Determining Full-Time Employee Status for 2017

Will Your Business Be Assessed An Employer Mandate Penalty?

BlueCross BlueShield of Kansas

bcbsks.com

MC18 05/17

START

Is your company a large employer?
See "Determining Large Employer Status" on page 3

YES NO

STOP! This provision has no application to your company.

Key points to consider

There are a few guidelines you'll want to consider when reviewing this material. Please see page 8 for details.

Does your company offer an "affordable" "minimum value" plan to all FT employees?
See "affordable" "minimum value" (MV) plan on page 4

YES NO

STOP! Your company is not subject to a penalty.

Do you have less than 30 FT employees (excluding the FT equivalency test above)?
See "Determining Full Time Employee Status" on page 4

YES NO

STOP! Your company is not subject to a penalty.

Does your company offer an "eligible employer sponsored plan" to 95% of FT employees and dependents?

YES NO

STOP! PENALTY 1 You will be assessed a penalty equal to $2,260 x (# of FT employees minus 30).

Have any of your FT employees applied for and received a subsidy to purchase insurance on an Exchange?

YES NO

STOP! PENALTY 1 Your company will be assessed a penalty equal to the lesser of Penalty 1 or $3,390 x (# of FT employees who have obtained Exchange coverage with a subsidy).

UNLESS An employee subsequently applied for and received a subsidy to purchase insurance on an Exchange.

STOP! Your company is not subject to a penalty.

* *Most employer plans are "eligible employer sponsored plans"*

Determining Large Employer Status

Applicable Large Employer: An employer who employs the average of at least 50 Full Time (FT) and FT equivalent employees in the applicable calendar year.

Step 1: FT employee: Calculate the number of employees who work at least 30 hours per week or 130 hours in a given month.

Step 2: Full Time Equivalency: For any non-FT employee (see Step 1), add up the total hours worked during a given month for every employee and divide by 120.

- *For step 1 and 2 you must include actual hours worked and paid time off.***
- *Include fractions.*

Step 3: Add the results of Step 1 and Step 2.
Step 4: Repeat Steps 1, 2 and 3 for every month.
Step 5: Add up the total for the year.
Step 6: Divide the total from Step 5 by 12.

- Drop all fractions and round down.

Step 7: If the result in Step 6 is 50 or greater, your company is a large employer and the penalties potentially apply.
***Seasonal exception: if your company exceeds the threshold for 120 days or less, and those employees are "seasonal" employees, your company is not a Large Employer.*

Examples

Assume *Acme Corporation* starts the year with 38 FT employees and 1,800 hours worth of part time (PT) employees.

Jan – March: Acme is stable with the starting employees, no one quits and Acme does not hire anyone. PT employees work 1,800 hours.

Step 1: 38 FT employees
Step 2: 1800 ÷ 120 = 15
Step 3: 53 total FT and FT equivalent employees

April - July: In April, Acme has some PT employees quit and hires one new FT employee.
Step 1: 39 FT employees
Step 2: 1500 ÷ 120 = 12.5
Step 3: 51.5 FT and FT equivalent employees

August: Eight FT employees unexpectedly quit, Acme adds PT hours to make up for the loss of productivity.
Step 1: 31 FT employees
Step 2: 2040 ÷ 120 = 17
Step 3: 48 FT and FT equivalent employees

Sept – Dec: Acme replaces most of the FT employees and cuts PT hours
Step 1: 36 FT employees
Step 2: 1440 ÷ 120 = 12
Step 3: 48 FT and FT equivalent employees
Step 4: done above
Step 5: 605
Step 6: 50.5=50
Step 7: the employer is a large employer as of 2016

Things to consider in making the above calculations

Single employer includes:

Controlled groups, as defined in subsection (b) (c) (m) and (o) of section 414 of the Internal Revenue Code.

- Make sure to consider employees who are hired during the year and employees who leave during the year.
- Remember that FT employee and FT equivalent employee calculations are different and the hours from one should not be included in the hours of the other. If an employee is FT (more than 130 hours a month) those hours are not considered in the FT equivalency test (step 2).
- This test is different from the later test of determining an employee's FT status. This test is conducted at the end of the applicable calendar year, thus, all you must do is look back at the previous year and conduct the calculations.

Does your company offer an “afford-able” “minimum value” (MV) plan to all FT employees?

MV: BCBSKS does this calculation inside your SBC.

Affordability: The IRS will not assess a penalty against a plan that passes the following:

Step 1: Identify the yearly premium of the cheapest self-only “eligible employer sponsored plan” that offers minimum value to all FT employees.
You test the cheapest “self-only” plan even if some low paid employees have a family and select a more expensive plan.

Step 2: Identify the lowest paid employee on the payroll.

Step 3: Calculate 9.69% of the employee’s income reported in box 1 on the employee’s W-2.

Step 4: Calculate what the employee’s contribution to the plan in Step 1 would be considering employer contributions.

Step 5: Ensure that Step 3 is greater than Step 4.

The lowest paid employee need not select the cheapest self-only plan, it need only be available to all FT employees and their dependents.

The regulations provide for two other methods to calculate affordability but one is very similar to the one described above and the other is simply a method of setting a plan’s cost to equal 9.69% above the federal poverty line.

Example of safe harbor:

Step 1: Cheapest plan costs $4,000 per year total.

Step 2: Lowest paid employee works 30 hours per week at $8.00 per hour and reports $12,480 on his W-2.

Step 3: 9.69% of $12,480 is $1,209.31.

Step 4: Employer contributes 75% to the cost of the plan in

Step 5: This plan is “affordable” under the safe harbor provision.

An employer could also conduct Steps 2 and 4 first and then design a plan where the employee contribution would be less than or equal to the results of Steps 1 and 4. However, this approach will not work as well for variable hour employees as it will not be possible to know the exact amount of hours the employee worked until the end of the year.

Determining Full Time Employee Status

The Affordable Care Act (ACA) requires a month-by-month approach (meaning the employer must evaluate each individual employee full time status each month). Recognizing that administrative burden, the IRS has created the following safe harbor.

Step 1: Classify employee in one of the following categories:

A: Ongoing employee
B: New employee – reasonably expected to work full time
C: New employee – variable hour/seasonal

Step 2: Apply the safe harbor provision based on employee classification:

A: Ongoing employee: An employee employed for at least one standard measurement period (see below).

1: Establish a “standard measurement period” (between 3 and 12 months) that applies to all FT employees within the same category.*

- The standard measurement period is a fixed period that does not change year to year.
- An individual who averages 130 hours monthly (or 30 weekly) or more is a FT employee and must be offered coverage.

2: Establish an optional “administrative period” of up to 90 days.

- This is a period between the standard measurement period and following stability period providing time for the employer to enroll employees.

3: Establish a stability period that is at least six months for FT employees, and is equal to the measurement period for non-FT employees. The stability and measurements period must be equal if the measurement period exceeds six months.

- The employer must consider the employee either FT or PT based on A-1 (page 4) for the entire stability period regardless of the hours worked during the stability period.
- The stability period is a set period beginning after the administrative period. It does not change year to year.

4: Re-test employee during every subsequent standard measurement period.

- There will be some overlap. Even though an employee's hours will not count during stability periods, the hours must be counted where the stability period overlaps with the measurement period for the purpose of categorizing the employee in the following stability period.

**Permissible categories for Ongoing Employees: union/non-union; salaried/hourly; employees of different entities; employees in different states.*

B: New employee reasonably expected to work full time

- Immediately considered FT; must offer coverage.
- Employee must be enrolled by the first day of the first full month after 3 months employment.

C: New and seasonal employee – variable hour

1: Establish an initial measurement period of three to 12 months, tied to hire date.

- Conduct the same hours analysis mentioned previously.
- The initial measurement period is fluid and is tied to hire date of individual employees; it is not a set period of the calendar.

2: Establish administrative period

- The administrative period must not exceed 90 days, but it is subject to a potentially shorter limit: the administrative period combined with the measurement period cannot extend beyond the last day of the first full month following the employee's one year anniversary.

3: Establish a stability period: must be the same length as the standard stability period, otherwise:

- If FT employee, the period must be six months or the length of the measurement period if the measurement period was longer than six months.
- If PT, the stability period cannot be longer than the measurement period plus one month.
- The stability period is just a set period designed to begin after the administrative period.

4: Re-test employee during the following "full" standard measurement period established in "A" and treat employee as ongoing employee at end of the standard measurement period.

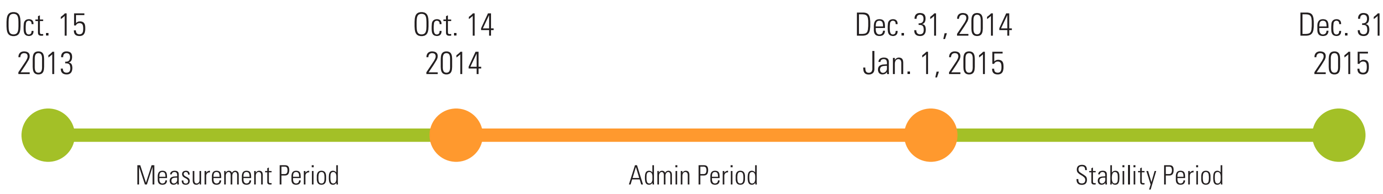
- Because the standard measurement period is a set part of the calendar, the employee might be in his initial measurement period and standard measurement period at the same time.
- Thus, the employee would be subject to the initial stability period following the initial measurement period and the standard stability period following the standard measurement period which could result in a combined stability period of longer than one year.

Assumptions: *Group renews on Jan. 1*
Standard Measurement Period: *Oct. 15—Oct. 14*
Administrative Period: *Oct. 15—Dec. 31*
Stability Period: *Jan. 1—Dec. 31*

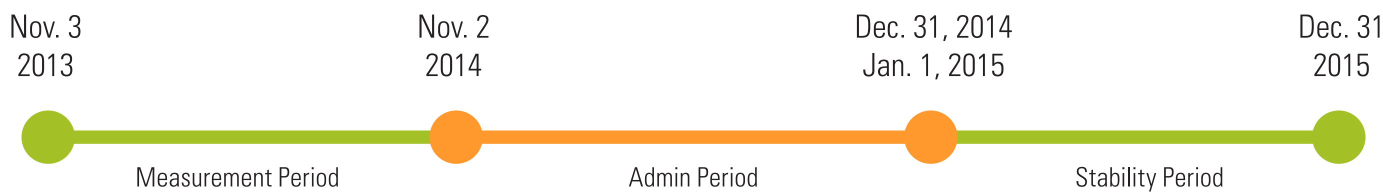
Initial Measurement Period: *Begins on date of hire and is 12 months long*
Initial Admin Period: *Ends on the last day of the first full month following the end of the measurement period*

We will also assume this group qualifies for transitional relief and has 150 employees, thus the group must be compliant as of Jan. 1, 2015.

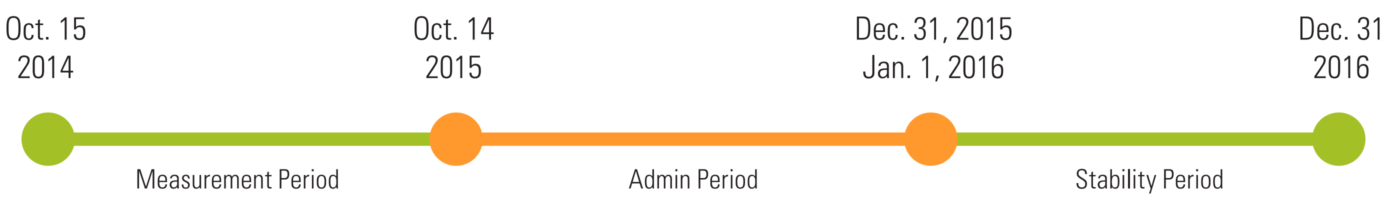
Year 1: Measurement must begin in 2013



New Employee: Year 1, hired Nov. 3, 2013



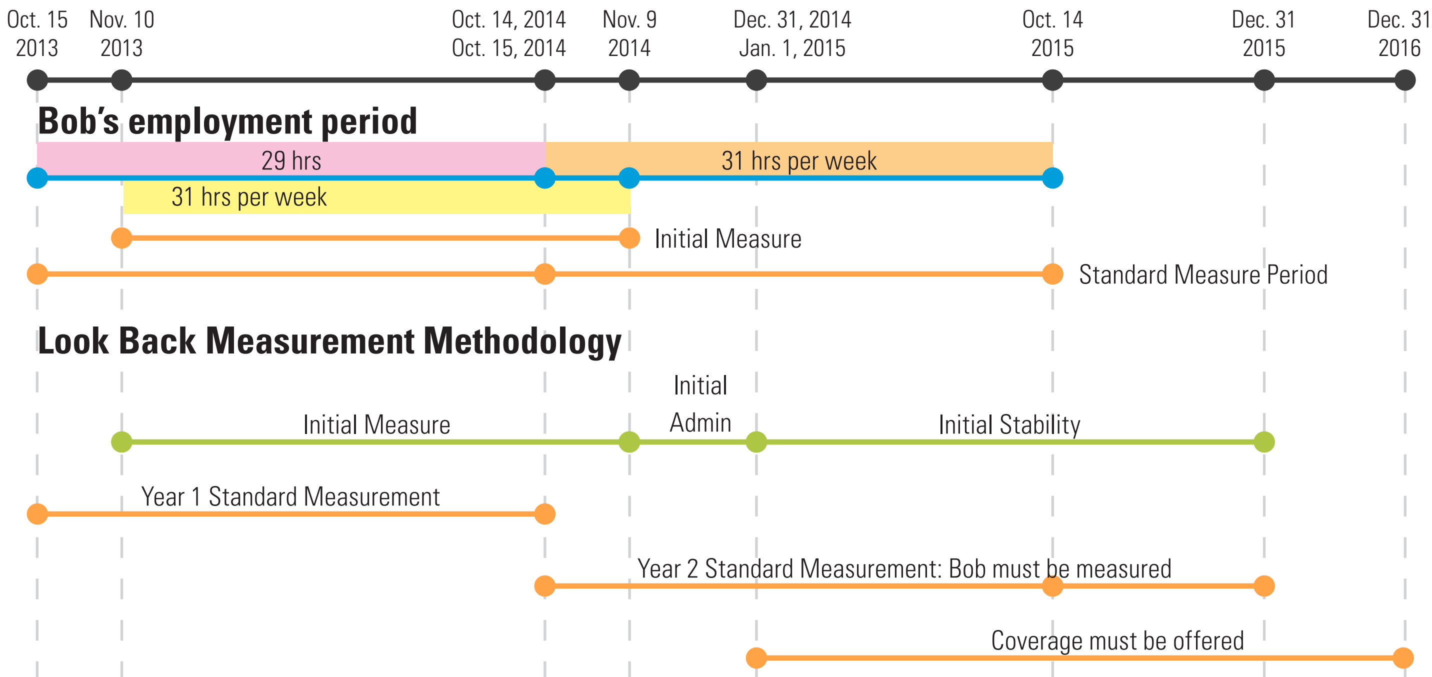
Year 2



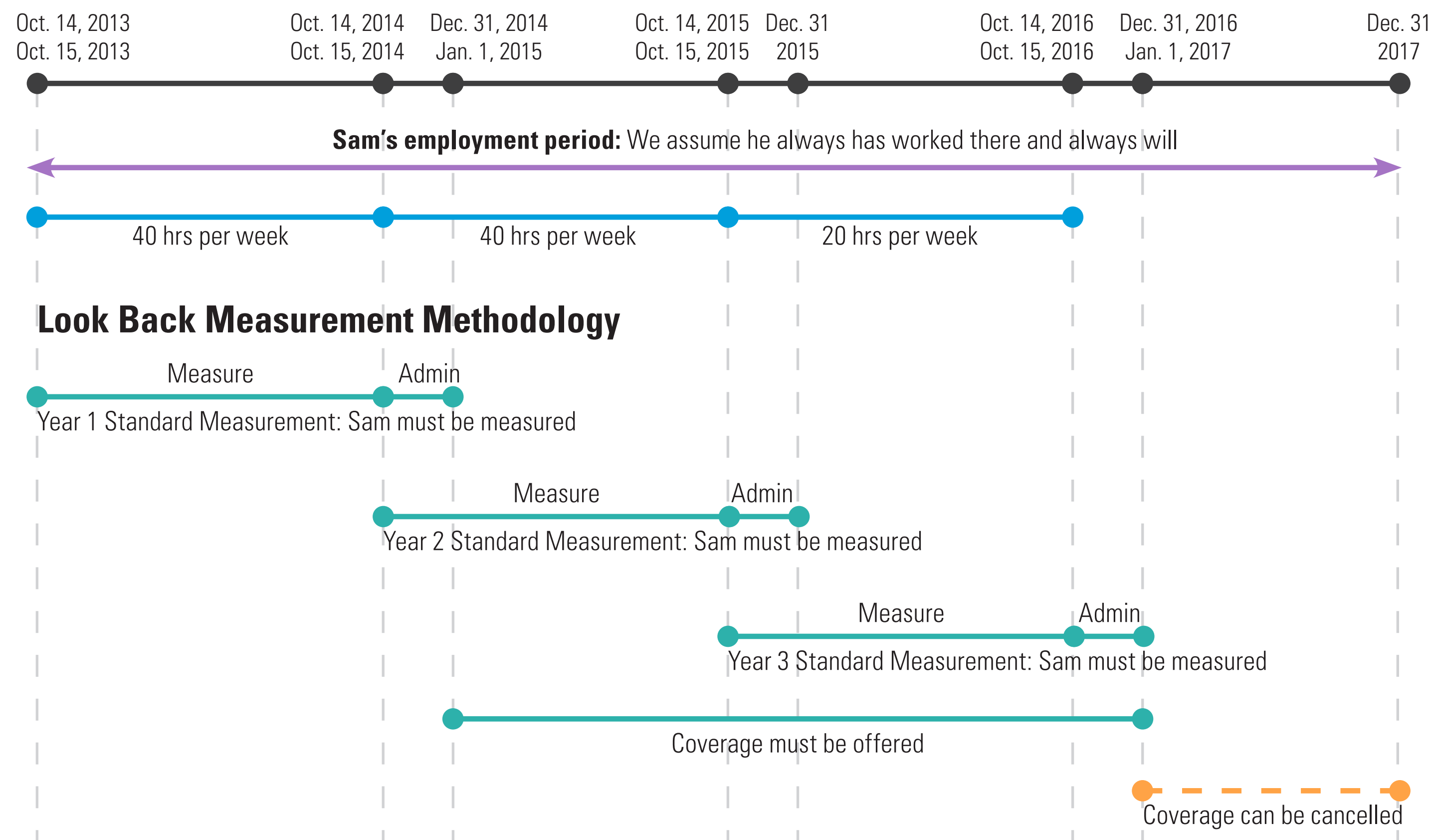
Examples for Bob and Sam

Assume Bob is hired Nov. 10 and averages 31 hours per week between Nov. 10, 2013, and Nov. 9, 2014; 29 hours per week between Oct. 15, 2013, and Oct. 14, 2014; then 31 between Oct. 15, 2014, and Oct. 14, 2015. Further assume Sam has worked here for 30 years. Sam has always worked 40 hours per week but reduces his hours starting Oct. 15, 2015, and only works 20 hours per week from then on.

BOB: Will be offered coverage continuously from Jan. 1, 2015 through at least Dec. 31, 2016



SAM: Must be offered coverage Jan. 1, 2015-Dec. 31, 2016, coverage may be canceled from Jan 1, 2017-Dec 31, 2017, however, measurement must continue.



Calculating the Penalty

Scenario 1 (stronger penalty): Employer does not offer an eligible employer sponsored plan to all FT employees, and at least one FT employee obtains coverage on the Exchange and obtains a premium or cost-sharing subsidy.

Step 1: Calculate the number of FT employees.
Step 2: Subtract 30 from that number.
Step 3: Multiply the number from Step 2 by 1/12 of $2,260 for each month coverage wasn't offered.

Scenario 2 (softer penalty): Employer offers an eligible employer sponsored plan to all FT employees but at least one FT employee obtains coverage on the Exchange with a premium or cost-sharing subsidy, because the plan either did not offer MV or was unaffordable.

Step 1: Calculate the number of FT employees.
Step 2: Determine the number of FT employees who obtained coverage on the Exchange and obtained a premium or cost sharing subsidy.
Step 3: Pay the lesser of:

A: The number of employees from Step 2 multiplied by 1/12 of $3,390 for each month coverage was not affordable or didn't offer minimum value plan.

B: The calculation in Scenario 1.

***Note, under Scenario 2, it is preferable for an employer that cannot make its plan affordable under the safe harbor to make a plan as cheap as possible anyway. The cheaper the plan, the fewer employees will be eligible for an Exchange subsidy. The worst case scenario for any employer is to fail to offer any coverage at all.*

***Also remember, if your company's plan satisfies the IRS safe harbor on affordability (9.66% of W-2 income), then your company is not subject to a penalty under either scenario even if an employee obtains an Exchange subsidy.*

Key points to consider

1. You need only offer coverage to FT employees (and their dependents).
   a. Required to offer coverage for dependents up to age 26.

2. Your company must offer a plan to all FT employees to avoid a penalty. If your company only offers a plan to some FT employees (i.e. management plans) then your company will be subject to the stronger penalty.

3. If your company offers minimum value coverage that is affordable to all FT employees, your company cannot, under any circumstances, be subject to penalties.

4. If your company is not a large employer, it is not, under any circumstances, subject to penalties.

5. The "large employer" test and the "full time employee" test are independent tests and should not be confused with one another.

6. Calculating hours of service: The following applies in determining Large Employer Status and Full Time Employee Status hours of service.
   a. Hourly — simply count the hours worked
   b. Non-hourly — three options available:
   i. Count the actual hours worked
   ii. Day by day approach where any day the employee works at least 1 hour he is credited with an 8 hour day
   iii. Week by week approach where any week an employee works, he is credited with 40 hours of work

7. The plan pays any applicable penalties like a tax.
   a. However the IRS has authority to require the payments on an annual, monthly or more frequent basis.
   b. The IRS will notify an employer if it must pay the penalty and inform the employer how to remit payment.

8. Due to a special rule for extended leave periods, most employees of educational organizations will be full time even if they do not work at all over the summer.

9. The regulations provide a safe harbor. An employer will not be penalized if it offers coverage to at least 95% (or five employees for a smaller employer) of its employees.