Health Care Reform
Bulletin

Pay or Play Rules—IRS Proposes Approach for Measurement Period Changes

Provided by Macomb Benefits

Quick Facts

Issued Sept. 18, 2014, Notice 2014-49 provides guidance on the look-back measurement method under the pay or play rules.

Employers can rely on the notice through 2018.

The notice addresses measurement period changes resulting from:

- Employee transfers within the same ALE; or
- Employer-initiated changes.

Notice 2014-49 describes a proposed approach for applying the look-back measurement method if the measurement period for a particular employee changes.

Beginning in 2015, the employer shared responsibility rules under the Affordable Care Act (ACA) require applicable large employers (ALEs) to offer affordable, minimum value health coverage to their full-time employees (and dependents) or pay a penalty. Final regulations provide an optional safe harbor method, called the **look-back measurement method**, which employers can use to determine full-time employee status.

On Sept. 18, 2014, the Internal Revenue Service (IRS) issued Notice 2014-49, which describes a **proposed approach for applying the look-back measurement method if the measurement period for a particular employee changes**. This notice addresses measurement period changes resulting from the following situations:

- An employee transfers from one position to another within the same ALE (or ALE member), where a different measurement period is used for each position; or
- The ALE changes the measurement period applicable to a category of employees.

The approach proposed in Notice 2014-49 is not finalized, and the IRS has invited comments on the proposal. However, taxpayers may rely on the proposed approach until further guidance is issued, at least **through the end of 2016**.

Background

Under the employer shared responsibility rules, a full-time employee is an employee who works, on average, at least **30 hours of service per week**. The IRS' final regulations provide two methods for determining full-time employee status—the **monthly measurement method** and the **look-back measurement method**.

The look-back measurement method generally involves using an employee's average hours of service per week during a **measurement period** to determine if an employee is a full-time employee during a subsequent **stability period**. ALEs using the look-back measurement method may establish two separate measurement periods, subject to certain rules on length:

- The **standard measurement period** (SMP), which is used for ongoing employees (generally, all employees who have been employed for at least one full SMP); and
- The **initial measurement period** (IMP), which is used for new variable hour, seasonal or part-time employees.

ALEs may use **different measurement methods** (either the look-back measurement method or the monthly measurement method), or may use **measurement periods that differ in length or start on a different date**, for the following specified categories of employees:

- Collectively bargained and non-collectively bargained employees;
- Each group of collectively bargained employees covered by a separate collective bargaining agreement;
- Salaried and hourly employees; and
- Employees whose primary places of employment are in different states.

Notice 2014-49 proposes an approach for applying the look-back measurement method if the measurement period for a particular employee changes in certain situations. However, employers may adopt rules that make employees eligible for coverage before they otherwise would be under this approach.

Measurement Period Changes Initiated by Employee Transfer
First, Notice 2014-49 addresses changes in measurement methods for employees who:

- Have been employed by an ALE member in a **first position** for which the employer uses the look-back measurement method; and
- Transfer to a **second position** for the same ALE (whether or not with the same ALE member) for which the employer uses a different measurement period.

A transfer that may result in a change of a measurement method includes transfers from one ALE member to another ALE member of the same ALE, or from one permitted category of employees to another.

Notice 2014-49 describes how to address these situations, both for employees **in a stability period** or those **not yet in a stability period** at the time of the measurement period change.

For this purpose, an employee is deemed to be in a stability period if, as of the date of transfer, the employee has been assigned a status for that stability period as a result of having been employed by the ALE for a full SMP or IMP.

Beginning with the date on which an employee transfers to the second position, Notice 2014-49 proposes that the look-back measurement method would be applied as follows:

- For an employee who is **in a stability period** (or administrative period) at the time of transfer, the employee **retains his or her status through the end of that stability period**.
- For an employee who is **not in a stability period** (or administrative period) at the time of transfer, the employee's status is determined using **the measurement period applicable to the second position**, but **including hours of service in the first position**.

However, if a new variable hour, part-time or seasonal employee transfers during the IMP to a second position in which he or she is **reasonably expected to be full-time**, the general look-back measurement method rules apply. Under these rules, the ALE must offer coverage that provides minimum value to the employee no later than the first day of the fourth full calendar month following the transfer, if the employee is still employed on that date.

New employees who are reasonably expected to be full-time are not measured under the look-back measurement method. Full-time status for these employees is determined based on hours of service in each month (not based on an IMP), until the employee has been employed for a full SMP. In the case of a transfer:

- Until a new employee who is reasonably expected to be full-time has been employed for a full SMP applicable to the second position (including service in the first position), the employee's status as full-time or non-full-time continues to be determined

based on hours of service in each calendar month.

- If a new employee who is reasonably expected to be full-time has been employed for a full SMP applicable to the second position, but not the first position, as of the date of transfer, the employee's full-time status is determined based on his or her average hours of service during that SMP for the second position (but counting the hours of service accumulated during that SMP for the first position), applied starting on the first day of the first month following the date of transfer and continuing through the end of the associated stability period.

Employer-initiated Measurement Period Changes
The employer shared responsibility final regulations do not address whether (or when) an ALE may change the measurement method used for any permitted category of employees. A change in measurement method may include:

- A change from the look-back measurement method to the monthly measurement method (or vice versa); or

- A change in the duration or start date of any applicable measurement period under the look-back measurement method.

Notice 2014-49 would clarify that an ALE may change the measurement method for a category of employees only if, as of the date of the change, each affected employee's full-time status is determined using a special rule provided in the final regulations for employees who have been continuously offered coverage that provides minimum value.

Under this special rule, an ALE that changes the measurement method for a category of employees would **apply the monthly measurement method to these employees** beginning on the first day of the fourth full calendar month following the change, through the end of the first full measurement period (and any associated administrative period) that would have applied under the applicable look-back measurement method. For the three full calendar months between the change and the application of the monthly measurement method, the affected employees would retain their full-time or non-full-time status from the applicable stability period.

The ALE would apply this special rule as if, on the date of the change, each employee had transferred from a position in which the original measurement method applied to a position in which the revised measurement method applied.

Application to Corporate Transactions
Notice 2014-49 specifically addresses how the proposed approach would apply in the context of a corporate transaction (such as a merger or acquisition involving employers using different measurement methods). In these corporate transactions, the two (or more) entities may have different measurement methods for their respective employees in a particular category. As a result of the corporate transaction, these groups of employees may become employed by the same ALE member.

Until further guidance is issued, at least through the end of 2016, taxpayers involved in a corporate transaction in which employers use different measurement methods may **rely on the proposed approach in Notice 2014-49** for determining an employee's full-time status when an employee transfers to a position using a different measurement period.

More Information
Notice 2014-49 provides more information on this proposed approach, including examples for each specific situation.

Contact Macomb Benefits for more information on the employer shared responsibility rules.