

# ACA Employer Pay or Play Rules and the Definition of Full-Time Employees

May 22 & 23, 2013



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



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# Employer Shared Responsibility Rules

- Background
  - Beginning in 2014, applicable large employers must offer minimum essential health coverage to all full-time employees or face possibility of “shared responsibility payments” (penalties)
  - Full time employee is generally defined as any employee averaging 30 hours of service per week
    - More later!
  - “Applicable large employer”
    - Employed an average of at least 50 full-time equivalent (FTE) employees in the prior calendar year



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# Employer Shared Responsibility Rules

- Applies only to “applicable large employer”
  - 50 or more full-time equivalents (FTE) in prior calendar year
    - For each month calculate the following: Add total number of full time employees working 30 hrs/wk + total hours worked by part-time employee ÷ 120 = Number FTEs for month

Example	JAN	FEB	MAR	APR	Etc.
Number employees 30 hrs/wk	32	32	35	34	Etc.
Total hours worked by all other employees (PT) EEs	1200	1800	1800	2400	Etc.
Part time FTE (hours ÷ 120)	10	15	15	20	Etc.
<b>Monthly Total</b>	<b>42</b>	<b>47</b>	<b>50</b>	<b>54</b>	Etc.

- Average the monthly totals for the 12 months of the calendar year
- Special one time 6 month rule for 2013
  - To determine 2014 status employer may use average of any 6 consecutive months in 2013



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# Employer Shared Responsibility Rules

- 4980(H)(a) Employer Penalty
  - Employer does not offer minimum essential coverage to all full-time employees (as defined by the ACA) and their dependent children
  - At least 1 full-time employee is certified for and purchases subsidized individual health insurance through a public (state or federal) Exchange
  - Employer Penalty Amount
    - \$166.67/mo (\$2000/yr) times total number of full-time employees (not counting first 30 )
      - Penalty applies even to employees who are offered coverage
    - 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



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# Employer Shared Responsibility Rules

- 4980(H)(b) Penalty
  - Employer offers minimum essential coverage to all full-time employees but coverage is unaffordable or not minimum value (MV)
    - MV = 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
    - Employee family member qualification for subsidy is also based on the cost of employee only coverage – Example:
      - Employee contribution for single coverage = \$50/month
      - Employee contribution for family coverage = \$1500/month
      - Employee or any family members eligible for employer plan will not qualify for subsidized coverage even though cost of family coverage is “unaffordable”



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# Employer Shared Responsibility Rules

- 4980(H)(b) Penalty
  - Employer Penalty Amount
    - \$250/mo (\$3000/yr) times number employees who actually purchase subsidized individual coverage through a public Exchange
  - 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
  - Example:

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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# Full Time Employees

- In general ACA defines full time as 30 hours per week
  - 130 hours per month can be used to define full time
  - Employers must decide to manage eligibility on a month by month basis or implement an optional IRS “Safe-Harbor” full time employee definition
  - Safe Harbor Basics
    - Employers have option to use a “look back” measurement period to determine full-time status for benefits purposes
    - This FTE definition is for purpose of ACA health insurance requirements only and does not change an employers definition of full-time for other purposes
      - Retirement plans, wage and hour rules, etc.



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# Full Time Employees

- Measurement and Stability Period
  - Employers can choose a “measurement period” of 3-12 months
    - Employees who have worked an average of 30 hrs per week during measurement period must be treated as full time
    - This equals 1560 hours if using a 12 month measurement period
  - Measurement periods handled differently for new employees vs. ongoing employees
    - New Employees
      - 90 Day waiting period or possible 12 month initial measurement period
      - Initial measurement period applies only to new hire variable hour and 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

- Measurement and Stability Period
  - Ongoing employees (cont.)
    - Standard measurement period applies equally to all employees within certain employee categories:
      - Collectively bargained and noncollectively bargained employees or employees covered by different collective-bargaining agreements
      - Salaried or hourly employees
      - Primary places of employment in different states
  - Example:
    - May not use different standard measurement periods for different non-union hourly employees



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# Full Time Employees

- Measurement and Stability Period
  - Corresponding “stability period” rules
    - Employees considered full time in measurement period
      - Stability period must be as long as measurement period but no less than 6 months for coverage purposes
    - For employees not considered full time in measurement period
      - Employees cannot be treated as not full time for any period longer than the measurement period - Example:
        - 6 month standard measurement period January - June
        - Employees not full time during measurement period not offered coverage for 6 month stability period
        - Employees must be “re-measured” in next 6 month measurement period July – December



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# Full Time Employees

- Measurement and Stability Periods
  - 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 three months (4 times per year) and offering coverage for at least a 6 month period to any employee earning full time status
  - 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!



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# Full Time Employees

- New Employee 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

- New Employee Rules
  - 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

- New Employee Rules
  - Initial measurement period
    - Can begin any time from date of hire to the first of the month following date of hire
    - 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 1 after the 12 month initial measurement period



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# Full Time Employees

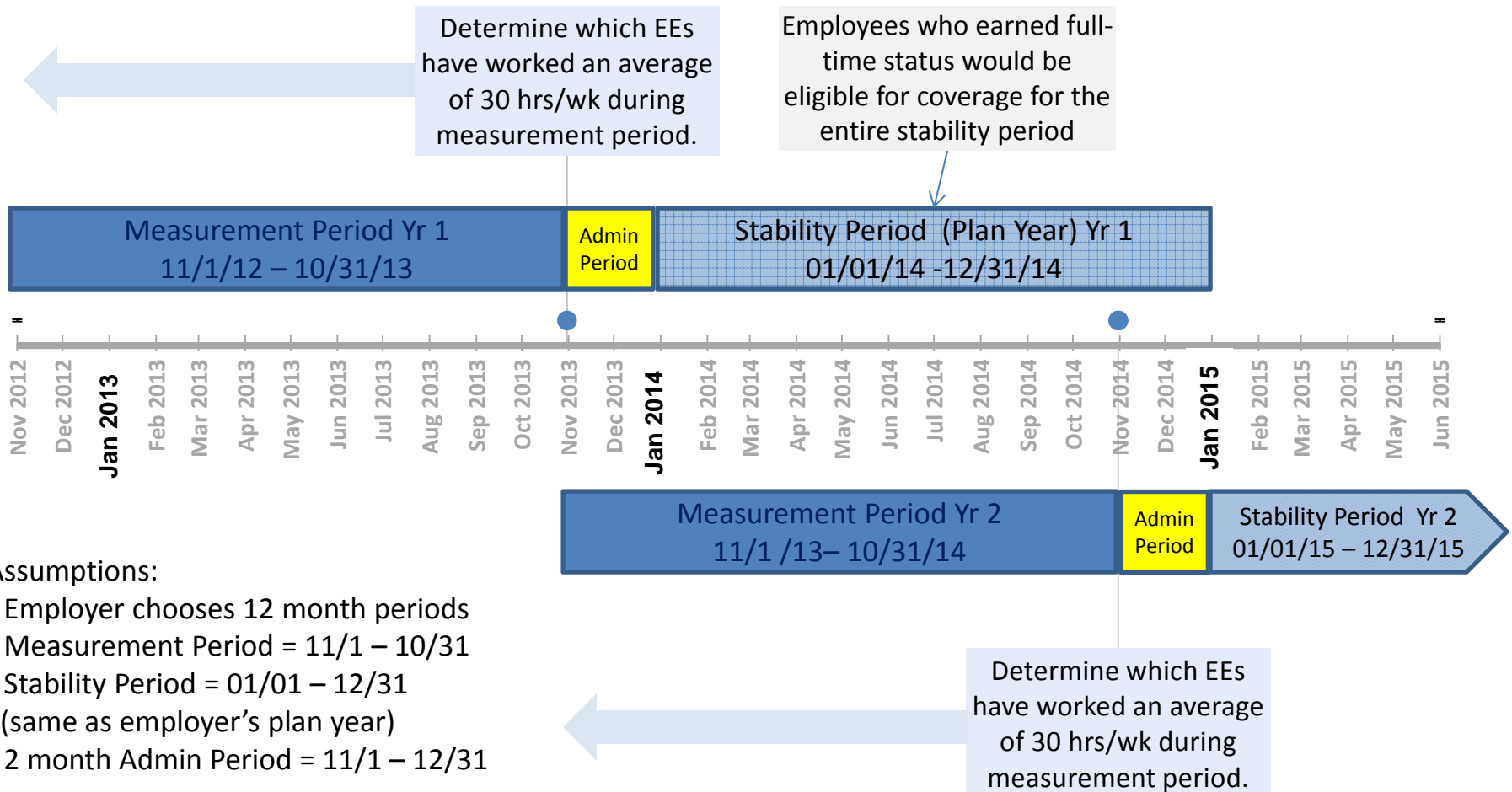
- New Employee Rules
  - Transition rule for short term employees (i.e. temporary hires, interns, etc.)
    - For 2014 only employer can apply variable hour new hire rules to short term employees expected not to work full time during initial measurement period
    - IRS reviewing short term employee rules and is expected to release more detailed guidance which will apply for 2015 and later



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# Ongoing Employees Full Time Timeline



## Assumptions:

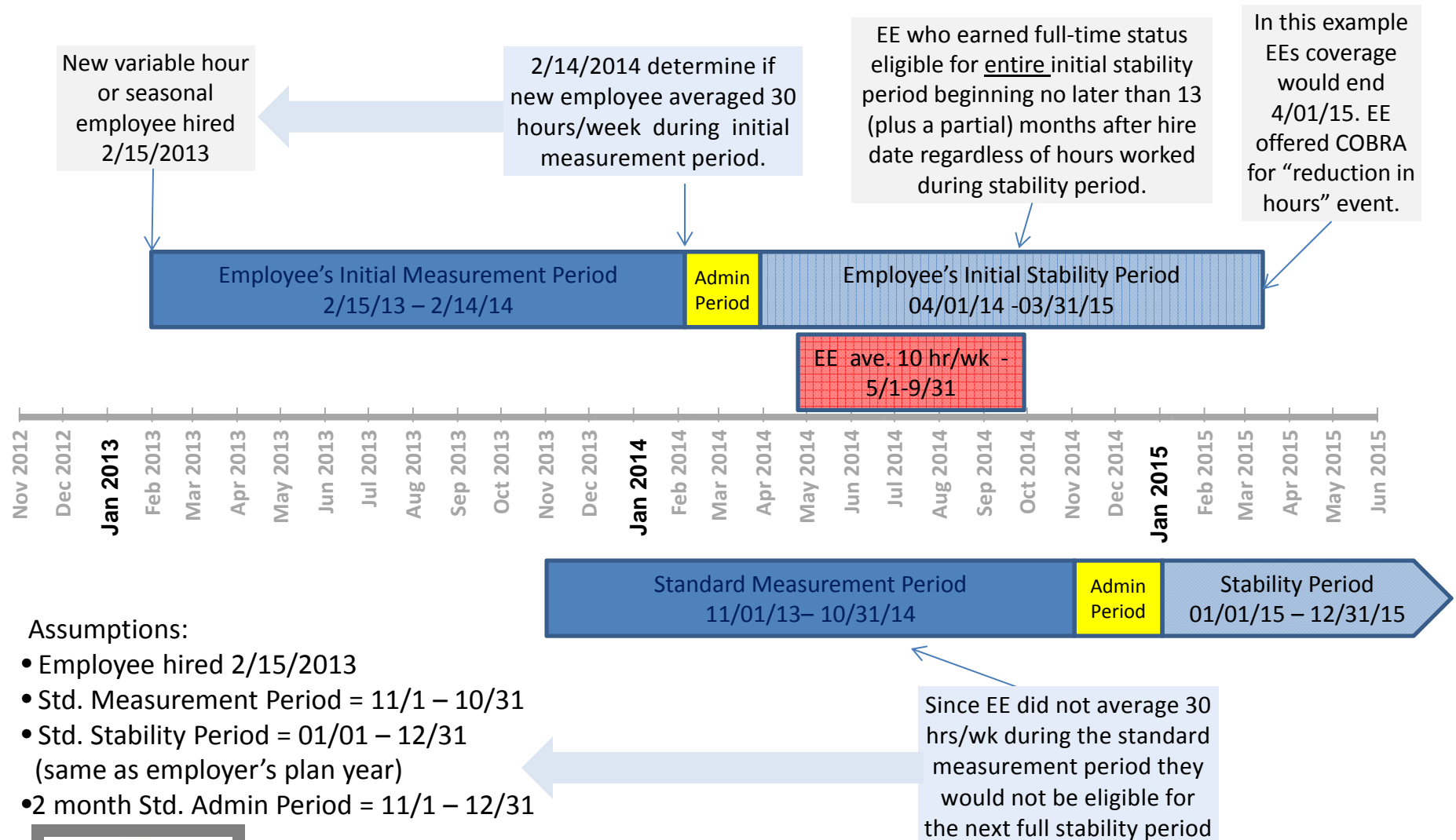
- Employer chooses 12 month periods
- Measurement Period = 11/1 – 10/31
- Stability Period = 01/01 – 12/31 (same as employer's plan year)
- 2 month Admin Period = 11/1 – 12/31



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# New Variable and Seasonal Employee Timeline



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# Full Time Employees

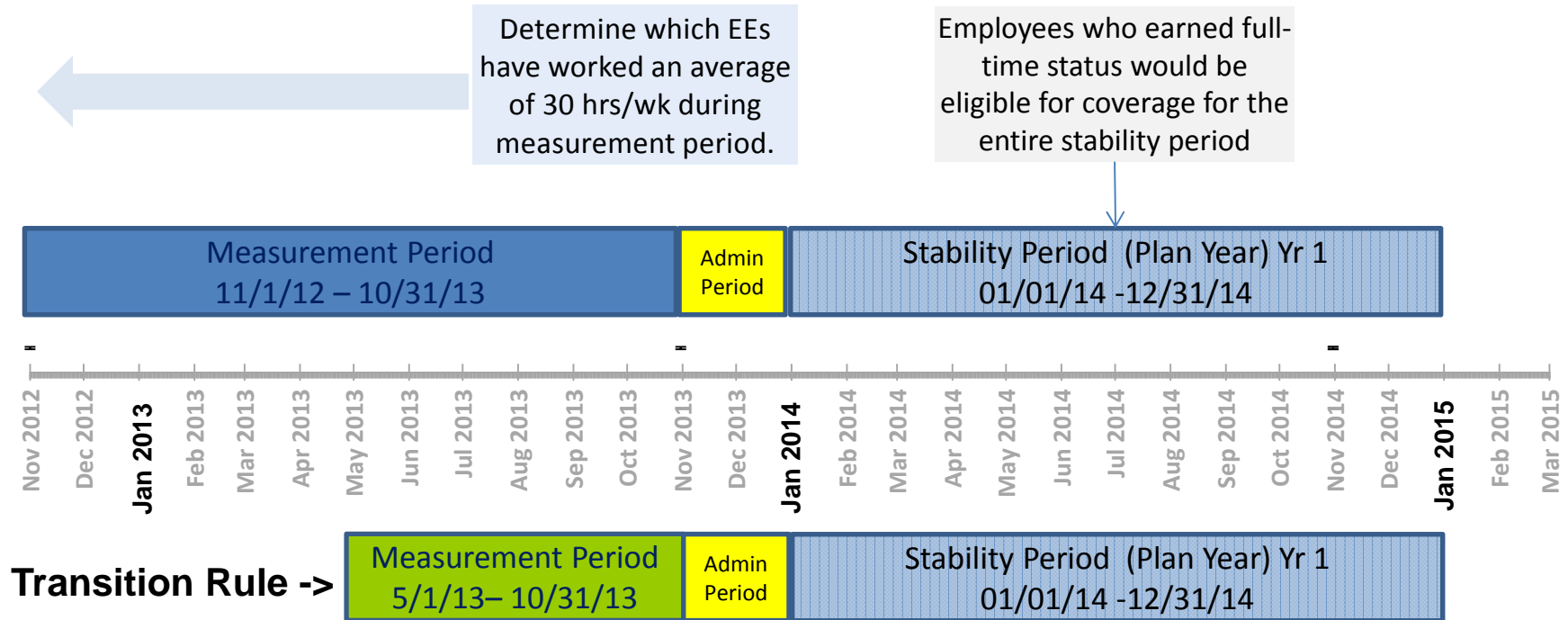
- 2013 Measurement Periods
  - Transition Rule for 2014 coverage
  - 2013 6-month measurement period allowed
    - Employer may use a 6 month measurement period during 2013 to determine eligibility for a longer stability period in 2014
    - Transition rule measurement period may be no shorter than 6 months and must begin prior to July 1, 2013



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# Measurement Period for 2014 Eligibility



## Assumptions:

- Employer chooses 12 month periods
- Measurement Period = 11/1 – 10/31
- Stability Period = 01/01 – 12/31  
(same as employer's plan year)
- 2 month Admin Period = 11/1 – 12/31



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# Full Time Employees

- 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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# Full Time Employees

- 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

- 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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# Full Time Employees

- 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
      - 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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# Full Time Employees

- Counting Hours of Service
  - Employees of Educational Organizations
    - Employer can determine the employee's average hours of service by
      - Excluding any employment break period occurring during the measurement period and applying that average for the remaining measurement period
      - Employer can 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 occurring in a single calendar year



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Thank you.



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