

COVID-19 WORKFORCE MANAGEMENT & ACA COMPLIANCE REFERENCE GUIDE

The material in this guide will focus on how the COVID-19 Pandemic, and the workforce management options many employers implemented; furloughs, temporary layoffs, hours reduction and terminations, can impact ACA reporting compliance.

To date, the IRS has not made any changes to the ACA's hours of service threshold for offering health coverage or affordability calculations due the Coronavirus. Employers are still required to comply with the ACA's Employer Mandate and IRS reporting requirements for 2020 despite any recently enacted Coronavirus Tax Relief acts.

The ACA's Employer Mandate: Understanding the Basics

Under the Affordable Care Act (ACA), an applicable large employer (with 50+ FT and FTE employees) must offer health coverage to at least 95% of its full-time employees (and their dependents) or risk being exposed to the employer mandate penalties. The IRS defines **full-time** as an employee averaging 30 or more hours per week or 130 hours per month. The IRS has provided applicable large employers (ALEs) with two methods for determining if an employee should be designated full-time under the ACA, requiring an offer of medical coverage. The **Monthly Measurement Method** and the **Lookback Measurement Method**.

Monthly Measurement Method

Under the monthly measurement method, an ALE determines each employee's status as a full-time employee by counting the employee's hours of service for each calendar month.

Lookback Measurement Method

Under the lookback measurement method, an ALE determines each employee's full-time status by looking back at a measurement period. Key periods under this method include:

- Measurement Period (3-12 Months): time period to monitor and track employee hours
- Administrative Period (Up to 90 Days): time period to identify and enroll eligible employees
- Stability Period (6-12 Months): time period employer must maintain employee's eligibility status

Workforce Structure Changes: The Downstream Impact

How and to what extent an employer uses the available workforce management options can have a direct impact on the ongoing and future obligations under the ACA. The workforce management options many employers are currently implementing include:

Workforce Management Options:

- Furloughs: a temporary unpaid leave from work where the employee remains employed but is not accruing *hours of service*
- Layoff: an employer-initiated termination of employment that may be temporary or permanent
- Reduction in Hours: involves reducing scheduled working hours for existing part-time or full-time employees

Amendments to the medical plan document due to COVID-19 may be required. Plan documents include eligibility rules which contain the hours of service requirements. Employers need to check on required amendments with their insurance carrier.

ACA affordability under the W-2 safe harbor method could be impacted due to employees on unpaid leave. Unpaid leave may result in a lower Form W-2, Box 1 wages for employees.

With the enactment of the Families First Coronavirus Response Act (FFCRA), employers have questions about the workforce management solutions due to COVID-19 and their impact on ACA hours of service.

Who is Eligible, or not, for coverage? Employers who have issued furloughs or layoffs without termination or transitioning employees to some type of *unpaid status* need to ensure they are complying with the ACA employer mandate to avoid penalties. However, employers who formally terminate employees do not have an obligation to continue coverage past the date of termination.

As a disclaimer, we (Selerix) are not consultants or legal counsel and cannot dictate an employer's response. We can only offer our understanding of the IRS expectation based on their published guidance. Employers are advised to seek guidance from their advisor and/or legal counsel.

HR Challenges: COVID-19 & ACA Offers of Coverage

Employers are facing a number of new challenges due to the Coronavirus. Among them is the ACA tracking and offering process given the newly added sick leave and FMLA requirements related to COVID-19.

As employers begin to evaluate their Workforce Management solutions, for ACA compliance purposes, it is important to:

- Determine which hours of service should be counted to identify full-time employees
- Determine if an employee’s offer of coverage is affected, including the potential impact of the *Rule of Parity*
- Determine if the employer will meet the 95% threshold for offering coverage to full-time employees (and their dependents)

Additional factors into how the ACA compliance correlates to an employer’s workforce management solution are outlined below:

The Regulations define an hour of service to mean: Each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer, and each hour for which an employee is paid, or entitled to payment by the employer for a period of time during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence

Tracking Hours of Service:

Unpaid Leave such as furloughs and temporary layoffs should be kept in mind to ensure compliance.

- Hours of Service: Employees on furlough or layoff with no termination generally do not accrue hours of service. From an ACA Compliance tracking perspective, the period (weeks) the employee is on unpaid leave is included in measurement calculation with zero (0) hours for that period.

Offer of Coverage and Rule of Parity:

Employees incorrectly classified can result in over/under full-time employee counts leading to inaccurate ACA reporting and potential penalties from the IRS.

When determining an employee’s eligibility for an offer of coverage, an important rule to keep in mind is the *Rule of Parity*.

Under the *Rule of Parity*, an employer can treat an employee as a new hire if the following are true:

- ✓ The break is at least 4 consecutive weeks
- ✓ The break should not be more than 13 weeks (educational organizations, not more than 26 weeks)
- ✓ The break should be more than the period of employment immediately preceding the break

The ACA’s Employer Mandate :



- Furloughs are treated differently by different employers
- Employers using furlough, or leave without employment termination, could inadvertently trigger potential penalties
- Employers failing to offer MEC to 95% of their full-time employees may be subject to annual penalty in 2020
- Employers should continually offer health coverage during the furlough or leave period for full-time employees

Employers can be more generous than the regulations stipulate. Employers implementing new unpaid leave policies do not have to remove the offer of coverage. For example, if an employee only averages 28 hours due to being on an unpaid leave due to COVID-19 at the end of the measurement period, employers can continue to treat them as eligible for health benefits. Employers are advised to seek council and verify carrier plan document change requirements.

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