Provided by Insure NW

Pay or Play Penalty—When to Begin Tracking Employee Hours

The Affordable Care Act (ACA) requires applicable large employers (ALEs) to offer affordable, minimum value health coverage to their full-time employees or pay a penalty. This employer mandate is also known as the "employer shared responsibility" or "pay or play" rules.

The employer shared responsibility rules took effect on Jan. 1, 2015, due to a one year delay. In addition, ALEs that had fewer than 100 full-time and FTE employees in 2014 generally had an additional year, until 2016, to comply with these rules.

To prepare for compliance in 2019, employers that intend to use the look-back measurement method for determining full-time status for 2019 will need to **begin tracking their employees' hours of service in 2018** to have corresponding stability periods for 2019.

LINKS AND RESOURCES

- On July 9, 2013, the Internal Revenue Service (IRS) issued Notice 2013-45 to provide formal guidance on the one-year delay.
- On Feb. 12, 2014, the IRS published final regulations on the ACA's employer shared responsibility rules.
- The IRS has also provided Questions and Answers for employers on the employer shared responsibility rules.

HIGHLIGHTS

APPLICABLE LARGE EMPLOYERS (ALES)

Only ALEs are subject to the employer shared responsibility rules.

- ALEs are employers that employ, on average, **at least 50 full-time employees, including full-time equivalents (FTEs)**, during the preceding calendar year.
- All ALEs are subject to these rules, including for-profit, nonprofit and government employers.

FULL-TIME EMPLOYEES

- A full-time employee is an employee who was employed, on average, at least **30 hours of service per week** (or 130 hours in a calendar month).
- The look-back measurement method allows ALEs to look at average hours of service over a longer period of time.

IDENTIFYING FULL-TIME EMPLOYEES

Two methods are available for determining full-time employee status—the **monthly measurement method** and the **look-back measurement method**. These methods provide minimum standards for identifying employees as full-time. ALEs may decide to treat additional employees as eligible for coverage, or otherwise offer coverage more expansively than would be required to avoid an employer shared responsibility penalty.

Monthly Measurement Method

The monthly measurement method involves a **month-to-month analysis** where full-time employees are identified based on their hours of service for each calendar month. This method is not based on averaging hours of service over a prior measurement period. This month-to-month measuring may cause practical difficulties for ALEs, particularly if there are employees with varying hours or schedules, and could result in employees moving in and out of coverage on a monthly basis.

Look-back Measurement Method

The look-back measurement method is an optional safe harbor method for determining full-time status that is intended to give ALEs flexible and workable options and greater predictability for determining full-time employee status. The look-back measurement method involves:

- A **measurement period** for counting hours of service;
- A **stability period** when coverage may need to be provided, depending on an employee's average hours of service during the measurement period; and
- An optional **administrative period** that allows time for enrollment and disenrollment.

ALEs that intend to use the look-back measurement method for determining full-time status for 2019 will need to begin their measurement periods in 2018 to have corresponding stability periods for 2019.

WHEN TO BEGIN TRACKING EMPLOYEE HOURS

The specific timeline for when an ALE should begin tracking its employees' hours will depend on a number of factors, including whether the ALE has a calendar year plan (beginning January 1) or a non-calendar year plan (beginning on any date other than January 1).

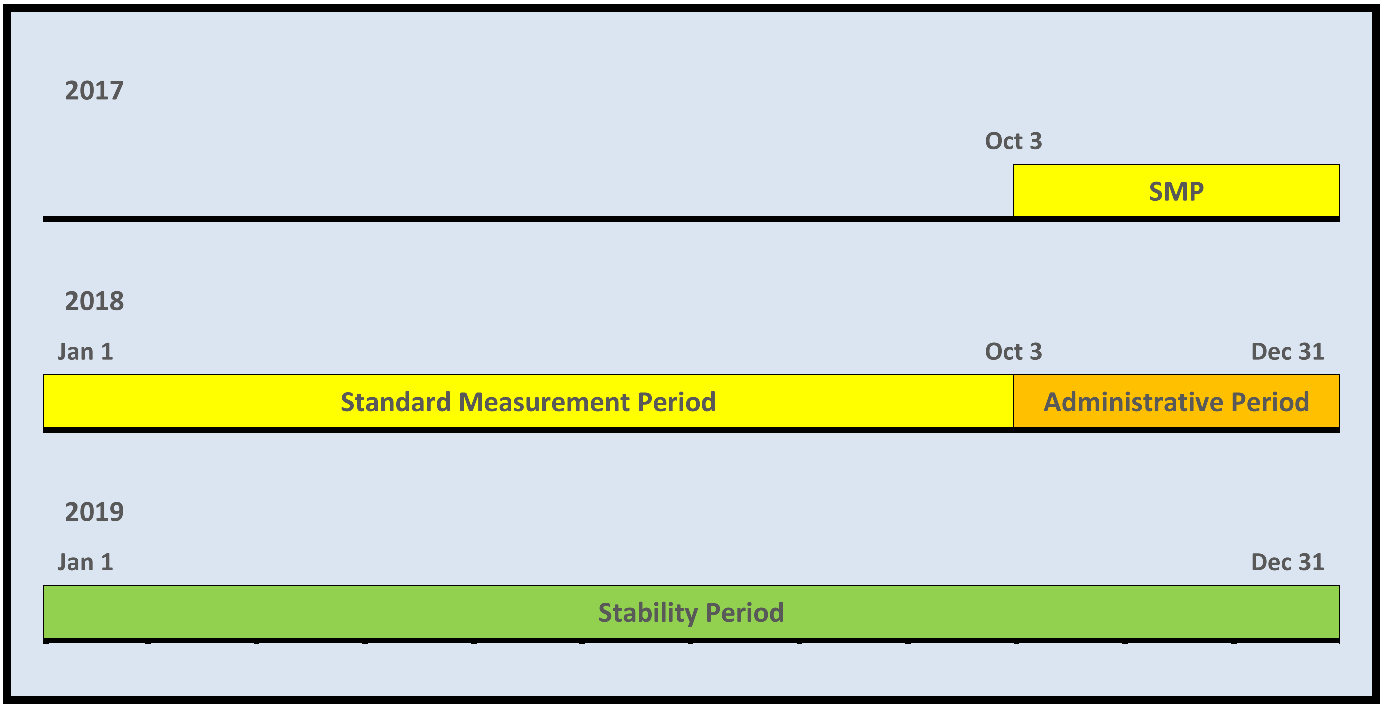
Calendar Year Plans

ALEs that have calendar year plans and want to use a 12-month standard measurement period (and, in turn, a 12-month stability period) will have to begin measuring their employees' hours of service no later than **Jan. 1, 2018**. However, an ALE that wants to take advantage of an administrative period would have to begin measuring its employees' hours of service at some point in 2017 (depending on the length of the administrative period).

For example, an ALE that wants to use the look-back measurement method may need to start measuring hours of service as early as **Oct. 3, 2017**. This date would apply if the ALE wants to use a 12-month stability period beginning on Jan. 1, 2019, and take advantage of the maximum 90-day administrative period. It can be helpful to work backward to determine the applicable dates. In this scenario:

- The stability period would run for the entire 2019 calendar year to coincide with the plan year;
- A full 90-day administrative period would run from Oct. 3, 2018, through Dec. 31, 2018; and
- A 12-month measurement period would begin on Oct. 3, 2017.

The following chart illustrates this timeline:



ALEs may want to set up the measurement, administrative and stability periods to begin on the first day of the month for administrative ease. This can be accomplished by using a shorter administrative period. Then, ALEs would not have to begin measuring hours of service so early.

For example, an ALE with a calendar year plan may use the following timelines:

- A 12-month measurement period from Nov. 1, 2017, through Oct. 31, 2018;
- A 61-day administrative period (November and December) ending on Dec. 31, 2018; and
- A full 12-month stability period from January 1 through Dec. 31, 2019.

The following chart illustrates this timeline:

Keep in mind that ALEs that have calendar year plans and want to use a 12-month standard measurement period (and, in turn, a 12-month stability period) will have to begin measuring their employees' hours of service **no later than Jan. 1, 2018**. However, an ALE that wants to take advantage of an administrative period would have to begin measuring its employees' hours of service at some point in 2017 (depending on the length of the administrative period).

Non-calendar Year Plans

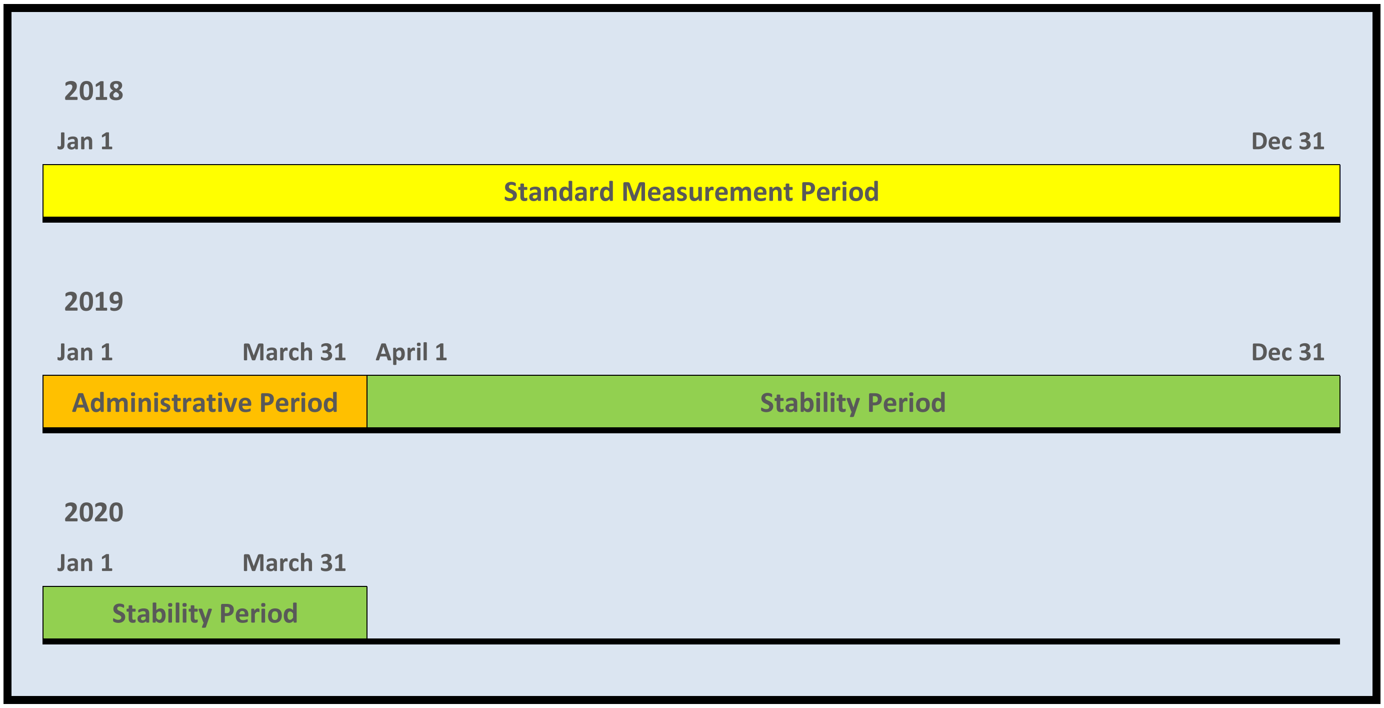
Although the employer shared responsibility penalties apply for every month of the calendar year, ALEs that have non-calendar year plans may be able to base their compliance with these rules on their plan year, rather than on the calendar year. However, keep in mind that penalties may apply for the months of the calendar year prior to the start of the ALE's plan year, if the required coverage was not offered to all full-time employees (and dependents) during that time.

For example, an ALE with a non-calendar year plan year beginning April 1 that is using a 90-day administrative period may use:

- A 12-month measurement period from Jan. 1, 2018, through Dec. 31, 2018; followed by
- An administrative period ending on March 31, 2019.
- The ALE's stability period in this scenario would then run for the ALE's 2019 plan year (April 1, 2019, through March 31, 2020).

4/14; BR 10/18

The following chart illustrates this timeline:



MORE INFORMATION

Please contact Insure NW for more information, as well as additional resources to help track your employees' hours of service.

4/14; BR 10/18