
Federal Health Care Reform Updated Compliance Guide Participation Supplement

Inside:

Action Required	4
Look-back vs. Monthly Methods.....	5
Choose Participation Criteria Going Forward	6
Default Standard 12-month Look-back Provisions.....	6
Custom 12-month Look-back Provisions.....	7
Monthly Participation Provisions	7
Classifying Current Employees for 2015.....	8
Sample Plan Document Eligibility Language	9

www.HealthPlansInc.com

Background

To avoid penalties under the ACA for failing to offer full-time employees coverage and to generate the data required for the annual information reporting that begins with data from 2015, all employers who offer health coverage to their employees must develop:

- Participation rules for coverage under their plans that comply with the ACA
- A system for documenting each employee's hours of service and confirming eligibility (or ineligibility) for coverage under the plan

In addition, under DOL rules, Summary Plan Descriptions (SPDs) must include a plan's criteria "for eligibility for participation and for benefits" in "a manner calculated to be understood by the average plan participant". (29 CFR2520.120-2,3)

Health Plans first described these requirements in our June 2013 *Compliance Guide*. Although the regulators postponed the initial implementation of this part of the employer mandate, the basic requirements are the same: employers must apply ACA-compliant eligibility rules to the health plans they sponsor, and must document their employees' hours or face potential penalties.

This Supplement provides tools and information to help clients:

1. Establish the eligibility and participation criteria that should apply to their plans
2. Take the steps necessary to classify current employees for the 2015 plan year
3. Become familiar with the way the new participation provisions will be incorporated into Plan Document/Summary Plan Descriptions (PD/SPDs)

Clients will work with their Health Plans Account Managers to establish new participation criteria as required.

We understand that payroll vendors are working with employers to generate employee hours data to support eligibility determinations and to provide information needed to comply with the annual reporting requirements.

This *Supplement* focuses on helping employers understand and execute the steps for establishing ACA-compliant participation provisions. For detailed information about the ACA rules for eligibility and participation, the relevant sections of the *Updated Compliance Guide* are cross-referenced throughout.

Action Required

All employers offering health coverage will need to develop participation criteria that are compliant with the ACA.

To help streamline the development of new participation provisions, we suggest the following steps:

Step	Objective	Action Required
1	Determine whether to use the look-back or monthly method to establish eligibility and participation provisions	Review the: <ol style="list-style-type: none"> 1. <i>Updated Compliance Guide</i>, pages 14-19 and 46-57, for details about how the methods work 2. <i>Look-back vs. Monthly Method</i> chart on page 4 of this <i>Supplement</i> to assess the differences and comparative advantages/disadvantages of each. 3. Sample plan document language that begins on page 8 of this <i>Supplement</i> to become familiar with how look-back provisions will be described
2	Identify full-time employees for the 2015 plan year	<ol style="list-style-type: none"> 1. Review pages 4-7 of this <i>Supplement</i> and establish the process by which you will identify which current employees are full-time 2. Work with your payroll vendor to establish ongoing processes for tracking employee hours of service
3	Develop detailed participation provisions for inclusion in your plan document/summary plan description	<p>Your Health Plans Account Manager will work with you to incorporate the new provisions into your plan document</p> <p>The default, custom and monthly checklists will help familiarize you with the participation provisions that must be considered and will guide the discussion of the specific provisions that will apply to your plan</p>

Quick refresher

The look-back method bases full-time eligibility on average hours in the past, and locks the status in (or out) for a fixed future period.

The monthly method bases eligibility on actual (not average) hours in any given month.

Look-back vs. Monthly Methods

The chart below provides a very high-level overview of the features of and differences between the look-back and monthly methods of identifying full-time employees. It is intended to help familiarize readers with the basic issues associated with each method. Any actual advantages or disadvantages of one method over the other, or between the variations available under the look-back method require a fact-specific analysis, factoring in the composition of the employer’s workforce and the employer’s overall benefits strategy.

Look-back vs. Monthly Method Comparison Chart

Look-back Method	Monthly Method
Both may be used for all employees, or any category of employees listed below <ul style="list-style-type: none"> • Salaried/ hourly • Union/non-union • Subject to different collective bargaining agreements • Working in different states 	
Provides greater protection against the larger Part A penalty when employee hours fluctuate	May make employers more vulnerable to the larger Part A penalty when employee hours fluctuate
Best option when employee hours fluctuate above and below 30 hours, but also works for stable hours	Most appropriate when employee hours don’t fluctuate, or when those below 30 hours per week are offered coverage
Provides predictability about length of coverage, but also locks in coverage for those whose hours drop	May result in administrative/employee relations burden if participation changes monthly
Allows employer to establish eligibility over up to 12 months for part-time, variable hour, and seasonal employees whose hours may fluctuate during that period	Requires employers to immediately offer coverage to employees whose hours unexpectedly increase

Choose Participation Criteria Going Forward

Clients will need to specify the ACA-compliant provisions that will govern eligibility for and participation in their plans starting with the plan year that begins in 2015. For clients using the look-back method, this also means measuring current employee hours in the 2014 plan year to determine eligibility for coverage for the 2015 plan year (see page [7](#) for information about the options available for current employees).

Health Plans will draft plan amendments based on the participation criteria that each client develops.

To streamline the process of developing criteria, Health Plans proposes three separate approaches which clients may choose to adopt:

- Default standard 12-month look-back provisions that incorporate many of the plan's current eligibility and participation criteria, and apply the same rules to all employees.
- Custom look-back provisions that accommodate shorter measurement and stability periods, and/or permit different rules for different categories of employees
- Monthly provisions for clients using the monthly method of identifying full-time employees

Clients may want to review the [default, custom and monthly checklists](#) which detail the information required to implement each approach and which will help guide client discussions regarding participation provisions with their Health Plans Account Managers.

Default Standard 12-month Look-back Provisions

Health Plans' approach to standard look-back participation rules incorporates 12-month measurement and stability periods. Using the default:

- The same rules apply to all employees
- The current definitions of full-time employees and the waiting period are retained (unless they do not comply with ACA rules)
- 12-month periods are used to identify both new and ongoing full-time employees, and status is locked in for 12 months
- Clients choose which new ACA-mandated protected leave and break-in-service rules to apply *

Sample plan language which reflects the default look-back approach begins on page [8](#) of this *Supplement*.

* See pages 22-23 and 55 of the *Updated Compliance Guide* for a description of these options.

Custom 12-month Look-back Provisions

The custom approach allows clients to:

- Either retain some of their current eligibility criteria or choose all new provisions
- Specify measurement and stability periods of fewer than 12 months,
- Vary the provisions for different categories of employees
- Choose which new ACA-mandated protected leave and break-in-service rules to apply*

Monthly Participation Provisions

The monthly method of identifying full-time employees and establishing eligibility for coverage is described in detail in the *Updated Compliance Guide*, pages 47-49. This method requires measuring employee hours each month to determine eligibility.

Under the monthly method, clients will decide:

- When eligibility ends if an employee's average hours fall below the minimum required
- Which new ACA-mandated break-in-service rule to apply*

The monthly method may create a risk of greater penalties because if a full-time employee obtains subsidized Exchange coverage for any month during which the employee was not offered coverage under the employer's plan, the Part A penalty will apply: \$2,000 x every full-time employee (-80 in 2015; -30 in subsequent years).

Note: Under all options, coverage must be offered to new full-time employees no later than the first day of the fourth full calendar month of employment. This is a change from the prior 90 day limit on waiting periods. Regulations issued in Summer 2014 added a 'bona fide orientation period' during which an applicable large employer would not have to offer coverage to a full-time employee. The addition of the orientation period now enables plan sponsors to resolve the inconsistency between the 90-day waiting period limit under Section 2708 of the Public Health Services Act (PHSA) and the play or pay provision that coverage be offered to full-time employees no later than the first day of the fourth full calendar month of employment (i.e., the first of the month *following* 90 days of employment).

In all cases, clients will work with their Health Plans Account Managers to review the options available under the ACA and confirm the provisions that will apply to their plans.

* See pages 22-23 of the *Updated Compliance Guide* for a description of these options.

Classifying Current Employees for 2015

Before the first day of the plan year that begins in 2015, employers need to identify the current employees who must be offered coverage for the 2015 plan year in order to avoid potential penalties. The steps required will depend on whether the look-back or monthly method is used.

Employers adopting the look-back method will be able to use historical data to document hours of service. We understand that payroll vendors are working with employers to generate employee hours data to support these eligibility determinations. Those adopting the monthly method may also want to use historical data to confirm their identification of current employees as either full-time or part-time.

Look-back method

- Measure employee hours of service to determine eligibility as of the beginning of the 2015 plan year
- If 12-month measurement and stability periods will be used going forward, determine whether to use the special transition rule for the first year of implementation for ongoing employees; the rule requires that the measurement period used to establish the status of current employees as either full-time or part-time for the 2015 plan year be:
 - At least six months long,
 - Include hours of service each employee averaged since at least July 1, 2014, and
 - End no sooner than 90 days before the plan year that begins in 2015

Example 1: Plan year begins 1/1/15: Employer would measure and average employee hours from 5/1/14 through 10/31/14 to determine FT/PT status for 2015 plan year

Example 2: Plan year begins 7/1/15: Employer would measure and average employee hours from 7/1/14 through 4/30/14 to determine FT/PT status for 2015 plan year

Any employee hired after the transition measurement period has begun would be subject to the measurement and stability periods the employer establishes for new employees.

- Establish an ongoing system for tracking hours to establish eligibility
See the *Updated Compliance Guide*, page 46 for more

Monthly method

Establish a system for tracking hours month-by-month to ensure that full-time employees are accurately identified and offered coverage as they become eligible

The decisions regarding the method and process for identifying full-time employees will necessarily be made by each individual employer based on the unique nature of each employer's business needs and workforce composition.

Sample Plan Document Eligibility Language

Going forward, Health Plans will describe eligibility criteria in the Plan Document/Summary Plan Description for plans adopting the look-back method as shown below. This example reflects default 12-month look-back provisions.

We have illustrated the major changes to the Plan Document/Summary Plan Description (PD/SPD); other areas of the PD/SPD will also be edited to comply with all required changes.

ELIGIBILITY, ENROLLMENT AND PARTICIPATION

Some of the terms used in this Article have special meanings under the Plan. These terms will always begin with capital letters. Please refer to Section D of this Article – Definitions for an explanation of these terms.

A. Eligibility.

Employees and their Eligible Dependents are eligible to participate in the Plan as described below:

If an Employee is a(n):	Then
<p>New hire –</p> <p>Full-Time Employee (reasonably expected to average 30 or more hours of service per week)</p>	<p>The Employee is eligible for coverage on the first of the month following 30 days of employment.</p> <p>Coverage will continue at least until the first day of the first Standard Stability Period following completion of a Standard Measurement Period, provided the Employee remains employed.</p>
<p>New hire –</p> <p>Part-Time Employee (reasonably expected to average fewer than 30 hours per week);</p> <p>Variable Hour Employee (cannot reasonably determine whether average hours will equal or exceed 30 per week); or</p> <p>Seasonal Employee (hired into position that typically lasts six months or less and begins/ends at generally same time each year)</p>	<p>The Employee’s hours of service will be tracked over a 12-month Initial Measurement Period that begins on the first of the month following date of hire to determine whether the Employee averages 30 or more hours of service per week.</p> <p>Employees who average 30 or more hours of service per week during the Initial Measurement Period will be considered Full-Time and coverage will begin on the first of the month following completion of the Initial Measurement Period, which is also the first day of the Initial Stability Period. Coverage will continue at least until the end of the Initial Stability Period, provided the Employee remains employed.</p> <p>Employees who average fewer than 30 hours of service per week during the Initial Measurement Period will not be offered coverage.</p>
<p>New hire –</p> <p>Change from Part-Time, Variable Hour or Seasonal Employee to Full-Time Employee during Initial Measurement Period</p>	<p>Coverage will be offered on the first of the month following the change in employment status, or, if later, the first of the month following 30 days of employment.</p> <p>Coverage will continue at least until the end of the Initial Stability Period, provided the Employee remains employed.</p>

**Updated Compliance Guide
Participation Supplement**

If an Employee is a(n):	Then
Ongoing Employee (an employee who has been employed for a complete Standard Measurement Period)	<p>Hours will be tracked during each 12-month Standard Measurement Period.</p> <p>Employees who average 30 or more hours of service per week during the Standard Measurement Period will be offered coverage for as long as they remain employed during the following Standard Stability Period.</p> <p>Employees who average fewer than 30 hours of service per week will be ineligible for coverage for the following Standard Stability Period.</p>
Employee as of May 1, 2014 (Employees hired after that date are subject to the rules for new employees outlined above)	Status as a Full-Time or Part-Time Employee and eligibility for coverage as of January 1, 2015 will be based on each Employee's average hours of service between May 1, 2014 and October 31, 2014.

Hours of service include all hours for which an Employee is paid, including vacation and sick time or disability.

If the Employee is on an approved unpaid FMLA or military leave, or on jury duty, then the weeks of unpaid time will not be included in the calculation of average hours of service for the purpose of determining Full-Time status for the following Stability Period. If the Employee is on any other type of unpaid leave, the weeks of unpaid time are included in the Measurement Period and credited with zero (0) hours of service for the purpose of determining Full-Time status for the following Stability Period.

D. Definitions.

For purposes of this Article, the following words and phrases will have the following meanings when used in the Plan, unless a different meaning is plainly required by the context.

Break-in-Service – following an Employee's termination of employment: a) a period of 13 or more consecutive weeks during which the Employee did not have an hour of service; or b) a period of 4 or more, but fewer than 13 consecutive weeks, during which the Employee did not have an hour of service, where such period exceeds the Employee's period of prior employment.

Full-Time Employee – a New Employee who is reasonably expected to average 30 or more hours of service per week and an Ongoing Employee who averaged 30 or more hours of service per week during the prior Standard Measurement Period.

Initial Measurement Period – a 12-month period that begins on the first of the month following date of hire during which a Part-Time, Variable Hour or Seasonal Employee's hours of service are tracked to determine eligibility for coverage during the Initial Stability Period.

Initial Stability Period – a 12-month period that begins on first day of the fourteenth full calendar month of employment during which a Part-Time, Variable Hour or Seasonal Employee's status as either Full-

Time and eligible for coverage or Part-Time and ineligible for coverage as determined during the Initial Measurement Period is locked in.

New Employee – an Employee who has not been employed for an entire Standard Measurement Period or a returning Employee who has had a Break-in-Service.

Ongoing Employee – an Employee who has been employed for a complete Standard Measurement Period.

Part-Time Employee – a New Employee who is not reasonably expected to average 30 or more hours of service per week or an Ongoing Employee who did not average 30 or more hours of service per week during the prior Standard Measurement Period.

Seasonal Employee – a New Employee hired into a position which customarily lasts six months or less and which begins and ends at approximately the same time each calendar year.

Standard Measurement Period – the 12-month period during which all Employees' hours of service are tracked to determine Full-Time and Part-Time status, and eligibility or ineligibility for coverage for the following Standard Stability Period. The dates for the Standard Measurement Period are determined by the Employer each year.

Standard Stability Period – the 12-month period that begins annually on the date that the Plan Year begins, during which every Ongoing Employee's status as Full-Time or Part-Time and eligible or ineligible for coverage as determined during the Standard Measurement Period is locked in.

Variable Hour Employee – a New Employee for whom average hours of service cannot reasonably be determined.

[The language below will be added to the existing provisions regarding coverage following termination of employment.]

Reemployment in General **Note: these new break in service rules are required by the ACA, in place of any less generous current provisions for resuming coverage after termination of employment. The Standard, Custom and Monthly Checklists detail the choices available. The language below adopts the rule of parity.**

A rehired Employee who was a participant in the Plan on the date of employment termination may resume participation in the Plan on the first day of the month following rehire if the Employee is reemployed fewer than 4 weeks following termination of employment or the Employee has not had a Break-in-Service, provided that the Stability Period on the date of reemployment is the same as the Stability Period in effect on the date of employment termination. If reemployment begins during a new Stability Period, participation in the Plan will begin the first day of the month following rehire if, based on the applicable Measurement Period, the Employee has Full-Time status on the date of reemployment.

***Updated Compliance Guide
Participation Supplement***

In the case of a reemployed Employee eligible to participate under the conditions stated above, but who had not satisfied the Waiting Period as of the termination date, the Waiting Period will be reduced by the period of prior employment and the period between the date of termination and date of rehire.

In cases of reemployment following a Break-in-Service, eligibility to participate will be based upon the Employee's status on the date of rehire in accordance with the provisions of Section (A) of this Article (relating to initial eligibility for new hires).

This *Supplement* is intended to provide a summary of our understanding of the current rules related to establishing eligibility criteria for medical plan participation which is consistent with the requirements of the ACA. It should not be construed as specific legal advice. The contents are for general informational purposes only and are not a substitute for the advice of legal counsel.