

State of Kansas: Agencies Compliance

Affordable Care Act Implementation Update

June 25th and 26th 2013

Prepared by Consulting
Health and Benefits

AON Hewitt

Today's Discussion

Agenda

- Health Care Reform Overview (10 minutes)
- Agency Responsibility (10 minutes)
- Agency Compliance (40 minutes)
- Questions & Answers (30 minutes)

Note:

- Over the next 12 to 18 months, Aon Hewitt expects a significant amount of regulatory guidance from the applicable governmental agencies, i.e., the U.S. Department of Labor, Treasury, and Health and Human Services
- Future guidance, regulations, or legislation may change the current interpretation and, therefore, financial impact analysis

Health Care Reform Overview



Health Care Reform—Paradigm Shift for Employers and Employees

Employer Plan

- Generally the best choice for employees who do not receive a federal subsidy in the exchanges
- Insurance plan familiar to most employees

Exchanges

- Employees with low family incomes may receive better benefits at a lower cost in a state exchange
- These individuals can only receive federal subsidies if employer does not offer an affordable plan

Medicaid

- May be available to more employees in states that choose to expand Medicaid coverage
- Employees receive nearly full coverage, although provider access is limited

Opt-Out Self Insure

- Employees may opt-out for many reasons including a spouse with a better/cheaper plan, TriCare coverage, or simply not wanting to own health insurance

Agency Responsibility



Agencies Responsibilities

2013	2014
Agency Compliance	
<ul style="list-style-type: none"> - Agency must determine Full Time Employee to avoid ACA penalties for not offering health care coverage 	<ul style="list-style-type: none"> - Employer must provide affordable health care coverage to Full Time Employees (FTE) or risk penalty on your Agency
<ul style="list-style-type: none"> - Provide notice to all current employees about Exchanges by October 1. 	
<ul style="list-style-type: none"> - Beginning October 1, provide all new hires notice of exchanges within 14 days of start date. 	
<ul style="list-style-type: none"> - Health FSA \$2,500 limit, if applicable 	
<ul style="list-style-type: none"> - Effective 1/1 there are new employee Medicare taxes on high-income individuals earning over \$200K (\$250 for joint filers) 	
Other Responsibilities	
	<ul style="list-style-type: none"> - Effective 1/1 State/Federal Exchange begin
	<ul style="list-style-type: none"> - Individual must buy health insurance or pay shared responsibility tax when they file their 2014 tax return

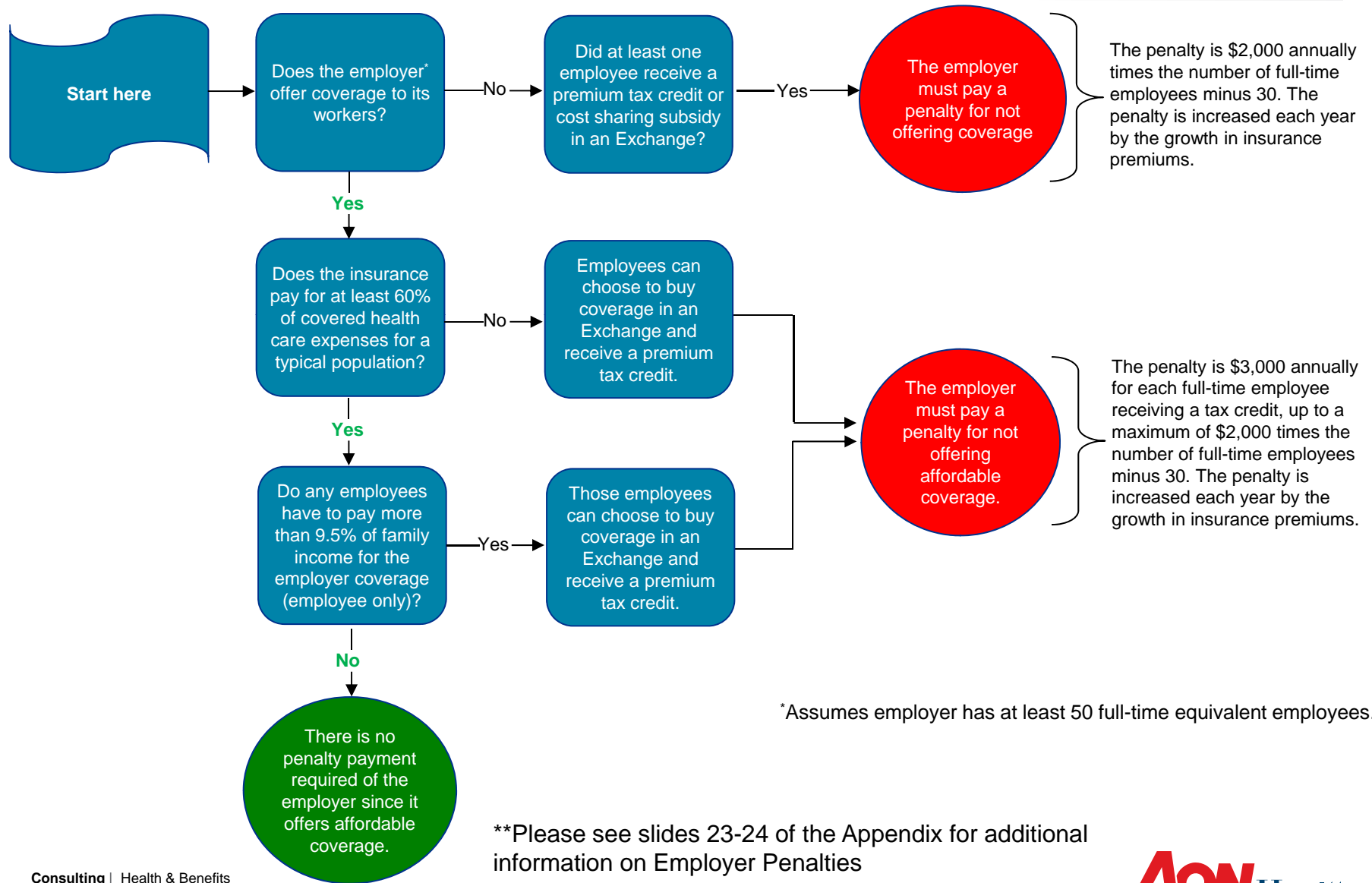
State Insurance Exchange Notice

- Each Agency is responsible for providing a notice to **all** current employees of an employee's coverage options available through an Exchange **by October 1, 2013**
- The notice will provide the following information:
 - Information about the Exchange
 - Whether or not the plans offered to through the Agency meets the required 60% minimum actuarial value
 - Informs employees of the loss of employer contribution, if they purchase a QHP (Qualified Health Plan) through the exchange
- **All** employees (regardless of employment or enrollment status) must receive this notice
- The notice must be distributed to **all new** employees within 14 days of their date of hire
- The notice may be provided by first class mail or electronically
- EBSA released a model notice for employers to use
 - Sample notice: <http://www.dol.gov/ebsa/pdf/FLSAwithplans.pdf>

Agency Compliance



Employer Penalties in 2014



*Assumes employer has at least 50 full-time equivalent employees.

**Please see slides 23-24 of the Appendix for additional information on Employer Penalties

Determining Full Time Employees

- Who is a “full-time employee”?
 - Employee who works 30 hours or more per week
 - 130 hours of service in a calendar month is treated as monthly equivalent of 30 hours of service per week
- Variable Hour and Seasonal employees
 - Employers **must measure** employees that are categorized as seasonal or temporary, if it cannot be determined that the employee is reasonable expected to work on average at least 30 hours per week

**Please see slides 25-29 in the Appendix for additional information on determining a Full Time Employee

Variable Hour and Seasonal Employees

“Look-back” Measurement Period

- Period over which employer tracks employee’s hours of service
- SEHP has set the measurement period to be twelve months in duration
 - Initial measurement period for new employees – based on each employee’s hire date
 - But does not have to begin on employee’s hire date
 - Standard measurement period for ongoing employees – uniform period set by employer – October 15, 2012 – October 14, 2013

Administrative Period

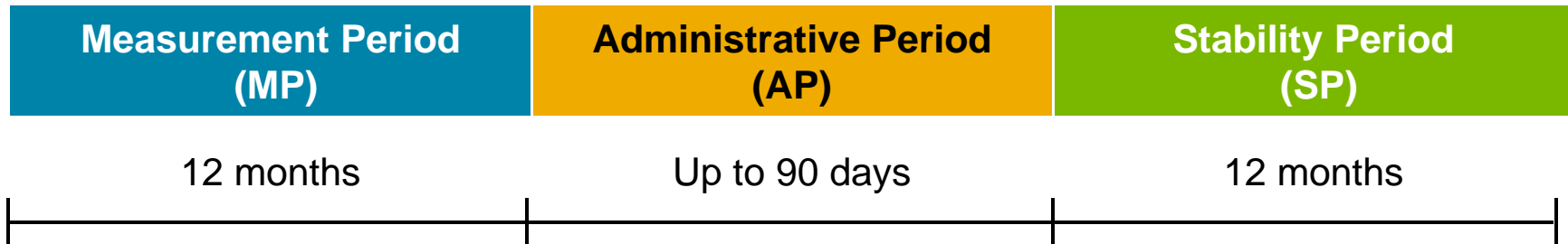
- Calculations, communications, enrollment
- Up to 90 days in duration
 - Begins immediately after end of standard measurement period
 - Ends immediately before associated stability period

Stability Period

- Period for which employer must offer health care coverage to Full-Time Employee to avoid No Coverage Penalty or Inadequate Coverage Penalty
- SEHP has set the Stability Period at twelve months

Measurement, administrative, and stability periods must coordinate with plan waiting periods

Defining Full-Time Employee Status of Ongoing Employees

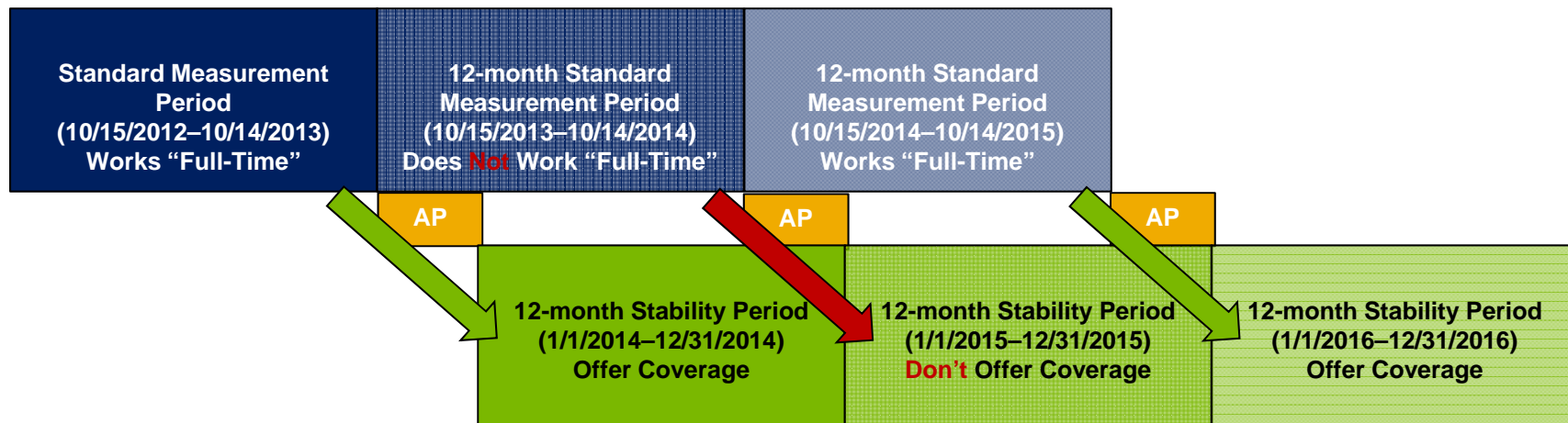


- An **ongoing** employee is an individual who has been employed for a least one complete standard measurement period
 - Determines if the agency would offer health care coverage in the stability period
 - Average hours worked
 - Determine whether an ongoing employee is a Full-Time Employee
- Buffer between MP and SP
 - Allows for measuring and enrolling full-timers
- Eligibility period for coverage for employees averaging 30 hours or more during MP
 - If there is a change in an employee's position of employment or employment status before the end of the stability period, the change will not affect the classification as a Full-Time employee for the remaining portion of the stability period

**Please see slide 27 of the Appendix for additional information regarding defining an Ongoing Employee

Example 1: Ongoing Employees

- The agency
 - Will use a 12-month standard measurement period
 - 12-month standard measurement period that begins October 15, 2012 – October 14, 2013
 - A 2 1/2-month (78 day) administrative period October 15, 2013 –December 31, 2013
 - Offers coverage during a stability period that equals the calendar plan year 1/1/14 – 12/31/14
- Based on hours worked during the standard measurement periods, employee is eligible for coverage in the 2014 plan year and the 2016 plan year, but not eligible for coverage in the 2015 plan year



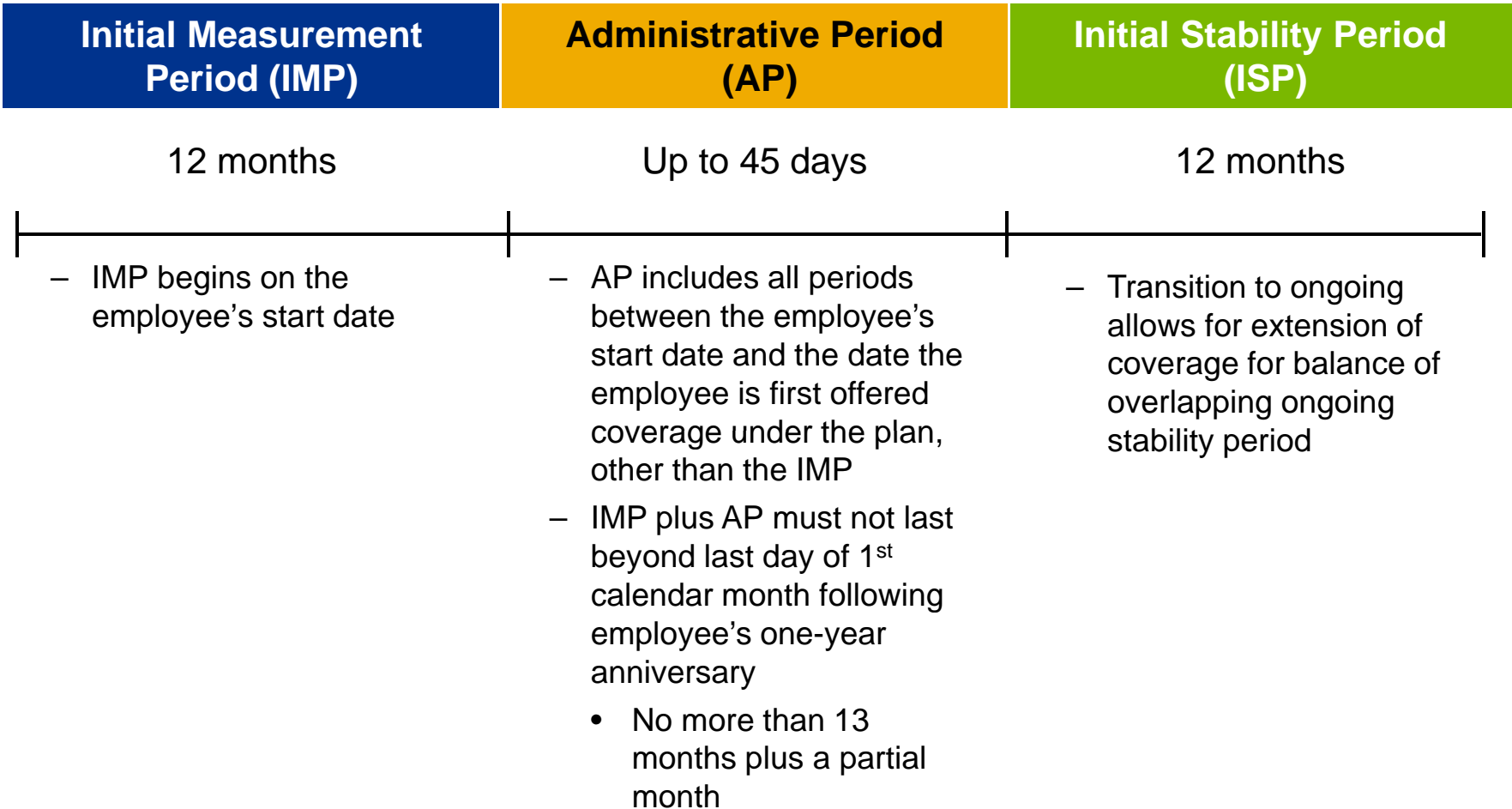
Determining Full-Time Employees Under ACA

- **New Non-Variable Hour Employee**
- If an employee is reasonably expected to be a Full-Time Employee upon hire, you must offer group health plan coverage after their waiting period or will be at risk for a shared responsibility payment
- If employer did not offer coverage by the end of their waiting period then employer is subject to penalty for those months and any subsequent months that coverage is not offered

- **Is New Hire a Variable or Seasonal Hour Employee at Start Date?**
 - Look at the “facts and circumstances” at the employee’s start date
 - A new employee is a variable-hour employee if
 - It cannot be determined that the employee is reasonably expected to work on average at least 30 hours of service/week or
 - Initial period of 30 hours/week employment is reasonably expected to be of limited duration and it cannot be determined that the employee is reasonably expected to work on average at least 30 hours/week over 12 months (the initial measurement period); e.g.:
 - ♦ Retail worker hired at more than 30 hours/week for the holiday season but who is reasonably expected to work fewer than 30 hours/week after the holiday season
 - ♦ Part-time worker hired for 20 hours per week but who could work more

Defining Full-Time Employee Status of Newly Hired Employees

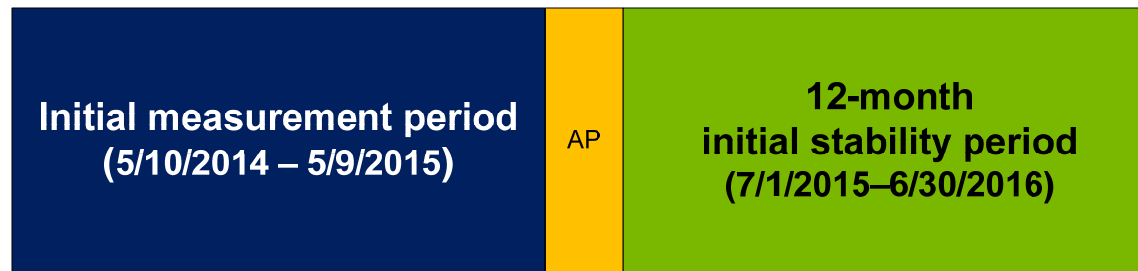
New Variable-Hour and Seasonal Employees



**Please see slide 29 of the Appendix for more information on the measurement periods for new variable and season employees

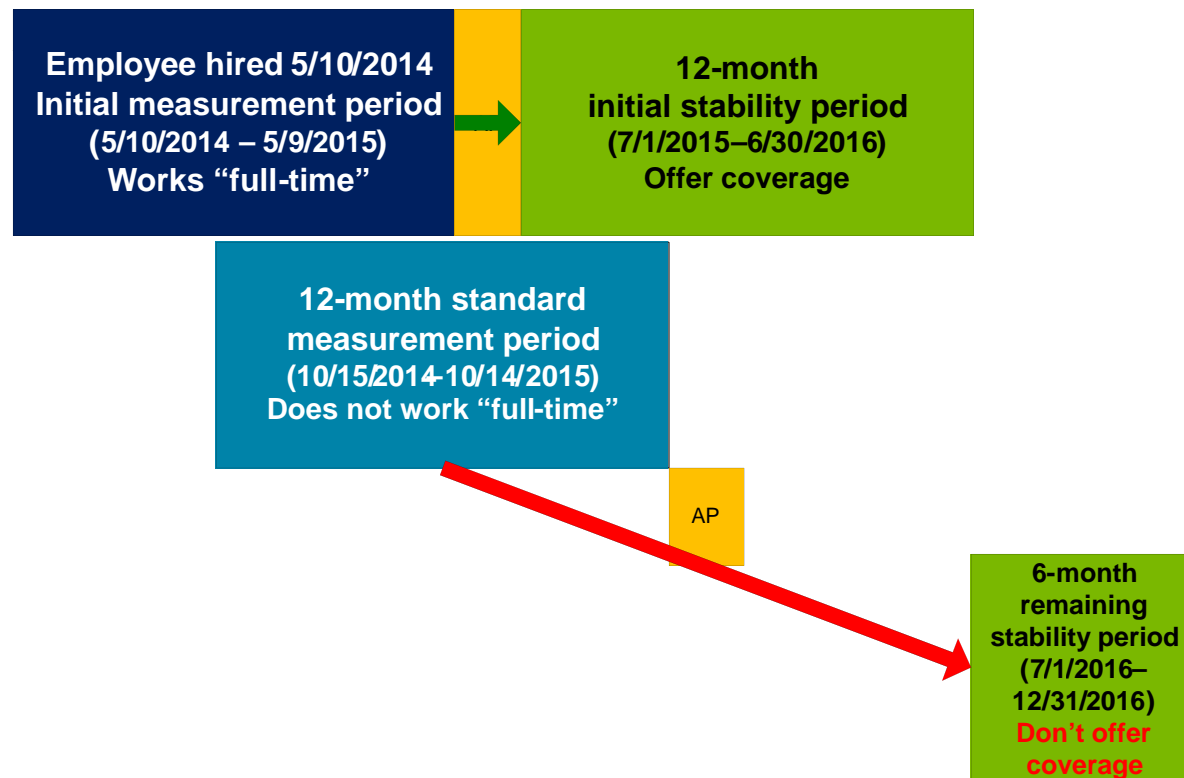
Example 2: Newly Hired Employees

- 12-month initial measurement period beginning on date of hire, 5/10/14
- 1+ month administrative period beginning on 1st anniversary of date of hire and ending on last day of following month 6/30/15
- 12-month stability period 7/1/2015 – 6/30/2016



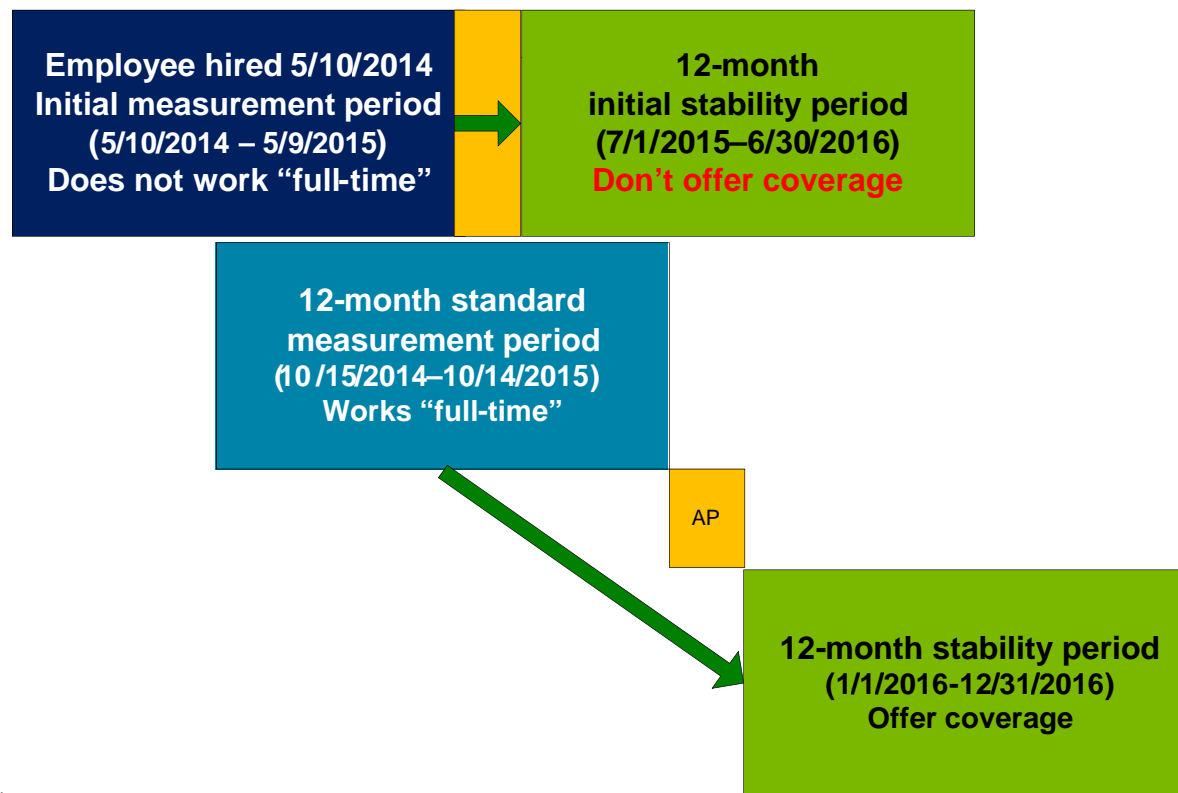
Example 3: Transition of New Hire to Ongoing Employee

- Employee hired on May 10, 2014
- Works “full-time” during the initial measurement period
 - Does not work “full-time” during his/her first standard measurement period
 - Must be offered coverage during the entire initial stability period
- Is not required to be offered coverage during portion of first standard stability period after the end of the initial stability period.



Example 4: Transition of New Hire to Ongoing Employee

- Employee hired on May 10, 2014
- Does not work “full-time” during the initial measurement period
 - Does work “full-time” during his/her first standard measurement period
 - Not required to be offered coverage during the initial stability period
- However, is required to be offered coverage during the entire standard stability period including portion of first initial stability period.



Summary Chart Based on Month Hired

Example Seasonal Variable Hour Employee – Look Back Measurement Period

Hire Month/Yr	Initial Measurement Period	Initial Stability Period if FTE	Overlapping Standard Measurement Period	Term Date if not FTE	Coverage Ext. if FTE
Oct-12	11/1/2012 - 10/31/2013	12/1/2013 - 11/30/2014	10/15/2013 - 10/14/2014	11/30/2014	to 12/31/2015
Nov-12	12/1/2012 - 11/30/2013	1/1/2014 - 12/31/2014	10/15/2013 - 10/14/2014	12/31/2014	to 12/31/2015
Dec-12	1/1/2013 - 12/31/2013	2/1/2014 - 1/31/2015	10/15/2013 - 10/14/2014	1/31/2015	to 12/31/2015
Jan-13	2/1/2013 - 1/31/2014	3/1/2014 - 2/28/2015	10/15/2013 - 10/14/2014	2/28/2015	to 12/31/2015
Feb-13	3/1/2014 - 2/28/2014	4/1/2014 - 3/31/2015	10/15/2013 - 10/14/2014	3/31/2015	to 12/31/2015
Mar-13	4/1/2014 - 3/31/2014	5/1/2014 - 4/30/2015	10/15/2013 - 10/14/2014	4/30/2015	to 12/31/2015
Apr-13	5/1/2014 - 4/30/2014	6/1/2014 - 5/31/2015	10/15/2013 - 10/14/2014	5/31/2015	to 12/31/2015
May-13	6/1/2014 - 5/31/2014	7/1/2014 - 6/30/2015	10/15/2013 - 10/14/2014	6/30/2015	to 12/31/2015
Jun-13	7/1/2014 - 6/30/2014	8/1/2014 - 7/31/2015	10/15/2013 - 10/14/2014	7/31/2015	to 12/31/2015
Jul-13	8/1/2014 - 7/31/2014	9/1/2014 - 8/31/2015	10/15/2013 - 10/14/2014	8/31/2015	to 12/31/2015
Aug-13	9/1/2014 - 8/31/2014	10/1/2014 - 9/30/2015	10/15/2013 - 10/14/2014	9/30/2015	to 12/31/2015
Sep-13	10/1/2014 - 9/30/2014	11/1/2014 - 10/31/2015	10/15/2013 - 10/14/2014	10/31/2015	to 12/31/2015
Oct-13	11/1/2013 - 10/31/2014	12/1/2014 - 11/30/2015	10/15/2014 - 10/14/2015	11/30/2015	to 12/31/2016
Nov-13	12/1/2013 - 11/30/2014	1/1/2015 - 12/31/2015	10/15/2014 - 10/14/2015	12/31/2015	to 12/31/2016

What do you need to do?

- Provide notice of exchanges by October 1, 2013
 - Provide notice for new hires starting October 1, 2013 within 14 days
- Measure seasonal and variable hour employees
 - The first measurement period concludes October 14, 2013
 - Each Agency will have from October 15th – December 31, 2013 to determine if seasonal or variable hour employees are eligible for January 1, 2014

Health Care Reform—Appendix

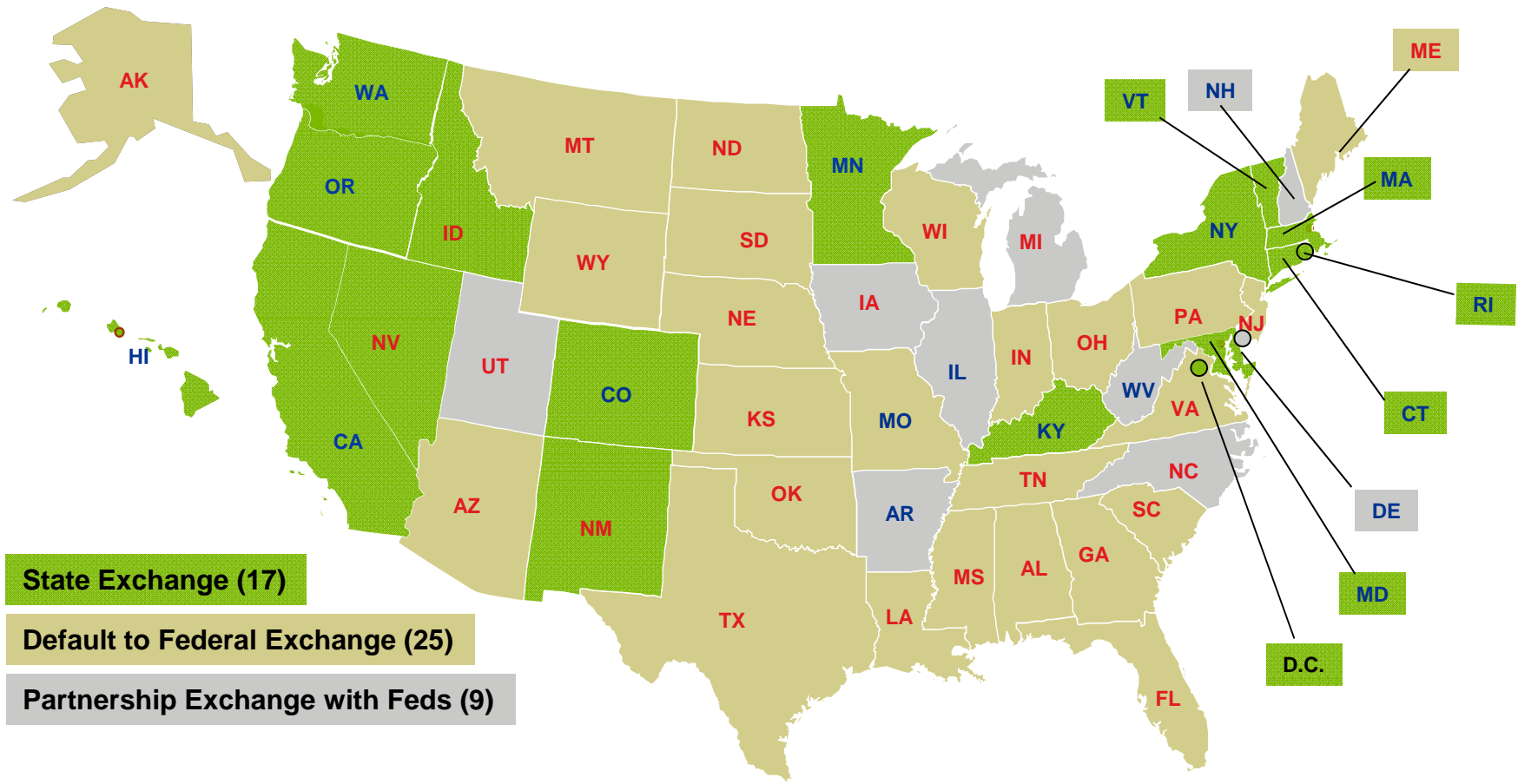
- 1) Individual Mandate
- 2) Individual Exchanges
- 3) ACA Penalties
 - 1) Defining FTE
 - 2) Measurement Period
 - 3) Affordability

Individual Responsibilities—Starting January 2014

- Individual must maintain minimal essential coverage or pay a penalty that is “generally” based on taxable income
 - Payable on tax return for the year in which the penalty was incurred
- The amount of the penalty is the **greater** of the:
 - “flat dollar amount” and
 - “percentage of income amount” (Note the proposed regulations refer to this amount as the “excess income amount.”)
- The penalty is calculated on a monthly basis.
- The flat dollar amounts are phased in over three years:
 - \$95 (adult), \$47.50 (child), \$285 max for 2014;
 - \$325 (adult), \$162.50 (child), \$975 max for 2015; and
 - \$695 (adult), \$347.50 (child). \$2085 max in 2016 and thereafter.
- The percentage of income amount is determined by first subtracting the taxpayer’s exemption (or exemptions for a married couple) and standard deductions from the taxpayer’s household income. The result is then multiplied by the applicable percentage. Like the flat dollar amount, the applicable percentage is phased in over three years:
 - 1% for 2014;
 - 2% for 2015; and
 - 2.5% in 2016 and thereafter.

Exchange Planning by State

State Exchanges



The ACA Penalties—Definitions

- Who is an “applicable large employer”?
 - Employer that employed an average of at least 50 full-time employees on business days during the preceding calendar year
- Who is an “employee”?
 - IRS will define employee based on IRS’s “common law” test
- Who is a “full-time employee”?
 - Employed on average at least 30 hours of service per week, measured monthly
 - 130 hours of service in a calendar month is treated as monthly equivalent of 30 hours of service per week
- What is “minimum essential coverage”?
 - An employer group health plan qualifies as minimum essential coverage for purposes of the shared responsibility payment. Note “minimum essential coverage” is different than “essential health benefits.”
- What is “unaffordable coverage”?
 - FTE’s required contribution exceeds 9.5% of taxpayer’s household income for the taxable year
 - Affordability is based on cost of self-only coverage of at least one plan offering, even if employee elects family coverage
- What is “minimum actuarial value”?
 - Plan must pay at least 60% of covered expenses
 - State plans exceed this threshold

Employer Mandate & Penalties Begins January 1, 2014

Agencies are potentially liable for either:

- **“No Coverage Penalty” (Code section 4980H(a))**

- For each month on and after January 1, 2014, that an Employer does not offer Minimum Essential Coverage (“MEC”) to at least 95% of its full-time employees (FTEs) and their eligible dependents and at least one full-time employee enrolls in Exchange and receives Federal subsidy
 - **NOTE:** If employer offers coverage to at least 95% but less than 100% of its FTEs (and their eligible dependents) and one or more of those FTEs who are not offered coverage enrolls in an Exchange and receives a Federal subsidy, the employer is liable for the “Inadequate Coverage Penalty” with respect to such FTE(s)
- Penalty equals \$166.67 per month (\$2,000 per year) multiplied by **all** FTEs of the employer (minus the first 30 FTEs), regardless of whether the FTE elected employer-provided health care coverage

OR

- **“Inadequate Coverage Penalty” (Code section 4980H(b))**

- For each month on and after January 1, 2014, Employer offers MEC to at least 95% of its FTEs (and their eligible dependents) but coverage is either:
 - “Unaffordable,” or (State plans are deemed affordable)
 - Does not provide “minimum actuarial value” (State plans exceed this threshold)
- Penalty equals \$250 per month (\$3,000 per year) per each FTE who enrolls in an Exchange and receives a Federal subsidy; Inadequate Coverage Penalty amount for month can’t exceed \$166.67 multiplied by all FTEs (minus the first 30 FTEs)

What is Considered an Hours of Service?

- **Determining an employee's hours of service**

- An employee's hours of service include:

- Each hour for which employee is paid, or entitled to payment, for the performance of duties for employer; and
- Each hour for which employee is paid, entitled to payment by employer even if no work is performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence
- Workers' compensation—Employer should discuss with legal counsel before making a final determination on whether or not to credit an employee with hours of service for workers' compensation time
 - ♦ Under the proposed rules, if an employee is being paid from the employer's workers' compensation plan maintained pursuant to state law on account of a period of time during which the employee performed no duties for the employer, the employer may not be required to credit the employee with any hours of service
- All periods of paid leave (e.g., maternity or paternity leave) are considered hours of service
 - ♦ Where a traditional academic year break (e.g., winter, spring, or summer break) is a period of paid leave, employees will be required to be credited with hours of service
- All hours of service performed for all entities treated as a single employer under the controlled group and affiliated service group rules of the Internal Revenue Code

Hourly vs. Salaried

- **Determining an employee's hours of service**
 - **For employees paid on an hourly basis**, calculate actual hours of service from records of hours worked and hours for which payment is made or due for vacation, holiday, illness, etc.
 - **For employees NOT paid on an hourly basis**, use the following methods:
 1. Count actual hours of service from records of hours worked and hours for which payment is made or due for vacation, holiday, illness, etc.; OR
 - May apply different methods for different calendar years or different classes of non-hourly employees, so long as classifications are reasonably and consistently applied
 - Cannot use a particular method if it would substantially understate an employee's hours of service; For example, if an employee generally works three 10-hour days per week, but the days-worked equivalency method would understate this as only 24 hours of service per week

Determining Full-Time Employees Under the ACA

Ongoing Employees

- An **ongoing** employee is an individual who has been employed for at least one complete standard measurement period
- Employer permitted to use measurement and stability periods of up to 12 months to determine Full-Time Employee status of ongoing employee
- If employee averages at least 30 hours per week during the standard measurement period, then employer must treat employee as a Full-Time Employee during a subsequent stability period that begins immediately after the standard measurement period and any administrative period
 - Regardless of the employee's number of hours of service during stability period, so long as he or she remains an employee
- If employee did not average at least 30 hours per week during standard measurement period, then the employer may treat the employee as not a Full-Time Employee during a subsequent stability period that begins immediately after the end of the standard measurement period and any applicable administrative period
- **If there is a change in an employee's position of employment or employment status** before the end of the stability period, the change will **not** affect the classification as a Full-Time Employee (or not a Full-Time Employee) for the remaining portion of the stability period
- Employers are allowed to modify the measurement period to include payroll periods

Determining Full-Time Employees Under ACA

New Variable-Hour and New Seasonal Employees

- Employers may use an initial measurement period/stability period to determine Full-Time Employee status
 - No penalty for failure to offer MEC upon hire
- If new variable-hour employee or new seasonal employee has on average at least 30 hours per week during the initial measurement period (IMP), then employer treats the employee as a Full-Time Employee during stability period that begins after the IMP and any administrative period
- Change in an employee's position of employment or employment status during the IMP
 - Example:
 - A new variable-hour employee who is promoted during the IMP to a position in which employees are reasonably expected to be employed on average 30 hours of service/week
 - He or she is treated as a Full-Time Employee on
 - ♦ The 1st day of the 4th month following the change; or
 - ♦ If earlier and the employee averages more than 30 hours of service/week during IMP, the 1st day of the 1st month following the end of IMP (plus any administrative period)

Determining Full-Time Employees Under ACA

New Variable-Hour and New Seasonal Employees (cont'd)

- If new employee does not have on average at least 30 hours per week during initial measurement period (IMP), then employer does not consider the employee a Full-Time Employee
 - Coverage is not provided during the stability period that follows the IMP
 - Stability period must not
 - Be more than 1 month longer than the IMP
 - Exceed remainder of standard measurement period (plus associated administrative period) in which IMP ends
- If employer offers MEC and does not restrict enrollment beyond 13 and a fraction months (i.e., the last day of the first calendar month beginning on or after the one-year anniversary of employee's start date), it will not be subject to shared responsibility payment
- Must begin to measure again as of first standard measurement period (SMP) following IMP

Look-Back Measurement Method

- **Other Special Issues and Rules**

- **Employees Rehired After Termination of Employment or Resuming Service After Other Absence**

- Rules designed to prevent a period without credited hours of service from inappropriately restarting an employee's initial measurement period, or causing the employee to be subject to a new waiting period for new full-time employees
 - If employee is treated as terminated and rehired:
 - ♦ Employee's IMP may be restarted
 - ♦ Employee may be subject to new waiting period
 - If employee is treated as a continuing employee after absence (rather than terminated and rehired), same MP and SP continue to apply upon the employee's resumption of service

Look-Back Measurement Method

▪ Other Special Issues and Rules

– Employees Rehired After Termination of Employment or Resuming Service After Other Absence

- Period with no hours of service is 26 weeks or more—an employee may be treated as having terminated employment and having been rehired as a new employee if the employee has no credited hours of service for at least 26 weeks and the employee has an hour of service after that period
- Period with hours of service less than 26 weeks—*optional* “Rule of Parity” may be applied
 - ♦ Employee may be treated as having terminated employment and having been rehired as a new employee if:
 - * The period with no credited hours of service (of less than 26 weeks) is at least four (4) weeks long; and
 - * Such period is longer than the employee’s period of employment immediately preceding that period with no credited hours of service
 - ♦ Example—employee works 3 weeks for an applicable large employer, terminates employment, and is rehired by that employer 10 weeks after terminating employment. The rehired employee is treated as a new employee because the 10 week period with no credited hours of service is longer than the immediately preceding 3 week period of employment

Look-Back Measurement Method

▪ Other Special Issues and Rules

– Employees Rehired After Termination of Employment or Resuming Service After Other Absence

- **Employment Break Periods of Educational Organizations**—when calculating hours of service for continuing employees (not employees treated as terminated and rehired) during a measurement period that includes an Employment Break Period, educational organizations can use one of two methods for averaging hours:
 - ♦ **Employment Break Period (EBP):** a period of at least 4 consecutive weeks (disregarding special unpaid leave) during which an employee of an educational organization is not credited with hours of service
 - ♦ **Option 1**—determine the average hours of service per week for the employee during the measurement period **excluding** the EBP and use that average as the average for the entire measurement period; or
 - ♦ **Option 2**—treat employees as **credited** with hours of service for EBPs at a rate equal to the average weekly rate at which the employee was credited with hours of service during the weeks in the measurement period that are not an EBP
- These methods of averaging hours for EBPs apply only to employees treated as continuing employees and NOT to employees treated as terminated and rehired
- Educational organizations are not required to exclude (Option 1) or credit (Option 2) an employee in any calendar year with more than 501 hours of service for any EBP (although the 501-hour limit does not apply to, or take into account, hours of service required to be credited for Special Unpaid Leave)

Look-Back Measurement Method

- **Other Special Issues and Rules**

- **Employees Rehired After Termination of Employment or Resuming Service After Other Absence**

- **Special Unpaid Leave**—when calculating hours of service during a measurement period that includes “special unpaid leave” (periods of unpaid leave under FMLA or USERRA), employers can use one of two methods for averaging hours:
 - ♦ **Option 1**—determine the average hours of service per week for the employee during the measurement period excluding the special unpaid leave period and use that average as the average for the entire measurement period; or
 - ♦ **Option 2**—treat employees as credited with hours of service for special unpaid leave at a rate equal to the average weekly rate at which the employee was credited with hours of service during the weeks in the measurement period that are not special unpaid leave
 - ♦ **NOTE**—these methods of averaging hours for periods of Special Unpaid Leave apply only to employees treated as continuing employees and NOT to employees treated as terminated and rehired

Eligibility for Exchange Subsidies

- Individual is not eligible for a subsidy from an Exchange if individual has been offered affordable health care coverage of minimum value from an employer
 - **Employer must offer dependent coverage (but not spousal coverage) to employee to avoid penalty**
 - Coverage does not have to be “affordable” for the dependent(s)
 - Federal law does not require employers to subsidize dependent coverage
- What happens if an employed individual is offered “affordable” employee-only coverage, but family coverage is “unaffordable”?
 - Employee and family will not be eligible for subsidy in the exchange
 - If spousal coverage is not offered, spouse can purchase coverage in exchange and receive subsidy
 - But if spouse is offered coverage, even if spousal coverage is not affordable, spouse is not entitled to subsidy in Exchange, as long as employee-only coverage is affordable and minimum value

2014 Affordable Coverage

- Based on **estimated** 2014 premium for the Partnership plan with the preferred Network, the table illustrates affordable coverage for different salary levels
 - For example, affordable coverage for an employee making \$20,000 is \$158 per month
 - Affordability is based on the employee only premium

Salary	9.5% of Salary	Max Monthly Contribution Considered Affordable
\$20,000	\$1,900	\$158
\$25,000	\$2,375	\$198
\$30,000	\$2,850	\$238
\$35,000	\$3,325	\$277
\$40,000	\$3,800	\$317
\$45,000	\$4,275	\$356
\$50,000	\$4,750	\$396
\$55,000	\$5,225	\$435
\$60,000	\$5,700	\$475
\$65,000	\$6,175	\$515
\$70,000	\$6,650	\$554