

Pay or Play and Special Employment Classifications

Many employers hire employees with special employment classifications such as interns, “temporary” employees, H2A or H2B visa workers. Often these employees are hired for a short duration. These employees can create significant penalty risk under the Affordable Care Act’s Pay or Play mandate. There is no relief or special category under the ACA for full-time employees that are expected to work only for a short period of time. How an employer deals with short-term hires depends on the method used for determining full-time (FT) status under the Affordable Care Act (ACA). Under the ACA, “full-time” is defined as working or paid for an average of 130 or more hours per month as determined using either the monthly method or the look-back safe harbor method. This chart addresses how offers of coverage should be handled to limit Pay or Play risk with these special category employees based on whether the employer uses the look-back measurement method or the monthly measurement method.

Employee Category	Look-Back Method	
<ul style="list-style-type: none"> ➤ Short Duration Hires ➤ Paid Interns (unpaid interns do not have ACA hours of service so are not FT) ➤ H2A or H1B Visas ➤ Seasonal Employees 	<p>No relief or special treatment unless employees meet the definition of Seasonal or Variable Hour Hires below.</p>	<p>If expected to work FT on hire should generally be treated like any other FT employees.</p> <p>New hires expected to work on average 130 or more hours a month have their ACA FT status determined on a monthly basis until they captured in their first full standard measurement period and are generally eligible for health plan coverage after a waiting period not to exceed 90 days.</p>
<ul style="list-style-type: none"> ➤ Seasonal Employees 	<p>A position for which the customary annual employment is six months or less beginning each calendar year in approximately the same part of the year, such as summer or winter.</p> <p>In unusual instances, employment can extended in a particular year beyond its customary duration of six months or less.</p>	<p>Assess ACA FT status in an initial measurement period and under first full standard measurement period after DOH.</p> <p>Employment will generally be over before the IMP ends and the IMP is a limited non-assessment period under pay or play.</p>
<ul style="list-style-type: none"> ➤ Variable Hour Employees 	<p>Based on the facts and circumstances on the employee’s start date, it cannot be determined whether the employee is reasonably expected to work an average of at least 30 hours per week during the initial measurement period.</p> <p>Consider whether the employee is replacing an employee who was or was not FT, are employees in the same or comparable positions FT, was the job advertised as requiring or not requiring FT hours.</p>	<p>Assess ACA FT status in an initial measurement period and under first full standard measurement period after DOH.</p> <p>Employers must carefully manage hours if the desired result is for VH populations to remain ACA PT for associated stability periods (1,560 hour average for a 12-month measurement period is ACA FT).</p>

Employee Category	Monthly Method	
<ul style="list-style-type: none"> ➤ Short Duration Hires ➤ Paid Interns (unpaid interns do not have ACA hours of service so are not FT) ➤ H2A or H1B Visas ➤ Seasonal Employees 	<p>No relief or special treatment</p>	<p>Option 1 (for no pay or play penalty exposure): These employees are made otherwise eligible for coverage but subject to a 60- or 90-day waiting period with the expectation that their employment will end before the waiting period ends.</p> <p>There are potential non-discrimination issues for self-funded plans if other groups have a shorter waiting period.</p> <p>Interns are in a limited non-assessment period during that waiting period (first full 3 months of employment) as long as they are otherwise eligible for coverage.</p> <p>Option 2 (for some small potential part (b) penalty exposure): If these employees remain ineligible, there MUST be few enough FT ineligible employees to avoid the part (a) penalty under the margin of error rule (5%).</p> <p>Part (b) exposure for these employees should be assessed based on the likelihood they are eligible for Exchange subsidies (for example, many interns are covered by student insurance or a parent’s plan).</p> <p>Option 3 (for little (or no) pay or play penalty exposure): Make these employees eligible on the same terms as other employees.</p> <p>Assess whether these employees are likely to elect coverage (for example, many interns are covered by student insurance or a parent’s plan) because if they do elect coverage, there is cost (employer portion of the premium).</p> <p>Part (b) exposure for these employees should be assessed based on the likelihood they are eligible for Exchange subsidies (is cost sharing “affordable”, is there a likelihood of other coverage such as student insurance or a parent’s plan).</p>
<ul style="list-style-type: none"> ➤ Variable Hour Employees 	<p>No relief or special treatment</p>	<p>Employers must carefully manage hours if the desired result is for VH populations to remain ACA PT.</p> <p>Because ACA FT status is determined retroactively at the end of each month, a VH employee who worked or was paid for at least 130 hours in a month is FT for that month and can trigger retroactive penalties if they were not benefits eligible.</p>

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