longer than 4/20/16.*

PERIODS OF TIME APPLIED TO NEW EMPLOYEES

To illustrate periods of time for a new employee qualifying as Full-Time during the Initial Measurement Period, we will use ABC Company's (ABC) defined measurement periods. The measurement periods below, as well as the illustration, apply only to newly hired employees with variable/unknown hours at the time of hire.

The illustration below is based on the following:

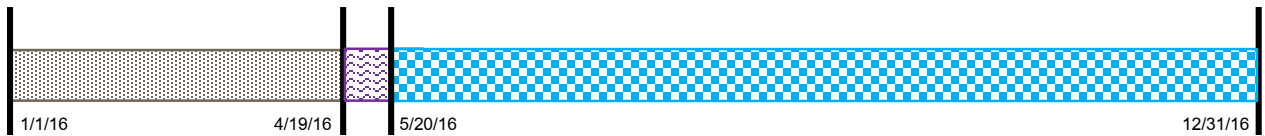
- INITIAL MEASUREMENT PERIOD (IMP): 12 months (begins on date of hire).**
- INITIAL ADMINISTRATIVE PERIOD: 30 days (begins immediately following the IMP).**
- INITIAL STABILITY PERIOD: 12 months.

Details for new employee, Kate:

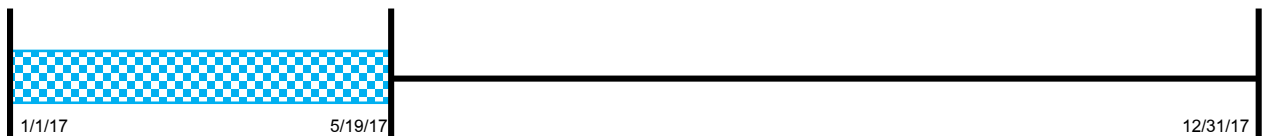
- New variable hour employee hired 4/20/15.
- Employment is to be indefinite.
- Average hour work week is unknown .




- Kate's Initial Measurement Period will take place 4/20/15-4/19/16.





- Kate averages a 32-hour work week during her IMP, therefore, she is considered a full-time employee and must be extended an offer of coverage.
- She will be extended an offer of coverage during her Initial Administrative Period (immediately following her IMP).
- Kate elects to enroll in coverage and her coverage must be effective no later than 5/20/16**. She will remain covered for a period no less than 12-months (since the IMP exceeds 6 months, the ISP must match the IMP).
- **IRS guidance requires that the combined IMP and IAP may not extend beyond the last day of the first calendar month beginning on or after the one-year anniversary of the employee's start date (totaling, at most, 13 months and a fraction of a month). In this example, Kate is insured within 13 months exactly; however, the employer could make her effective 6/1/16 and still be in compliance.



- While Kate is covered during her Initial Stability Period, ABC's SMP will occur as normal.
- Kate's hours will now be measured during the SMP to ensure she averages a 30+ hour work week.
- As long as she continues to average 30 or more hours per week during the SMP she will continue to be offered coverage as a full-time ongoing employee and will remain insured during the company's SAP (also known as Open Enrollment) and the following SSP.

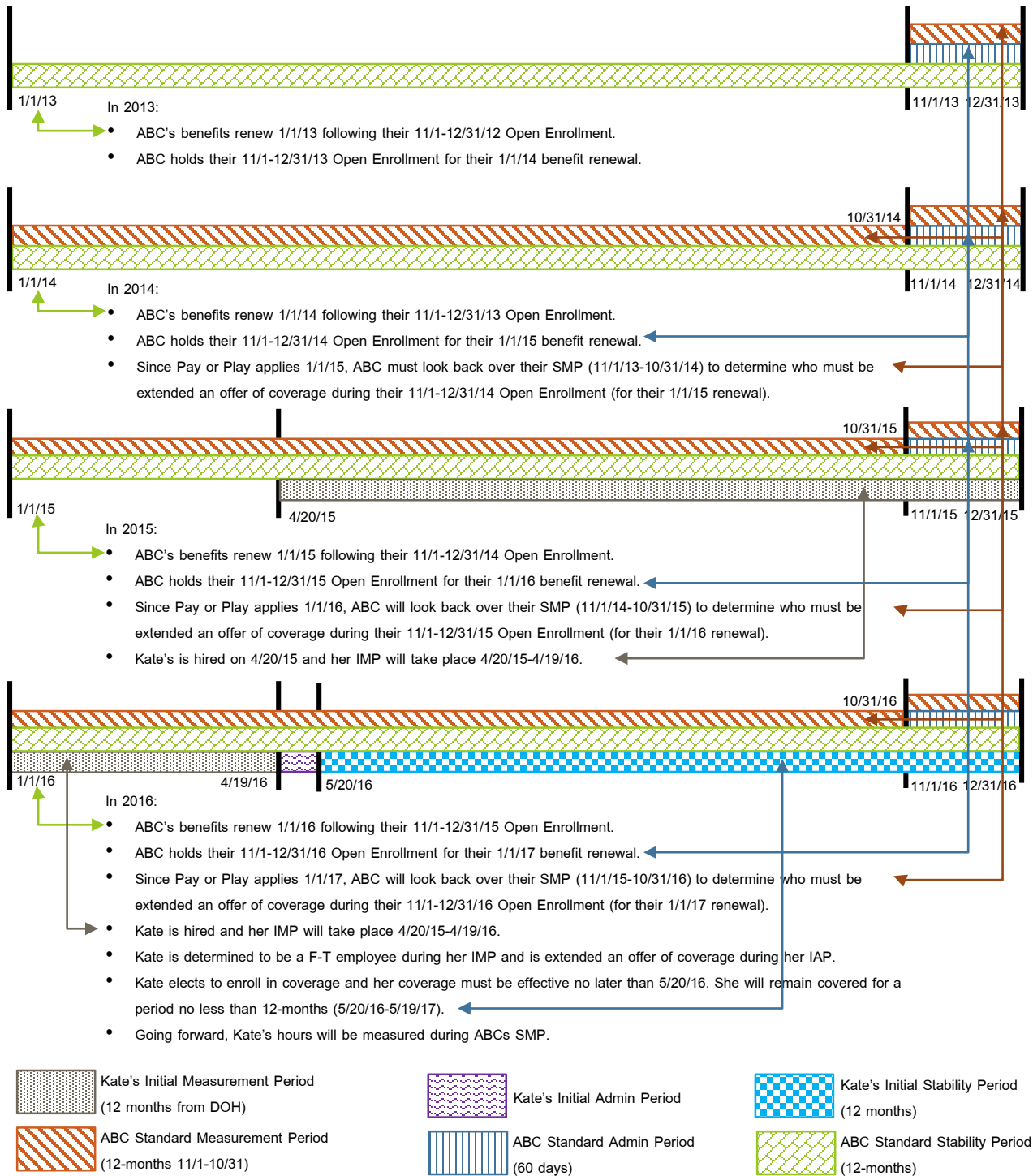
 Kate's Initial Measurement Period (12 months from DOH)

 Kate's Initial Admin Period

 Kate's Initial Stability Period (12 months)

PERIODS OF TIME APPLIED TO ONGOING & NEW EMPLOYEES

To illustrate periods of time for BOTH ongoing employees and the new variable hour employee, Kate, we will use all of ABC Company's (ABC) defined measurement periods as listed in the two previous examples.



PERIODS OF TIME APPLIED TO NEW EMPLOYEES

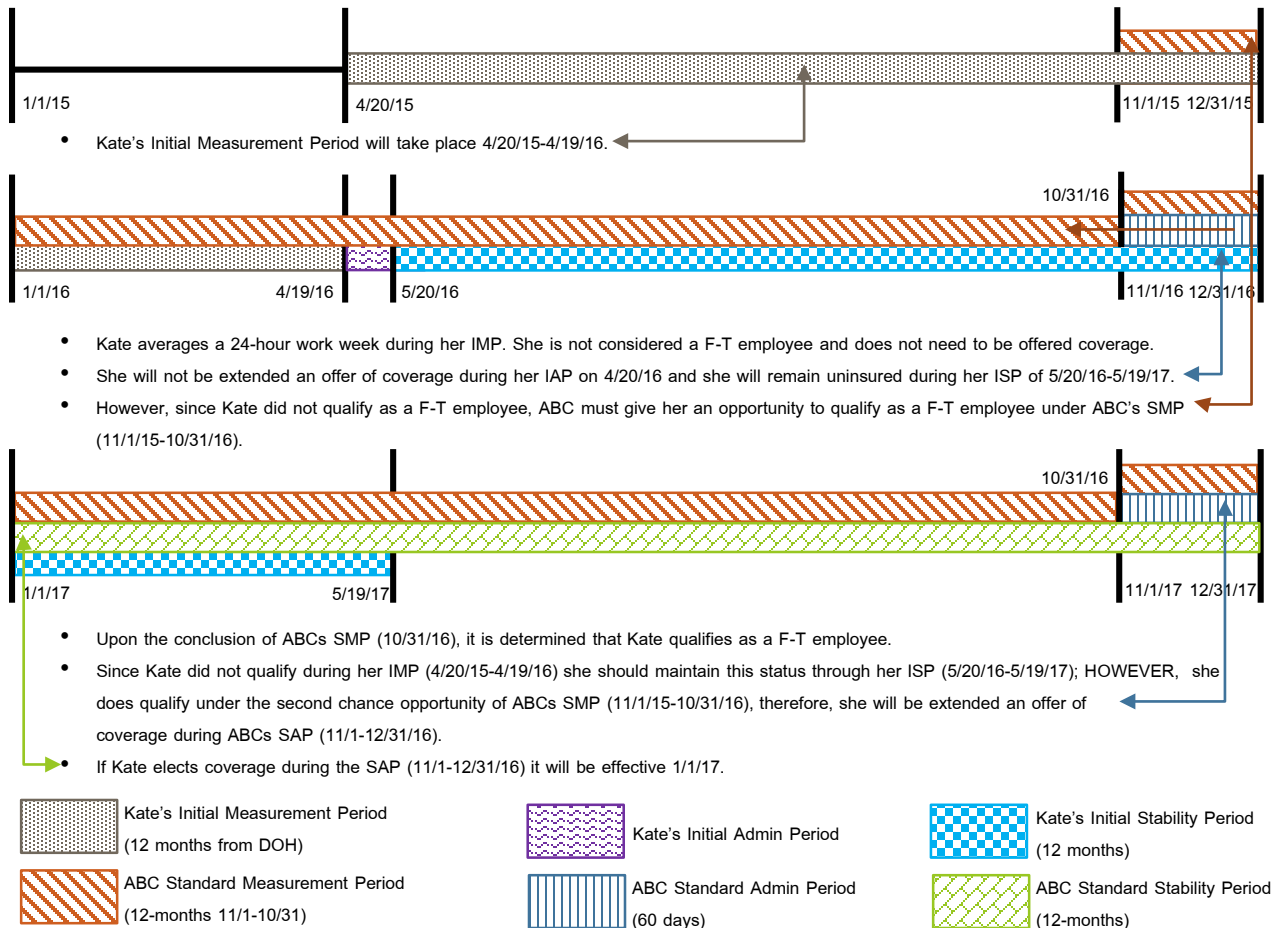
To illustrate periods of time for a **new employee that does not qualify as Full-Time** during the Initial Measurement Period, we will use ABC Company's (ABC) defined measurement periods. The measurement periods below, as well as the illustration, apply only to newly hired employees with variable/unknown hours at the time of hire.

The illustration below is based on the following:

- HEALTH PLAN RENEWAL DATE: 1/1 of every year.
- INITIAL MEASUREMENT PERIOD (IMP): 12 months (begins on date of hire).** pg. 15
- INITIAL ADMINISTRATIVE PERIOD: 30 days (begins immediately following the IMP).** pg. 15
- INITIAL STABILITY PERIOD: 12 months.

Details for new employee, Kate:

- New variable hour employee hired 4/20/15.
- Employment is to be indefinite.
- Average hour work week is unknown (in this example she does NOT qualify as a F-T employee).



• Kate's Initial Measurement Period will take place 4/20/15-4/19/16.

- Kate averages a 24-hour work week during her IMP. She is not considered a F-T employee and does not need to be offered coverage.
- She will not be extended an offer of coverage during her IAP on 4/20/16 and she will remain uninsured during her ISP of 5/20/16-5/19/17.
- However, since Kate did not qualify as a F-T employee, ABC must give her an opportunity to qualify as a F-T employee under ABC's SMP (11/1/15-10/31/16).

- Upon the conclusion of ABC's SMP (10/31/16), it is determined that Kate qualifies as a F-T employee.
- Since Kate did not qualify during her IMP (4/20/15-4/19/16) she should maintain this status through her ISP (5/20/16-5/19/17); HOWEVER, she does qualify under the second chance opportunity of ABC's SMP (11/1/15-10/31/16), therefore, she will be extended an offer of coverage during ABC's SAP (11/1-12/31/16).
- If Kate elects coverage during the SAP (11/1-12/31/16) it will be effective 1/1/17.

EXAMPLE – Seasonal Employees (Measurements & Rehires)

ABC Company hires Mark:

- New seasonal employee hired 1/1/15.
- Employment term is 5 months, approximately 250 hours per month.
- Employment will be terminated on 5/31/15.

12-MONTH INITIAL MEASUREMENT PERIOD: Begins on Mark's start date (1/1/15-12/31/15).

QUESTION: Will Mark qualify as a F-T employee over the IMP if he works 1,250 hours?

ANSWER: No. Mark averages 24 hours per week over the 12-month IMP (1,250/52).

3-MONTH INITIAL MEASUREMENT PERIOD: Begins on Mark's start date (1/1/15-3/31/15).

QUESTION: Will Mark qualify as a F-T employee over the IMP if he works 750 hours?

ANSWER: Yes. Mark averages 57.6 hours per week over the IMP (750/13).

QUESTION: When is Mark eligible to enroll in ABC Company's health plan?

ANSWER: 6/1/14. Even though Mark qualifies as a F-T employee on 3/31/15, his IAP is 60 days, therefore, he would not be eligible until 6/1/15 and his employment terminates on 5/31/15.

Now let's assume Mark is rehired every year by ABC Company on 1/1 and terminated 5/31.

QUESTION: Does Mark qualify as an ongoing employee or a new seasonal employee the next year?

ANSWER: Mark will be treated as a new seasonal employee when he is hired on 1/1/16. Why? If either one of the tests below applies to Mark, he must be considered a new seasonal employee.

Test 1: Did Mark leave ABC Company for at least 13 consecutive weeks? Yes.

Test 2: Did Mark leave ABC Company for at least 4 weeks AND did the time in which he was away exceed the length of time he worked? Yes.

Now... let's assume Mark is expected to work the same hours but over 7 months instead of 5.

QUESTION: Does Mark qualify as an ongoing employee or a new seasonal employee the next year?

ANSWER: Mark will be treated as a new seasonal employee when he is hired on 1/1/16. Why? Since at least one of the tests below applies to Mark, he will not receive credit for the hours worked and will be recognized as a new seasonal employee when he is rehired on 1/1/16.

Test 1: Did Mark leave ABC Company for at least 13 consecutive weeks? Yes.

Test 2: Did Mark leave ABC Company for at least 4 weeks AND did the time in which he was away exceed the length of time he worked? No.

Controlled Group Rules

When determining whether you are subject to the Pay or Play provision, i.e. an applicable large employer, the IRS controlled group rules apply – meaning that all affiliated employers for which there is 80% or greater common ownership will be treated as a single employer. However, compliance with Pay or Play rules – and any associated penalties – will generally be assessed on an employer-by-employer basis.

Penalties

- **\$2,320** penalty in 2018 for each full-time employee, excluding the first 30, if you do not offer at least 95% of full-time employees (and their dependents) the opportunity to enroll in an employer-sponsored plan.
- **\$3,480** penalty in 2018 for each full-time employee obtaining a subsidy from the Exchange. In this scenario, a full-time employee can only be eligible for a subsidy if you offer coverage that fails to provide [minimum value](#) and/or it is deemed unaffordable.
 - To be considered minimum coverage, a plan must provide at least a 60% actuarial value, meaning the plan must cover 60% on average of the covered health care expenses. The IRS has outlined *proposed* methods for determining minimum value in [IRS Notice 2012-31](#), including use of an actuarial or minimum value calculator, a safe harbor checklist of required benefits, and an independent actuarial certification.
 - Coverage is deemed affordable **IF** the employee's share for the lowest priced employee only coverage offered does not exceed 9.86% of the employees household income for plan years beginning in 2019 (Table A) **OR** of one (1) of three (3) optional safe harbors (Table B).

TABLE A: COST OF PLAN AFFORDABILITY EXAMPLES

If an employer offers multiple plan options, affordability applies to the lowest-cost option available to the employee that also meets the minimum value requirement.

	EE Only Premium	ER Portion (80%)	EE Portion (20%)	Minimum Annual Income EE Must Earn ((EE Portion x 12) / .0986)
TABLE B: Plan A	\$575	\$460	\$115	\$13,996
Plan B	\$450	\$360	\$90	\$10,954

	Annual Maximum	Monthly Maximum
W2 Income	Box 1 wage x .0986	(Box 1 wage x .0986) / 12
Rate of Pay	n/a	(130 hours x hourly rate) x .0986
Federal Poverty Level	FPL x .0986	(FPL x .0986) / 12

- When calculating penalties, the total penalty for not offering coverage is: ((# of FTEs – 30) x \$2,500). When calculating a penalty for offering coverage that does not meet a minimum threshold, the total penalty is the lesser of: (# of EEs receiving a subsidy x \$3,750) or ((# of FTEs – 30) x \$2,500).

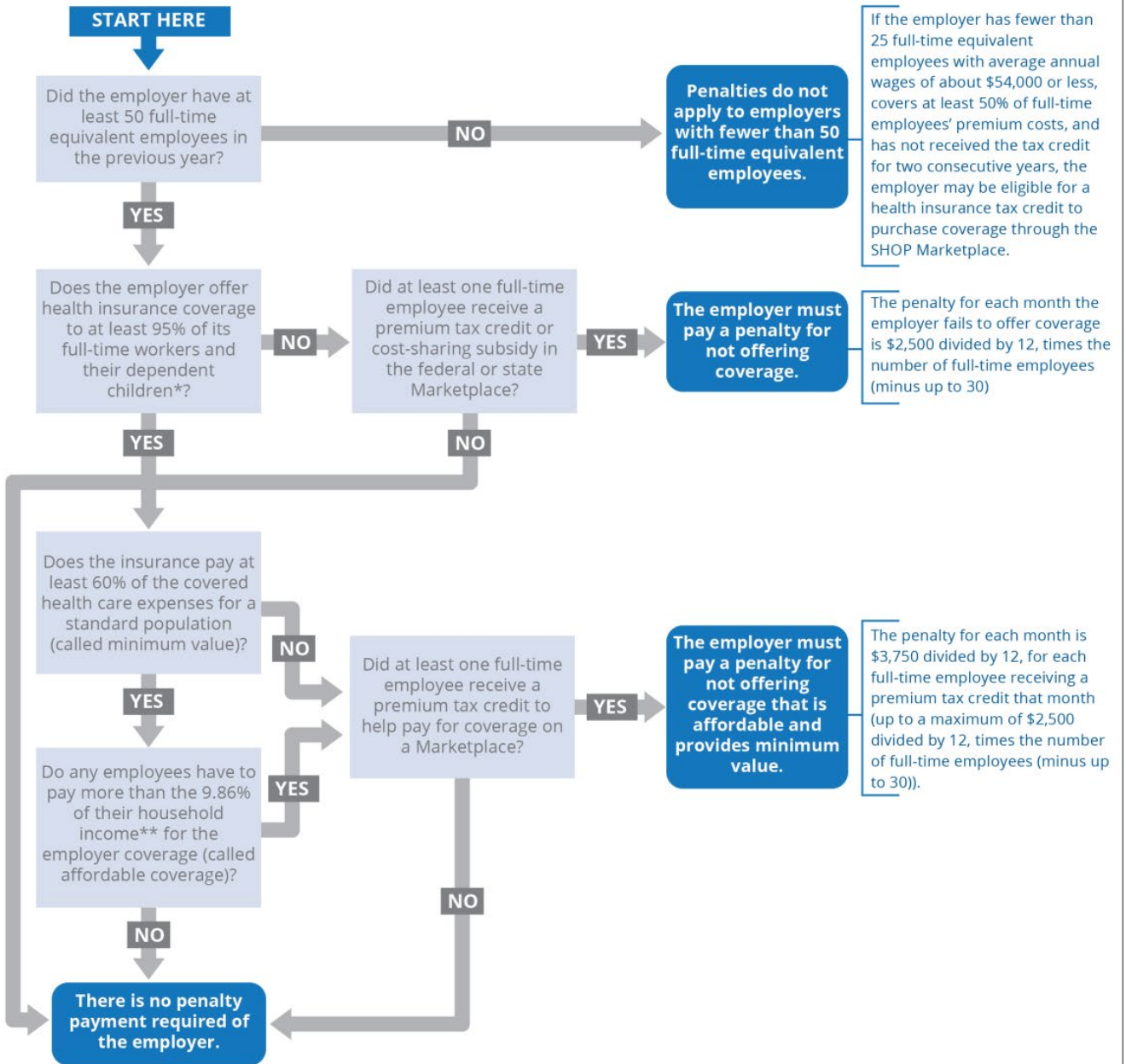
PENALTY EXAMPLES (Not Offering Coverage)	2019 Example A	2019 Example B
	\$2,500 Penalty	
Full-Time Employees	64	64
Permitted Waivers	30	30
# of Employees Receiving Subsidy	0	1 or more
Total Penalty	\$0 (<i>no penalty assessed since no Employee received a subsidy</i>)	\$85,000 (<i>((34 x \$2,500); the penalty is always assessed on the # of FTEs regardless of how many receive a subsidy</i>)

PENALTY EXAMPLES (Offering Coverage not Meeting Minimum Thresholds)	2019 Example A	2019 Example B
	\$3,480 Penalty	
Full-Time Employees	64	64
Permitted Waivers	30	30
# of Employees Receiving Subsidy	0	25
Total Penalty	\$0 (<i>no penalty assessed since no Employee received a subsidy</i>)	\$85,000 (<i>the penalty is always the lesser of (# of employees receiving subsidy x \$3,750) OR ((# of FTEs – 30) x \$2,500). In this example the total penalty equals \$93,750 and \$85,000 respectively.</i>)



PENALTIES FOR EMPLOYERS NOT OFFERING COVERAGE UNDER THE AFFORDABLE CARE ACT DURING 2019

UPDATED AS OF JUNE 10, 2019



* A dependent child is defined as a child of an employee who is under the age of 26. Employers do not face a penalty under the Affordable Care Act if they do not offer coverage to the spouse of a full-time employee.

** Affordability is determined by reference to the taxpayer's household income (i.e., the employee's required contribution for self-only coverage should not exceed 9.86% in most states for 2019). Since employers generally do not know the worker's household income, to determine if an employer may be subject to a penalty, the employer can measure 9.86% against three separate safe harbor amounts (the worker's Form W-2 wages, the worker's hourly rate of pay as of the first day of the coverage period, or the federal poverty line for a single individual). Note that a worker's and the worker's dependents' eligibility for premium tax credits or cost sharing subsidies are based on family income, not the safe harbor amounts.

VENDORS

- **Sterling HSA**

<http://www.sterlinghsa.com/>

800-617-4729

- **TASC**

<http://www.tasconline.com/>

800-422-4661

This document is intended to provide you with a high-level understanding of the compliance requirements facing you and your employees. Please note that all details are a best interpretation of information available as of the print date and should not be construed as tax or legal advice. Due to continual legislative updates, details within this document are likely to change. This document will be revised frequently so please contact us periodically to determine if a revision is available.