

How to Define Full Time Employees

January 23, 2014



How to Define Full Time Employees

- Welcome! We will begin at 3 p.m. Eastern
- There will be no sound until we begin the webinar. When we begin, you can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.
- You will be able to submit questions during the webinar by using the “questions” box located on your webinar control panel.



How to Define Full Time Employees

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Agenda

- Employer Shared Responsibility Rules - Quick Review
- How to Define Full Time Employees
- Measurement Period Approach
- Special Hours of Service Rules for Measurement Periods



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Employer Shared Responsibility Rules

- **Applicable large employers** must offer minimum essential health coverage to all **full-time** employees or face possibility of “shared responsibility payments” (penalties)
 - “Applicable large employer”= employed an average of at least 50 full-time equivalent (FTE) employees in the prior calendar year
 - Full-time Employees
 - Full time employee is generally defined as any employee averaging 30 hours of service per week
- Shared Responsibility Rules often called “Pay or Play” or “Employer Mandate”



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Employer Shared Responsibility Rules

- Pay or Play Requirements Delayed until 2015
 - Applicable large employers can continue most current eligibility rules through 2014 plan year - for example:
 - Employer could continue to offer benefits only to those working 40+ hours
 - Employer could have ineligible class of full time employees
 - Subject, of course, to existing non-discrimination rules for self-funded plans
 - Waiting period rules were not delayed
 - All employers must limit waiting period to no more than 90 days for eligible employees beginning with first plan year in 2014



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Employer Shared Responsibility Rules

- 4980H(a) Penalty
 - If employer does not offer minimum essential coverage to at least 95% of full time employees (and their) dependent children and at least one employee purchases subsidized individual insurance through a public exchange
 - \$166.67/mo. times number of full-time employees (not counting first 30)
- 4980H(b) Penalty
 - If employer does offer minimum essential coverage to all full time employees but coverage is unaffordable or not minimum value
 - \$250/mo. times number of employees who purchase individual coverage through an exchange and is certified to receive subsidies



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Employer Shared Responsibility Rules

- Employer Penalty Observations
 - 4980(H)(b) considerations
 - Minimum value (MV) is a plan with 60% actuarial value
 - Affordable = Individual's required contribution to participate in employer plan for **single (self-only)** coverage is no more than 9.5% of household income
 - Very few employers who offer a minimum value employer plan to full time employees will be subject to 4980(H)(b) penalty due to coverage being unaffordable

Employee with \$20,000 Annual Income	\$1,666.67 mo. x 9.5%
For coverage to be unaffordable to the employee the cost for single coverage must exceed	\$158.33 mo.



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Employer Shared Responsibility Rules

- Employer Penalty Observations
 - Penalties will be paid annually, but calculated on a monthly basis
 - IRS will know if any employees are receiving subsidized individual health insurance
 - IRS will first begin to contact employers after individual tax filing deadline (April 15, 2016 for 2015 employer penalties)
 - 95% “margin of error” rule - 4980(H)(a) penalty will not apply as long as coverage is actually offered to at least 95% of FT employees in any given month



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How to Define Full Time Employees



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Full Time Employees

- ACA defines full time as **30 hours of service** per week
 - 130 hours per month can be used as alternative to weekly average
 - This FTE definition is for purpose of ACA health insurance requirements only and does not change an employer's definition of full-time for other purposes
 - Retirement plans, wage and hour rules, etc.
- Month-by-Month vs. Measurement Period Approach
 - Employers must decide to manage full time status on a month-by-month basis or implement an optional IRS safe harbor measurement period approach



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Hours of Service

- Counting Hours of Service
 - IRS has defined an hour of service
 - Each hour an employee is paid, or entitled to payment, for the performance of duties for the employer
 - Each hour for which an employee is paid, or entitled to payment, for vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty, or leave of absence.
 - Hourly employees
 - Employer must calculate actual hours of service from records of hours worked and for non-worked hours for which payment is made or due (vacation, holiday, illness, incapacity, etc.)



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Hours of Service

- Counting Hours of Service
 - For employees not paid on an hourly basis
 - Employer must calculate hours of service using one of three methods:
 - Counting actual hours worked and non-worked hours for which payment is due
 - Using a days-worked equivalency method counting eight hours of service for each day for which the employee is entitled to pay
 - Using a weeks-worked equivalency using 40 hours of service per week for each week for which the employee is entitled to pay
 - An employer is not permitted to use the days-worked or weeks-worked equivalency if the result is to substantially understate an employee's hours of service



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Full Time Employees

- General Employer Considerations when Choosing Approach
 - Does employer have **variable hour** or **seasonal employees** who have 130 hours of service in some months but are not offered health coverage?
 - No requirement to offer coverage to employees with less than 130 hours of service
 - How many employees with 130 hours of service in a month are not eligible for coverage (outside 90 day waiting period)?
 - If less than 5% of all FT employees there is no 4980(H)(a) penalty risk and 4980(H)(b) risk may be small

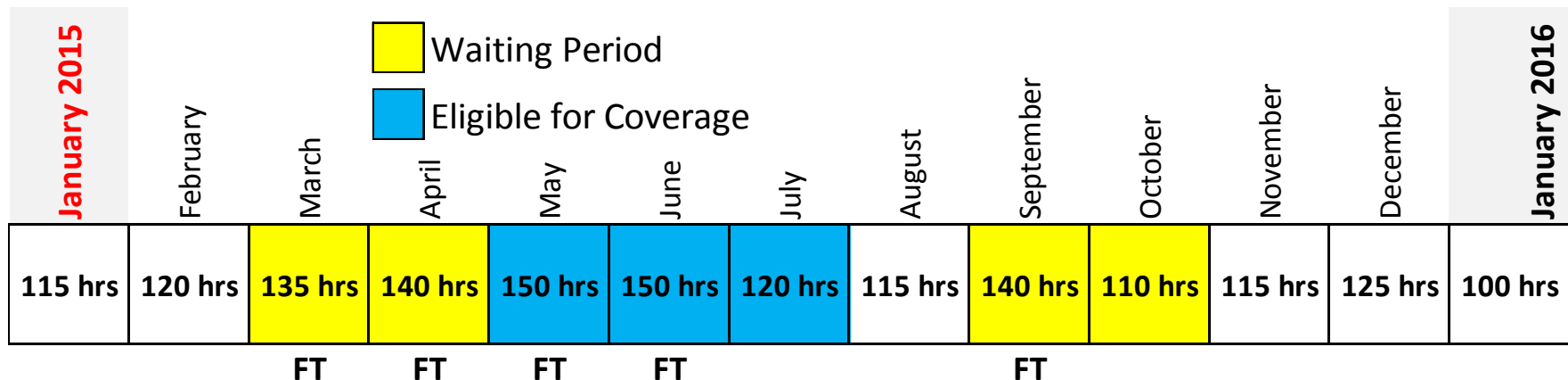


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Full Time Employees

- Continuing Monthly Determination of Full Time Status
 - Can be challenge for employees whose hours vary
 - Coverage must be effective no more than 90 days from date of eligibility
 - Example – assume eligibility rules
 - Coverage effective 1st of month after 60 days from full time status
 - Coverage terminated at end of month with <130 hours of service



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Measurement Period Approach



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Full Time Employees

- IRS Optional Safe Harbor Measurement Period Method
 - Measurement Period
 - Employers can choose a measurement period of 3-12 months
 - Employees who have worked an average of 30 hours of service per week during measurement period must be treated as full time
 - Equals 1560 hours if using a 12 month measurement period
 - New employee initial measurement period vs. ongoing employees standard measurement period
 - New employee initial measurement period applies only to **variable hour** or **seasonal employees** (more later)
 - Ongoing employee - an employee who has worked for an employer for at least one standard measurement period



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Full Time Employees

- Standard Measurement Period
 - Ongoing employees
 - Standard measurement period applies equally to all employees within certain allowed employee categories:
 - Collectively bargained and non-collectively bargained employees or employees covered by different collective-bargaining agreements
 - Salaried or hourly employees
 - Primary places of employment in different states
 - Examples:
 - Employer may not use different standard measurement periods for different non-union hourly employees
 - Employer may not use standard measurement periods only for seasonal employees



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Full Time Employees

- Standard Stability Period
 - Employees who were full time in measurement period
 - Stability period must be as long as measurement period but no less than 6 months for coverage purposes
 - Employees not considered full time in measurement period
 - Employees cannot be treated as part time for any period longer than the measurement period
 - e.g. Employers may not use a 6 month measurement period and then treat the employee as part-time for 12 months
- Standard Administrative Period
 - Up to a 90 day administrative period allowed between end of standard measurement period and beginning of stability period
 - Maximum is 90 days – not 3 months so employer cannot use October, November, and December for an administrative period

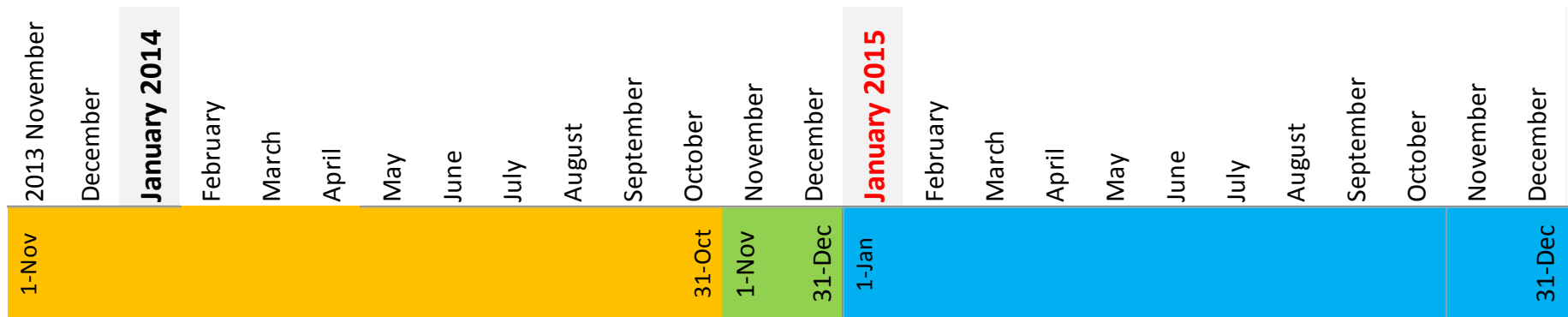





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Full Time Employees

- Assumptions Used in Examples
 - Employer using 12 month measurement and stability periods
 - Plan Year and Standard Stability Period = 01/01 – 12/31
 - Standard Administration Period = November and December
 - Standard Measurement Period 11/01 – 10/31



-  Standard Measurement Period
-  Stability Period - Eligibility guaranteed regardless of # of hours of service
-  Administrative Period

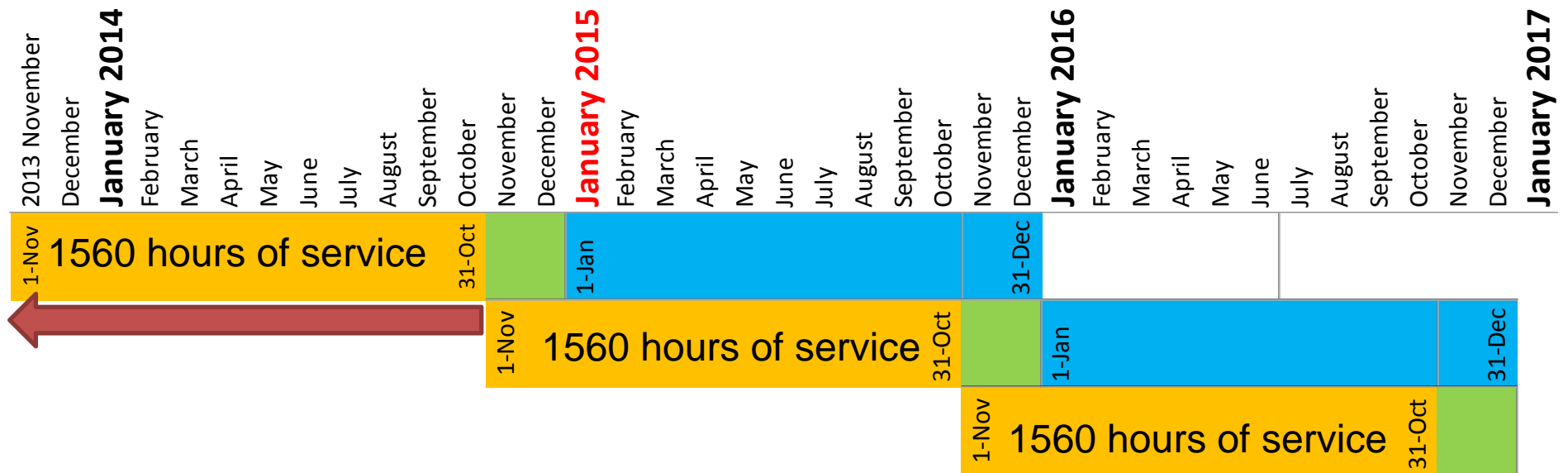


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Standard Measurement Period

Applicable to all ongoing employees in allowable class



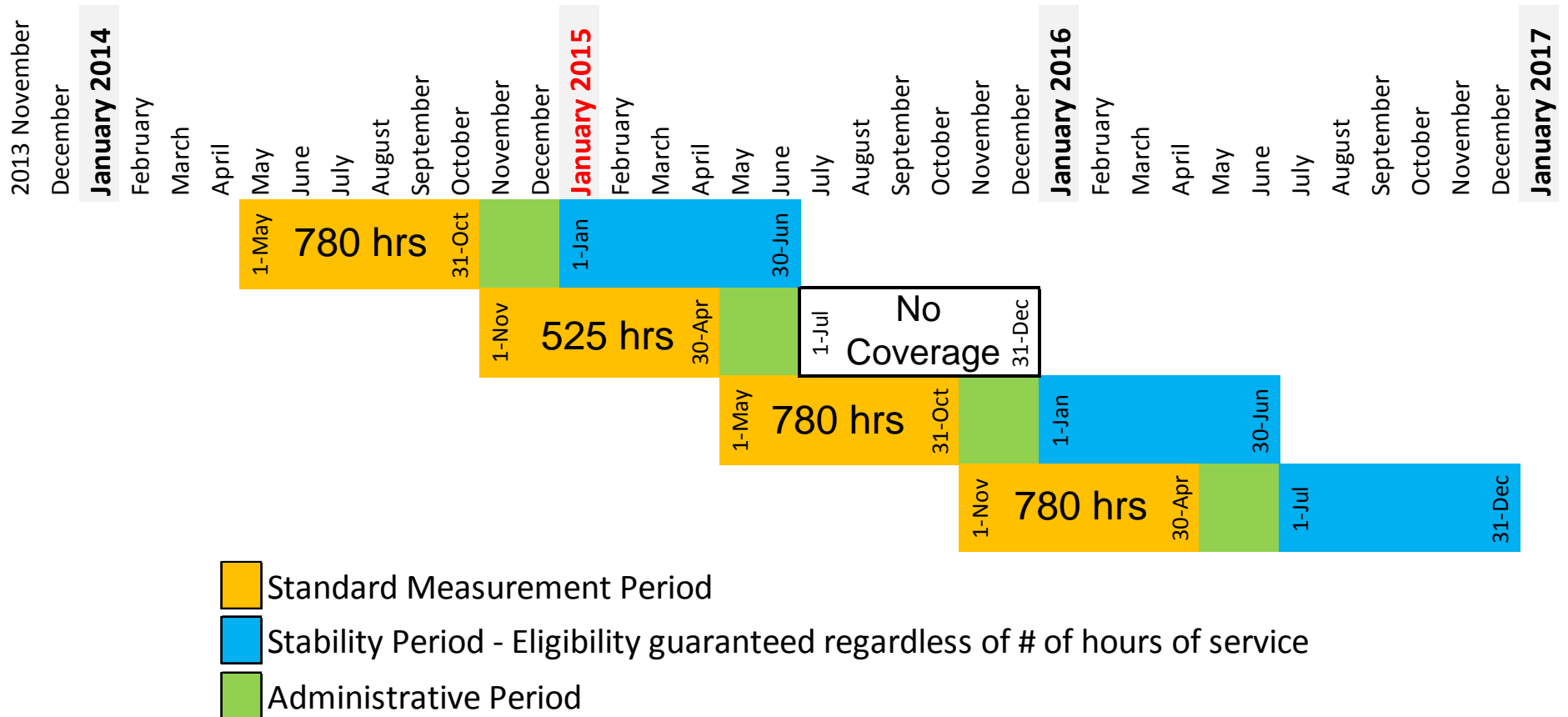
- Standard Measurement Period
- Stability Period - Eligibility guaranteed regardless of # of hours of service
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6 Month Standard Measurement Period



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Full Time Employees

- Measurement and Stability Periods Thoughts
 - Employers will almost always align stability period with plan year
 - Using shorter measurement periods
 - Very few employers will find it advantageous to run measurement periods shorter than 12 months
 - Using a 3 month measurement period would mean measuring existing employee hours of service every 3 months and offering coverage for at least a 6 month period to any employee earning full time status



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Full Time Employees

- New Employee Initial Measurement Period Rules
 - Maximum waiting period for “regular” full-time employees cannot exceed 90 days beginning on 2014
 - Effective beginning first plan year in 2014
 - Maximum waiting period applies to all size employers
 - Initial measurement period of 3-12 months can be applied to “variable hour” & seasonal employees only



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Full Time Employees

- Variable Hour Employees
 - “Based on the facts and circumstances at the start date, it cannot be determined that the employee is reasonably expected to work at least 30 hours per week for entire measurement period”
 - Example of variable hour employees
 - Retail worker hired full-time during holiday season, but may go to part time after first of the year
 - Medical facility staff used to supplement full-time staff whose hours vary significantly from month to month
 - Not a variable hour employee
 - Full-time employee hired into a high turnover job
 - Even if employer expects many employees not to work entire “measurement period” due to turnover – this is not a variable hour employee



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Full Time Employees

- Seasonal Employees
 - The proposed regulations issued early in 2013 did not define “seasonal employee” for purposes of using the look-back measurement method
 - *“Through at least 2014, employers are permitted to use a reasonable, good faith interpretation of the term “seasonal employee”*
 - An employee of an educational organization, who works during the active portions of the academic year may not be considered a seasonal employee.
 - We expect further clarification of seasonal employee sometime in 2014 for the 2015 effective date



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Full Time Employees

- New Employee Initial Measurement Period
 - Can begin any time from date of hire to the first of the month following date of hire
 - 13+ Month Rule
 - For new employees earning full time status during initial measurement period, coverage must be offered no later than 13 months plus a partial month after the date of hire.
 - Example:
 - Hire date July 15th with a 12 month initial measurement period
 - Coverage must be effective no later than September 1st after the 12 month initial measurement period



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Full Time Employees

- New Employee Rules
 - 2014 transition rule for short term employees (i.e. temporary hires, interns, etc.)
 - For 2014 IRS had released a transition rule allowing employers to apply variable hour new hire rules to “short term hires” expected not to work full time during initial measurement period.
 - IRS reviewing short term employee rules and is expected to release more detailed guidance which will apply for 2015
 - Special rules apply to temporary staffing firms

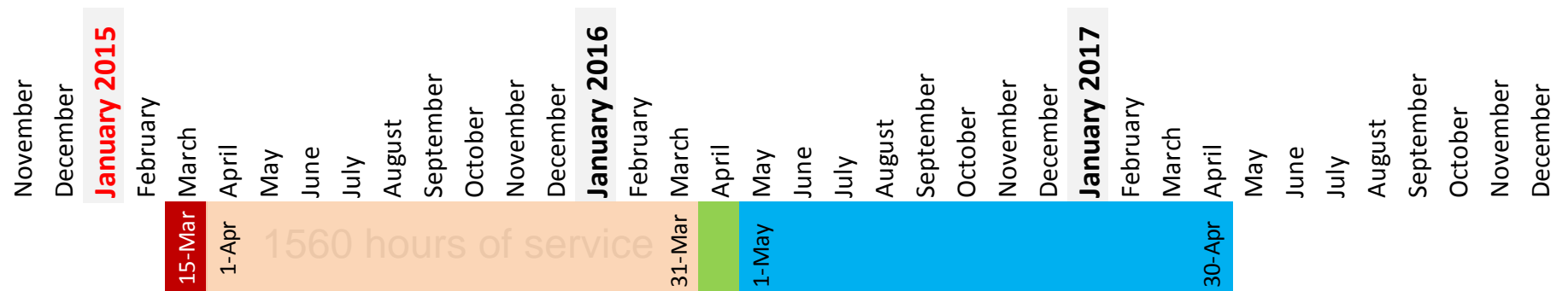







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New Hire Initial Measurement Period Transitioning into Standard Measurement Period

New variable hour employee hired March 15, 2015



-  Hire Date
-  Initial Measurement Period
-  Standard Measurement Period
-  Stability Period - Eligibility guaranteed regardless of # of hours of service
-  Administrative Period

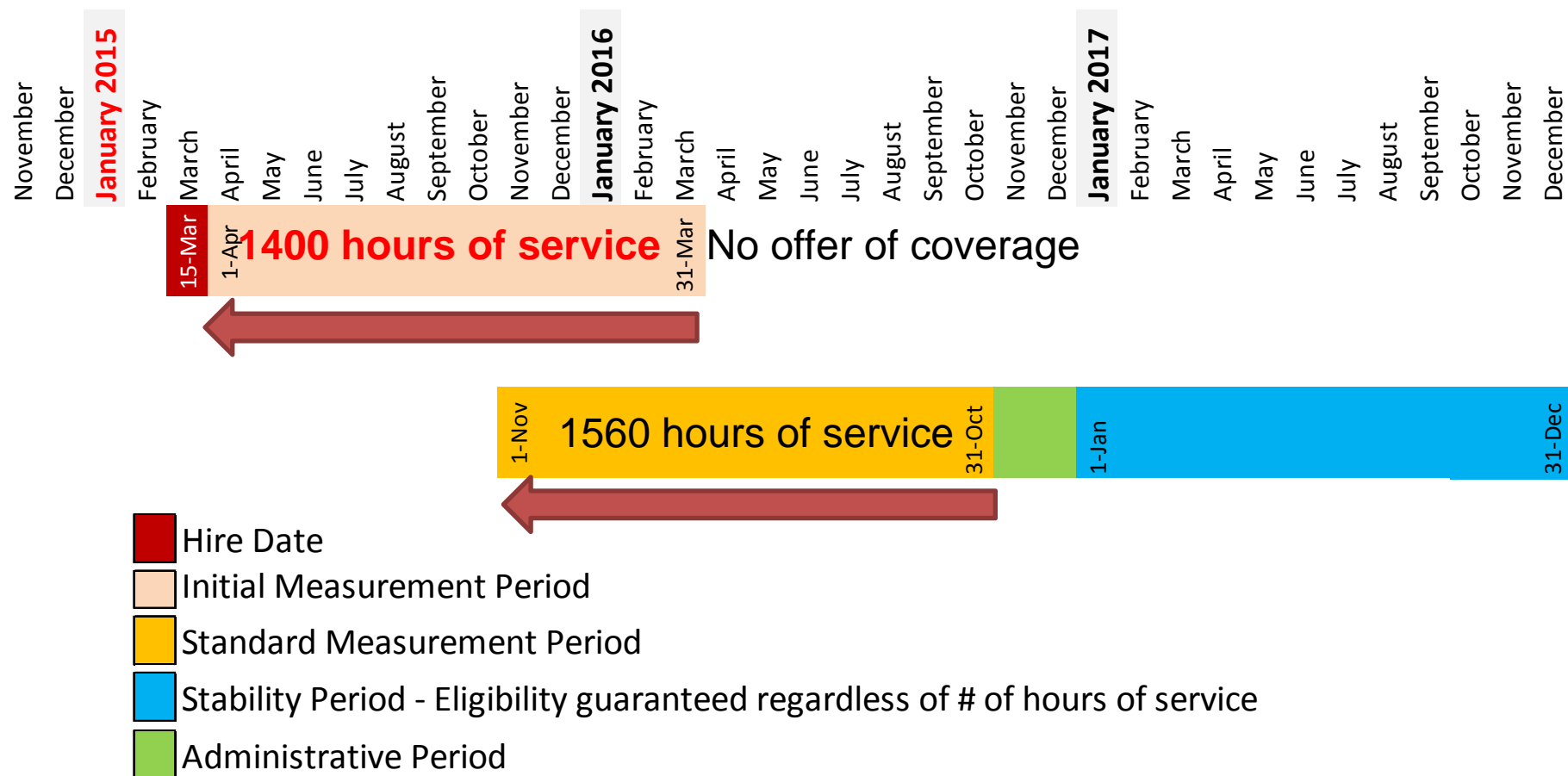


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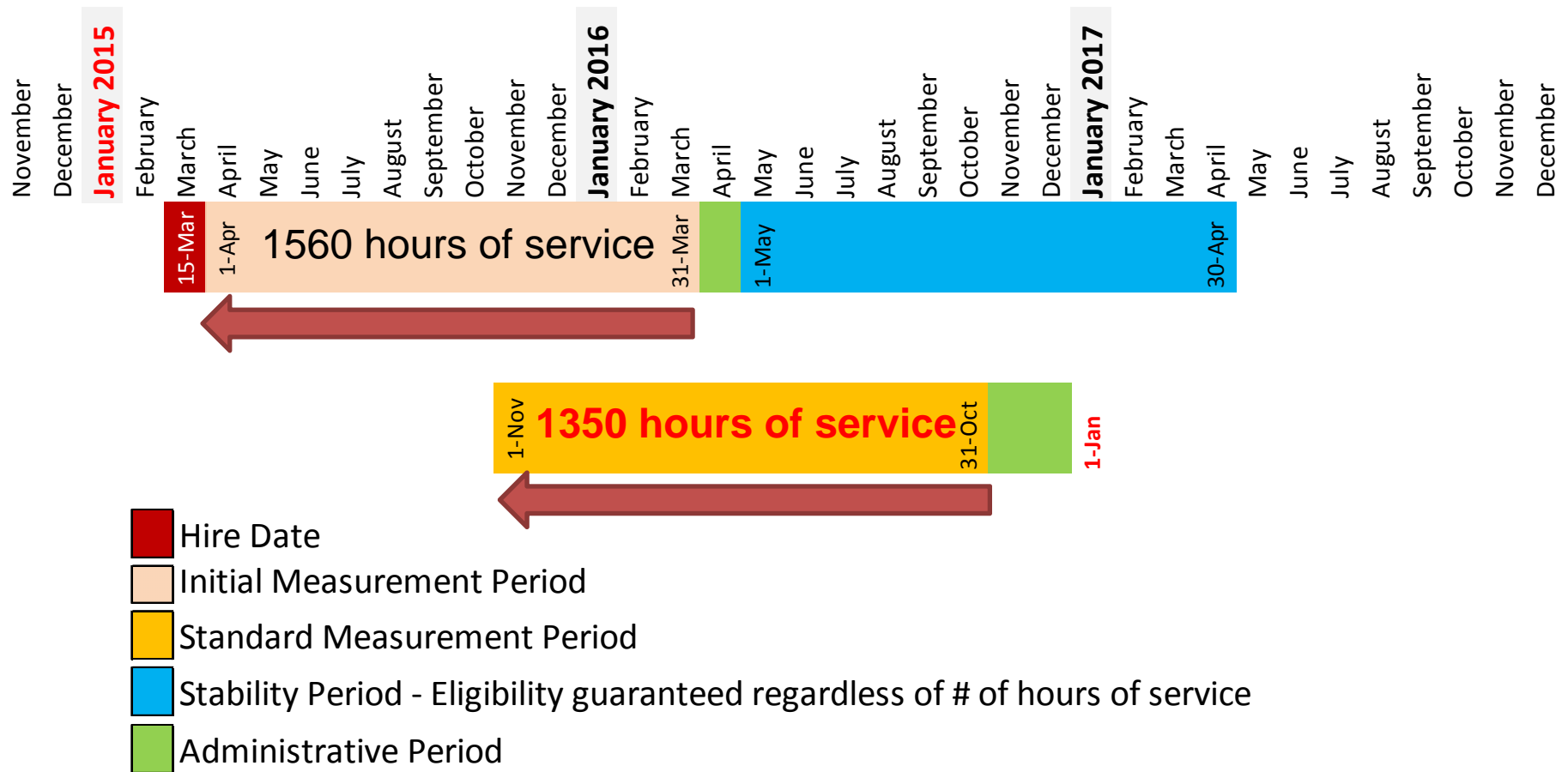


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New Hire Initial Measurement Period Transitioning into Standard Measurement Period

New variable hour employee hired March 15, 2015



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Special Hours of Service Rules Related To Measurement Periods



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Hours of Service

- Counting Hours of Service
 - Averaging service for special unpaid leaves
 - Prevent periods of special unpaid leave from reducing an employee's hours of service during a measurement period.
 - Special unpaid leave is unpaid leave under the FMLA, under the USERRA, or for jury duty
 - The employer can treat special unpaid leave in one of two ways:
 - Determine average hours of service by excluding any periods of special unpaid leave during the measurement period and applying that average for the remaining measurement period
 - Impute hours of service during the periods of special unpaid leave at a rate equal to the average weekly hours of service for weeks that are not part of a period of special unpaid leave



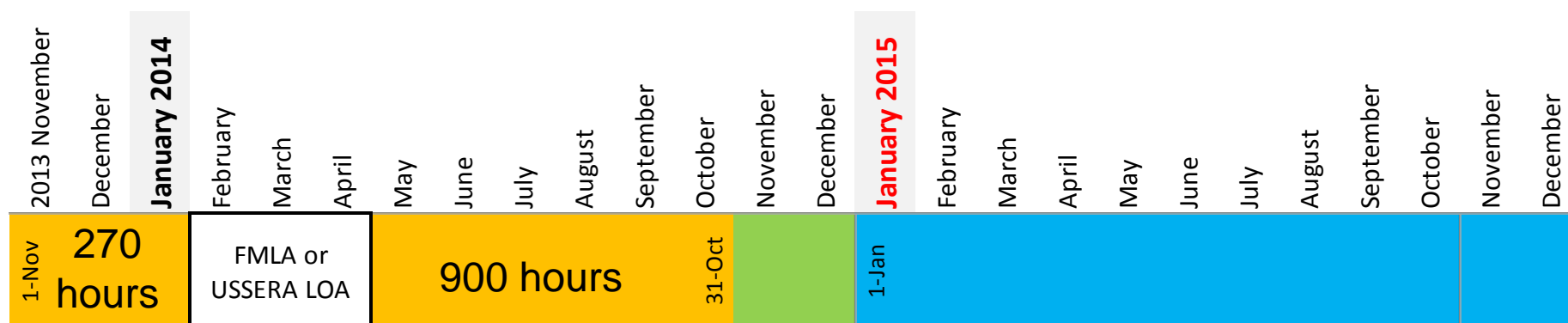
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Hours of Service

Special Leave of Absence Rule

3 Month Unpaid FMLA or USERRA LOA - No Hours of Service



1170 hours over 9 months = 130 hours per month

Employee considered full time during measurement period

- Standard Measurement Period
- Stability Period - Eligibility guaranteed regardless of # of hours of service
- Administrative Period



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Hours of Service

- Counting Hours of Service
 - Break in Service
 - An employee returning to work following a period of unpaid absence (including a termination) may need to be treated as a “continuing employee.”
 - Upon resumption of service, a continuing employee must be restored to their former status in the stability period.
 - Continuing employee
 - If employee resumes employment after a period of at least 26 consecutive weeks with no hours of service, the employer can treat the employee as a new employee.
 - Rule of Parity for break period shorter than 26 consecutive weeks
 - Employee can be treated as new employee if the period of absence is at least four weeks long and longer than the weeks of employment prior to the break

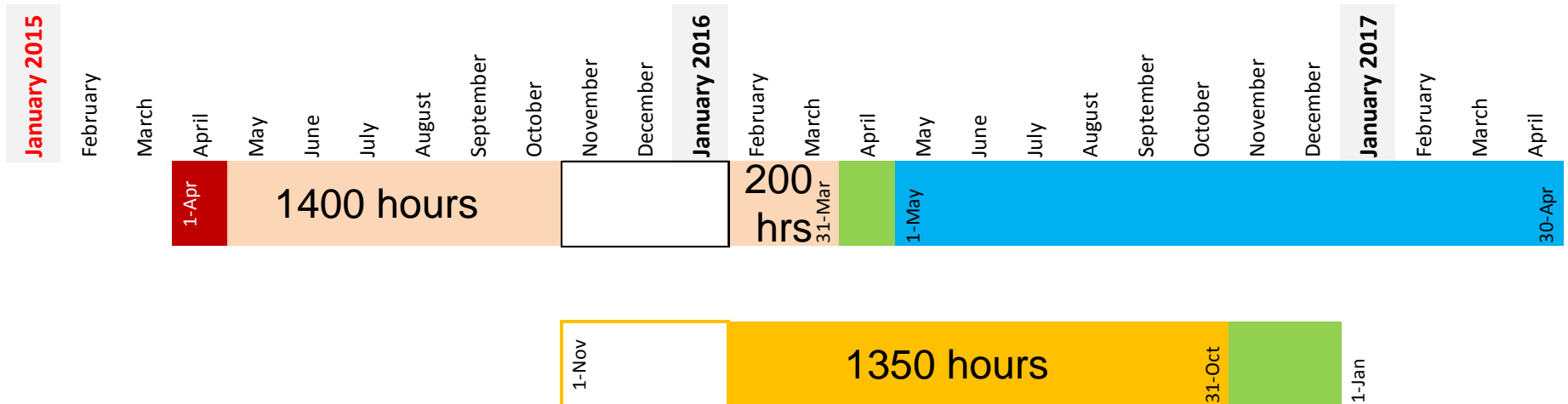


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Break In Service Example

Employee laid off for 3 months



1600 hours over initial measurement period - Employee considered full time
 Only 1350 hours during first standard measurement period – employee not full time

- Hire Date
- Initial Measurement Period
- Standard Measurement Period
- Stability Period - Eligibility guaranteed regardless of # of hours of service
- Administrative Period



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Hours of Service

- Counting Hours of Service
 - Employees of Educational Organizations
 - Employer can determine the employee's average hours of service by using rules similar to the special leave rules
 - Excluding any employment break period occurring during the measurement period and applying that average hours of service for the remaining measurement period
 - Impute hours of service for the employment break period at a rate equal to the average weekly hours of service for weeks that are not part of an employment break period
 - However, an educational organization is not required to take into account more than 501 hours of service for all employment break periods in a calendar year



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Thank you.



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