Q&A from Assurex Global Webinar "How to Define Full Time Employees"	January 23, 2014
Question	**Answer**
Q: a school district is trying to figure out if substitutes need to be offered coverage, but they don't work during the summer. Can the summer months be included in the stability period?	A: If the employer chooses to use the look-back measurement method to determine eligibility, special rules for educational organizations required that the employer: (i) Exclude the summer break occurring during the measurement period and apply that average hours of service for the remaining measurement period; or (ii) Impute hours of service for the summer break at a rate equal to the average weekly hours of service for weeks that are not part of an employment break period. However, a maximum of 501 hours of service need to be credited toward the non-work period using this method. If the employer is not using the look-back measurement method, it is not necessary to account for the summer break or to provide coverage through an entire stability period (stability period only applies if a look-back measurement period is used). And yes, the summer months would then be included in the stability period for which the employee is eligible or ineligible for coverage depending on the previous measurement period.
Q: Are hours of service defined as "worked" or "Paid", meaning does vacation, jury duty, or other hours count toward FTE status?	A: Vacation, jury duty and other hours do count toward FTE status. IRS has defined an hour of service as: (i) Each hour an employee is paid, or entitled to payment, for the performance of duties for the employer; and (ii) 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.
Q: If a variable hour employee is in a job that is not guaranteed to be full time (salaried), but works more than 130 hours three months in a row, are they now full-time or do they have to satisfy the remainder of the 12 month variable hour tracking period?	A: The answer depends on whether or not the employer is tracking eligibility on a monthly basis or using a 12-month measurement period. If the variable hour employee is subjected to a 12-month measurement period, the employee's hours of service must be averaged over the entire 12 months to determine eligibility (therefore waiting until the end of the 12 months to make the determination). If the employer is tracking hours of service on a monthly basis, the employee must be offered coverage within 90 calendar days of the first month the employee achieves 130 or more hours of service.

Q: Are you saying we need to count the hours of paid personal leave an employee earns as part of the calculation for their hours because this is non-work hours for which payment is due? Or do we only count this PTO accrual if a part time or call-list employee is out and using that benefit?

A: Hours of service must be counted for hours worked and hours of leave for which the employee is entitled to payment. It would only be necessary to account for PTO hours actually used because otherwise the employer will already be counting the hours as hours worked.

Q: Assume the 12 month stability period and the employee's hours reduce to a point that their income isn't enough to pay for the premiums - can we terminate coverage?

A: The individual must be given the opportunity to pay for the employee contribution portion (after-tax), but if the employee contribution isn't made, the employee should be treated the same as any other eligible employee who fails to make a required contribution.

Q: Are the penalties also subject to an excise tax for the employer? If so - what is that true cost to the employer per employee?

A: The 4980H shared responsibility payments (often called penalties) are not tax deductible to the organization. This increases their effective cost to each employer differently depending on the particular organization's tax situation.

Q: Can the initial measurement period for current, ongoing employees be only 6 months and then transition to a 12-month measurement period after 1/1/15?

A: Yes, for determining status in 2015 only, an employer who will otherwise be using 12 month measurement periods in future years may use a measurement period in 2014 that is (i) at least 6 months; (ii) starts no later than July 1, 2014; and (iii) ends no earlier than 90 calendar days prior to the stability period. Therefore, for a 1/1/15 renewal, an employer, for example, might use the following:
Measurement Period: May 1, 2014 - October 31, 2014
Administrative Period: November 1, 2014 - December 31, 2014
Stability Period: January 1, 2015 - December 31, 2015
And for anyone hired after the beginning of the measurement period, they would be subject to the regular rules (12 month initial measurement and stability period).

Q: Do you have to use the same measurement procedure for all employees or can you use month to month for some employees and the measurement period for others?

Q: We're a controlled group of three different companies. Can we have a different measurement period for each of the 3 companies. Each have separate federal Tax ID number.

A: Generally, if the employer chooses to use the look-back measurement method, it must apply uniformly to all employees; however, an employer may differentiate between using the monthly method vs the look-back measurement method or differentiate the length or dates for the measurement period for the following categories of employees:
- Hourly and salaried employees
- Union and non-union employees (or separate collectively bargained agreement)
- Employees in different states
- Different entities within a controlled group or affiliated service group

Q: I am assuming we do not have to track hours for employees we classify as full time and offer Health insurance. Q: Most of our employees have full time status. Do I need to track their hours in a look back period or only track hours for employees we have classified as Seasonal and Part time employees	A: The employer has the option to track on a monthly basis or to use the look-back measurement method. If there are relatively few employees that have 30 hours of service per week (130/month) that are not currently offered coverage or very few variable hour/seasonal employees, it may be easier for the employer to continue measuring on a monthly basis. However, if the employer chooses to implement the look-back measurement method, it generally must be applied to all employees. An employer may differentiate only for the following categories of employees: - Hourly and salaried employees - Union and non-union employees (or separate collectively bargained agreement) - Employees in different states - Different entities within a controlled group or affiliated service group
Q: For 4980H(a) penalty does the 95% of Full time employees include employees who have waived medical coverage because they get it somewhere else?	A: The requirement under 4980H(a) is that coverage be OFFERED to at least 95% (70% in 2015) of full-time employees. It is not relevant how many employees actually accept coverage. Therefore, if the employer offers coverage to at least 95% (70% in 2015), the employer will not face penalties for those full-time employees that waive coverage.
Q: For new hires, do they have to meet 30 hours per week during their 90 day waiting period?	A: If an employee is expected to average 30 hours of service per week at hire, the employee must be offered coverage within 90 calendar days. If the new hire is a variable hour employee and it cannot reasonably be determined whether or not the employee will average 30 hours of service per week, the employer can track on a monthly basis and offer coverage accordingly or subject the employee to an initial new hire measurement period (3-12 months) to determine eligibility.
Q: For schools, specifically for substitute teachers, what would you use for the measurement period since teachers and subs do not work in June, July and part of August. We have a calendar year plan, so what would you suggest for a measurement period and stability period?	A: Similar to any other calendar year plan, we recommend the following: - Measurement period: November 1 - October 31 - Administrative period: November 1 - December 31 - Stability period: January 1 - December 31 Because of the special rules for educational organizations, the employer either averages the hours of service over 9 months (ignore the summer break) or imputes hours of service over the summer break equal to the average achieved during the rest of the measurement period.
Q: For variable hour employees, after you get to the standard measurement period do you ever go back to the initial period again? Kind of a back and forth?	A: Not unless the employee is terminated and then rehired (and not treated as a continuing employee in accordance with the break in service rules).
Q: Hours of service includes overtime, then, too. RIght?	A: Yes, generally all hours of service for which payment is due are counted.

Q: have a group who has a DOL contract, it's a landscaping company. They bring people from Mexico on contract every year from 4/1 and the contract ends 11/30, many of the same employees come back from Mexico each year. They are on contract through DOL, BUT they are W-2 ees. If using the 12 month lookback would they be offered coverage or not? I'd think not, please advise. Thank you.

A: If such seasonal employees are subjected to a 12-month look-back measurement period, the employees would have to achieve 1560 hours of service within the 8 months to be considered full-time employees for the corresponding stability period. Generally if the employees average 30 hours of service per week (130/month or 1560/yr.) over the 12 month measurement period, the employees should be considered full-time and offered coverage for the following plan year/stability period. We are not aware of any special rules related to "DOL contracts", but without more detailed information we cannot comment on this particular aspect of the question.

Q: How do we determine the measurement period for regular new hires? Do they fall in with the other employees?

A: Variable hour and seasonal employees may be subject to an initial measurement period starting from the period between date of hire or 1st of month following date of hire. After the initial measurement/stability period, the individual should be transferred over and tracked according to the standard measurement/stability period.

For regular full-time employees offered coverage within 90 calendar days, the individual's ongoing eligibility is tracked on a monthly basis until the individual has been employed for one full measurement period. Then once the individual has been employed for one full measurement period, the individual is subject to the standard measurement/stability period with all other ongoing employees.

Q: How does the employer know what the household income is???	A: The employer is unlikely to ever know true household income, which is why affordability employer safe harbors were provided. So long as coverage is 'affordable' using one of the safe harbor methods, it is not necessary for the employer to determine employees' actual household incomes. • Rate of Pay Safe Harbor – An employer can take the hourly rate of pay for each hourly employee and multiply that rate by 130 hours per month to determine a monthly "rate of pay." The employee's monthly contribution amount (for the self-only premium) is affordable if it is equal to or lower than 9.5% of this computed monthly wage estimate, regardless of the number of hours the person actually works or is paid in the month. • Federal Poverty Line Safe Harbor - An employer may also rely on a design-based safe harbor using the Federal Poverty Level (FPL) for a single individual. Coverage offered to an employee is affordable if the employee's cost for self-only coverage does not exceed 9.5% of the FPL for a single individual. • Form W-2 Safe Harbor - provides employers with an option for determining the affordability of health coverage that is based on information (unlike employees' household income) that the employer will know. To qualify for this safe harbor, the employee's required contribution must remain a consistent amount or a consistent percentage of all Form W-2 wages during the year (as reported in Box 1). Note that individuals may still qualify for subsidized health insurance though a public exchange based on their particular household income. However, as long as the employer has met one of the safe harbors no employer penalty would apply.
Q: If a leave of absence is unpaid are those hours counted towards an hour of service	A: If the unpaid leave is considered "special unpaid leave" special rules apply. "Special unpaid leave" includes leave under FMLA, USERRA or leave for jury duty. Other types of unpaid leave are not considered when measuring hours of service.
Q: What is an IRS safe harbor?	A: It is a workaround or relief provided by the IRS for the enforcement and/or potential penalties that may apply for a particular provision of the law.
Q: If an employer is tracking, should he be tracking in 2014 for 2015, or should tracking begin in 2015?	A: If the employer is subject to the shared responsibility rules in 2015 (100 or more FTEs), it is necessary to begin tracking hours of service in 2014 to determine full-time status for the 2015 plan year. Those employers not required to comply until 2016 (50-99 FTEs) can wait to begin tracking hours of service until 2015.
Q: If someone is receiving on-call pay, are those hours counted towards the hours of service Q: Do you count hours of service for on call pay? You are paid $2/hr. to be on call, an emergency occurs and you come to work and then paid regularly pay. Do you count on call pay?	A: If the individual is receiving payment for on-call hours, the time must generally be counted toward hours of service. If the time is unpaid, it depends…the final rules provide some guidance requiring the employer to consider whether the individual is required to remain onsite during on-call hours and to what extent the individual's freedom to do other things is restricted when determining whether or not to count the time as hours of service.

Q: If use month by month period, what is considered a month - the actual calendar month or 4.5 weeks?

A: The actual calendar month rather than a set number of weeks. If full time status is determined on a monthly (rather than weekly) basis, then 130 hours of service per month is considered full time regardless of the number of weeks in a given calendar month.

Q: We have an employee who is working 32 hours per week with every 12th week working 24 hours and then one or two weeks throughout the year 0 hours. This does work out to 130 hours per month per year but some months may be more than 130 and some less. How do we define this employee.

A: It seems very likely that this employee would achieve the 1560 hours of service required to be full-time. If the employer cannot reasonably know how many weeks there may be 0 hours of service or if there may be additional weeks of less than 30 hours of service, this type of employee could be labeled a "variable hour employee" and subjected to a 3 to 12-month new hire measurement period to initially determine eligibility. The employee would then be measured regularly (annually if using a 12 month measurement period) after that.

Q: If you have a full time employee who wants to work part time after retirement, do you have to offer him health insurance for the entire stability period. Example – they work 10 hours a week.

A: Generally, yes. Typically an employee that achieves full-time status during the measurement period must be treated as a full time employee throughout the stability period even if hours are reduced during the stability period to part-time.

Q: So you are saying: If your FT employee goes to an occasional employee, their coverage has to end at the end of the stability period and not at the end of the month in which they change their status.

However, the final rules allow an employer to terminate coverage the 1st of the fourth month following an employee's change to a part-time status if the hours of service remain at part-time for three months. This rule (allowing the termination of coverage during a stability period) applies only when there is a formal change in employment status, and not to employees whose hours simply vary during the year.

Q: Will Temp employees who normally are not offered coverage now be eligible if working full time hours?

A: Yes. The final rules do not provide any special exceptions for short-term or temporary hires. Therefore, if the individual works more than 3 months at full-time, the individual must be offered coverage within 90 calendar days from the date of hire. Such individuals may be subjected to an initial new hire measurement period if they fall under the variable hour or seasonal definition.

Q: In law enforcement, part-time dispatchers are utilized to fill in around full-time. As long as the part-time DOES NOT work over 130 per month, they can be used as needed during the course of the week, correct?

A: Yes, an employer is allowed to define full time on a monthly basis. In this case only those employees with 130 hours of service or more per month need to be treated as full-time, even if from week-to-week the hours of service exceed 30.

Q: Just to clarify, if we chose the Month-by-Month approach, is the penalty assessed only for the exact month(s) that an employee exceeds 130 hours (assuming they are on the exchange and receiving a federal subsidy)?

A: Both penalty 4980H(a) and (b) apply on a monthly basis.
Penalty 4980H(a) applies for any month that the employer fails to offer coverage to 95% (70% in 2015) of full-time employees and their dependent children and any full-time employees qualify for subsidized coverage through the Exchange. The penalty of $166.67 would be multiplied by all employees with 130 hours of service or more in each month.
Penalty 4980H(b) applies for those employees for which the coverage offered fails to provide minimum value or is not affordable; however the penalty of $200 will only apply for each full-time employee (130 hours of service or more per month) that qualifies for subsidized coverage through the Exchange.

Q: I work for a school district. how do I account for summers?

A: For educational organizations using a month-to-month measurement, the employer is required to offer coverage to any employees for any month in which the employees average 30 or more hours of service per week (or optionally 130 hour per month). It would not be necessary to offer coverage during the summer months if the employees aren't full-time.

For educational organizations choosing to use the look-back measurement method, to prevent the summer breaks from changing the status of an otherwise full-time employee, the employer is required to average hours of service by using special rules to account for the summer break period. The employer may choose one of the following methods:
- Exclude any employment break period occurring during the measurement period and 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 never required to take into account more than 501 hours of service for all employment break periods in a calendar year

Q: On the standard measurement period example, if an employee starts February of 2014 can I wait until November 2014 to actually start the measurement period?

A: No. If it's a full-time employee, the individual must be offered coverage within 90 calendar days. If it is a variable hour or seasonal employee and the employer chooses to use the look-back measurement method, the individual's initial measurement period may start any time between the date of hire and the 1st of the month following date of hire (but no later).

Q: Re: Seasonal employees. We are a country club that hires seasonal employees from mid-May to Labor Day. Do we have to track those employees or can we call them Temporary employees, since that is what they are. How does ACA consider Temporary Employees?

A: The final rules do not provide any special treatment for short-term or temporary employees. However, if the employee meets the definition of seasonal (customary annual employment of no more than 6 months), then the individuals may be subjected to a measurement period of 3-12 months to determine full-time status.

Q: For initial measurement period, do you look at whether they are variable at time of hire or at time of measure? For example, hire someone as 40-hour FT employee, but when you go to do measurement they have changed to a temp position. What do you do when they go temp (working less than 30 hours)? Typically, we would terminate coverage but is that correct?

A: The determination needs to be made upon hire. Upon hire, if the individual is a seasonal employee (customary annual employment of up to 6 months) or a variable hour employee (based on information available at hire the employer cannot reasonably know whether the employee will average 30 hours of service per week), then the individual may be subjected to an initial measurement period. Otherwise the individual must be offered coverage within 90 calendar days if full-time.

Q: did i correctly understand that LTD does not need to be included as part of the special leave rule of needing to count?

A: Yes, that's correct. "Special unpaid leave" only requires hours to be accounted for during FMLA, USERRA or leave for jury duty.

Q: Temporary labor qualifies as variable hour, correct?

A: The final rules do not provide any special treatment for short-term or temporary employees. This is an important clarification in the final rules. A short term hire that is expected to average 30 hours of service per week (or 130 per month) must be treated as any other employee and is subject to the 90 day waiting period rules.

However, if the employee meets the definition of seasonal (customary annual employment of no more than 6 months) or variable hour (cannot reasonably determine at hire that the employee will average 30 hours of service per week), then the individuals may be subjected to an initial measurement period of 3-12 months to determine full-time status.

Q: truck drivers are exempt from the wages on over time hours rules. are they exempt from the 30 hours?

A: No, they are not exempt. Although maybe difficult to track hours of service, the employer must use a reasonable method of counting hours of service and offer coverage if the drivers average 30 or more hours of service per week (assuming the employer is an applicable large employer subject to the shared responsibility rules)

Q: Please explain the optional equivalency methods of determining full time again	A: For non-hourly employees, the employer may track hours of service in one of the following ways: - Count actual hours worked and non-worked hours for which payment is due - Days-worked equivalency method (count eight hours of service for each day for which the employee is entitled to any pay) - Weeks-worked equivalency method (count 40 hours of service per week for each week for which the employee is entitled to any pay) An employer is not permitted to use the days-worked or weeks-worked equivalency method if the result is to substantially understate an employee's hours of service (i.e. cannot use days-worked equivalency method if the employee works three 10-hr days because it would result in 24 rather than 30 hours of service).
Q: Regarding the waiting period - I realized as the employer we can no longer have a 90 days waiting period, but what if we go with 60 days can we use the first of the month following the date of hire? or must the employee be enrolled in medical plan by no later than 60 days period.	A: You can use 1st of month following 60 days from data of hire.
Q: We have employees who make large deductions to a tax deferred annuity, which lowers their w-2 wages. This has the potential to make the plan unaffordable. Is this addressed any where in any of the regs, we don't want to be penalized over something we can not control	A: If you're referring to the W-2 safe harbor provision, that has been recognized but the regulators are not changing that provision. It is a significant difference since BOX 1 of the W-2 is net of such pre-tax contributions (including health premiums paid pre-tax). Employers in this situation may be better off using the "rate of pay" or "poverty level" safe harbor since these are not based on an employees net pay.
Q: what do you do with a seasonal employee who might become eligible based on hours but is concurrently laid off. How can you offer benefits to someone not "active" to be eligible for the benefit?	A: If the seasonal employee earns enough hours of service during the measurement period to be considered full-time, the employee must be offered coverage during the corresponding stability period unless the employee's employment is terminated. However, if the employee returns to work within less than 13 weeks, according to the break in service rules, the employee may need to be treated as a continuing employee and would need to be reinstated as soon as administratively possible upon rehire for the remainder of the stability period. The employer is not required to offer employee coverage to an employee who is terminated (although COBRA may apply).

Q: What if the person only works for two months? If they might come back next summer, but you don't know for sure- do you need to measure them?	A: For any employees working less than 3 months, the employer doesn't need to worry about offering coverage. However, if there is a possibility that they might be rehired within less than 13 weeks, the break in service rules would apply and the employee would need to be treated as a continuing employee (and the measurement period continued from the original date of hire) rather than restarting a new initial new hire measurement upon rehire. If the employee truly works only 2 months each year at the same time each year, the employee will always be treated as a new hire and the employer will never achieve full-time status.
Q: Who pays the penalty if a person works full time for more than one company and goes to the exchange? -	A: If both companies are part of a controlled group (shared ownership) or affiliated service group (shared services), then the entity employing the individual with the most hours of service is responsible for the employee. If there is no relationship between the two companies, and the individual earns full-time status at both companies, then both companies could potentially face penalties for a failure to offer coverage that meets the requirements.
Q: why is the administrative period less for the initial period vs. the standard measurement period?	A: There was a desire to ensure that new hires would never have to wait more than 13 months (plus a partial month) from the date of hire for coverage if they earned full-time status. If the full administrative period was allowed, the individual could be measured for 12 months and then have to wait up to 90 calendar days for an offer of coverage.
Q: can you clarify for the audience that household income includes income for anyone in your household that you claim as a tax dependent. Therefore if Mom and Dad make $85k and child 1 makes $10k and child 2 makes $15k - the family may be ineligible for subsidy based on their total household income.	A: A household, for purposes of determining eligibility for premium tax credits, includes any individuals for whom a taxpayer claims a personal exemption on the federal tax form. Household income is based on an individual's modified adjusted gross income (MAGI). For most taxpayers, MAGI is the same as Adjusted Gross Income (AGI) found on Line 4 on a Form 1040EZ, or Line 37 on a Form 1040. However, any non-taxable Social Security benefits, income earned while living abroad or certain tax free interest earnings to AGI need to be added to your AGI to determine MAGI.

Q: Will ER Shared Resp. Penalty take effect Jan 1, 2015 for all groups or as they renew in '15?

A: For those employers with 100 or more FTEs subject to the shared responsibility rules in 2015, non-calendar plans are not required to comply until the first plan year in 2015 as long as they meet the following criteria:

- The non-calendar plan year must have been in place as of Dec 27, 2012 and not changed to a date later in the year since then
- The plan must meet one of the following:
  - Have 1/4 of all employees covered on any date within the 12 months prior to Feb 9, 2014 OR have offered coverage to at least 1/3 of all employees during the most recent open enrollment;
  - Have 1/3 of all full-time employees covered on any date within the 12 months prior to Feb 9, 2014 OR have offered coverage to at least 1/2 of all full-time employees during the most recent open enrollment
- The plan must offer coverage to at least 70% of full-time employees that provides minimum value and is affordable no later than the first day of the 2015 plan year

Q: Would COBRA have to be offered for any months an employee is not eligible?

A: COBRA needs to be offered if the individual has a loss of coverage due to loss of eligibility for the plan. Consequently, if an employer is determining eligibility on a monthly basis, then the employee would need to be offered coverage any time they lose coverage due to a reduction in hours that causes a loss of eligibility. If an employer is using a measurement period approach, a covered employee would need to be offered COBRA at the end of the stability period after losing eligibility.

Q: FMLA states that employees must be offered the same benefits as if they were working. Wouldn't we count their hours on FMLA leave towards hours of service in this case?

A: Yes, according to the rules for "special unpaid leave" - FMLA, USERRA or jury duty - the employer can account for hours of service during 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; or
- 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

Q: so, instead of calculating how many hours an employee works in the initial measuring period and the standard measuring period, you can just see how they do month to month?

A: Yes, the employer has the choice of measuring eligibility on a monthly basis or using the look-back measurement method to determine full-time status.