Overview of 4980H Penalties and IRS Reporting
- Forms 1094 and 1095 (B and C forms)

Measurement Method Basics
- Monthly Measurement Method
- Look-Back Measurement Method
  - Ongoing Employees
  - New Employees

Look-Back Measurement Method Details
- Transitioning from New to Ongoing
- Employment Breaks
Two Measurement Methods Permitted

The final regulations provide two measurement methods for large employers to use to determine whether an employee is a “full-time” employee:

- **Monthly Measurement Method**
- **Look-Back Measurement Method**

All employees (EE) are to be measured using either the Monthly Method or the Look-Back Method

If you choose NOT to use the Look-Back Measurement Method, you have, by default, selected the Monthly Measurement Method
Consistency Standard for Employee Categories

Large employers generally must apply one measurement method across the entire workforce. The exception is that an employer can choose different measurement methods or use different lengths or start/end dates for measurement and stability periods for employees based ONLY on these 4 approved categories:

- Employees in different states
- Union vs. non-union employees
- Union employees in different/separate collective bargaining agreements
- Salaried versus hourly employees

If the only category above that you can use is “salaried vs hourly” then you can only vary your measurement method by your salaried vs hourly employees.....and since the Monthly Method is a retrospective look at hours of service, it doesn’t protect you from a 4980H penalty for hourly employees, so:

1. ALL your employees could be measured under the Look-Back Method or,
2. Salaried employees could be measured under the Monthly Method and all other non-salaried (hourly) employees measured under the Look-Back Method
3. But it won’t work well to measure hourly employees under the Monthly Method because it exposes you to potential 4980H penalties

REMEMBER:
The determination of measurement method must be made on a uniform and consistent basis for all employees in the same govt-approved category
Monthly Measurement Method

To perform the Monthly Measurement Method the employer determines each employee’s status as a full-time employee or not by counting the employee’s actual hours of service each month…no averaging

If EE reaches 130 hours of service in the month they are a FT employee, and they should have had benefits offered for that month, or else the large employer risks a 4980H penalty for that month

Monthly measurement method works best for salaried employees, NOT hourly employees

- Because, you won’t know if the hourly person has achieved over/under 130 hours of service until the very end of that month and then it’s too late to retrospectively add coverage or terminate coverage…you risk 4980H penalties here

AGAIN, the Monthly Measurement Method does not work well for hourly employees and for hourly employees not offered coverage, this method exposes the large employer to potential 4980H penalties.

Stay tuned for a special exception to this rule for a new FT hourly employee, explained later in the Look-Back section of this training.
Monthly Measurement Method: Ongoing Employee

- Monthly measurement method is simple to administer but potentially dangerous (for a 4980H employer penalty) for a non-benefits eligible hourly or salaried employee

  - In the example below, an employee normally works part-time but spikes up to achieve 130 or more hours of service in the month

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<th>Hours of service attained as of the end of the month</th>
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- Full-Time Status under Monthly Measurement Method

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- Potential 4980H(b) Penalty ($3,000 / 12) if no benefits offered for the month

|                                                     | $0  | $250 | $250 | $250 | $0  | $0  | $250 | $0  | $250 | $250 | $1,500 |

- In this example, the full-time status of a non-benefits eligible employee is determined using the monthly measurement method. Assuming the large employer avoids the 4980H(a) penalty, there is a potential 4980H(b) penalty for 6 months, totaling $1,500 for the year.

Using a monthly measurement method may also be problematic for an insured medical plan where adding and dropping employees monthly causes an administrative burden on the insurer (and on the COBRA administrator who is sending lots of COBRA election notices).
**Monthly Measurement Method: New Employee**

- An employer is not subject to a 4980H penalty for the first 3 full calendar months beginning with the first full month in which the **NEW employee** is otherwise eligible for an offer of coverage (a new hire safety zone – it’s a limited non-assessment period or LNAP) (See page 8584 of final regs).

- Example: John is **hired into a FT position** on March 4th. To avoid a 4980H penalty, coverage must be offered and if elected, must become effective no later than July 1:

<table>
<thead>
<tr>
<th>FT employee hired March 4th</th>
<th>April</th>
<th>May</th>
<th>June</th>
<th>Coverage for the FT EE must begin July 1</th>
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</thead>
<tbody>
<tr>
<td>Large employer safe from the 4980H penalty during this very first partial month period of 3/4 to 3/31</td>
<td>Large employer is safe from the 4980H penalty during this 3-month period</td>
<td><em>Warning to watch out for the 90-day waiting period rule</em></td>
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Cannot apply this **new hire safety zone (LNAP)** more than once per period of employment unless the individual qualifies as a NEW employee again.

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Very simply, the Look-Back Measurement Method is a “wait and see” method. The large employer determines the status of an employee as FT or not for a future period (called a stability period) based on the # of hours of service the employee achieved in a prior period (called the measurement period).

Look-Back Method works well for Hourly employees (because the monthly method won’t protect employer from the 4980H penalties with these types of hourly employees).

Look-Back method is NOT available for NEW employees who are reasonably expected to work full time because they MUST be offered coverage by the first day of the 4th calendar month after their date of hire to avoid a 4980H penalty. (Warning to watch out for the 90-day waiting period rule)
Look-Back Measurement Method

- Using the Look-Back Measurement Method is optional, it is NOT required, but it sure may come in handy to help you avoid a 4980H penalty.

- Although the use of the Look-Back Method is complicated and administratively burdensome, it does afford more flexibility and certainty than a strict monthly measurement method calculation.

  THE LOOK-BACK MEASUREMENT METHOD ADDS PREDICTABILITY

- Under the Look-Back Method, long measurement periods help to dilute weeks with lots of hours of service.

Employers may use different measurement and stability periods from year to year, but remember:

- A measurement or stability period may not be changed once the measurement period has begun.
- You can change measurement methods and durations annually, if desired.
- Stability periods must start on the 1st of a month and end on the last day of a month, whereas Measurement periods can be mid-month to mid-month.
There are two types of Look-Back Measurement periods:

- **Initial**: used to track hours for “new” employees
- **Standard**: used to track hours for “ongoing” employees

Both types of Look-Back Measurement periods include:

- A Measurement Period
- An (optional) Administrative Period
- A Stability Period

During the **Measurement Period** the employer tracks the employee’s hours of service.

During the **Administrative Period** the employer calculates which employees were full-time, notifies them and offers them coverage during the upcoming Stability period.

During the **Stability Period** the employer offers coverage to employees who were full-time during the Measurement Period and does not offer coverage to employees who did not reach FT status during the Measurement period.
Look-Back Method: New & Ongoing Employees

More terms to remember:

- **New Employee** is one who has been employed by an employer for **less than** one Standard Measurement Period

- **Ongoing Employee** is one who has been employed by an employer for **at least one** Standard Measurement Period
Look-Back Measurement Method

Let’s start with ONGOING employees and discuss STANDARD periods

**IMPORTANT POINT**

Ongoing employees must be in a STABILITY PERIOD on the first day of the 2015 plan year to have an ALE avoid the 4980H penalty.

This means that the measurement period associated with a 2015 ongoing employee stability period occurs back in 2014.
Look-Back Measurement Method

DETREMINING FULL-TIME EMPLOYEE STATUS

**Ongoing Employees:**

- **Standard Measurement Period (SMP)**
  - 3 to 12 months to determine if full time

- **Admin Period**
  - up to 90 days

- **Stability Period**
  - At least 6 months if FT

- **Measurement & Stability Periods repeat**

**New Variable Hour, Part-time and Seasonal Employees:**

- **Initial Measurement Period (IMP)**
  - 3 to 12 months to determine if full time

- **Admin Period**
  - up to 90 days

- **Stability Period**
  - At least 6 months if FT

- **IMP & Admin period cannot exceed 13 mon. for NEW EE**

- **Then use the Measurement Period for Ongoing employees**

*Source: Congressional Research Services (CRS) based on IRS Notice 2012-58 Determining Full-time Employees for Purposes of Shared Responsibility for Employers Regarding Health Coverage.*
Look-Back: Rules for ONGOING Employees

An “ongoing employee” is an employee (EE) who has been employed for at least one complete standard measurement period. (26 CFR §54.4980H-3(d))

**Standard Measurement Period (SMP)**
- **Period is at least 3 months & not more than 12 consecutive calendar months**
- Employer can choose the months when the standard measurement period starts and ends. Examples: calendar year, plan year, or period ending just before open enrollment starts.
- Must be uniform for all employees in same category. Permissible 4 categories = each group of collectively bargained employees covered by a separate collective bargaining agreement, collectively bargained and non-collectively bargained employees, employees working in different States, salaried and hourly employees.

**Administrative Period (AP)**
- Optional period of up to 90 days, between the measurement and stability periods. Admin period must overlap prior stability period so no gap in coverage. 90 days is NOT same as 3 months

**Standard Stability Period (SSP)**
- Begins after the measurement period and applicable administrative period
- **If an employee averages at least 30 hrs of service/week** in the standard measurement period, the standard stability period is the longer of –
  - 6 consecutive calendar months or
  - the length of the standard measurement period
- **If an employee does NOT average at least 30 hrs of service/week** in the standard measurement period, the standard stability period must begin immediately after the end of the standard measurement period and any admin. period, and cannot be longer than the standard measurement period.

ALEs will probably want to establish a standard measurement period and admin period that causes their stability period to correspond to their medical plan year.
The purpose of the Standard Administrative Period
• is to allow employers time to total and average the hours of service of each employee during the Standard Measurement Period, offer enrollment to eligible FT employees and, for employees who elect coverage, assure coverage starts day one of the Standard Stability Period.

An Administrative period must overlap the previous stability period to prevent gaps in coverage.
• As soon as one Standard Measurement Period ends the next one begins, so the Standard Administrative Period overlaps the end of the prior Standard Stability Period and the beginning of the next Standard Measurement Period.
Look-Back: Using 12 Months is Common

Most employers will want a 12-month measurement period for ongoing employees (EE) because:

a) You calculate average weekly hours of service less frequently;
b) Longer measurement periods dilute lots of hours of services and tend to lead to lower average hours of service; and
c) More opportunity to reduce work hours near the end of a measurement period if average weekly hours during the measurement period start to increase.

The downside of a 12-month look-back measurement period means a longer stability period where if EE reached FT status, coverage will need to be offered for commonly a 12-month period (regardless of hours worked during the stability period).

- A 6-month Look-Back measurement period means coverage offered only for a 6-month period, but you measure more often and also cannot dilute lots of hours of service.

Most employers want their stability period to align with the start of their benefits plan year because:

a) Ease of administration
b) Aligns with annual open enrollment period
c) Helps with budgeting costs for benefits
## 12-0-12 Look-Back for Ongoing Employees (January)

### Look-Back Period Illustration for January 1 Plan Year

For **ONGOING** employees:

- **M**: 12-month Standard Measurement Period (SMP)
- **A**: 0-month Standard Administration Period (SAP)
- **S**: 12-month Standard Stability Period (SSP), if full time

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</table>
For ONGOING employees:
- 12-month Standard Measurement Period (SMP)
- 1-month Standard Administration Period (SAP)
- 12-month Standard Stability Period (SSP), if full time

Look-Back Period Illustration for January 1 Plan Year

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## 12-2-12 Look-Back for Ongoing Employees (January)

### Look-Back Period Illustration for January 1 Plan Year

**For ONGOING employees:**

- **M** 12-month Standard Measurement Period (SMP)
- **A** 2-month Standard Administration Period (SAP)
- **S** 12-month Standard Stability Period (SSP), if full time

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*Segal Consulting*
Why not a 12-3-12 Look-Back for Ongoing Employees?

A large employer with a July plan year who holds open enrollment during April might hope to have an **Administrative Period** begin April 1st (when their Open Enrollment is held).

- This is not permissible because the period April 1 to June 30 is **91 days**. This exceeds the maximum of 90 days allowed for an Administrative Period.
- Remember, 3 months is not always a 90-day timeperiod.

An alternate solution to stay within the 90 day duration for an Admin period might be to choose any date from April 2nd through the end of April as the start of the Administrative Period where Open Enrollment is held.

While there is no requirement to hold Open Enrollment during the Administrative Period, it seems to make sense that by the time you add up the hours to determine if employees have reached full-time status, you would proceed with allowing those employees to participate in Open Enrollment.

- Save proof you offered enrollment.
For ONGOING employees to match up to your 12-month plan year, consider:

- **12 month standard measurement period + 2 month admin + 12 month standard stability period**
  
  OR

- **12 month standard measurement period + 77-day admin + 12 month standard stability period**
  
  For instance 12-month standard measurement period from April 15 to April 14 + 77-day admin from April 15 to June 30 + 12 month standard stability period from July 1 to June 30 to match up to a July plan year.
  
  Note: April 2 is earliest admin period could start and not violate the 90-day admin rule...this would push standard measurement period back 13 more days to April 2 through April 1 with a 90-day admin period of April 2 to June 30.

Look below for example for Standard Measurement periods using 12M-90D-12M:

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<td>Open Enrollment Period</td>
<td>Process Elections for new Plan Year</td>
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Look-Back Measurement Method

DETERMINING FULL-TIME EMPLOYEE STATUS

Ongoing Employees:

Standard Measurement Period (SMP)
3 to 12 months
to determine if full time

Admin Period
up to 90 days

Stability Period
At least 6 months if FT

Measurement & Stability Periods repeat

New Variable Hour, Part-time and Seasonal Employees:

Initial Measurement Period (IMP)
3 to 12 months
to determine if full time

Admin Period
up to 90 days

Stability Period
At least 6 months if FT

IMP & Admin period cannot exceed 13 mon. for NEW EE

Then use the Measurement Period for Ongoing employees

Source: Congressional Research Services (CRS) based on IRS Notice 2012-58 Determining Full-time Employees for Purposes of Shared Responsibility for Employers Regarding Health Coverage.
Look-Back Method: Part-time, Variable Hour, & Seasonal Employees

- Variable hour, part-time, and seasonal employees are the only new hires whose status can be determined using an initial measurement period:

- **Part-time Employees:** Employees for whom, based on facts and circumstances on their hire date, the employee is reasonably expected to average less than 30 hours of service per week during their Initial Measurement Period.

- **Variable Hour Employees:** Employees for whom, based on facts and circumstances on their hire date, it cannot be determined whether the employee is reasonably expected to average at least 30 hours of service/week during an Initial Measurement Period.

- **Seasonal Employees:** Employees hired into positions in which the customary annual employment is 6 months or less. For example, the seasonal worker averages 40 hrs of service/week for 3 months of the year only (Oct, Nov and Dec)
  - Employees hired to work for more than 6 months but fewer than 12 months cannot be considered seasonal.
  - Seasonal employees who work more than 30 hours of service/week “in season” (even when the season lasts many months) may still be excluded from full-time status if they do not average at least 30 hours of service/week over the entire Initial Measurement Period.

**Part-time, variable hour and seasonal employees are usually HOURLY employees, not salaried**
Look-Back: Rules for **NEW** Part-time, Variable Hour or Seasonal EEs

A “new employee” is an employee (EE) who has **not been employed** for at least one complete standard measurement period. (26 CFR §54.4980H-3(d)(3))

| **Initial Measurement Period (IMP)** | At least 3 months and not more than 12 consecutive calendar months  
Employer can choose when the measurement period begins such as actual hire date OR first day of first calendar month after hire date OR 1st payroll period following the hire date.  
Measurement duration must be uniform for all employees in same category. Permissible 4 categories = each group of collectively bargained employees covered by a separate collective bargaining agreement, collectively bargained and non-collectively bargained employees, employees working in different States, salaried and hourly employees. |
| **Administrative Period (AP)** | Optional period of **up to 90 days** before the stability period, that:  
- Includes the period from the hire date to the date coverage starts under the plan, excluding the initial measurement period  
- **Initial measurement period plus administrative period together cannot extend beyond** the last day of the first calendar month that begins on or after the one-year anniversary of the new employee’s hire date (**the 13-month rule = 13 months and a fraction**).  
- Admin period must overlap prior stability period so no gap in coverage |
| **Initial Stability Period (ISP)** | **Stability period must be the same length as for ongoing employees**  
- If an employee averages at least 30 hrs of service/week in the initial measurement period, the initial stability period must be at least 6 consecutive months that is no shorter than the initial measurement period  
- If an employee does NOT average at least 30 hrs of service/week in the initial measurement period, the initial stability period **must not be more than 1 month longer than the initial measurement period** and, must not exceed the remainder of the first entire standard measurement period (plus any associated admin period). This allows an 11-2-12 duration option. |
Ideal NEW Employee Look-Back Period?

For NEW employees, these are options that consider the “13 month” rule:

- 11 month initial measurement period + 2 month admin + 12 month initial stability period (11 + 2 = 13 months)
- 12 month initial measurement period + 0 month admin + 12 month initial stability period (12 + 0 = 12 months)
- 12 month initial measurement period + 1 month admin + 12 month initial stability period (12 + 1 = 13 months)

***For new hires, some employers are wanting an 11-month IMP 2-month IAP 12-month ISP

But, for employees hired on the 2nd of any month other than January, caution with months with 31 days clustered together because the 90-day admin period rule could be exceeded.
The Initial Measurement Period for each NEW employee is to begin:

a) on their date of hire or,

b) more practically, on the first day of the month after their hire date

**CAUTION:** Employees hired **ON** the first day of a month must have their Initial Measurement Period begin **ON** their date of hire

Starting on the first day of the next month means that if using a 12-month Initial Measurement Method you only have **twelve 12-month Initial Measurement Periods** to track for new employees during the year.
All Hourly Employees Should Be Measured

- Even if you **offer benefits** to an employee who does NOT average 30 hours of service or more per week, you should still be measuring this employee under a Measurement Method:

  A. to prove to the IRS that they are not really full-time and you do not need to factor them into your 70%/95% 4980H (a) calculation and

  B. in case the employee transitions to a different position and you want to terminate benefits and you need proof why they did not achieve enough hours of service to qualify for benefits in the next position

**Look-Back Method Reminder:**

If an employee is measured as FT in a measurement period, that employee has earned FT status for the entire corresponding stability period.

If in the stability period you offered coverage to that FT employee, coverage is NOT to be cancelled during the stability period **even if** the employee is averaging less than 30 hours of service/week in that stability period.
Overview of 4980H Penalties and IRS Reporting

- Forms 1094 and 1095 (B and C forms)

Measurement Method Basics

- Monthly Measurement Method
- Look-Back Measurement Method
  - Ongoing Employees
  - New Employees

Look-Back Measurement Method Details

- Transitioning from New to Ongoing
- Employment Breaks
Look-Back: Going from NEW to ONGOING

- Next slides show a NEW variable hour/part-time/seasonal employee using a 12 month Look-Back Initial Measurement Period and how you need to overlap it with the Standard Measurement Period of Ongoing Employees in order to transition the new employee into the same Standard Measurement period as Ongoing employees.
### Lookback Period Illustration for January 1 Plan Year

**New variable hour/seasonal EE who works 30+ hours/week during initial measurement period**

#### For ONGOING employees:
- **M**: 12-month Standard Measurement Period (SMP)
- **A**: 2-month Standard Administration Period (SAP)
- **S**: 12-month Standard Stability Period (SSP), if full time

#### For NEW variable hour, seasonal, and PT employees:
- **IMP**: 12-month Initial Measurement Period (IMP)
- **IAP**: 1-month Initial Administration Period (IAP)
- **ISP**: 12-month Initial Stability Period (ISP), if full time

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**30+ hrs/week in IMP but less than 30 hrs/week in SMP?**

*Remember: “You keep what you earn”*
### Lookback Period Illustration for January 1 Plan Year

**New variable hour/seasonal EE who does NOT work 30+ hours/week during initial measurement period**

#### For ONGOING employees:
- **M** 12-month Standard Measurement Period (SMP)
- **A** 2-month Standard Administration Period (SAP)
- **S** 12-month Standard Stability Period (SSP), if full time

#### For NEW variable hour, seasonal, and PT employees:
- **IMP** 12-month Initial Measurement Period (IMP)
- **IAP** 1-month Initial Administration Period (IAP)
- **ISP** 12-month Initial Stability Period (ISP), if full time

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Less than 30 hrs/wk in IMP but 30+ hrs/week in SMP? Remember: “Full-time trumps NON-full-time”
In order to facilitate a **seamless transition** from the Initial Look-Back Method to the Standard Look-Back Method, a NEW employee’s hours of service must be tracked in BOTH the Initial Measurement period AND in the Standard Measurement period. How does that work:

- Employer tracks the new employee using the Initial Measurement Period.

- Then, on the first day of the Standard Measurement Period (SMP) that begins on/after the new employee’s date of hire*, the employer also starts tracking the newly hired employee’s hours of service under the Standard Look-Back Method.

- Thus the employer is tracking the newly-hired employee’s hours of service under the Initial Measurement period for one full cycle and is also tracking that same employee under the Standard Measurement period.

  - *it could happen that a Standard Measurement Period (SMP) starts **before** the start of the Initial Measurement Period (IMP) such as when the IMP starts on the first day of the month following the date of hire and the SMP starts on the date of hire.

---

Remember, if new employee is measured as FT in their Initial Measurement Period (IMP), coverage must be offered at the start of month 13
Look-Back: New Hire Overlap of Measurement Periods

- While you are performing your initial measurement period for a new hire, you must simultaneously apply your ongoing employee standard measurement period, because:
  - **New hires MUST BE MEASURED** in the first complete Standard Measurement Period (SMP) that begins on or after their date of hire.
  - **Example:** The large employer has a July plan year and has elected to use for Ongoing employees, a 12-month Standard Measurement Period, a 90-day Admin Period, and a 12-month Standard Stability Period. This example assumes open enrollment is held during April for the start of a July plan year.
Suppose the new employee **does not** work full-time during their Initial Measurement Period but **does** work full-time during the first Standard Measurement Period that begins on or after their hire date.

**Look-Back: New Hire Overlap of Measurement Periods**

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- New hire averaged 31.4 hours of service during the first Standard Measurement Period that began on or after their date of hire.
- New hire averaged 28.6 hours of service during the Initial Measurement Period.

New employee was hired as a part-time hourly employee. In the middle of the Initial Measurement Period, the employer began to work the employee more hours.

**MUST OFFER COVERAGE TO AVOID PENALTY**
The regulations clarify that if an employee is reasonably expected at his or her hire date to be a full-time employee averaging 30 hours of service or more per week (and is not a seasonal employee), the employee must be treated as a full-time employee and coverage must be offered in accordance with the 4980H rules, unless the period of employment is to be shorter than 3 months.

But what about a NEW HOURLY EMPLOYEE that will be working full time, when all of my ongoing hourly employees are measured using the Look-Back Measurement Method?
While the Monthly measurement method works best for salaried employees, NOT hourly employees, there is one situation where the Monthly Measurement Method MUST be used for hourly employees:

- If the ALE hires a NEW hourly employee that is expected to be a FT employee averaging 130 or more hours of service/month, the ALE is to measure that employee under the Monthly Measurement Method until the completion of the first Standard Measurement Period (SMP) on or after the employee’s date of hire. (At this point the employee is an ongoing employee)

- See next slide for example.
- Also explained on page 8588 (left column) of the final regs.
Look-Back: New FT Hourly Employee

Look-Back Period Illustration for January 1 Plan Year
(New full-time hourly employee)

For ONGOING employees:
- **M**: 12-month Standard Measurement Period (SMP)
- **A**: 2-month Standard Administration Period (SAP)
- **S**: 12-month Standard Stability Period (SSP), if full time

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For new FT Hourly Employee:
- Look-Back: New FT Hourly Employee
- Hired 4/15/14 as a FT Hourly EE
- LNAP
- Monthly Measurement Method
- Monthly Measurement Method
- Monthly Measurement Method
- Monthly Measurement Method
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- Monthly Measurement Method

Here's the first SMP following date of hire.

- Continue to use Monthly Measurement Method to determine full-time status during Admin Period, then convert to PURE Look-Back from here on.
Leave of Absence or Break in Service

For rehired employees or employees returning from a leave of absence the employee will be credited with zero hours of service during the period of non-employment or unpaid leave of absence. (26 CFR §54.4980H-3(c)(4)(i-ii))

However,

If the period of absence with no hour of service is AT LEAST 13 consecutive weeks* (at least 26 weeks for educational organizations):
- the employee may be treated as a NEW employee upon return to employment

If the period of absence with no hour of service is LESS THAN 13 consecutive weeks* (at least 26 weeks for educational organizations), but more than 4 consecutive weeks:
- the employee MUST be considered a CONTINUING employee upon return to employment

Can also use the RULE OF PARITY that says if the period of absence with no hour of service is between 4 and 13 weeks (between 4 and 26 weeks for educational organizations) AND the break is longer than the employee’s period of employment before the break, the employee may be treated as a NEW employee.

When treated as a “NEW” employee, the employer can restart the initial measurement period OR apply a new 90-day waiting period

These break in service rules may be used under either measurement method.
Leave of Absence “Rule of Parity”

- Under the **RULE OF PARITY**, an employer can treat a worker returning from a leave of absence as a **NEW employee** if:
  
  a) the break lasted at least 4 weeks **AND**
  
  b) the break was longer than the employee’s period of employment before the break.

  - For example, if a new employee works for 6 weeks, is on unpaid leave for 8 weeks, and then returns to work, the employee could be treated as a new hire upon return to work because the 8-week break lasted at least 4 weeks, and the break lasted longer than the employee’s 6 weeks on the job.

- If a returning employee had FT status before the break and must be treated as a continuing employee upon return to work because the break was not long enough to establish a new employee status, then

  a) employee must be offered coverage upon resumption of service if offered as of the first day the employee is credited with an hour of service or,

  b) if later, as soon as “administratively practicable” (which means no later than the first day of the month following the resumption of service).

Rule of Parity: (26 CFR §54.4980H-3(c)(4)(v))
Employment Breaks

For employers using the Look-Back Method:

- When employees have to be treated as **continuing employees** (because their break isn’t long enough under the rules just stated), the employee is essentially **put back into whatever measurement and stability periods they would have been in had they NOT had the break**.

  - For purposes of the measurement period into which they are added, there are special rules for crediting hours during the break.
    - These rules apply if the break included periods of unpaid FMLA leave, unpaid jury duty or unpaid USERRA leave
    - These rules also apply for educational institutions

- See the next two slides…
**Averaging Method for Special Unpaid Leave is ONLY for Educational Organizations**
(26 CFR §54.4980H-3(d)(6)(ii)(B))

- When calculating average hours of service to determine whether an employee under the Look-Back Method is a FT employee, the regulations permit educational organizations to take either of two approaches with respect to employment break periods of at least 4 consecutive weeks (e.g., summer/winter break periods):

  1) employment break period may be excluded when calculating average hours during the measurement period *(meaning look only at the academic year for avg. hours of service)*; **OR**

  2) employee may be credited with hours of service during the employment break period at a rate equal to his/her average hours of service during non-break periods

- When calculating average hours of service where employee is paid, or entitled to payment, **no more than 501 hours of service during employment break periods are required to be excluded (or credited)** by an educational organization per employee each calendar year.

  - Thus, shorter breaks will be treated as "hours of service" to the extent they are paid.

  The rules governing employment break periods for educational organizations apply only to an employee treated as a continuing employee upon the resumption of services, and not to an employee treated as terminated and rehired.

---

**Cannot use this employment break calculation for employees under a Monthly Measurement Method**
Let’s add a summer break…

In the first Standard Measurement Period, the employee accumulated a total of 1,320 hours of service. Because the employer is an educational institution, one of two methods must be used when calculating the average hours of service during the Standard Measurement Period.

**Method 1 (Exclude 10-week break from average):**
\[
\frac{1320}{52-10} = 31.4 \text{ hours of service per week}
\]

**Method 2 (Credit hours during break):**
\[
\frac{1320 + 31.4 \times 10}{52} = 31.4 \text{ hours of service per week}
\]

New employee was hired as substitute teacher beginning March 10, 2015. After a 10-week summer break, the employee returns. During the spring semester they are hired as a full-time teacher in a category being measured using the Look Back.

The employee was on Summer Break with zero hours of service during a 10 weeks period in May-August 2015 and May-August 2016.

Because there was a break of service of at least 4 weeks but no more than 26 weeks, the employee cannot be treated as a new employee after the break; they must complete the Initial Measurement Period they were in prior to the break.
# Quick Reference to Breaks and Measurement Methods

First, use Break in Service rule to see if returning employee can be classified as a NEW employee.
Next, see how to handle the counting of hours during the leave by referencing the Special unpaid leave or Educational organization break rules.

<table>
<thead>
<tr>
<th>SITUATION</th>
<th>MONTHLY MEASUREMENT METHOD</th>
<th>LOOK-BACK MEASUREMENT METHOD</th>
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<tbody>
<tr>
<td><strong>Break in Service</strong> such as rehiring a former employee or employee returns from an unpaid leave of absence</td>
<td>May treat as NEW employee if 13* or more weeks with no hours of service. (*Employees of educational organizations must use 26 or more weeks)¹, ²</td>
<td>May treat as NEW employee if 13* or more weeks with no hours of service. (*Employees of educational organizations must use 26 or more weeks) ¹, ²</td>
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<tr>
<td><strong>Special unpaid leave</strong> (FMLA, USERRA military leave and jury duty)</td>
<td>Not applicable (ALE will record zero hours of service during leave)</td>
<td>Ignore the period of leave when averaging hours OR calculate at the same average hours rate when employee was not on leave</td>
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<tr>
<td><strong>For employees of educational organizations with an employment break of 4 or more consecutive weeks</strong></td>
<td>Not applicable (ALE will record zero hours of service during leave)</td>
<td>Ignore period of break when averaging hours OR calculate at the same average hours rate when employee was not on leave (up to max of 501 hours) not counting any special unpaid leave</td>
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Footnotes:

¹: Rule of parity applies here
²: When treated as a NEW employee, the employer can restart the initial measurement period or apply a new 90-day waiting period for FT employees

Regs do not provide guidance on how an employee should be treated (as FT or not FT) during a break in service.
Questions