



Health Care Reform

LEGISLATIVE BRIEF

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Pay or Play Penalty—When to Begin Tracking Employee Hours

The Affordable Care Act (ACA) imposes a penalty on applicable large employers (ALEs) that do not offer health insurance coverage to substantially all full-time employees and dependents. Penalties may also be imposed if coverage is offered, but is unaffordable or does not provide minimum value. The ACA's employer penalty rules are often referred to as "employer shared responsibility" or "pay or play" rules.

The employer penalty provisions were set to take effect on Jan. 1, 2014. However, in July 2013, the Treasury announced that **the employer penalties and related reporting requirements would be delayed for one year, until 2015**. Therefore, no penalties will apply to any employers for 2014. Smaller ALEs may also be eligible for an additional one-year delay.

On Feb. 12, 2014, the IRS published [final regulations](#) on the employer shared responsibility rules. These regulations finalize provisions in [proposed regulations](#) released on Jan. 2, 2013. Under the final regulations, **ALEs that have fewer than 100 full-time employees (including full-time equivalents, or FTEs) generally will have an additional year, until 2016, to comply with the pay or play rules**. ALEs with 100 or more full-time employees (including FTEs) must comply with the pay or play rules starting in 2015.

The pay or play rules will take effect for most ALEs beginning on Jan. 1, 2015. To prepare for compliance, employers that intend to use the look-back measurement method for determining full-time status for 2015 will need to **begin tracking their employees' hours of service in 2014** to have corresponding stability periods for 2015.

IDENTIFYING FULL-TIME EMPLOYEES

A full-time employee is an employee who was employed on average at least **30 hours of service per week**. The final rules treat 130 hours of service in a calendar month as the monthly equivalent of 30 hours of service per week.

The final regulations provide two methods for determining full-time employee status—the **monthly measurement method** and the **look-back measurement method**. These methods provide minimum standards for identifying employees as full-time employees. Employers may decide to treat additional employees as eligible for coverage, or otherwise offer coverage more expansively than would be required to avoid a pay or play penalty.

Monthly Measurement Method

The monthly measurement method involves a **month-to-month analysis** where full-time employees are identified based on their hours of service for each calendar month. This method is not based on averaging hours of service over a prior measurement period. This month-to-month measuring may cause practical difficulties for employers, particularly if there are employees with varying hours or employment schedules, and could result in employees moving in and out of employer coverage on a monthly basis.

Look-back Measurement Method

The look-back measurement method is an optional safe harbor method for determining full-time status that is intended to give employers flexible and workable options and greater predictability for determining full-time employee status. The look-back measurement method involves a **measurement period** for counting hours of service, a

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stability period when coverage may need to be provided, depending on an employee’s average hours of service during the measurement period, and an **administrative period** that allows time for enrollment and disenrollment.

Employers that intend to use the look-back measurement method for determining full-time status for 2015 will need to begin their measurement periods in 2014 to have corresponding stability periods for 2015. However, employers intending to adopt a 12-month measurement period (and, in turn, a 12-month stability period) will face time constraints in doing so.

Consequently, as transition relief, the final regulations allow employers to use **shorter measurement periods for stability periods starting in 2015** under the look-back measurement method. For 2015, employers can determine full-time status by reference to a **transition measurement period in 2014** that:

- Is shorter than 12 consecutive months, but not less than six consecutive months long; and
- Begins no later than July 1, 2014, and ends no earlier than 90 days before the first day of the first plan year beginning on or after Jan. 1, 2015.

WHEN TO BEGIN TRACKING EMPLOYEE HOURS

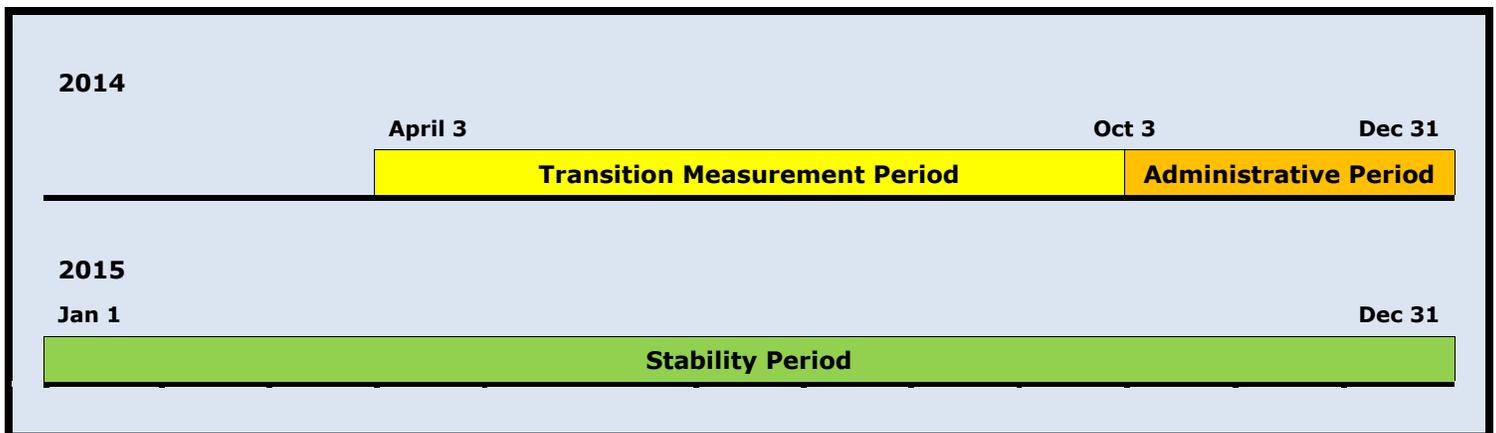
Calendar Year Plans

An ALE that wants to use the look-back measurement method may need to start measuring hours of service as early as **April 3, 2014**. This date would apply if the employer wants to use a 12-month stability period beginning on Jan. 1, 2015, and take advantage of the maximum 90-day administrative period. It can be helpful to work backward to determine the applicable dates.

In this scenario:

- The stability period would run for the entire 2015 calendar year to coincide with the plan year;
- A full 90-day administrative period would run from Oct. 3, 2014, through Dec. 31, 2014; and
- The minimum permissible transition measurement period of six consecutive months would begin on April 3, 2014.

The following chart illustrates this timeline:



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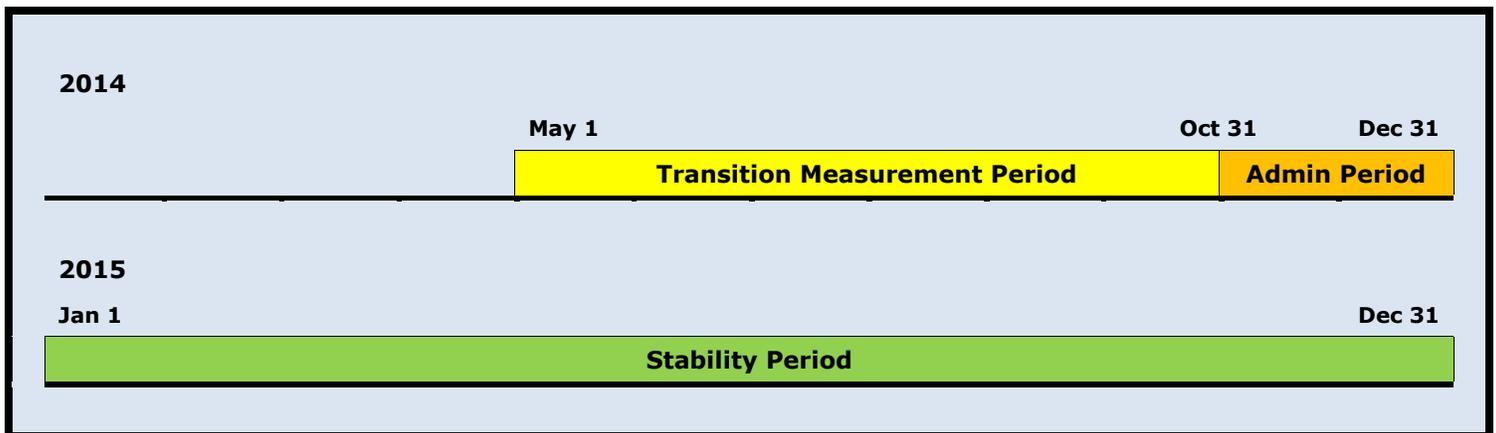
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Employers may want to set up the measurement, administrative and stability periods to begin on the first day of the month for administrative ease. This can be accomplished by using a shorter administrative period. Employers would then not have to begin measuring hours of service so early. For example, an employer with a calendar year plan may use the following timelines:

- A transition measurement period from May 1 through Oct. 31, 2014 (six months);
- A 61-day administrative period (the months of November and December) ending on Dec. 31, 2014; and
- A full 12-month stability period from Jan. 1 through Dec. 31, 2015.

The following chart illustrates this timeline:



However, all ALEs that want to take advantage of the shorter transition measurement period in 2014 must **begin tracking employee hours no later than July 1, 2014**. For a calendar year plan, this would allow for a six-month transition measurement period (running from July 1, 2014, through Dec. 31, 2014), but no administrative period.

Non-calendar Year Plans

In general, the ACA's pay or play penalty goes into effect on Jan. 1, 2015, for both ALEs with calendar year plans and ALEs with non-calendar year plans. However, the final regulations include transition relief that provides ALEs that have non-calendar year plans with additional time to comply, if certain conditions are met.

Thus, employers that have non-calendar year plans may have some additional time before they need to begin tracking employees' hours of service. For example, an employer with a plan year beginning April 1 that is using a 90-day administrative period may use a measurement period from July 1, 2014, through Dec. 31, 2014 (six months), followed by an administrative period ending on March 31, 2015.

However, an employer with a plan year beginning on July 1 may not use a six-month transition measurement period. Instead, the employer must use a measurement period that is longer than six months to comply with the requirement that the measurement period begin no later than July 1, 2014, and end no earlier than 90 days before the stability period. For example, the employer may have a 10-month measurement period from June 15, 2014, through April 14, 2015, followed by an administrative period from April 15, 2015, through June 30, 2015.

Medium-sized Applicable Large Employers

Under the final regulations, applicable large employers that have fewer than 100 full-time employees (including full-time equivalent employees, or FTEs) generally will have an additional year, until 2016, to comply with the pay or play

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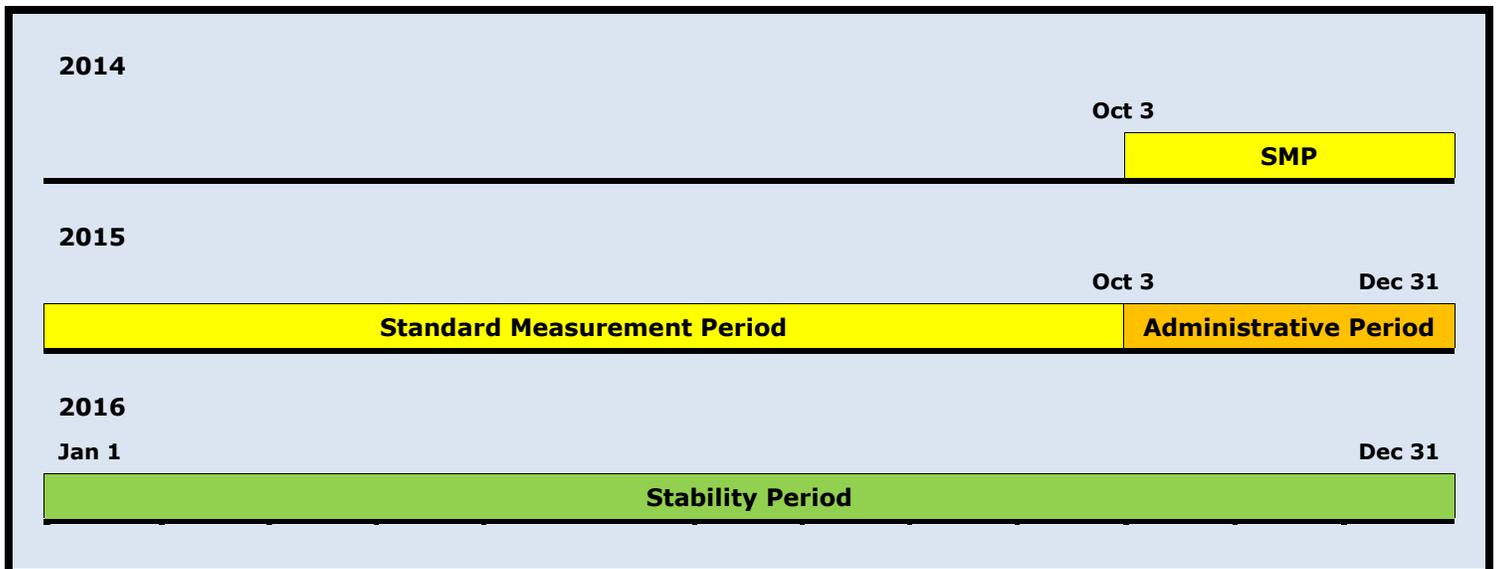
rules. This delay applies for all calendar months of 2015 plus any calendar months of 2016 that fall within the 2015 plan year. However, ALEs that change their plan year after Feb. 9, 2014, to begin on a later calendar date are not eligible for the delay. In addition, an ALE must certify that it meets the following three eligibility conditions to qualify for the delay:

- The employer must employ a **limited workforce** of at least 50 full-time employees (including FTEs) but fewer than 100 full-time employees (including FTEs) on business days during 2014.
- Between Feb. 9, 2014, and Dec. 31, 2014, the employer **may not reduce its workforce size** or overall hours of service of its employees in order to satisfy the limited workforce size condition.
- During the coverage maintenance period (that is, the period ending Dec. 31, 2015, or the last day of the plan year that begins in 2015), the employer **may not eliminate or materially reduce the health coverage**, if any, it offered as of Feb. 9, 2014.

An ALE that qualifies for this additional one year delay will have to comply with the pay or play rules beginning on Jan. 1, 2016, at the earliest. However, an ALE that qualifies for this delay and has a non-calendar year plan may not have to comply until the beginning of their 2016 plan year. In most cases, to prepare for compliance, ALEs that intend to use the look-back measurement will also need to **begin tracking their employees' hours of service in 2014** to have corresponding stability periods for 2016. A transition measurement period is not available in 2015.

Employers that have calendar year plans and want to use a 12-month standard measurement period (and, in turn, a 12-month stability period) will have to begin measuring their employees' hours of service no later than **Jan. 1, 2015**. However, an employer that wants to take advantage of an administrative period would have to begin measuring its employees' hours of service at some point in 2014 (depending on the length of the administrative period).

For example, for the 2016 plan year, an employer that has a calendar year plan and is using a 90-day administrative period would have to begin the standard measurement period on **Oct. 3, 2014** and the administrative period on **Oct. 3, 2015**. The following chart illustrates this timeline:



Because this delay applies for all calendar months of 2015 plus any calendar months of 2016 that fall within the 2015 plan year, an ALE that has a non-calendar year plan may not have to comply with the pay or play rules until the

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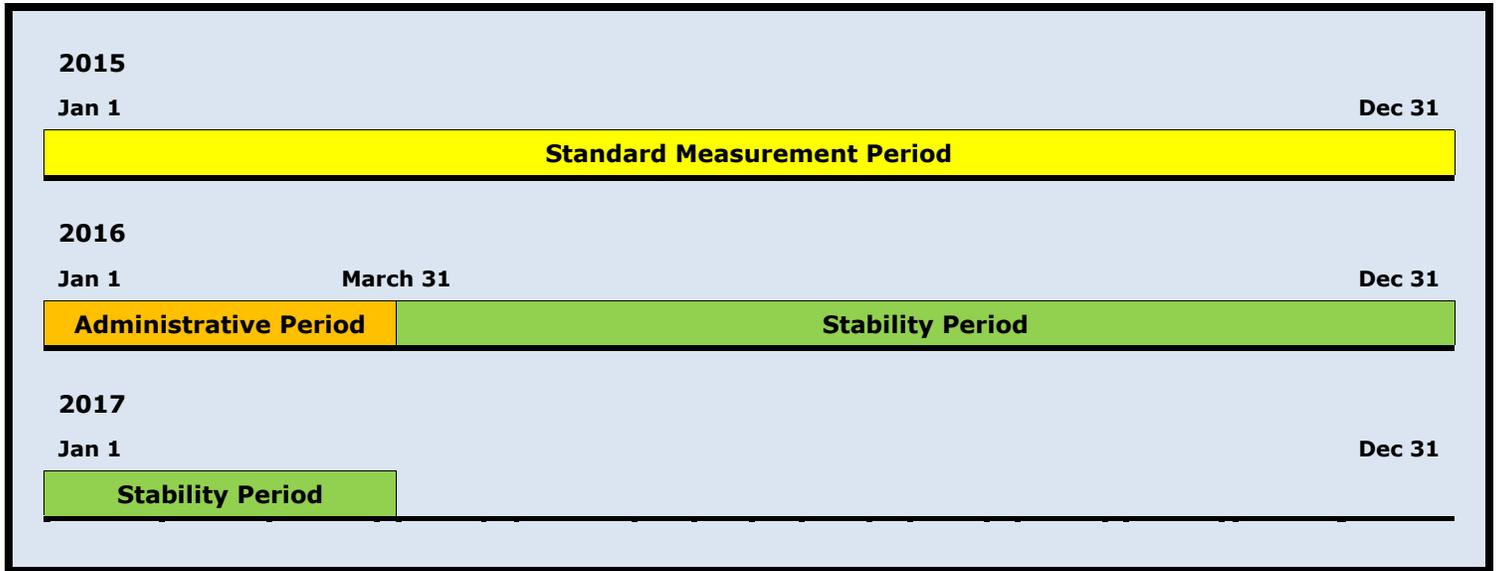
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beginning of their 2016 plan year, **as long as it continues to meet the eligibility conditions for the additional one year delay for its entire 2015 plan year.**

Thus, medium-sized ALEs that have non-calendar year plans may have some additional time before they need to begin tracking employees' hours of service. For example, an employer with a plan year beginning April 1 that is using a 90-day administrative period may use a measurement period from Jan. 1, 2015, through Dec. 31, 2015 (12 months), followed by an administrative period ending on March 31, 2016.

The following chart illustrates this timeline:



MORE INFORMATION

Please contact Hickok & Boardman HR Intelligence for more information, as well as additional resources to help track your employees' hours of service.

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