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## Determining Full-Time Status

The Affordable Care Act (ACA) requires employers to, among other things, offer insurance to full-time employees and make insurance affordable for full-time employees. The determination of whether an employer is covered by these requirements depends in great part on the number of full-time employees in the employer’s workforce. A key component of all of these provisions is the definition of full-time employee.

**Terminology:** Neither state nor federal law provides a definition of full-time status that applies to all employees in all situations. Rather, different definitions apply in different contexts. For example, the Texas Education Code and TEA rules define full-time for purposes of employee contract rights and the state minimum salary schedule, Teacher Retirement System rules provide a different definition for purposes of eligibility in the retirement system, and local policy may provide yet another definition for purposes of local leave rights. These definitions do not apply to the determination of full-time status under the ACA, nor does full-time status under the ACA apply in these other contexts.

**Full-time status and benefits eligibility:** An employee’s status as full-time under the ACA is separate from the question of whether the employee is eligible to enroll in health coverage through a district. Eligibility for health coverage is determined by the terms of the health plan. Thus, first and foremost, a district should understand which employees are eligible for its health coverage. Eligibility for enrollment in TRS-ActiveCare is described in [Health Insurance in Texas School Districts](#).

**ACA definition:** The ACA defines *full-time employee* as an employee who is employed an average of at least 30 hours of service per week with an employer.\(^1\) In school districts, this will include teachers, counselors, librarians, nurses, campus and district administrators, transportation and food-service managers, and most clerical staff.

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\(^1\) 26 C.F.R. § 54.4980H–1(a)(21).
This definition of full-time employees becomes problematic when applied to employees who work variable schedules, such as substitutes and temporary employees. The IRS created two approaches for determining full-time status: the monthly measurement method and the look-back method. The monthly measurement method is further subdivided into a calendar month method and, confusingly, a weekly rule. The monthly measurement method applies for purposes of determining whether an employer is a large employer covered by the ACA and for purposes of calculating compliance and penalties under the employer shared responsibility requirements. The look-back measurement method applies solely for purposes of calculating compliance and penalties under the employer shared responsibility requirements: look-back measurement periods are not used to determine whether an employer is a large employer.

The IRS rules are the minimum standards for determining status as a full-time employee under the ACA. Employers may treat additional employees as eligible for coverage or otherwise offer coverage more expansively than would be required by the ACA. An employer’s decision to treat additional employees as full-time for non-ACA purposes does not affect the employer’s ACA liability.

**Monthly equivalency:** In addition to the two measurement periods, the IRS has recognized a calendar-month equivalency for the 30-hour per week standard. Unless an employer uses weekly periods, described below, 130 hours of service in a calendar month is treated as the monthly equivalent of at least 30 hours of service per week, provided that the employer applies this equivalency rule on a reasonable and consistent basis. This monthly standard takes into account that the average month consists of more than four weeks: 130 hours of service is equal to 30 hours of service per week multiplied by 52 weeks and divided by 12 calendar months. This 130-hour equivalency applies for both the look-back measurement method and the monthly measurement method for determining full-time employee status.

**Hours of service:** The definition of full-time employee includes the term *hours of service.* Hours of service is a defined term under the ACA. A district should have a solid understanding of hours of service—including in particular the 8-hour equivalency rule—before attempting to determine whether a particular employee is full-time. See *Calculating Hours of Service Under the Affordable Care Act.*

**Monthly measurement method:** Under the monthly measurement method, an employer determines whether an employee is full-time by counting the employee’s hours of service for each calendar month. Applying the monthly-equivalency rule discussed above, an employee

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2 26 C.F.R. § 54.4980H–3(a).
3 26 C.F.R. § 54.4980H–3(a).
4 26 C.F.R. § 54.4980H–3(a).
5 26 C.F.R. § 54.4980H–3(a).
7 26 C.F.R. § 54.4980H–3(a).
10 26 C.F.R. § 54.4980H–3(c)(1).
who has 130 or more hours in a calendar month will be considered full-time for that month.\textsuperscript{11} The monthly measurement method is essentially the default method for determining full-time status: if an employer elects not to use the look-back measurement method, full-time employees will be identified based on the hours of service for each calendar month.\textsuperscript{12}

An employee’s status may vary from month to month, depending on hours of service, under the monthly measurement method. For example, a substitute teacher will be considered full-time for October 2015 if she has 131 hours of service in October, but not full-time in November 2015 if she has 129 hours service in November.

An employee’s change in status from full-time to not full-time under the monthly measurement method does not necessarily affect the employee’s eligibility to enroll or remain enrolled in the district’s health insurance plan: Plan eligibility is determined by the terms of the plan. In the case of TRS-ActiveCare, full-time status under the ACA does not determine or impact enrollment eligibility. Again, it is important to distinguish full-time status under the ACA from plan eligibility.

The averaging method for special unpaid leave, described below in connection with look-back periods, does not apply to the monthly measurement method.\textsuperscript{13} Thus, a district would not factor in unpaid Family and Medical Leave Act leave or unpaid military leave when calculating hours of service under this method. Similarly, the rules on employment break periods, discussed below, do not apply to the monthly measurement method.\textsuperscript{14} Determinations under the monthly measurement method are based on hours of service during that particular calendar month and are not based on averaging over a prior measurement period.\textsuperscript{15}

**First 3-months of employment:** The final IRS rules extend a 3-month “amnesty” provision, created for the look-back method, to the monthly measurement method. An employer that uses the monthly measurement method is not subject to shared responsibility penalties, with respect to an employee who is otherwise eligible for the employer’s insurance, if the employee is offered affordable insurance within the first three months that the employee is eligible for insurance.\textsuperscript{16}

**Weekly rule:** The weekly rule is a variation of the monthly measurement method that takes into account the fact that some months are longer than others. The weekly method is intended to correlate, to some extent, with payroll periods.\textsuperscript{17} Use of the weekly method is purely optional.

\textsuperscript{13} 26 C.F.R. § 54.4980H–3(c)(4)(iii); Shared Responsibility for Employers Regarding Health Coverage, 79 Fed. Reg. at 8555.
\textsuperscript{14} 26 C.F.R. § 54.4980H–3(c)(4)(iii); Shared Responsibility for Employers Regarding Health Coverage, 79 Fed. Reg. at 8555.
\textsuperscript{16} 26 C.F.R. § 54.4980H–3(c)(2).
\textsuperscript{17} 26 C.F.R. § 54.4980H–3(c)(2).
Under the weekly method, an employer may determine an employee’s full-time status for a calendar month by averaging hours of service over either four or five weeks, depending on the length of the month:

- Four-week month: an employee with at least 120 hours of service is a full-time employee
- Five-week month: an employee with at least 150 hours of service is a full-time employee

In general, the period measured for the month must contain either the week that includes the first day of the month or the week that includes the last day of the month, but not both.\(^\text{18}\)

**Look-back method:** Another method for determining full-time status is to average an employee’s hours over a look-back period. Under this method, an employee is treated as full-time if he or she averages at least 30 hours per week during a measurement period. During the initial measurement period for a new employee, the employer is not subject to penalties if the employee works 130 or more hours in any one or more calendar months during the measurement period.

**TRS-ActiveCare districts:** About 90% of Texas districts and all of the education service centers participate in TRS-ActiveCare. Look-back periods have only limited value for these entities.

A participating entity may not use look-back periods to deny enrollment to an otherwise eligible employee, including a substitute.\(^\text{19}\) In other words, a district may not average the hours actually worked by a substitute over 3-12 months, to determine whether the substitute is working 30 or more hours per week, before offering coverage to the substitute. TRS-ActiveCare applies a “reasonable look forward” standard, not a look-back standard. If, looking forward, a district reasonably expects a substitute to be employed for 10 or more hours per week, the substitute is eligible to enroll in TRS-ActiveCare at that time: An offer of coverage should not be delayed for months to test how many hours the substitute actually works. If the TRS-ActiveCare enrollment standard is applied correctly, a district should meet the requirements of the ACA that full-time employees be offered coverage. It should not be necessary to resort to ACA look-back periods to avoid the penalty for failure to offer coverage.

Nonetheless, a district that participates in TRS-ActiveCare could potentially benefit from the use of look-back periods to avoid the affordability penalty. Even if a district offers coverage to a substitute or other variable-hour employee, the district may be exposed to the affordability penalty for any month that substitute would be classified as full-time under the ACA. If a district uses the monthly measurement method, the district’s exposure with respect to any given employee will vary from month to month with that employee’s hours of service. If the district instead uses the look-back method, the district’s exposure will depend on the employee’s hours of service over the course of the entire measurement period. However, administration of look-back periods can be quite burdensome, which may outweigh any benefits.

\(^{18}\) 26 C.F.R. § 54.4980H–3(c)(3).

\(^{19}\) TRS Affordable Care Act Clarifications, available at www.trs.state.tx.us/global.jsp?page_id=TRS_activecare/affordable_care_act.
Non-ActiveCare districts: Districts that do not participate in TRS-ActiveCare may opt to use look-back periods to determine eligibility for enrollment and to manage the affordability penalty. If a district decides to use look-back periods for enrollment eligibility purposes, the district should ensure that its plan terms and practices are consistent with this strategy. The district should first determine how eligibility is defined in the plan document and whether the document needs to be revised to allow for the enrollment of variable-hour employees who are full-time under the ACA. Non-ActiveCare plans often provide that “full-time employees,” as defined by the district, are eligible to participate. It is very important for a district with this plan language to articulate how it defines “full-time.”

Many non-ActiveCare districts consider all TRS eligible employees to be “full-time,” even those who are employed for only 15 hours per week: The district uses “full-time” as a proxy for “regularly employed.” These districts risk exposure to ACA penalties where non-TRS members, such as substitutes and temporary employees, meet the definition of full-time under the ACA. If a district decides to use look-back periods to determine substitute eligibility to enroll, the district’s definition of “full-time” must be modified. For example, the district may determine that “full-time,” for plan eligibility purposes, means “TRS eligible or ‘full-time’ as defined by the ACA.” Note that the term “full-time” has two different meanings in this context, which could generate confusion.

Key concepts: This section highlights key concepts a district should consider before committing to the look-back method. This is a general overview and not an exhaustive treatment of the subject. Again, use of look-back periods is not mandatory: A district may instead use the monthly measurement method.

Two measurement periods: Two types of measurement periods are involved with the look-back method:

- **Initial measurement period** (IMP): a period of three to 12 consecutive months that is used to determine the full-time status of new variable-hour, part-time, and seasonal employees. A new employee is an employee who has been employed for less than one complete standard measurement period.

- **Standard measurement period** (SMP): a period of three to 12 consecutive months that is used to determine the full-time status of all ongoing employees. An ongoing employee is an employee who has been employed for at least one complete SMP.

The employer chooses the months of the measurement periods, subject to ACA rules. If a district opts to use the look-back method, it must track the hours of every employee in the same job category using the applicable measurement period. The only exception is for new, non-variable, nonseasonal, full-time employees: The status of these employees is based on

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hours per calendar month, as discussed below.\textsuperscript{25}

**Four stability periods:** At the end of the applicable measurement period, the employer determines the employee’s average hours. If the employee averages 30 or more hours per week during the measurement period, the employer must treat the employee as full-time, under the ACA, for a subsequent stability period.\textsuperscript{26} The employee retains full-time status for the entire stability period, regardless of the number of hours the employee works and even if the employee is reassigned to a position that involves fewer hours, unless the employee separates from employment.\textsuperscript{27}

If the employee averages fewer than 30 hours per week during the measurement period, the employer may treat the employee as not full-time, under the ACA, during a subsequent stability period.\textsuperscript{28} The employee retains this status for the entire stability period, regardless of the number of hours the employee works and even if the employee is reassigned to a position that involves fewer hours, unless the employee separates from employment.\textsuperscript{29}

The length of each stability period varies with the type of measurement period (IMP or SMP) and whether the employee averages 30 or more hours per week during the measurement period:

- **IMP and 30 or more hours per week:** If a new variable-hour, part-time, or seasonal employee averages 30 or more hours during the IMP, the employer must treat the employee as full-time during a subsequent stability period (Stability Period One) that is at least six consecutive calendar months and no shorter than the IMP.\textsuperscript{30}

- **IMP and fewer than 30 hours per week:** If a new variable-hour, part-time, or seasonal employee averages fewer than 30 hours per week during the IMP, the employer may treat the employee as not full-time during a subsequent stability period (Stability Period Two) that is no more than one month longer than the IMP and does not exceed the remainder of the first entire SMP for which the employee has been employed.\textsuperscript{31}

- **SMP and 30 or more hours per week:** If an ongoing employee averages 30 or more hours per week during the SMP, the employer must treat the employee as full-time during a subsequent stability period (Stability Period Three) that is at least six consecutive calendar months but no shorter than the SMP.\textsuperscript{32}

- **SMP and fewer than 30 hours per week:** If an ongoing employee averages fewer than 30 hours per week during the SMP, the employer may treat the employee as not full-time during a subsequent stability period (Stability Period Four) that is no longer than the SMP.\textsuperscript{33}

\textsuperscript{25} 26 C.F.R. § 54.4980H-3(d)(2)(i).
\textsuperscript{26} 26 C.F.R. § 54.4980H-3(d)(1)(iii), (3)(iii).
\textsuperscript{27} 26 C.F.R. § 54.4980H-3(d)(1)(iii), (vii), (3)(iii).
\textsuperscript{28} 26 C.F.R. § 54.4980H-3(d)(1)(iv), (3)(iii).
\textsuperscript{29} 26 C.F.R. § 54.4980H-3(d)(1)(iv), (vii), (3)(iv).
\textsuperscript{30} 26 C.F.R. § 54.4980H-3(d)(3)(iii).
\textsuperscript{31} 26 C.F.R. § 54.4980H-3(d)(3)(vi).
\textsuperscript{32} 26 C.F.R. § 54.4980H-3(d)(3)(iv).
\textsuperscript{33} 26 C.F.R. § 54.4980H-3(d)(1)(vi).
No IMP with new non-variable hour, nonseasonal, non-part-time employees: The primary benefit of the look-back method is that the employer is not subject to penalties during a new employee’s IMP. However, an employer cannot rely on an IMP with respect to a new employee who is reasonably expected to be full-time, unless the employee is a seasonal employee (seasonal employees are discussed below).

The determination that a new employee is full-time or is not full-time is based on the facts and circumstances at the employee’s start date. Factors affecting the determination of whether an employee is reasonably expected to average at least 30 hours per week include:

- whether the employee is replacing an employee who was full-time or a variable-hour employee
- the extent to which the hours of employees in the same or comparable positions have actually varied above and below an average of 30 hours per week during recent measurement periods
- whether the job was advertised, otherwise communicated to the new employee, or otherwise documented (for example, through a contract or job description) as requiring on average at least 30 hours per week, less than 30 hours per week, or an amount varying above and below an average of 30 hours per week.

An employer may not take into account the likelihood of an employment break period in determining expected hours of service. An employment break period is a period of at least four consecutive weeks during which an employee is not credited with hours of service. In other words, a district may not take into account the probability that a substitute will not work during summer break in determining whether that substitute is reasonably expected to average 30 or more hours per week.

In short, a district must make an individualized determination of whether each new employee is reasonably expected to work 30 or more hours per week. If an employee is reasonably expected at his or her start date to be full-time, the employer will not be subject to a penalty for the first three months of employment provided the employee is offered affordable coverage by the first day of the fourth full calendar month of employment.

If a new employee is reasonably expected at the employee’s start date to be full-time and the district fails to offer insurance by the first day of the fourth calendar month of employment, the employee’s status is based on the employee’s hours of service for each calendar month. If the employee’s hours for a calendar month equal or exceed an average of 30 hours of service per week (or 130 for the full calendar month), the employee is full-time for that calendar month.

34 26 C.F.R. § 54.4980H-3(d)(2)(ii).
37 26 C.F.R. § 54.4980H-1(a)(17).
38 26 C.F.R. § 54.4980H-3(d)(2)(iii). This statement assumes the employee is not a seasonal employee.
40 26 C.F.R. § 54.4980H-3(d)(2)(i).
The rules above may prevent a district from using IMPs with new permanent or long-term substitutes. For example, an instructional substitute who is assigned to a classroom (in elementary grades) or who is assigned to teach a full course load (in middle and high school) for the entire instructional year is probably expected to work 30 or more hours per week. A district may not avoid ACA penalties by using an IMP with such a substitute. The district must either offer affordable insurance by the first day of the fourth calendar month of employment or risk ACA penalties for each month the employee works 130 or more hours.

Individualized IMPs for each new variable-hour, seasonal, and part-time employee: One of the most misunderstood aspects of the look-back method is the mechanics of determining IMPs. Districts often believe they can average the hours of all substitutes over the period from, for example, September 1 to August 31. While a district will have one SMP for all ongoing employees, each new employee (other than new, nonseasonal full-time employees, as described above) will have his or her own IMP.

Each employee’s IMP begins on that employee’s start date, or on any date up to and including the first day of the first calendar month following the employee’s start date. Start date means the first date on which an employee is required to be credited with an hour of service. For most school district employees, this will be the employee’s first paid hour of work. For example, if a substitute’s first assignment is on August 27, the substitute’s IMP must begin on or before September 1. If another substitute’s first assignment is on October 5, that substitute’s IMP must begin by November 1.

Exclusion of extended break periods and special unpaid leaves: Another frequently misunderstood aspect of look-back periods is the impact of breaks in employment. If a substitute’s hours are averaged over an entire 12-month period, the substitute will probably never average 30 hours per week because of the summer break. Unfortunately, the rules do not permit this.

Employment break periods and special unpaid leaves are excluded in calculating average hours of service. Employment break periods are discussed above. Special unpaid leave means unpaid FMLA leave and unpaid military leave under USERRA. Special unpaid leaves are not likely to be a factor for substitutes and new part-time or seasonal employees, but they would be a factor when calculating average hours of ongoing, regular employees.

Factoring in extended break periods and special unpaid leaves could be administratively burdensome. A covered district must make an individualized determination, for each substitute, as to whether that substitute had a period of four or more weeks during which the substitute had no hours of service. Breaks of less than four weeks, such as winter and spring breaks, would be included in calculating a substitute’s weekly average (assuming the

43 See Calculating Hours of Service Under the Affordable Care Act for more information.
employee had at least one hour of service within four weeks of each break). Summer break and any other period of four or more weeks during which the substitute had no assignments would not be included in calculating the weekly average. Nonetheless, a substitute who works 180 instructional days in a typical 10-month school year will probably average at least 30 hours per week.

Limits on restarting stability periods for rehired employees: An employee who is rehired retains, upon resumption of services, the status the employee had with respect to the application of any stability period. For example, if an employee separates from service during a stability period in which the employee was being treated as full-time, the employee is treated as full-time upon return and through the end of that stability period. The employer is subject to penalties unless the employee is offered coverage no later than the first day of the calendar month following resumption of services. If the employee had previously declined coverage, however, the employee is treated as having been offered coverage through the end of the stability period. The same rule applies if a substitute or other employee has no hours of service for an extended period of time.

An exception to this rule applies if the employee has a period of at least 26 consecutive weeks with no hours of service. In that case, the employee may be treated as a new employee, rather than an ongoing employee, when the employ resumes work. A rule of parity is available if the employee’s previous period of employment was less than 26 weeks.

Seasonal employment is not excluded: Districts often believe that they may exclude short-term or temporary employees when determining ACA compliance. The ACA does include special rules for seasonal employees, but seasonal employees are not completely excluded.

First, the definition of seasonal employee is fairly limited. A seasonal employee is an employee who is hired into a position for which the customary annual employment is six months or less. The reference to customary means that by the nature of the position an employee typically works for a period of six months or less, and that period should begin each calendar year in approximately the same part of the year, such as summer or winter.

In certain unusual instances, an employee can still be considered a seasonal employee even if employment is extended in a particular year beyond its customary duration (regardless of whether the customary duration is six months or is less than six months). For example, if ski instructors at a resort have a customary period of annual employment of six months, but are asked in a particular year to work an additional month because of an unusually long or heavy snow season, they would still be considered seasonal employees. Special rules apply

45 26 C.F.R. § 54.4980H-3(d)(6)(iii).
46 26 C.F.R. § 54.4980H-3(d)(6)(ii).
48 26 C.F.R. § 54.4980H-1(a)(38).
when a seasonal employee is reassigned to a permanent position that would involve 30 or more hours of service per week.\textsuperscript{52}

It is unlikely that a district will be able to characterize a substitute as a seasonal employee, even if the district limits his or her employment to six months’ duration. In most cases, the customary annual employment of an instructional substitute spans the entire instructional year. Other employees of a district may fit the definition of seasonal employee. These may include employees who are hired in connection with extracurricular activities.

Second, characterization of an employee as seasonal, as opposed to variable-hour, does not change the employer’s obligations. The status of a seasonal employee as full-time or not full-time is determined in the same manner as for variable hour employees, using the average hours of service during the applicable measurement period.\textsuperscript{53}

The characterization of an employee as a new seasonal employee, as opposed to a new, non-seasonal employee does have some benefit. As discussed above, an employer is subject to ACA penalties if it does not offer affordable coverage to a new, nonseasonal employee by the first day of the fourth month of employment if the employee is reasonably expected to be full-time. If the employee is seasonal, the employer is protected from penalties during the IMP, even if the employee works 130 or more hours every month of employment.

One final note: the term \textit{seasonal employee} should not be confused with the term \textit{seasonal worker}. A seasonal worker is a worker who performs labor or services on a seasonal basis as defined by the Secretary of Labor, such as retail workers employed exclusively during holiday seasons.\textsuperscript{54} Seasonal workers are excluded, under limited circumstances, when determining whether an employer is a large employer for purposes of the ACA.\textsuperscript{55} Seasonal workers do not, however, receive special treatment when determining full-time status.

\textbf{Administrative period:} An employer may provide for an administrative period that begins immediately after the end of the SMP and ends immediately before the associated stability period.\textsuperscript{56} Any administrative period between the SMP and the stability period for ongoing employees may neither reduce nor lengthen the measurement period or the stability period.\textsuperscript{57} The administrative period following the SMP may last up to 90 days.\textsuperscript{58}

To prevent an administrative period from creating a period during which coverage is not available, the administrative period for ongoing employees must overlap with the prior stability period: During the administrative period, ongoing employees who are enrolled in coverage because of their status as full-time employees based on a prior measurement period must continue to be covered through the administrative period.\textsuperscript{59}

\textsuperscript{52} Shared Responsibility for Employers Regarding Health Coverage, 79 Fed. Reg. at 8558.
\textsuperscript{54} 26 C.F.R. § 54.4980H-1(a)(39).
\textsuperscript{55} 26 C.F.R. § 54.4980H-2(b)(2).
\textsuperscript{56} 26 C.F.R. § 54.4980H-3(d)(1)(vi).
\textsuperscript{57} 26 C.F.R. § 54.4980H-3(d)(1)(vi).
\textsuperscript{58} 26 C.F.R. § 54.4980H-3(d)(1)(vi).
\textsuperscript{59} 26 C.F.R. § 54.4980H-3(d)(1)(vi).
Determining large employer status: The look-back method does not apply to the determination of large employer status. Large employer means, with respect to a calendar year, an employer that employed an average of at least 50 full-time employees (including full-time equivalent employees) on business days during the preceding calendar year.  

Most non-ActiveCare districts are clearly large employers under the ACA. However, a small number of non-ActiveCare district have only a few employees. These districts may not be covered by the ACA. To determine workforce size, these districts must use the monthly measurement method to identify which employees are full-time each calendar month. If a smaller district determines that it averages enough employees to be covered by the ACA, the district may then decide which method to use—look-back or monthly measurement—to determine full-time status for purposes of the requirement to offer coverage and the affordability requirement.

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60 26 C.F.R. § 54.4980H-1(a)(4). The rules use the term applicable large employer. For simplicity, this paper uses just large employer.

61 26 C.F.R. § 54.4980H–3(a).

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