Notice: As of 7/3/2013, the Federal Government has delayed the penalties associated with the Employer Mandate until 2015. We are awaiting further guidance on other aspects of the provision.

FAQ: VARIABLE-HOUR EMPLOYEES

Employers subject to the employer responsibility provision in the federal Patient Protection and Affordable Care Act (ACA) must establish annual measurement and stability periods for determining which variable hour employees are to be offered health care coverage by the employer. The federal rules allow 2013 to be a transition year wherein measurement and stability periods may differ in length. However, beginning with the 2015 coverage year, both the measurement and stability periods must be the same length of time. Due to the staging of the measurement and stability periods, the measurement period established in 2014 determines the stability period in the 2015 coverage year. This provision only applies to large employers which is defined under the ACA as an employer that employed at least 50 full-time employees (including full-time equivalent employees) on business days in the preceding calendar year.

Our workforce numbers go up and down during the year. How do we determine if we had at least 50 full-time employees on business days during the preceding calendar year?

For purposes of determining if you are a large employer, the formula requires the following steps:

1. Determine the total number of full-time employees (including any full-time seasonal workers) for each calendar month in the preceding calendar year;
2. Determine the total number of full-time equivalents (including non-full-time seasonal employees) for each calendar month in the preceding calendar year;
3. Add the number of full-time employees and full-time equivalents described in Steps 1 and 2 above for each month of the calendar year;
4. Add up the 12 monthly numbers;
5. Divide by 12.

If the average per month is 50 or more, you are a large employer. For 2014 only, there is a special rule that gives you the option to do the above calculation based on any 6 consecutive calendar months in 2013 (rather than the entire 2013 calendar year).

We have more than 50 full-time employees so we are subject to the employer mandate penalties. How do we know which of our employees is considered “fulltime” requiring us to pay a penalty if they qualify for premium tax credits at an exchange (if the employee has a variable work schedule or is seasonal)?

Through the end of 2014, for purposes of the employer mandate penalties, the guidance permits you to use a “look-back measurement period/stability period” safe harbor to determine which of your employees are considered full-time employees. You may use a standard measurement/stability period for ongoing employees, while using a different initial measurement/stability period for new variable and seasonal employees.
Who are “variable hour” employees?

All employees who are not full-time employees are considered variable hour employees. Full-time employees are those that work 30 or more hours per week, including salaried employees that work more than 30 hours per week. For purposes of the measurement and stability periods, seasonal employees and salaried employees that work less than 30 hours per week are also considered variable hour employees.

Must I include seasonal employees in my measurement period?

Yes, you must evaluate the hours of seasonal employees if they are employed during the measurement period and must offer those employees coverage if they:

- Work more than 120 days during the year;
- Work more than an average of 130 hours per month, as determined by the measurement period; and
- Are still in your employ at the beginning of the coverage year.

How do the measurement and stability periods coincide with my health plan open-enrollment period?

Open enrollment periods are typically used to make employees aware of their coverage options and provide them with time to complete necessary enrollment paperwork prior to the beginning of the coverage year. All employees eligible for coverage in the upcoming coverage year must be provided with an opportunity to participate in the open enrollment period. The measurement period thus must end before the open enrollment period begins.

If we use a measurement/stability period safe harbor, which hours do we have to count when calculating the number of hours worked in the measurement period?

For hourly employees, you must calculate actual hours of service and hours for which payment is made or due for vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. For non-hourly employees, you are permitted to calculate the number of hours of service using one of three methods. You may apply different methods for different classifications of non-hourly employees, so long as the classifications are reasonable and consistently applied. The three methods are:

1. Counting actual hours of service (as in the case of hourly employees) and hours for which payment is made or due for vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence; or
2. Using a days-worked equivalency method whereby the employee is credited with eight hours of service for each day; or
3. Using a weeks-worked equivalency of 40 hours of service per week. However, you cannot use the days-worked or weeks-worked equivalency method if the result would be to substantially understate an employee's hours of service (e.g. employees working three 10-hour days). Also, you do not have to count hours worked outside the United States.

For our school district plan, can we use a 12-month measurement period by counting only the hours of service that were incurred during the school year (and no hours for the summer break)?

No. For employees of educational institutions, a 12-month measurement period is permitted but a special rule applies that says for employment break periods (e.g. summer break) of four or more consecutive weeks, you must either:

- Determine the average hours of service per week for the employee during the measurement period excluding the employment break period and use that average as the average for the entire measurement period; or
- Credit the employee with hours of service for the employment break period at a rate equal to the average weekly rate at which the employee was credited with hours of service during the weeks in the measurement period that are not part of an employment break period (but no more than 501 hours of service are required to be credited). Also, you cannot treat your employees who work during the active portions of the academic year as seasonal employees.
We generally do not track the full hours of service of our adjunct faculty, but instead compensate them on the basis of credit hours taught. How should we count hours of service for our adjunct faculty?

You must use a reasonable method for crediting hours of service that is consistent with the purposes of the employer mandate. For example, a method of crediting hours would be reasonable if it took into account all of your adjunct professor’s hours of service including classroom or other instruction time and other hours that are necessary to perform the employee’s duties, such as class preparation time. It would not be reasonable if it took into account only some of an adjunct professor’s hours of service with the effect of recharacterizing, as non-fulltime, an employee in a position that traditionally involves more than 30 hours of service per week.

If an employee takes an unpaid FMLA leave or goes on unpaid military leave during their measurement period, how do we account for that time upon their return to work?

For periods of special unpaid leave including under FMLA, USERRA or on account of jury duty, you must determine the average hours of service per week for the employee during the measurement period – excluding the special unpaid leave period – and use that average as the average for the entire measurement period. Alternatively, you can choose to credit employees with hours of service during the leave at a rate equal to the employee’s average weekly rate during the weeks in the measurement period that were not special unpaid leave.

So, if an employee meets the 30 hours per week requirement over the measurement period, do we need to enroll them the day after the measurement period ends?

For ongoing employees, you can build in an “administrative period” after the measurement period ends and before the associated stability period begins. This administrative period can’t reduce or lengthen the measurement period or the stability period; it can’t be longer than 90 days; and it must overlap with the prior stability period; so that, during the administrative period, you continue to offer coverage to ongoing employees until the new stability period begins.

For new variable or seasonal employees, you can build in an administrative period before the start of the stability period. This administrative period must not exceed 90 days in total. For this purpose, the administrative period is counted from the date of hire to the date the employee is first offered coverage under your group health plan, other than the initial measurement period. Thus, for example, if you begin the initial measurement period on the first day of the first month following the employee’s start date, the period between the employee’s start date and the first day of the next month must be taken into account in applying the 90-day limit on the administrative period.

Similarly, if there is a period between the end of the initial measurement period and the date the employee is first offered coverage under your plan, that period must be taken into account in applying the 90-day limit on the administrative period. In addition, you are limited in how long the initial measurement period and the administrative period combined can be for a new variable or seasonal employee. Specifically, your initial measurement period and administrative period together cannot extend beyond the last day of the first calendar month beginning on or after the first anniversary of the employee’s start date. For example, if you use a 12-month initial measurement period for a new variable our employee, and begin that initial measurement period on the first day of the first calendar month following the employee’s start date, then the administrative period before coverage starts cannot be longer than one month, assuming of course, the employee met the full-time hours requirement during the initial measurement period.

How do the full-time employee safe harbors work for new hires?

They are generally based on the employee’s hours worked, or, the amount of hours the employee is reasonably expected to work as of their hire date.
New employee reasonably expected to work full-time (i.e. 30 or more hours per week)

- If you reasonably expect an employee to work full-time when you hire them, and coverage is offered to the employee before the end of the employee’s initial 90 days of employment, you will not be subject to the employer mandate payment for that employee, if the coverage is affordable and meets the minimum required value.

New employee reasonably expected to work part-time (i.e. less than 30 hours per week)

- If you reasonably expect an employee to work part-time and the employee’s number of hours do not vary, you will not be subject to the employer mandate penalty for that employee if you don’t offer them coverage.

New variable hour and seasonal employees

– If based on the facts and circumstances at the date the employee begins working (the start date), you cannot determine that the employee is reasonably expected to work on average at least 30 hours per week, then that employee is a variable hour employee. Because the term “seasonal employee” is not defined for purposes of the employer responsibility penalty, through 2014, you are permitted to use a reasonable, good faith interpretation of the term “seasonal employee”. The IRS has indicated that any interpretation of the term “seasonal” probably would not be reasonable if it included a working period of more than six months. Once hired, you have the option to determine whether a new variable hour or seasonal employee is a full-time employee using an “initial measurement period” of between three and 12 months (as selected by you). You would measure the hours of service completed by the new employee during the initial measurement period to determine whether the employee worked an average of 30 hours per week or more during this period. If the employee did work at least 30 hours per week during the measurement period, then the employee would be treated as a full-time employee during a subsequent “stability period,” regardless of the employee’s number of hours of service during the stability period, so long as he or she remained an employee. The stability period must be for at least six consecutive calendar months and cannot be shorter than the initial measurement period. If the employee then didn’t work on average at least 30 hours per week during the measurement period, you would not have to treat the employee as a full-time employee during the stability period that followed the measurement period, but the stability period could not be more than one month longer than the initial measurement period.

Example – Facts:

For new variable hour employees, you use a 12-month initial measurement period that begins on the start date and apply an administrative period from the end of the initial measurement period through the end of the first calendar month beginning on or after the end of the initial measurement period.

Situation:

Dianna is hired on May 10, 2014. Dianna’s initial measurement period runs from May 10, 2014, through May 9, 2015. Dianna works an average of 30 hours per week during this initial measurement period. You offer affordable coverage to Dianna for a stability period that runs from July 1, 2015 through June 30, 2016.

Conclusion:

Dianna worked an average of 30 hours per week during her initial measurement period and you had (1) an initial measurement period that does not exceed 12 months; (2) an administrative period totaling not more than 90 days; and (3) a combined initial measurement period and administrative period that does not last beyond the final day of the first calendar month beginning on or after the one year anniversaries of Dianna’s start date. Accordingly, from Dianna’s start date through June 30, 2016, you are not subject to an employer mandate penalty with respect to Dianna because you complied with the standards for the initial measurement period and stability periods for a new variable hour employee. However, you must test Dianna again based on the period from October 15, 2014 through October 14, 2015 (your first standard measurement period that begins after Dianna’s start date) to see if she qualifies to continue coverage beyond the initial stability period.
My plan year begins in September 2013. Since the employer mandate doesn’t begin until January of 2014, am I exempt from measurement and stability requirements for that year?

No, and your situation is a bit more complex than others. Since the employer responsibility provision is not applicable until January 2014, you need to check with your insurer to determine what options they are providing to employers in this situation. The insurers are allowed to establish separate enrollment periods that would cover newly eligible employees in January. Your insurer could allow a separate open enrollment period in December for the variable hour employees found eligible for 2014 coverage, or they could require that you enroll them during the standard open enrollment period in September 2013. It is possible they may have some other options for you as well. The key will be working with them early to know what is expected. Once you have the answer to this question, you can proceed with determining your measurement and stability periods.

Is this a continuous process?

Yes. Once you begin the process this year you must continue with measurement and stability periods for as long as you are identified as a large employer.

May I have different measurement and stability periods for different employees?

Yes, you may establish different measurement and stability periods for categories of employees such as salary/hourly; collective bargaining/noncollective bargaining; each group of collectively bargained employees covered by a separate collective bargaining agreement; employees whose primary places of employment are in different States etc, but periods established within the categories must be applied uniformly to all employees within the category.

Are these periods set in stone once I set them or can I change them in the future?

You may change the periods for the following coverage year but may not change them for the upcoming coverage year (EX. The current year is 2013; the upcoming coverage year will be 2014; and the following coverage year will be 2015). Beginning in 2014, once a measurement period begins it is linked to the stability period of the upcoming coverage year. In practical terms, the measurement period used in 2014 determines the stability period in 2015 and so on. All changes must therefore begin by altering the upcoming measurement period. Changes can either increase or decrease the measurement and stability periods as long as the periods are still 6-12 months long.

What happens if the hours of a variable hour employee drop after they are enrolled in the health plan?

The established stability period guarantees employees access to coverage during that time unless the employee notifies the employer they are no longer able to make the required employee premium contributions. An employer may not make an assumption the employee is unable to afford the contributions even though payroll deductions may not be possible. The employee must notify the employer they are unable to make the payments before the employee can be disenrolled during a stability period.
How does the full-time employee safe harbor work for ongoing employees?

For ongoing employees with variable hours, you have the option to determine each ongoing employee’s full-time status by looking back at a standard measurement period between 3 and 12 consecutive calendar months (as chosen by you). You can choose the months in which the standard measurement period starts and ends, provided that you are uniform and consistent in applying it for all employees in the same category. (See below in this section for permissible categories.) For example, if you chose a standard measurement period of 12 months, it could be the calendar year, a non-calendar plan year, or a different 12-month period, such as one that ends shortly before the start of the plan’s annual open enrollment season. If you determine that an employee averaged at least 30 hours per week during the standard measurement period, then you must treat the employee as a full-time employee during a subsequent “stability period”, regardless of the employee’s number of hours of service during the stability period, so long as he or she remained an employee. The stability period would have to be at least six consecutive calendar months and no shorter than the standard measurement period. If you determine that the employee did not work full-time during the standard measurement period, you would not have to treat the employee as a full-time employee during the stability period that follows and you would not incur an employer mandated penalty.

Example – Facts:

You choose a 12-month stability period that begins January 1 and a 12-month standard measurement period that begins October 15. Consistent with the terms of your group health plan, only an ongoing employee who works full-time (an average of at least 30 hours per week) during the standard measurement period is offered coverage during the stability period associated with that measurement period. You also choose to use an administrative period between the end of the standard measurement period (October 14) and the beginning of the stability period (January 1) to determine which employees worked full-time during the measurement period, notify them of their eligibility and of the coverage available under the plan for the calendar year beginning on January 1, answer questions and collect materials from employees, and enroll those employees who elect coverage in the plan. Previously-determined full-time employees already enrolled in coverage continue to be offered coverage through the administrative period until January 1.

Situation:

Phil and Cara have been employees for several years, continuously from their start date. Phil worked full-time during the standard measurement period that begins October 15 of Year 1 and ends October 14 of Year 2 and for all prior standard measurement periods. Cara also worked full-time for all prior standard measurement periods, but is not a full-time employee during the standard measurement period that begins October 15 of Year 1 and ends October 14 of Year 2.

Conclusions:

Because Phil was employed for the entire standard measurement period that begins October 15 of Year 1 and ends October 14 of Year 2, he is an ongoing employee with respect to the stability period running from January 1 through December 31 of Year 3. Because Phil worked full-time during that standard measurement period, he must be offered coverage for the entire Year 3 stability period (including the administrative period from October 15 through December 31 of Year 3). Because Phil worked full-time during the prior standard measurement period, he would have been offered coverage for the entire Year 2 stability period, and if enrolled would continue such coverage during the administrative period from October 15 through December 31 of Year 2.

Because Cara was employed for the entire standard measurement period that begins October 15 of Year 1 and ends October 14 of Year 2, Cara is also an ongoing employee with respect to the stability period in Year 3. Because Cara did not work full-time during this standard measurement period, she is not required to be offered coverage for the stability period in Year 3 (including the administrative period from October 15 through December 31 of Year 3). However, because Cara worked full-time during the prior standard measurement period, she would be offered coverage through the end of the Year 2 stability period, and if enrolled would continue such coverage during the administrative period from October 15 through December 31 of Year 2.
In this example, you would comply with the standards because your measurement and stability periods are no longer than 12 months; the stability period for ongoing employees who work full-time during the standard measurement period is not shorter than the standard measurement period; the stability period for ongoing employees who do not work full-time during the standard measurement period is not longer than the standard measurement period; and the administrative period is not longer than 90 days.

At what point would we stop using the initial measurement/stability period and transition an employee to ongoing status?

Once a new employee, who has been employed for an initial measurement period, has been employed for an entire standard measurement period, the employee must be tested for full-time status, beginning with that standard measurement period, at the same time and under the same conditions as other ongoing employees.
Example:

If you have a calendar year standard measurement period that also uses a one-year initial measurement period beginning on the employee’s start date, you would test a new variable hour employee whose start date is February 12 for full-time time status first based on the initial measurement period (February 12 through February 11 of the following year) and again based on the calendar year standard measurement period (if the employee continues in employment for that entire standard measurement period) beginning on January 1 of the year after the start date.

If you determine the employee is a full-time employee during the initial measurement period or standard measurement period, then he or she must be treated as a full-time employee for the entire associated stability period. This is the case even if the employee is determined to be a full-time employee during the initial measurement period but determined not to be a full-time employee during the overlapping or immediately following standard measurement period. In that case, you may treat the employee as a part-time employee only after the end of the stability period associated with the initial measurement period. Thereafter, the employee’s full-time status would be determined in the same manner as that of other ongoing employees.

In contrast, if you determine the employee is not a full-time employee during the initial measurement period, but is determined to be a full-time employee during the overlapping or immediately following standard measurement period, you must treat the employee as a full-time employee for the entire stability period that corresponds to that standard measurement period (even if that stability period begins before the end of the stability period associated with the initial measurement period). Thereafter, the employee’s full-time status would be determined in the same manner as that of other ongoing employees.

If we use a measurement/stability period safe harbor for our variable hour employees, is there a formula we can use to determine whether they worked 30 or more hours per week during the measurement period?

Employees would be deemed to be full-time employees if they work on average at least 130 hours per month. For example, using a 12-month measurement period you would count up the number of hours worked in those 12 months and divide by 12. If the hours worked per month averages 130 or more, that employee would be a full-time employee for the ensuing stability period.

We intend to adopt a 12 month measurement period and a 12 month stability period but are facing time constraints in getting our systems set up in order to be ready to enroll full-time employees on January 1, 2014. Are there any other options?

Yes. Solely for purposes of stability periods beginning in 2014, you 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). For example, you could use a measurement period from April 15, 2013 through October 14, 2013 (six months), followed by an administrative period ending on December 31, 2013 with a 12-month stability period starting on January 1, 2014.

Can we change the timing or duration of our standard measurement and stability periods?

You may change your standard measurement period and stability period for subsequent years, but you may not change them once the standard measurement period has begun.

Is there an advantage to having shorter measurement and stability periods?

Given that the stability period for 2015 is linked to the measurement period established for 2014, the shorter periods could reduce both the number of employees eligible for coverage and the required employer contributions to the cost of coverage for the year. If the periods are six months, fewer employees may be eligible, and required employer contributions may be lower due to lower enrollment as well as premium contributions for only six months instead of the full year. However, unless the employer is truly willing to disenroll variable hour employees at the end of the stability period, regardless of on-going health needs or treatments the employees or their dependents must have, the employer will likely find themselves continuing this coverage for all eligible employees for the entire coverage year.
What about full-time employees that drop to part-time status during the year?

If it is your policy that access to coverage is restricted to full-time employees only, you are allowed to transition employees that move to part-time status off of coverage during the plan year (these are full-time employees, not variable hour employees subject to stability periods). To determine eligibility for coverage in the upcoming coverage year, you must include these employees in the measurement period as you would other variable hour employees. Depending on the time of year an employee moves to part-time status, the measurement period may show that they are eligible for coverage in the upcoming coverage year but they would be eligible as a variable hour employee and guaranteed coverage for only the stability period.

Can I just choose my slowest six months as the measurement period?

Perhaps. The rules provide the employer with flexibility to determine the number of months as well as which consecutive months it will use to define the measurement period. The risk you run in selecting the slowest six months will be from employees challenging that they meet the definition of a full-time employee based on average monthly hours worked over the course of the year. Should they be able to demonstrate that they indeed did meet full-time status for six or more months, you could be assessed the responsibility penalty which is $2,000 times the number of full-time employees minus the first 30 ($2,000 X (Full-time employees – 30)).

Given that using any measurement period that is less than 12 months could expose an employer to such a risk, if you would like to use a 6 or 9 month measurement period, the best way to limit your risk is to set your measurement period to include a combination of highs and lows, or to coincide with some other identifiable business practice – health plan renewal date, fiscal year, etc. Establishing some other criteria for the selection of the measurement period other than employee hours will bring credibility to your decision and help to avoid the appearance of merely trying to skirt the requirement.

What if my new plan year begins between February – June 2013?

The advantage of having a current plan year that extends into the first part of 2014 is that you may hold onto a health plan that does not include all of the required ACA benefit mandates for a bit longer than others. However, the date of your health plan renewal does not affect the requirement to establish measurement and stability periods. The rules allow you to establish measurement periods that are not based on the calendar year so a measurement period that begins in 2013 and ends in 2014 is allowed. As with all others, you are also allowed to establish a measurement period of 12 months but in doing so, the coinciding stability period may be no less than 12 months.

Does it benefit me to move hourly employees into salaried positions?

Potentially. The two buckets of employees that must be combined to determine your employer size are bucket one which is full-time employees only; and bucket two which includes the hours worked by all other employees. Combining the hours worked in bucket two to derive an FTE total yields a smaller number of FTEs than the actual number of people employed. This reduces your overall employer size. If the employees you want to move from hourly to salaried are already full-time (working 30 or more hours per week), they must already be included in bucket one and thus your employer size is not affected by moving them to “salaried”. However, if these employees work variable schedules and thus are included in bucket two, and you suspect they will always be eligible for health care coverage due to their schedule and results of the measurement period you establish, you could move them to salaried and include them in bucket one.

In this situation, when you move these employees into bucket one, you are moving the hours they worked out of the total number of hours that must be counted to determine the FTEs in bucket two. This lower number of hours may reduce your FTE count in bucket two, but it is not clear that it will reduce your overall size because of the increase in the number of employees in bucket one. If you are an employer that is right on the cusp of 50 FTES, it is theoretically possible that this could help reduce your overall employer size, but not likely.

Also note, it is possible to move an employee to a salaried position that is less than full-time. However, in this situation, the specific hours worked, regardless of whether they are salaried or not, must still be included in both the employer size (bucket two), as well as included for evaluation under the measurement period. Moving employees to a salaried position that is less than full-time thus does not have an impact on the ACA requirement but could have other benefits that are of interest to the employer.
If one of our new variable hour employees is promoted to a permanent full-time position during their initial measurement period, how should their eligibility for coverage be treated?

For a new variable hour or seasonal employee who changed employment status to full-time during their initial measurement period, you should treat her as a full-time employee as of the first day of the fourth month following the change in employment status.

What happens if the change in employment status occurs during a stability period?

An ongoing employee’s change in employment status during his or her stability period would not affect the employee’s status as a full-time employee or non fulltime employee for the remainder of that stability period.

What happens if an employee fails to make a timely contribution (e.g., tipped employees, reduced work schedules, and leaves of absence) during the stability period?

If your employee’s payment is late, you must provide the employee with a 30-day grace period in order to make the payment. If your employee does not make the payment within the grace period, you are not required to provide coverage for the period for which the premium is not timely paid and may terminate coverage. In addition, you are treated as having offered that employee coverage for the remainder of the coverage period (typically the remainder of the plan year) and cannot be penalized for terminating coverage if the premium is not paid. Similarly, if the employee makes a partial payment that is "not significantly less" than the total amount due (the lesser of 10% of what is due or $50), you must either accept the deficient payment as payment in full or notify the employee in writing of the underpayment and give the employee a reasonable amount of time to pay the remaining balance.

We frequently have variable hour employees whose contracts are terminated and then they are rehired at a later date. Can we treat them as new employees and start the measurement period over again for purposes of determining if they are a full-time employee?

It will depend on the length of the non-employment period. If the period of non-employment is at least 26 consecutive weeks, you may treat the rehired employee as a new employee. You can also use the “rule of parity” that says an employee may be treated as a new employee if the period of non-employment (of less than 26 weeks) is at least four weeks long and is longer than the employee’s period of employment immediately preceding the period of non-employment. For example, if an employee works six weeks, terminates employment, and is rehired ten weeks later, that rehired employee is treated as a new employee because the ten-week period of non-employment is longer than the immediately preceding six-week period of employment.

We occasionally hire temporary employees on a full-time 40-hour schedule when we have large projects to complete. How should we classify them in order to determine if we should be offering them coverage?

Until January 1, 2015, employees that are hired for a limited duration whose employment is not tied to a particular season of the year can be treated as variable hour employees subject to your measurement/stability period analysis. A new employee who is expected to be employed initially at least 30 hours per week can be classified as a variable hour employee if, based on the facts and circumstances at the start date, the period of employment at more than 30 hours per week is reasonably expected to be of limited duration and it cannot be determined that the employee is reasonably expected to be employed on average at least 30 hours per week over your entire initial measurement period.

Effective January 1, 2015, you must assume that a temporary employee will work for the entire duration of the initial measurement period so you will not be able to automatically classify them as variable-hour employees and there could be circumstances where not offering the coverage to a temporary employee who has worked a full-time schedule for at least three months will require the employer to either offer coverage or pay a penalty. For example, if you hire a temporary employee for a 10-month assignment at 40 hours per week, you could not 1) take into account the fact that the employee will not work for the entire duration of the initial measurement period; and 2) you could not make a reasonable assumption as of the employee's start date that the employee would average less than 30 hours per week over the duration of the initial measurement period. In which case, you would have to offer coverage after three months or be subject to a possible penalty for each month after the third month.