# EXPERT UPDATE

## Tracking Hours of Service for Variable Hour and Seasonal Employees Step-by-Step Guide for Adopting the IRS Safe Harbors

HENDERSON BROTHERS

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If you are a **large employer** and you have a part-time or seasonal workforce that is not entitled to enroll in your group health plan, now is the time for you to start establishing your formal procedure for monitoring hours of service for this employee population. While you are not required to institute a particular approach for tracking hours of service, we are highly encouraging you to consider adopting the safe harbors illustrated in the proposed regulations. These safe harbors allow employers to identify full-time employees by tracking hours during a specified period, then providing coverage when necessary during another specified period. Although confusing and complicated to implement, the "new employee" and "ongoing employee" safe harbors proposed for tracking coverage over extended periods of time will be less challenging and burdensome than the monthly determinations many employers were previously considering.

### *Step 1 - Understanding the Safe Harbor terms*

- **initial measurement period** – the look-back period used for new hires.
- **measurement period** – the look-back period that is evaluated to determine whether an employee has averaged at least 30 hours per week. There safe harbors

illustrate two types of measurement periods: standard measurement period and initial measurement period.

- **standard measurement period** – the look-back period used for ongoing employees.
- **administrative period** – the period after the end of a measurement period and before the beginning of the next stability period. This is the time when the employer gathers the information for the measurement period, calculates hours of service for each employee, determines eligibility for coverage, provides enrollment materials to eligible employees, and conducts open enrollment for no more than 90 days.
- **stability period** – the set period of time in which the employee is entitled to be enrolled in the plan or the period when the employee is ineligible to be enrolled. We recommend that this stability period run concurrent with the employer's plan year.
- **ongoing employee** (or "**current employee"**) – an employee who has been employed for at least one complete standard measurement period.
- **new employee** (or "**new hire**") – an employee who has not been employed for at least one complete standard measurement period.
- **variable-hour employee** – an employee who is not expected to work an average of at least 30 hours per week during the initial measurement period based on the facts and circumstances on the employee's start date.

### *Step 2 - Understanding what hours to track*

Employees who perform an average of 30 or more hours of service per week are considered full-time. The proposed regulations permit an employer to treat 130 hours of service in a calendar month as the monthly equivalent of 30 hours of service per week, provided the employer applies this equivalency rule on a reasonable and consistent basis.

Most large employers already know who their full-time employees are and understand that coverage must be offered on the 1st day of the plan year in 2014 or penalties may apply. If you have not determined who these employees are, we strongly suggest you run a report for calendar year 2012 to find out how many full-time employees you have. You may be surprised to find that some of your part-time employees are actually working a "full-time" schedule.

The statute has not defined "hour of service", but rather has granted the Treasury and DOL authority to prescribe regulations and rules to determine an employee's hours of service. The proposed regulations have defined "hour of service" to mean each hour for which an employee is paid, or entitled to payment for the performance of duties. As illustrated in other Expert Updates, this means when employers are evaluating hours of service, they must include paid time off like vacation time, holidays, time off for illness, jury duty, etc. The proposed regulations do not limit the number of paid non-work hours that must be taken into account even though there has been talk that a limit should apply. Hours of service generally do not include hours of service outside the United States, regardless of the residency or citizenship status of the employee. All of this is important to keep in mind when you begin to track variable hour and seasonal employees' hours of employment. Remember: if these employees are found to be full-time, and affordable, minimum value coverage is not offered, penalties could apply.

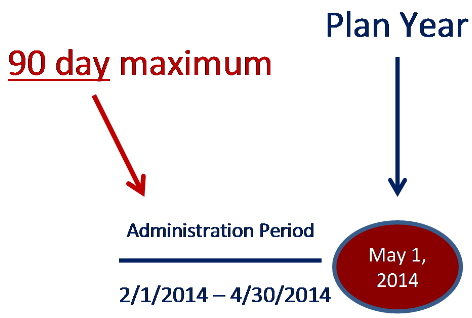
***Step 3 - Establishing your first standard measurement period, standard administration period and standard stability period for ONGOING employees***

First, think about what duration is appropriate for your standard measurement period. It should not be less than 90 days, nor should it be longer in duration than 12 months. Most of our clients are finding that the 12 month measurement period is best for their operation. Remember: your standard stability period will need to be set with the same duration as your standard measurement period.

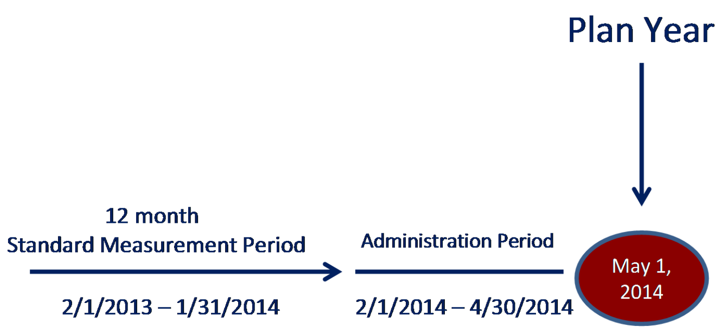
Next, identify your plan anniversary date in 2014. Transition relief will give fiscal year plans more time to gets things in order before penalties can be assessed. If your plan is not a calendar year plan, your first standard measurement period will likely straddle January 1, 2014. If your plan anniversary date is January 1, 2014, your will need to start your first measurement period very soon.

Assuming you have decided to measure hours of service for 12 months (measurement period), perform administrative functions for 90 days (administration period) and offer benefits or not offer benefits for 12 months (the stability period), you want to begin by COUNTING BACK 90 days from your plan anniversary date in 2014 to establish your administration period for ongoing employees. Let's assume your plan renews May 1, 2014:

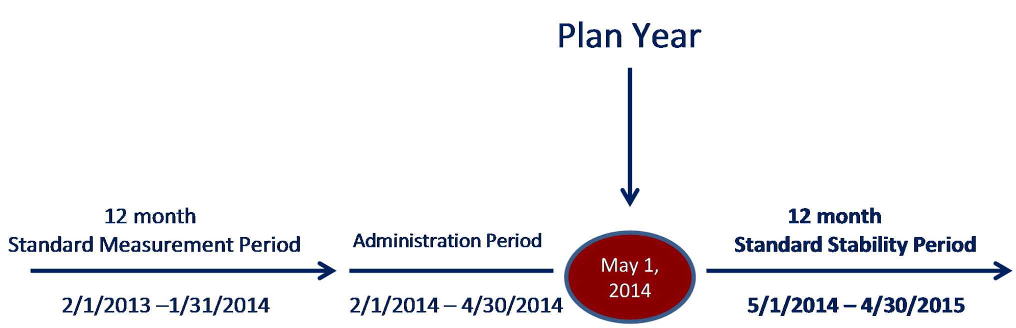
UPDATE: All exhibits altered to reflect 90 day limit on Administration Period




Now, to establish your 12 month standard measurement period, go back 12 months from the beginning of your administration period. Ideally, you should have begun to measure hours of service for your variable hour and seasonal workforce starting February 1, 2013.

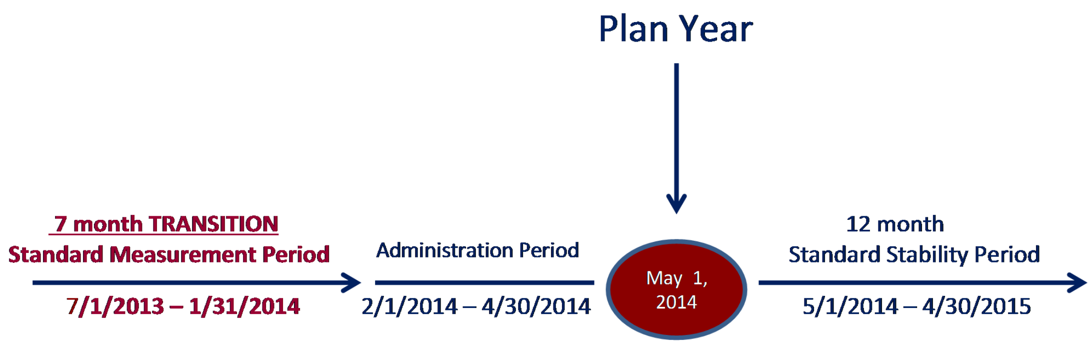



Next, establish your standard stability period to run concurrent with your plan year.



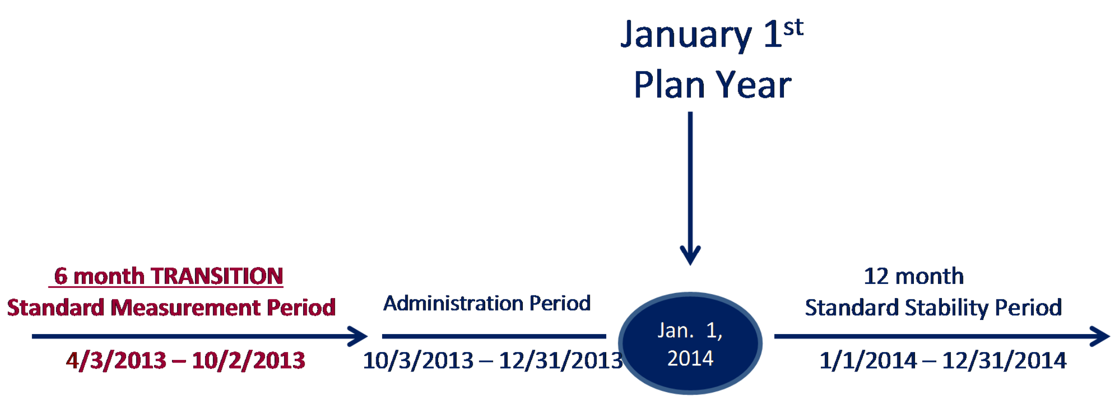

## Transition Rule

Under a transition rule that applies only to stability periods beginning in 2014 (a portion of which may continue into 2015), employers can adopt a measurement period that is shorter than 12 months. This transition measurement period **<u>must not be less than six consecutive months; must begin no later than July 1, 2013; and must end not more than 90 days before the first day of the plan year beginning on or after January 1, 2014</u>**. The standard stability can still be set at 12 months to run concurrent with the plan year.




**Then in 2014, the Standard Measurement Period is 12 months: <u>2/1/2014 – 1/31/2015</u>**

Employers with **calendar year plans** will likely want to establish the following arrangement to measure hours of service, beginning April 1st this year. The <u>transition standard measurement</u> period is set at 6 months.




**The next Standard Measurement Period will be established to run from <u>10/3/2013 to 10/2/2014</u>**

Regardless of whether you decide to adopt these safe harbors, it is critical that you begin to think about how you are going to measure the hours of service for your variable hour and/or seasonal workforce. Please feel free contact your HBI consultant or analyst if you have further questions about these safe harbors.

Stay tuned for more details on this subject matter and other information about the Affordable Care Act.

Contributor:

Shari Herrle
Henderson Brothers, Inc.
Director of Compliance

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