

full-time employees during each of eight calendar months of 2015, and 120 full-time employees during each of four calendar months of 2015, resulting in an average of 66.67 full-time employees for the year. However, Employer V's workforce exceeded 50 full-time employees (counting seasonal workers) for no more than four calendar months (treated as the equivalent of 120 days) in calendar year 2015, and the number of full-time employees would be less than 50 during those months if seasonal workers were disregarded. Accordingly, because after application of the seasonal worker exception described in paragraph (b)(2) of this section Employer V is not considered to employ more than 50 full-time employees, Employer V is not an applicable large employer for 2016.

*Example 4 (Seasonal workers and other FTEs).* (i) *Facts.* Same facts as *Example 3*, except that Employer V has 20 FTEs in August, some of whom are seasonal workers.

(ii) *Conclusion.* The seasonal worker exception described in paragraph (b)(2) of this section does not apply if the number of an employer's full-time employees (including seasonal workers) and FTEs exceeds 50 for more than 120 days during the calendar year. Because Employer V has at least 50 full-time employees for a period greater than four calendar months (treated as the equivalent of 120 days) during 2015, the exception described in paragraph (b)(2) of this section does not apply. Employer V averaged 68 full-time employees in 2015:  $[(40 \times 7) + (60 \times 1) + (120 \times 4)] \div 12 = 68.33$ , and accordingly, Employer V is an applicable large employer for calendar year 2016.

*Example 5 (New employer).* (i) *Facts.* Corporation S is incorporated on January 1, 2016. On January 1, 2016, Corporation S has three employees. However, prior to incorporation, Corporation S's owners purchased a factory intended to open within two calendar months of incorporation and to employ approximately 100 full-time employees. By March 15, 2016, Corporation S has more than 75 full-time employees.

(ii) *Conclusion.* Because Corporation S can reasonably be expected to employ on average at least 50 full-time employees on business days during 2016, and actually employs an average of at least 50 full-time employees on business days during 2016, Corporation S is an applicable large employer (and an applicable large employer member) for calendar year 2016.

*Example 6 (First year as applicable large employer).* (i) *Facts.* As of January 1, 2015, Employer R has been in existence for several years and did not average 50 or more full-time employees (including FTEs) on business days during 2014. Employer R averages 50 or more full-time employees on business days during 2015, so that for 2016 Employer R is an applicable large employer, for the first time. For all the calendar months of 2016, Em-

ployer R has the same 60 full-time employees. Employer R offered 20 of those full-time employees healthcare coverage during 2015, and offered those same employees coverage providing minimum value for 2016. With respect to the 40 full-time employees who were not offered coverage during 2015, Employer R offers coverage providing minimum value for calendar months April 2016 through December 2016.

(ii) *Conclusion.* For the 40 full-time employees not offered coverage during 2015 and offered coverage providing minimum value for the calendar months April 2016 through December 2016, the failure to offer coverage during the calendar months January 2016 through March 2016 will not result in an assessable payment under section 4980H with respect to those employees for those three calendar months. For those same 40 full-time employees, the offer of coverage during the calendar months April 2016 through December 2016 may result in an assessable payment under section 4980H(b) with respect to any employee for any calendar month for which the offer is not affordable and for which Employer R has received a Section 1411 Certification. For the other 20 full-time employees, the offer of coverage during 2016 may result in an assessable payment under section 4980H(b) for any calendar month if the offer is not affordable and Employer R has received a Section 1411 Certification with respect to the employee who received the offer of coverage. For all calendar months of 2016, Employer R will not be subject to an assessable payment under section 4980H(a).

(e) *Additional guidance.* With respect to an employer's status as an applicable large employer, the Commissioner may prescribe additional guidance of general applicability, published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter).

(f) *Effective/applicability date.* This section is applicable for periods after December 31, 2014.

[T.D. 9655, 79 FR 8577, Feb. 12, 2014]

### § 54.4980H-3 Determining full-time employees.

(a) *In general.* This section sets forth the rules for determining hours of service and status as a full-time employee for purposes of section 4980H. These regulations provide two methods for determining full-time employee status—the monthly measurement method, set forth in paragraph (c) of this section, and the look-back measurement method, set forth in paragraph

(d) of this section. The monthly measurement method applies for purposes of determining and calculating liability under section 4980H(a) and (b), as well as, with respect to paragraph (c)(1) of this section, determination of applicable large employer status (except with respect to the weekly rule under the monthly measurement method). The look-back measurement method applies solely for purposes of determining and calculating liability under section 4980H(a) and (b) (and not for purposes of determining status as an applicable large employer). See § 54.4980H-1(a)(21) for the definition of full-time employee. The rules set forth in this section prescribe the minimum standards for determining status as a full-time employee for purposes of section 4980H; treatment of additional employees as full-time employees for other purposes does not affect section 4980H liability if those employees are not full-time employees under the look-back measurement method or the monthly measurement method.

(b) *Hours of service*—(1) *In general*. The following rules on the calculation of hours of service apply for purposes of applying both the look-back measurement method and the monthly measurement method.

(2) *Hourly employees calculation*. Under the look-back measurement method and the monthly measurement method, for employees paid on an hourly basis, an employer must calculate actual hours of service from records of hours worked and hours for which payment is made or due.

(3) *Non-hourly employees calculation*—(i) *In general*. Except as otherwise provided, under the look-back measurement method and the monthly measurement method, for employees paid on a non-hourly basis, an employer must calculate hours of service by using one of the following methods:

(A) Using actual hours of service from records of hours worked and hours for which payment is made or due;

(B) Using a days-worked equivalency whereby the employee is credited with eight hours of service for each day for which the employee would be required to be credited with at least one hour of

service in accordance with paragraph (b)(2) of this section; or

(C) Using a weeks-worked equivalency whereby the employee is credited with 40 hours of service for each week for which the employee would be required to be credited with at least one hour of service in accordance with paragraph (b)(2) of this section.

(ii) *Change in method*. An employer must use one of the three methods in paragraph (b)(3)(i) of this section for calculating the hours of service for non-hourly employees. An employer is not required to use the same method for all non-hourly employees, and may apply different methods for different categories of non-hourly employees, provided the categories are reasonable and consistently applied. Similarly, an applicable large employer member is not required to apply the same methods as other applicable large employer members of the same applicable large employer for the same or different categories of non-hourly employees, provided that in each case the categories are reasonable and consistently applied by the applicable large employer member. An employer may change the method of calculating the hours of service of non-hourly employees (or of one or more categories of non-hourly employees) for each calendar year.

(iii) *Prohibited use of equivalencies*. The number of hours of service calculated using the days-worked or weeks-worked equivalency must reflect generally the hours actually worked and the hours for which payment is made or due. An employer is not permitted to use the days-worked equivalency or the weeks-worked equivalency if the result is to substantially understate an employee's hours of service in a manner that would cause that employee not to be treated as a full-time employee, or if the result is to understate the hours of service of a substantial number of employees (even if no particular employee's hours of service are understated substantially and even if the understatement would not cause the employee to not be treated as a full-time employee). For example, as to the former, an employer may not use a days-worked equivalency in the case of an employee who generally works three 10-hour days per week, because the

equivalency would substantially understate the employee's hours of service as 24 hours of service per week, which would result in the employee being treated as not a full-time employee.

(c) *Monthly measurement method*—(1) *In general.* Under the monthly measurement method, an applicable large employer member determines each employee's status as a full-time employee by counting the employee's hours of service for each calendar month. See § 54.4980H-1(a)(21) for the definition of full-time employee. This paragraph (c)(1) (except with respect to the weekly rule) applies for purposes of the determination of status as an applicable large employer; paragraphs (c)(2) through (4) of this section do not apply for purposes of the determination of status as an applicable large employer. For rules regarding the use of the look-back measurement method and the monthly measurement method for different categories of employees, see paragraph (e) of this section.

(2) *Employee first otherwise eligible for an offer of coverage.* The rule in this paragraph (c)(2) applies with respect to an employee who, in a calendar month, first becomes otherwise eligible to be offered coverage under a group health plan of an employer using the monthly measurement method with respect to that employee. For purposes of this paragraph (c)(2), an employee is otherwise eligible to be offered coverage under a group health plan for a calendar month if, pursuant to the terms of the plan as in effect for that calendar month, the employee meets all conditions to be offered coverage under the plan for that calendar month, other than the completion of a waiting period, within the meaning of § 54.9801-2, and an employee is first otherwise eligible if the employee has not previously been eligible or otherwise eligible for an offer of coverage under a group health plan of the employer during the employee's period of employment. An employer is not subject to an assessable payment under section 4980H(a) with respect to an employee for each calendar month during the period of three full calendar months beginning with the first full calendar month in which the employee is otherwise eligible for an offer of coverage

under a group health plan of the employer, provided that the employee is offered coverage no later than the first day of the first calendar month immediately following the three-month period if the employee is still employed on that day. If the coverage for which the employee is otherwise eligible during the three-month period, and which the employee actually is offered on the day following that three-month period if still employed, provides minimum value, the employer also will not be subject to an assessable payment under section 4980H(b) with respect to that employee for the three-month period. This rule cannot apply more than once per period of employment of an employee. If an employee terminates employment and returns under circumstances that would constitute a rehire as set forth in paragraph (c)(4) of this section, the rule in this paragraph (c)(2) may apply again.

(3) *Use of weekly periods.* With respect to a category of employees for whom an employer uses the monthly measurement method, an employer may determine full-time employee status for a calendar month based on hours of service over a period that:

(i) Begins on the first day of the week that includes the first day of the calendar month, provided that the period over which hours of service are measured does not include the week in which falls the last day of the calendar month (unless that week ends with the last day of the calendar month, in which case it is included); or

(ii) begins on the first day of the week immediately subsequent to the week that includes the first day of the calendar month (unless the week begins on the first day of the calendar month, in which case it is included), provided the period over which hours of service are measured includes the week in which falls the last day of the calendar month.

(4) *Employees rehired after termination of employment or resuming service after other absence*—(i) *Treatment as a new employee after a period of absence for employees of employers other than educational organizations.* Except as provided in paragraph (c)(4)(ii) of this section (related to rules for employers that are educational organizations), an

employee who resumes providing services to (or is otherwise credited with an hour of service for) an applicable large employer after a period during which the individual was not credited with any hours of service may be treated as having terminated employment and having been rehired, and therefore may be treated as a new employee upon the resumption of services only if the employee did not have an hour of service for the applicable large employer for a period of at least 13 consecutive weeks immediately preceding the resumption of services. The rule set forth in this paragraph (c)(4)(i) applies solely for the purpose of determining whether the employee, upon the resumption of services, is treated as a new employee or as a continuing employee, and does not determine whether the employee is treated as a continuing full-time employee (for example, an employee on leave) or a terminated employee for some or all of the period during which no hours of service are credited.

(ii) *Treatment as a new employee after a period of absence for employees of educational organizations.* With respect to an employer that is an educational organization, an employee who resumes providing services to (or is otherwise credited with an hour of service for) an applicable large employer after a period during which the individual was not credited with any hours of service may be treated as having terminated employment and having been rehired, and therefore may be treated as a new employee upon the resumption of services, only if the employee did not have an hour of service for the applicable large employer for a period of at least 26 consecutive weeks immediately preceding the resumption of services. The rule set forth in this paragraph (c)(4)(ii) applies solely for the purpose of determining whether the employee, upon the resumption of services, is treated as a new employee or as a continuing employee, and does not determine whether the employee is treated as a continuing full-time employee (for example, an employee on leave) or a terminated employee for some or all of the period during which no hours of service are credited.

(iii) *Averaging method for special unpaid leave and employment break periods.*

The averaging method for periods of special unpaid leave and employment break periods does not apply under the monthly measurement method, regardless of whether the employer is (or is not) an educational organization.

(iv) *Treatment of continuing employee.* The rule set forth in paragraph (c)(2) of this section applies to an employee treated as a continuing employee in the same way that it applies to an employee who has not experienced a period with no hours of service. A continuing employee treated as a full-time employee is treated as offered coverage upon resumption of services if the employee is offered coverage as of the first day that employee is credited with an hour of service, or, if later, as soon as administratively practicable. For this purpose, offering coverage by no later than the first day of the calendar month following resumption of services is deemed to be as soon as administratively practicable.

(v) *Rule of parity.* For purposes of determining the period after which an employee may be treated as having terminated employment and having been rehired, an applicable large employer may choose a period, measured in weeks, of at least four consecutive weeks during which the employee was not credited with any hours of service that exceeds the number of weeks of that employee's period of employment with the applicable large employer immediately preceding the period that is shorter than 13 weeks (for an employee of an educational organization employer, a period that is shorter than 26 weeks).

(vi) *International transfers.* An employer may treat an employee as having terminated employment if the employee transfers to a position at the same applicable large employer (including a different applicable large employer member that is part of the same applicable large employer) if the position is anticipated to continue indefinitely or for at least 12 months and if substantially all of the compensation will constitute income from sources without the United States (within the meaning of sections 861 through 863 and the regulations thereunder). With respect to an employee transferring from

a position that was anticipated to continue indefinitely or for at least 12 months and in which substantially all of the compensation for the hours of service constitutes income from sources without the United States (within the meaning of sections 861 through 863 and the regulations thereunder) to a position at the same applicable large employer (including a different applicable large employer member that is part of the same applicable large employer) with respect to which substantially all of the compensation will constitute U.S. source income, the employer may treat that employee as a new hire to the extent consistent with the rules related to rehired employees as set forth in paragraph (c)(4) of this section.

(5) *Examples.* The following examples illustrate the rules of paragraphs (c)(1) through (4) of this section. In each example, the employer is an applicable large employer with 200 full-time employees (including FTEs) that uses the monthly measurement method to identify full-time employees and offers coverage only to employees who are full-time employees (and their dependents).

*Example 1 (Monthly measurement method—employee first otherwise eligible for an offer of coverage).* (i) *Facts.* Employer Z uses the monthly measurement method. Employer Z hires Employee A on January 1, 2016. For each calendar month in 2016, Employee A averages 20 hours of service per week and is not eligible (or otherwise eligible) for an offer of coverage under the group health plan of Employer Z. Effective January 1, 2017, Employee A is promoted to a position that is eligible for an offer of coverage under a group health plan of Employer Z, following completion of a 90-day waiting period. For January 2017 through March 2017, Employee A meets all of the conditions for eligibility under the group health plan, other than completion of the waiting period. The coverage that would have been offered to Employee A under the terms of the plan, but for the waiting period, during those three months would have provided minimum value. Effective April 1, 2017, Employer Z offers Employee A coverage that provides minimum value. Employee A averages 40 hours of service per week for each calendar month in 2017.

(ii) *Conclusion.* Because Employer Z offers minimum value coverage to Employee A no later than the first day following the period of three full calendar months beginning with the first full calendar month in which Employee A is otherwise eligible for an offer of

coverage under a group health plan of Employer Z, Employer Z is not subject to an assessable payment for January 2017 through March 2017 under section 4980H by reason of its failure to offer coverage to Employee A during those months. For calendar months after March 2017, an offer of minimum value coverage may result in an assessable payment under section 4980H(b) with respect to Employee A for any month for which the offer is not affordable and for which Employer Z has received a Section 1411 Certification. Employer Z is not subject to an assessable payment under section 4980H by reason of its failure to offer coverage to Employee A during each month of 2016 because for each month of 2016, Employee A was not a full-time employee.

*Example 2 (Rehire rules under monthly measurement method for employers that are not educational organizations).* (i) *Facts.* Same as *Example 1*, except that Employee A has zero hours of service during a nine week period of unpaid leave (that constitutes special unpaid leave) beginning on June 25, 2017, and ending on August 26, 2017. As a result of the nine week period during which Employee A has zero hours of service, Employee A averages less than 30 hours of service per week for July 2017 and August 2017. Employee A averages more than 30 hours of service per week for each month between and including September 2017 through December 2017. Employer Z does not use the rule of parity, set forth in paragraph (c)(4)(v) of this section, and Employer Z is not an educational organization.

(ii) *Conclusion.* Because Employee A resumes providing services for Employer Z after a period during which the employee was not credited with any hours of service of less than 13 consecutive weeks, Employer Z may not treat Employee A as having terminated employment and having been rehired. Therefore, Employer Z may not treat Employee A as a new employee upon the resumption of services, and, accordingly, Employer Z may not again apply the rule set forth in paragraph (c)(2) of this section. Although the nine consecutive weeks of zero hours of service constitute special unpaid leave, the averaging method for periods of special unpaid leave does not apply under the monthly measurement method. Therefore, Employer Z may treat Employee A as a non-full-time employee for July 2017 and August 2017.

*Example 3 (Use of weekly rule).* (i) *Facts.* Employer Y uses the monthly measurement method in combination with the weekly rule for purposes of determining whether an employee is a full-time employee for a particular calendar month. For purposes of applying the weekly rule, Employer Y uses the period of Sunday through Saturday as a week and includes the week that includes

the first day of a calendar month and excludes the week that includes the last day of a calendar month (except in any case in which the last day of the calendar month occurs on a Saturday). Employer Y measures hours of service for the five weeks from Sunday, December 27, 2015, through Saturday, January 30, 2016, to determine an employee's full-time employee status for January 2016, for the four weeks from Sunday, January 31, 2016, through Saturday, February 27, 2016, to determine an employee's status for February 2016, and the four weeks from Sunday, February 28, 2016, through Saturday, March 26, 2016, to determine an employee's status for March 2016. For January 2016, Employer Y treats an employee as a full-time employee if the employee has at least 150 hours of service (30 hours per week  $\times$  5 weeks). For February 2016 and March 2016, Employer Y treats an employee as a full-time employee if the employee has at least 120 hours of service (30 hours per week  $\times$  4 weeks).

(ii) *Conclusion.* Employer Y has correctly applied the weekly rule as part of the monthly measurement method for determining each employee's status as a full-time employee for the months January, February, and March 2016.

(d) *Look-back measurement method—(1) Ongoing employees—(i) In general.* Under the look-back measurement method for ongoing employees, an applicable large employer determines each ongoing employee's full-time employee status by looking back at the standard measurement period. The applicable large employer member determines the months in which the standard measurement period starts and ends, provided that the determination must be made on a uniform and consistent basis for all employees in the same category (see paragraph (d)(1)(v) of this section for a list of permissible categories). For example, if an applicable large employer member chooses a standard measurement period of 12 months, the applicable large employer member could choose to make it the calendar year, a non-calendar plan year, or a different 12-month period, such as one that ends shortly before the start of the plan's annual open enrollment period. If the applicable large employer member determines that an employee was employed on average at least 30 hours of service per week during the standard measurement period, then the applicable large employer member must treat the employee as a full-time employee during a subsequent stability period,

regardless of the employee's number of hours of service during the stability period, so long as he or she remains an employee.

(ii) *Use of payroll periods.* For payroll periods that are one week, two weeks, or semi-monthly in duration, an employer is permitted to treat as a measurement period a period that ends on the last day of the payroll period preceding the payroll period that includes the date that would otherwise be the last day of the measurement period, provided that the measurement period begins on the first day of the payroll period that includes the date that would otherwise be the first day of the measurement period. An employer may also treat as a measurement period a period that begins on the first day of the payroll period that follows the payroll period that includes the date that would otherwise be the first day of the measurement period, provided that the measurement period ends on the last day of the payroll period that includes the date that would otherwise be the last day of the measurement period. For example, an employer using the calendar year as a measurement period could exclude the entire payroll period that included January 1 (the beginning of the year) if it included the entire payroll period that included December 31 (the end of that same year), or, alternatively, could exclude the entire payroll period that included December 31 of a calendar year if it included the entire payroll period that included January 1 of that calendar year.

(iii) *Employee determined to be employed an average of at least 30 hours of service per week.* An employee who was employed on average at least 30 hours of service per week during the standard measurement period must be treated as a full-time employee for a stability period that begins immediately after the standard measurement period and any applicable administrative period. The stability period must be at least six consecutive calendar months but no shorter in duration than the standard measurement period.

(iv) *Employee determined not to be employed on average at least 30 hours of service per week.* If an employee was not employed an average of at least 30 hours of service per week during the

standard measurement period, the applicable large employer member may treat the employee as not a full-time employee during the stability period that follows, but is not longer than, the standard measurement period. The stability period must begin immediately after the end of the measurement period and any applicable administrative period.

(v) *Permissible employee categories.* Different applicable large employer members of the same applicable large employer may use measurement periods and stability periods that differ either in length or in their starting or ending dates. In addition, subject to the rules governing the relationship between the length of the measurement period and the stability period, applicable large employer members may use measurement periods and stability periods that differ either in length or in their starting and ending dates for—

(A) Collectively bargained employees and non-collectively bargained employees,

(B) Each group of collectively bargained employees covered by a separate collective bargaining agreement,

(C) Salaried employees and hourly employees, and

(D) Employees whose primary places of employment are in different States.

(vi) *Optional administrative period.* An applicable large employer member may provide for an administrative period that begins immediately after the end of a standard measurement period and that ends immediately before the associated stability period; however, any administrative period between the standard measurement period and the stability period for ongoing employees may neither reduce nor lengthen the measurement period or the stability period. The administrative period following the standard measurement period may last up to 90 days. To prevent this administrative period from creating a period during which coverage is not available, the administrative period must overlap with the prior stability period, so that, during any such administrative period applicable to ongoing employees following a standard measurement period, ongoing employees who are enrolled in coverage because of their status as full-time em-

ployees based on a prior measurement period must continue to be covered through the administrative period. Applicable large employer members may use administrative periods that differ in length for the categories of employees identified in paragraph (d)(1)(v) of this section.

(vii) *Change in employment status.* Except as provided in paragraph (f)(2) of this section, if an ongoing employee experiences a change in employment status before the end of a stability period, the change will not affect the application of the classification of the employee as a full-time employee (or not a full-time employee) for the remaining portion of the stability period. For example, if an ongoing employee in a certain position of employment is not treated as a full-time employee during a stability period because the employee's hours of service during the prior measurement period were insufficient for full-time-employee treatment, and the employee experiences a change in employment status that involves an increased level of hours of service, the treatment of the employee as a non-full-time employee during the remainder of the stability period is unaffected. Similarly, if an ongoing employee in a certain position of employment is treated as a full-time employee during a stability period because the employee's hours of service during the prior measurement period were sufficient for full-time-employee treatment, and the employee experiences a change in employment status that involves a lower level of hours of service, the treatment of the employee as a full-time employee during the remainder of the stability period is unaffected.

(viii) *Example.*

The following example illustrates the application of paragraph (d)(1) of this section:

(A) *Facts.* Employer Z is an applicable large employer member and computes hours of service following the rules in this paragraph (d)(1). Employer Z chooses to use a 12-month stability period that begins January 1 and a 12-month standard measurement period that begins October 15. Consistent with the terms of Employer Z's group health plan, only employees classified as full-

time employees using the look-back measurement method are eligible for coverage. Employer Z chooses to use an administrative period between the end of the standard measurement period (October 14) and the beginning of the stability period (January 1) to determine which employees were employed on average 30 hours of service per week during the measurement period, notify them of their eligibility for the plan for the calendar year beginning on January 1 and of the coverage available under the plan, answer questions and collect materials from employees, and enroll those employees who elect coverage in the plan. Previously-determined full-time employees already enrolled in coverage continue to be offered coverage through the administrative period. Employee A and Employee B have been employed by Employer Z for several years, continuously from their start date. Employee A was employed on average 30 hours of service per week during the standard measurement period that begins October 15, 2015, and ends October 14, 2016, and for all prior standard measurement periods. Employee B also was employed on average 30 hours of service per week for all prior standard measurement periods, but averaged less than 30 hours of service per week during the standard measurement period that begins October 15, 2015, and ends October 14, 2016.

(B) *Conclusions.* Because Employee A was employed for the entire standard measurement period that begins October 15, 2015, and ends October 14, 2016, Employee A is an ongoing employee with respect to the stability period running from January 1, 2017, through December 31, 2017. Because Employee A was employed on average 30 hours of service per week during that standard measurement period, Employee A is offered coverage for the entire 2017 stability period (including the administrative period from October 15, 2017, through December 31, 2017). Because Employee A was employed on average 30 hours of service per week during the prior standard measurement period, Employee A is offered coverage for the entire 2016 stability period and, if enrolled, would continue such coverage during the administrative period from October 15, 2016, through December 31,

2016. Because Employee B was employed for the entire standard measurement period that begins October 15, 2015, and ends October 14, 2016, Employee B is also an ongoing employee with respect to the stability period in 2017. Because Employee B was not a full-time employee based on hours of service during this standard measurement period, Employee B is not offered coverage for the stability period in 2017 (including the administrative period from October 15, 2017, through December 31, 2017). However, because Employee B was employed on average 30 hours of service per week during the prior standard measurement period, Employee B is offered coverage through the end of the 2016 stability period and, if enrolled, would continue such coverage during the administrative period from October 15, 2016, through December 31, 2016. Employer Z complies with the standards of paragraph (d)(1) of this section because the standard measurement period is no longer than 12 months, the stability period for ongoing employees who are full-time employees based on hours of service during the standard measurement period is not shorter than the standard measurement period, the stability period for ongoing employees who are not full-time employees based on hours of service during the standard measurement period is no longer than the standard measurement period, and the administrative period is no longer than 90 days.

(2) *New non-variable hour, new non-seasonal and new non-part-time employees—(i) In general.* For a new employee who is reasonably expected at the employee's start date to be a full-time employee (and is not a seasonal employee), an applicable large employer member determines such employee's status as a full-time employee based on the employee's hours of service for each calendar month. If the employee's hours of service for the calendar month equal or exceed an average of 30 hours of service per week, the employee is a full-time employee for that calendar month. Once a new employee who is reasonably expected at the employee's start date to be a full-time employee (and is not a seasonal employee) becomes an ongoing employee, the rules



set forth in paragraph (d)(1) of this section apply for determining full-time employee status.

(ii) *Factors for determining full-time employee status.* Whether an employer's determination that a new employee (who is not a seasonal employee) is a full-time employee or is not a full-time employee is reasonable is based on the facts and circumstances at the employee's start date. Factors to consider in determining whether a new employee who is not a seasonal employee is reasonably expected at the employee's start date to be a full-time employee include, but are not limited to, whether the employee is replacing an employee who was (or was not) a full-time employee, the extent to which hours of service of ongoing employees in the same or comparable positions have varied above and below an average of 30 hours of service per week during recent measurement periods, and whether the job was advertised, or otherwise communicated to the new hire or otherwise documented (for example, through a contract or job description), as requiring hours of service that would average 30 (or more) hours of service per week or less than 30 hours of service per week. In all cases, no single factor is determinative. An educational organization employer cannot take into account the potential for, or likelihood of, an employment break period in determining its expectation of future hours of service.

(iii) *Application of section 4980H to initial full three calendar months of employment.* Notwithstanding paragraph (d)(2)(i) of this section, with respect to an employee who is reasonably expected at his or her start date to be a full-time employee (and is not a seasonal employee), the employer will not be subject to an assessable payment under section 4980H(a) for any calendar month of the three-month period beginning with the first day of the first full calendar month of employment if, for the calendar month, the employee is otherwise eligible for an offer of coverage under a group health plan of the employer, provided that the employee is offered coverage by the employer no later than the first day of the fourth full calendar month of employment if the employee is still employed on that

day. If the offer of coverage for which the employee is otherwise eligible during the first three full calendar months of employment, and which the employee actually is offered by the first day of the fourth month if still employed, provides minimum value, the employer also will not be subject to an assessable payment under section 4980H(b) with respect to that employee for the first three full calendar months of employment. For purposes of this paragraph (d)(2)(iii), an employee is otherwise eligible to be offered coverage under a group health plan for a calendar month if, pursuant to the terms of the plan as in effect for that calendar month, the employee meets all conditions to be offered coverage under the plan for that calendar month, other than the completion of a waiting period, within the meaning of § 54.9801-2.

(3) *New variable hour employees, new seasonal employees, and new part-time employees—(i) In general.* For new variable hour employees, new seasonal employees, and new part-time employees, applicable large employer members are permitted to determine whether the new employee is a full-time employee using an initial measurement period of no less than three consecutive months and no more than 12 consecutive months (as selected by the applicable large employer member) that begins on the 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 (or on the first day of the first payroll period starting on or after the employee's start date, if later, as set forth in paragraph (d)(3)(ii) of this section). The applicable large employer member measures the new employee's hours of service during the initial measurement period and determines whether the employee was employed on average at least 30 hours of service per week during this period. The stability period for such employees must be the same length as the stability period for ongoing employees.

(ii) *Use of payroll periods.* An applicable large employer member may apply the payroll period rule set forth in paragraph (d)(1)(ii) of this section for purposes of determining an initial

measurement period, provided that the initial measurement period must begin on the start date or any date during the period beginning with the employee's start date and ending with the later of the first day of the first calendar month following the employee's start date and the first day of the first payroll period that starts after the employee's start date. As set forth in paragraph (d)(1)(ii) of this section, the use of payroll periods for purposes of determining the initial measurement period applies for payroll periods that are one week, two weeks, or semi-monthly in duration.

(iii) *Employees determined to be employed on average at least 30 hours of service per week.* If a new variable hour employee, new seasonal employee, or new part-time employee has on average at least 30 hours of service per week during the initial measurement period, the applicable large employer member must treat the employee as a full-time employee during the stability period that begins after the initial measurement period (and any associated administrative period). The stability period must be a period of at least six consecutive calendar months that is no shorter in duration than the initial measurement period. The stability period must begin immediately after the end of the measurement period and any applicable administrative period. With respect to an employee who has on average at least 30 hours of service per week during the initial measurement period, the employer will not be subject to an assessable payment under section 4980H(a) for any calendar month during the initial measurement period and any associated administrative period if, for the calendar month, the employee is otherwise eligible for an offer of coverage under a group health plan of the employer, provided that the employee is offered coverage by the employer no later than the first day of the associated stability period if the employee is still employed on that day. If the offer of coverage for which the employee is otherwise eligible during the initial measurement period, and which the employee actually is offered by the first day of the stability period if still employed, provides minimum value, the employer also will not

be subject to an assessable payment under section 4980H(b) with respect to that employee during the initial measurement period and any associated administrative period. For purposes of this paragraph (d)(3)(iii), an employee is otherwise eligible to be offered coverage under a group health plan for a month if, pursuant to the terms of the plan as in effect for that calendar month, the employee meets all conditions to be offered coverage under the plan for that month, other than the completion of a waiting period, within the meaning of § 54.9801-2.

(iv) *Employees determined not to be employed on average at least 30 hours of service per week.* If a new variable hour employee, new seasonal employee, or new part-time employee does not have on average at least 30 hours of service per week during the initial measurement period, the applicable large employer member may treat the employee as not a full-time employee during the stability period that follows the initial measurement period. Except as provided in paragraph (d)(4)(iv) of this section, the stability period for such employees must not be more than one month longer than the initial measurement period and must not exceed the remainder of the first entire standard measurement period (plus any associated administrative period) for which a variable hour employee, seasonal employee, or part-time employee has been employed. The stability period must begin immediately after the end of the measurement period and any applicable administrative period.

(v) *Permissible differences in measurement or stability periods for different categories of employees.* Subject to the rules governing the relationship between the length of the measurement period and the stability period, with respect to a new variable hour employee, new seasonal employee, or new part-time employee, applicable large employer members may use measurement periods and stability periods that differ either in length or in their starting and ending dates for the categories of employees identified in paragraph (d)(1)(v) of this section.

(vi) *Optional administrative period—(A) In general.* Subject to the limits in paragraph (d)(3)(vi)(B) of this section,

an applicable large employer member may apply an administrative period in connection with an initial measurement period and before the start of the stability period. This administrative period must not exceed 90 days in total. For this purpose, the administrative period includes all periods between the start date of a new variable hour employee, new seasonal employee, or new part-time employee and the date the employee is first offered coverage under the applicable large employer member's group health plan, other than the initial measurement period. Thus, for example, if the applicable large employer member begins the initial measurement period on the first day of the first month following a new employee's start date, the period between the employee's start date and the first day of the next month must be taken into account in applying the 90-day limit on the administrative period. Similarly, if there is a period between the end of the initial measurement period and the date the employee is first offered coverage under the plan, that period must be taken into account in applying the 90-day limit on the administrative period. Applicable large employer members may use administrative periods that differ in length for the categories of employees identified in paragraph (d)(1)(v) of this section.

(B) *Limit on combined length of initial measurement period and administrative period.* In addition to the specific limits on the initial measurement period (which must not exceed 12 months) and the administrative period (which must not exceed 90 days), there is a limit on the combined length of the initial measurement period and the administrative period applicable to a new variable hour employee, new seasonal employee, or new part-time employee. Specifically, the initial measurement period and administrative period together cannot extend beyond the last day of the first calendar month beginning on or after the first anniversary of the employee's start date. For example, if an applicable large employer member uses a 12-month initial measurement period for a new variable hour employee, and begins that initial measurement period on the first day of the first calendar month following the em-

ployee's start date, the period between the end of the initial measurement period and the offer of coverage to a new variable hour employee who is a full-time employee based on hours of service during the initial measurement period must not exceed one month.

(vii) *Change in employment status during the initial measurement period—(A) In general.* If a new variable hour employee, new seasonal employee, or new part-time employee experiences a change in employment status before the end of the initial measurement period such that, if the employee had begun employment in the new position or status, the employee would have reasonably been expected to be employed on average at least 30 hours of service per week (or, if applicable, would not have been a seasonal employee and would have been expected to be employed on average at least 30 hours of service per week), the rules set forth in the remainder of this paragraph (d)(3)(vii) apply. With respect to an employee described in this paragraph (d)(3)(vii) and subject to the rules in the next sentence, the employer will not be subject to an assessable payment under section 4980H for the period before the first day of the fourth full calendar month following the change in employment status (or, if earlier and the employee averages 30 or more hours of service per week during the initial measurement period, the first day of the first month following the end of the initial measurement period (including any optional administrative period associated with the initial measurement period)). An employer will not be subject to an assessable payment under section 4980H(a) with respect to an employee described in this paragraph (d)(3)(vii) for any calendar month during the period described in the prior sentence if, for the calendar month, the employee is otherwise eligible for an offer of coverage under a group health plan of the employer, provided that the employee is offered coverage by the employer no later than the end of the period described in the prior sentence if the employee is still employed on that date; if the offer of coverage for which the employee is otherwise eligible during the period described in the prior sentence,

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and which the employee is actually offered by the first day after the end of that period if still employed, provides minimum value, the employer also will not be subject to an assessable payment under section 4980H(b) with respect to that employee during that period. For purposes of this paragraph (d)(3)(vii), an employee is otherwise eligible to be offered coverage under a group health plan for a calendar month if, pursuant to the terms of the plan as in effect for that calendar month, the employee meets all conditions to be offered coverage under the plan for that calendar month, other than the completion of a waiting period, within the meaning of § 54.9801-2.

(B) *Example.* The following example illustrates the provisions of paragraph (d)(3)(vii) of this section. In the following example, the applicable large employer member has 200 full-time employees and offers all of its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan. The coverage is affordable within the meaning of section 36B(c)(2)(C)(i) (or is treated as affordable under one of the affordability safe harbors described in § 54.4980H-5) and provides minimum value.

*Example (Change in employment status from variable hour employee to full-time employee).*

(i) *Facts.* For new variable hour employees, Employer Z uses a 12-month initial measurement period that begins on the start date and applies an administrative period from the end of the initial measurement period through the end of the first calendar month beginning on or after the end of the initial measurement period. For new variable hour employees, Employer Z offers coverage no later than the first day of the fourteenth month after the start date if an employee averages 30 or more hours of service per week during the initial measurement period. Employer Z hires Employee A on May 10, 2015. Employee A's initial measurement period runs from May 10, 2015, through May 9, 2016, with the optional administrative period ending June 30, 2016. At Employee A's May 10, 2015, start date, Employee A is a variable hour employee. On September 15, 2015, Employer Z promotes Employee A to a position that can reasonably be expected to average at least 30 hours of service per week. For October 2015 through December 2015, Employee A is otherwise eligible for an offer of coverage that provides minimum value, and, on January 1, 2016, Employee A is offered cov-

erage by the employer that provides minimum value.

(ii) *Conclusion.* Employer Z will not be subject to an assessable payment under section 4980H(a) with respect to Employee A for October 2015, November 2015, or December 2015, because for each of those months Employee A is otherwise eligible for an offer of coverage and because Employee A is offered coverage by January 1, 2016 (the date that is the earlier of the first day of the fourth calendar month following the change in employment status (January 1, 2016) or the first day of the calendar month after the end of the initial measurement period plus the optional administrative period (July 1, 2016)). Because the coverage offered on January 1, 2016, provides minimum value, Employer Z also will not be subject to an assessable payment under section 4980H(b) with respect to Employee A for October 2015, November 2015, or December 2015.

(4) *Transition from new variable hour employee, new seasonal employee, or new part-time employee to ongoing employee—*

(i) *In general.* Once a new variable hour employee, new seasonal employee, or new part-time employee has been employed for an entire standard measurement period, the applicable large employer member must test the employee for full-time employee status, beginning with that standard measurement period, at the same time and under the same conditions as apply to other ongoing employees. Accordingly, for example, an applicable large employer member with a calendar year standard measurement period that also uses a one-year initial measurement period beginning on the employee's start date would test a new employee whose start date is April 12 for full-time employee status first based on the initial measurement period (April 12 of the year including the start date through April 11 of the following year) and again based on the calendar year standard measurement period (if the employee continues in employment for that entire standard measurement period) beginning on January 1 of the year after the start date.

(ii) *Employee determined to be employed an average of at least 30 hours of service per week.* An employee who was employed an average of at least 30 hours of service per week during an initial measurement period or standard measurement period must be treated as a

full-time employee for the entire associated stability period. This is the case even if the employee was employed an average of at least 30 hours of service per week during the initial measurement period but was not employed an average of at least 30 hours of service per week during the overlapping or immediately following standard measurement period. In that case, the applicable large employer member may treat the employee as not a full-time employee only after the end of the stability period associated with the initial measurement period. Thereafter, the applicable large employer member must determine the employee's status as a full-time employee in the same manner as it determines such status in the case of its other ongoing employees as described in paragraph (d)(1) of this section.

(iii) *Employee determined not to be employed an average of at least 30 hours of service per week.* If the employee was not employed an average of at least 30 hours of service per week during the initial measurement period, but was employed at least 30 hours of service per week during the overlapping or immediately following standard measurement period, the employee must be treated as a full-time employee for the entire stability period that corresponds to that standard measurement period (even if that stability period begins before the end of the stability period associated with the initial measurement period). Thereafter, the applicable large employer member must determine the employee's status as a full-time employee in the same manner as it determines such status in the case of its other ongoing employees as described in paragraph (d)(1) of this section.

(iv) *Treatment during periods between stability periods.* If there is a period between the end of the stability period associated with the initial measurement period and the beginning of the stability period associated with the first full standard measurement period during which an employee is employed, the treatment as a full-time employee or not a full-time employee that applies during the stability period associated with the initial measurement period continues to apply until the begin-

ning of the stability period associated with the first full standard measurement period during which the employee is employed.

(5) *Examples.* The following examples illustrate the look-back measurement methods described in paragraphs (d)(1), (d)(3) and (d)(4) of this section. In all of the following examples, the applicable large employer member has 200 full-time employees and offers all of its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan. The coverage is affordable within the meaning of section 36B(c)(2)(C)(i) (or is treated as affordable coverage under one of the affordability safe harbors described in §54.4980H-5) and provides minimum value. In *Example 1* through *Example 8*, the new employee is a new variable hour employee, and the employer has chosen to use a 12-month standard measurement period for ongoing employees starting October 15 and a 12-month stability period associated with that standard measurement period starting January 1. (Thus, during the administrative period from October 15 through December 31 of each calendar year, the employer continues to offer coverage to employees who qualified for coverage for that entire calendar year based upon having an average of at least 30 hours of service per week during the prior standard measurement period.) In *Example 9* and *Example 10*, the new employee is a new variable hour employee, and the employer uses a six-month standard measurement period, starting each May 1 and November 1, with six-month stability periods associated with those standard measurement periods starting January 1 and July 1. In *Example 12*, *Example 13*, and *Example 14*, the employer is in the trade or business of providing temporary workers to numerous clients that are unrelated to the employer and to one another; the employer is the common law employer of the temporary workers based on all of the facts and circumstances; the employer offers health plan coverage only to full-time employees (including temporary workers who are full-time employees) and their dependents; and the

employer uses a 12-month initial measurement period for new variable hour employees that begins on the start date and applies an administrative period from the end of the initial measurement period through the end of the first calendar month beginning after the end of the initial measurement period.

*Example 1 (12-Month initial measurement period followed by 1+ partial month administrative period).* (i) *Facts.* For new variable hour employees, Employer Z uses a 12-month initial measurement period that begins on the start date and applies an administrative period from the end of the initial measurement period through the end of the first calendar month beginning on or after the end of the initial measurement period. Employer Z hires Employee A on May 10, 2015. Employee A's initial measurement period runs from May 10, 2015, through May 9, 2016. Employee A has an average of 30 hours of service per week during this initial measurement period. Employer Z offers coverage that provides minimum value to Employee A for a stability period that runs from July 1, 2016, through June 30, 2017. For each calendar month during the period beginning with June 2015 and ending with June 2016, Employee A is otherwise eligible for an offer of coverage with respect to the coverage that is offered to Employee A on July 1, 2016.

(ii) *Conclusion.* Employer Z uses an initial measurement period that does not exceed 12 months; an administrative period totaling not more than 90 days; and a combined initial measurement period and administrative period that does not last beyond the final day of the first calendar month beginning on or after the one-year anniversary of Employee A's start date. Accordingly, Employer Z complies with the standards for the initial measurement period and stability periods for a new variable hour employee. Employer Z will not be subject to an assessable payment under section 4980H(a) with respect to Employee A for any calendar month from June 2015 through June 2016 because, for each month during that period, Employee A is otherwise eligible for an offer of coverage and because coverage is offered no later than the end of the initial measurement period plus the associated administrative period (July 1, 2016). Employer Z will not be subject to an assessable payment under section 4980H(b) with respect to Employee A for any calendar month from June 2015 through June 2016 because the coverage Employer Z offers to Employee A provides minimum value. Employer Z will not be subject to an assessable payment under section 4980H(a) or (b) with respect to Employee A for May 2015 because an applicable large employer member is not subject to an assessable payment

under section 4980H with respect to an employee for the calendar month in which falls the employee's start date if the start date is on a date other than the first day of the calendar month. Employer Z must test Employee A again based on the period from October 15, 2015, through October 14, 2016 (Employer Z's first standard measurement period that begins after Employee A's start date).

*Example 2 (11-Month initial measurement period followed by 2+ partial month administrative period).* (i) *Facts.* Same as *Example 1*, except that Employer Z uses an 11-month initial measurement period that begins on the start date and applies an administrative period from the end of the initial measurement period until the end of the second calendar month beginning after the end of the initial measurement period. Employee A's initial measurement period runs from May 10, 2015, through April 9, 2016. The administrative period associated with Employee A's initial measurement period ends on June 30, 2016. Employee A has an average of 30 hours of service per week during this initial measurement period.

(ii) *Conclusion.* Same as *Example 1*.

*Example 3 (11-Month initial measurement period preceded by partial month administrative period and followed by 2-month administrative period).* (i) *Facts.* Same as *Example 1*, except that Employer Z uses an 11-month initial measurement period that begins on the first day of the first calendar month beginning after the start date and applies an administrative period that runs from the end of the initial measurement period through the end of the second calendar month beginning on or after the end of the initial measurement period. Employee A's initial measurement period runs from June 1, 2015, through April 30, 2016. The administrative period associated with Employee A's initial measurement period ends on June 30, 2016. Employee A has an average of 30 hours of service per week during this initial measurement period.

(ii) *Conclusion.* Same as *Example 1*.

*Example 4 (12-Month initial measurement period preceded by partial month administrative period and followed by 2-month administrative period).* (i) *Facts.* For new variable hour employees, Employer Z uses a 12-month initial measurement period that begins on the first day of the first month following the start date and applies an administrative period that runs from the end of the initial measurement period through the end of the second calendar month beginning on or after the end of the initial measurement period. Employer Z hires Employee A on May 10, 2015. Employee A's initial measurement period runs from June 1, 2015, through May 31, 2016. Employee A has an average of 30 hours of service per week during this initial measurement period. Employer Z offers coverage to Employee A for a stability period that

runs from August 1, 2016, through July 31, 2017.

(ii) *Conclusion.* Employer Z does not satisfy the standards for the look-back measurement method in paragraph (d)(3)(vi)(B) of this section because the combination of the initial partial month delay, the 12-month initial measurement period, and the two month administrative period means that the coverage offered to Employee A does not become effective until after the first day of the second calendar month following the first anniversary of Employee A's start date. Accordingly, Employer Z is potentially subject to an assessable payment under section 4980H for each full calendar month during the initial measurement period and associated administrative period.

*Example 5 (Continuous full-time employee).* (i) *Facts.* Same as *Example 1*; in addition, Employer Z tests Employee A again based on Employee A's hours of service from October 15, 2015, through October 14, 2016 (Employer Z's first standard measurement period that begins after Employee A's start date), determines that Employee A has an average of 30 hours of service per week during that period, and offers Employee A coverage for July 1, 2017, through December 31, 2017. (Employee A already has an offer of coverage for the period of January 1, 2017, through June 30, 2017, because that period is covered by the initial stability period following the initial measurement period, during which Employee A was determined to be a full-time employee.)

(ii) *Conclusion.* Employer Z is not subject to any payment under section 4980H for any calendar month during 2017 with respect to Employee A.

*Example 6 (Initially full-time employee, becomes non-full-time employee).* (i) *Facts.* Same as *Example 1*; in addition, Employer Z tests Employee A again based on Employee A's hours of service from October 15, 2015, through October 14, 2016 (Employer Z's first standard measurement period that begins after Employee A's start date), and determines that Employee A has an average of 28 hours of service per week during that period. Employer Z continues to offer coverage to Employee A through June 30, 2017 (the end of the stability period based on the initial measurement period during which Employee A was determined to be a full-time employee), but does not offer coverage to Employee A for the period of July 1, 2017, through December 31, 2017.

(ii) *Conclusion.* Employer Z is not subject to any payment under section 4980H for any calendar month during 2017 with respect to Employee A.

*Example 7 (Initially non-full-time employee).* (i) *Facts.* Same as *Example 1*, except that Employee A has an average of 28 hours of service per week during the initial measurement period (May 10, 2015, through May 9, 2016),

and Employer Z does not offer coverage to Employee A for any calendar month in 2016.

(ii) *Conclusion.* From Employee A's start date through the end of 2016, Employer Z is not subject to any payment under section 4980H with respect to Employee A, because Employer Z complies with the standards for the measurement and stability periods for a new variable hour employee with respect to Employee A and because under those standards, Employee A is not a full-time employee for any month during 2016.

*Example 8 (Initially non-full-time employee, becomes full-time employee).* (i) *Facts.* Same as *Example 7*; in addition, Employer Z tests Employee A again based on Employee A's hours of service from October 15, 2015, through October 14, 2016 (Employer Z's first standard measurement period that begins after Employee A's start date), determines that Employee A has an average of 30 hours of service per week during this standard measurement period, and offers coverage to Employee A for 2017.

(ii) *Conclusion.* Employer Z is not subject to any payment under section 4980H for any calendar month during 2017 with respect to Employee A.

*Example 9 (Initially full-time employee).* (i) *Facts.* For new variable hour employees, Employer Y uses a six-month initial measurement period that begins on the start date and applies an administrative period that runs from the end of the initial measurement period through the end of the first full calendar month beginning after the end of the initial measurement period. Employer Y hires Employee B on May 10, 2015. Employee B's initial measurement period runs from May 10, 2015, through November 9, 2015, during which Employee B has an average of 30 hours of service per week. Employer Y offers coverage that provides minimum value to Employee B for a stability period that runs from January 1, 2016, through June 30, 2016. For each calendar month during the period from June 2015 through December 2015, Employee B is otherwise eligible for an offer of coverage with respect to the coverage that is offered to Employee B on January 1, 2016.

(ii) *Conclusion.* Employer Y uses an initial measurement period that does not exceed 12 months; an administrative period totaling not more than 90 days; and a combined initial measurement period and administrative period that does not extend beyond the final day of the first calendar month beginning on or after the one-year anniversary of Employee B's start date. Employer Y complies with the standards for the measurement and stability periods for a new variable hour employee with respect to Employee B. Employer Y is not subject to an assessable payment under section 4980H(a) with respect to Employee B for any calendar month from June 2015 through December 2015 because, for each month during that period, Employee B

is otherwise eligible for an offer of coverage and because Employee B is offered coverage no later than the end of the initial measurement period plus the associated administrative period (January 1, 2016). Employer Y is not subject to an assessable payment under section 4980H(b) with respect to Employee B for any calendar month from June 2015 through December 2015 because the coverage Employer Y offers to Employee B no later than January 1, 2016, provides minimum value. Employer Y is not subject to an assessable payment under section 4980H(a) or (b) with respect to Employee B for May 2015 because an applicable large employer member is not subject to an assessable payment under section 4980H with respect to an employee for the calendar month in which falls the employee's start date if the start date is on a date other than the first day of the calendar month. Employer Y must test Employee B again based on Employee B's hours of service during the period from November 1, 2015, through April 30, 2016 (Employer Y's first standard measurement period that begins after Employee B's start date).

*Example 10 (Initially full-time employee, becomes non-full-time employee).* (i) *Facts.* Same as *Example 9*; in addition, Employer Y tests Employee B again based on Employee B's hours of service during the period from November 1, 2015, through April 30, 2016 (Employer Y's first standard measurement period that begins after Employee B's start date), during which period Employee B has an average of 28 hours of service per week. Employer Y continues to offer coverage to Employee B through June 30, 2016 (the end of the initial stability period based on the initial measurement period during which Employee B has an average of 30 hours of service per week), but does not offer coverage to Employee B from July 1, 2016, through December 31, 2016.

(ii) *Conclusion.* Employer Y is not subject to any payment under section 4980H with respect to Employee B for any calendar month during 2016.

*Example 11 (Seasonal employee, 12-month initial measurement period; 1+ partial month administrative period).* (i) *Facts.* Employer X offers health plan coverage only to full-time employees (and their dependents). Employer X uses a 12-month initial measurement period for new seasonal employees that begins on the start date and applies an administrative period from the end of the initial measurement period through the end of the first calendar month beginning after the end of the initial measurement period. Employer X hires Employee C, a ski instructor, on November 15, 2015, with an anticipated season during which Employee C will work running through March 15, 2016. Employee C's initial measurement period runs from November 15, 2015, through November 14, 2016.

(ii) *Conclusion.* Employer X determines that Employee C is a seasonal employee because Employee C is hired into a position for which the customary annual employment is six months or less. Accordingly, Employer X may treat Employee C as a seasonal employee during the initial measurement period.

*Example 12 (Variable hour employee; temporary staffing firm).* (i) *Facts.* Employer W hires Employee D on January 1, 2015, in a position under which Employer W will offer assignments to Employee D to provide services in temporary placements at clients of Employer W, and employees of Employer W in the same position as Employee D, as part of their continuing employment, retain the right to reject an offer of placement. Employees of Employer W in the same position of employment as Employee D typically perform services for a particular client for 40 hours of service per week for a period of less than 13 weeks, and for each employee there are typically periods in a calendar year during which Employer W does not have an assignment to offer the employee. At the time Employee D is hired by Employer W, Employer W has no reason to anticipate that Employee D's position of employment will differ from the typical employee in the same position.

(ii) *Conclusion.* Employer W cannot determine whether Employee D is reasonably expected to average at least 30 hours of service per week for the 12-month initial measurement period. Accordingly, Employer W may treat Employee D as a variable hour employee during the initial measurement period.

*Example 13 (Variable hour employee; temporary staffing firm).* (i) *Facts.* Employer V hires Employee E on January 1, 2015, in a position under which Employer V will offer assignments to Employee E to provide services in temporary placements at clients of Employer V. Employees of Employer V in the same position of employment as Employee E typically are offered assignments of varying hours of service per week (so that some weeks of the assignment typically result in more than 30 hours of service per week and other weeks of the assignment typically result in less than 30 hours of service per week). Although a typical employee in the same position of employment as Employee E rarely fails to have an offer of an assignment for any period during the calendar year, employees of Employer V in the same position of employment, as part of their continuing employment, retain the right to reject an offer of placement, and typically refuse one or more offers of placement and do not perform services for periods ranging from four to twelve weeks during a calendar year. At the time Employee E is hired by Employer V, Employer V has no reason to anticipate that Employee E's position of employment



will differ from the typical employee in the same position.

(i) *Conclusion.* Employer V cannot determine whether Employee E is reasonably expected to average at least 30 hours of service per week for the 12-month initial measurement period. Accordingly, Employer V may treat Employee E as a variable hour employee during the initial measurement period.

*Example 14 (Variable hour employee; temporary staffing firm).* (i) *Facts.* Employer T hires Employee F on January 1, 2015, in a position under which Employer T will offer assignments to Employee F to provide services in temporary placements at clients of Employer T. Employees of Employer T in the same position typically are offered assignments of 40 or more hours of service per week for periods expected to last for periods of three months to 12 months, subject to a request for renewal by the client. Employees of Employer T in similar positions to Employee F are typically offered and take new positions immediately upon cessation of a placement. At the time Employee F is hired by Employer T, Employer T has no reason to anticipate that Employee F's position of employment will differ from the typical employee in the same position.

(ii) *Conclusion.* Employer T must assume that Employee F will be employed by Employer T and available for an offer of temporary placement for the entire initial measurement period. Under that assumption, Employer T would reasonably determine that Employee F is reasonably expected to average at least 30 hours of service per week for the 12-month initial measurement period. Accordingly, Employer T may not treat Employee F as a variable hour employee during the initial measurement period.

*Example 15 (Variable hour employee).* (i) *Facts.* Employee G is hired on an hourly basis by Employer S to fill in for employees who are absent and to provide additional staffing at peak times. Employer S expects that Employee G will average 30 hours of service per week or more for Employee G's first few months of employment, while assigned to a specific project, but also reasonably expects that the assignments will be of unpredictable duration, that there will be periods of unpredictable duration between assignments, that the hours per week required by subsequent assignments will vary, and that Employee G will not necessarily be available for all assignments.

(ii) *Conclusion.* Employer S cannot determine whether Employee G is reasonably expected to average at least 30 hours of service per week for the initial measurement period. Accordingly, Employer S may treat Employee G as a variable hour employee during the initial measurement period.

*Example 16 (Period between initial stability period and standard stability period).* (i) *Facts.*

Employer R uses an 11-month initial measurement period for new variable hour, new seasonal, and new part-time employees with an administrative period that lasts from the end of the initial measurement period through the last day of the first calendar month beginning on or after the first anniversary of the employee's start date. Employer R uses a standard measurement period of October 15 through October 14, and an administrative period of October 15 through December 31. Employee H is hired as a variable hour employee on October 20, 2015, with an initial measurement period of October 20, 2015, through September 19, 2016, and an administrative period lasting through November 30, 2016. Employee H is a full-time employee based on the hours of service in the initial measurement period, and Employee H's stability period for the initial measurement period is December 1, 2016, through November 30, 2017. Employee H's first full standard measurement period begins on October 15, 2016, with an associated stability period beginning on January 1, 2018. The standard measurement period beginning on October 15, 2015, does not apply to Employee H because Employee H is not hired until October 20, 2015.

(ii) *Conclusion.* For the period after the stability period associated with the initial measurement period and before the stability period associated with Employee H's first full standard measurement period (that is December 1, 2017, through December 31, 2017), Employer R must treat Employee H as a full-time employee because the treatment as a full-time employee (or not a full-time employee) that applies during the stability period associated with the initial measurement period continues to apply until the beginning of the stability period associated with the first full standard measurement period during which the employee is employed.

(6) *Employees rehired after termination of employment or resuming service after other absence—(i) Treatment as a new employee after a period of absence for employees of employers other than educational organizations—(A) In general.* The rules in this paragraph (d)(6)(i) apply to employers that are not educational organizations. For rules relating to employers that are educational organizations, see paragraph (d)(6)(ii) of this section. An employee who resumes providing services to (or is otherwise credited with an hour of service for) an applicable large employer that is not an educational organization after a period during which the employee was not credited with any hours of service may be treated as having terminated employment and having been

rehired, and therefore may be treated as a new employee upon the resumption of services, only if the employee did not have an hour of service for the applicable large employer for a period of at least 13 consecutive weeks immediately preceding the resumption of services. The rule set forth in this paragraph (d)(6)(i) applies solely for the purpose of determining whether the employee, upon the resumption of services, is treated as a new employee or as a continuing employee, and does not determine whether the employee is treated as a continuing full-time employee or a terminated employee during the period during which no hours of service are credited.

(B) *Averaging method for special unpaid leave.* For purposes of applying the look-back measurement method described in paragraph (d) of this section to an employee who is not treated as a new employee under paragraph (d)(6)(i) of this section, the employer determines the employee's average hours of service for a measurement period by computing the average after excluding any special unpaid leave during that measurement period and by using that average as the average for the entire measurement period. Alternatively, for purposes of determining the employee's average hours of service for the measurement period, the employer may choose to treat the employee as credited with hours of service for any periods of special unpaid leave during that measurement period 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 part of a period of special unpaid leave. There is no limit on the number of hours of service required to be excluded or credited (as the case may be) with respect to special unpaid leave. For purposes of this paragraph (d)(6)(i)(B), in computing the average weekly rate, employers are permitted to use any reasonable method if applied on a consistent basis. In addition, if an employee's average weekly rate under this paragraph (d)(6)(i)(B) is computed for a measurement period and that measurement period is shorter than six months, the six-month period ending with the close of the measurement pe-

riod is used to compute the average hours of service.

(C) *Averaging rules for employment break periods for employers other than educational organizations.* The averaging rule for employment break periods described in paragraph (d)(6)(ii)(B) of this section applies only to educational organizations and does not apply to other employers.

(ii) *Treatment as a new employee after a period of absence for employees of employers that are educational organizations—(A) In general.* The rules of this paragraph (d)(6)(ii) apply only to employers that are educational institutions. An employee who resumes providing services to (or is otherwise credited with an hour of service for) an applicable large employer that is an educational organization after a period during which the employee was not credited with any hours of service may be treated as having terminated employment and having been rehired, and therefore may be treated as a new employee upon the resumption of services, only if the employee did not have an hour of service for the applicable large employer for a period of at least 26 consecutive weeks immediately preceding the resumption of services. The rule set forth in this paragraph (d)(6)(ii)(A) applies solely for the purpose of determining whether the employee, upon the resumption of services, is treated as a new employee or as a continuing employee, and does not determine whether the employee is treated as a continuing full-time employee or a terminated employee during the period during which no hours of service are credited.

(B) *Averaging method for special unpaid leave and employment break periods.* For purposes of applying the look-back measurement method described in paragraph (d) of this section to an employee who is not treated as a new employee under paragraph (d)(6)(ii)(A) of this section, an educational organization employer determines the employee's average hours of service for a measurement period by computing the average after excluding any special unpaid leave and any employment break period during that measurement period and by using that average as the average for the entire measurement period.

Alternatively, for purposes of determining the employee's average hours of service for the measurement period, the employer may choose to treat the employee as credited with hours of service for any periods of special unpaid leave and any employment break period during that measurement period 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 part of a period of special unpaid leave or an employment break period. Notwithstanding the preceding two sentences, no more than 501 hours of service during employment break periods in a calendar year are required to be excluded (under the first sentence) or credited (under the second sentence) by an educational organization, provided that this 501-hour limit does not apply to hours of service required to be excluded or credited in respect of special unpaid leave. In applying the preceding sentence, an employer that uses the method described in the first sentence of this paragraph (d)(6)(ii)(B) determines the number of hours excluded by multiplying the average weekly rate for the measurement period (determined as in the second sentence of this paragraph (d)(6)(ii)(B)) by the number of weeks in the employment break period. For purposes of this paragraph (d)(6)(ii)(B), in computing the average weekly rate, employers are permitted to use any reasonable method if applied on a consistent basis. In addition, if an employee's average weekly rate under this paragraph (d)(6)(ii)(B) is being computed for a measurement period and that measurement period is shorter than six months, the six-month period ending with the close of the measurement period is used to compute the average hours of service.

(iii) *Treatment of continuing employee.* Under the look-back measurement method, an employee treated as a continuing employee retains, upon resumption of services, the status that employee had with respect to the application of any stability period (for example, if the continuing employee returns during a stability period in which the employee is treated as a full-time employee, the employee is treated as a

full-time employee upon return and through the end of that stability period). For purposes of the preceding sentence, a continuing employee treated as a full-time employee is treated as offered coverage upon resumption of services if the employee is offered coverage as of the first day that employee is credited with an hour of service, or, if later, as soon as administratively practicable. For this purpose, offering coverage by no later than the first day of the calendar month following resumption of services is deemed to be as soon as administratively practicable. If a continuing employee returns during a stability period in which the employee is treated as a full-time employee and the employer previously made the employee an offer of coverage with respect to the entire stability period and the employee declined the offer, the employer will continue to be treated as having offered coverage for that stability period and the employer need not make a new offer of coverage for the remainder of the ongoing stability period due to the employee's resumption of services.

(iv) *Rule of parity.* For purposes of determining the period after which an employee may be treated as having terminated employment and having been rehired, an applicable large employer may choose a period, measured in weeks, of at least four consecutive weeks during which the employee was not credited with any hours of service that exceeds the number of weeks of that employee's period of employment with the applicable large employer immediately preceding the period and that is shorter than 13 weeks (for an employee of an educational organization employer, a period that is shorter than 26 weeks). For purposes of the preceding sentence, the duration of the immediately preceding period of employment is determined after application to that period of employment of the averaging methods described in paragraphs (d)(6)(i)(B) and (d)(6)(ii)(B) of this section (relating to employment break periods and special unpaid leave), if applicable.

(v) *International transfers.* An employer may treat an employee as having terminated employment if the employee transfers to a position at the

same applicable large employer (including a different applicable large employer member that is part of the same applicable large employer) if the position is anticipated to continue indefinitely or for at least 12 months and if substantially all of the compensation will constitute income from sources without the United States (within the meaning of sections 861 through 863 and the regulations thereunder). With respect to an employee transferring from a position that was anticipated to continue indefinitely or for at least 12 months and in which substantially all of the compensation for the hours of service constitutes income from sources without the United States (within the meaning of sections 861 through 863 and the regulations thereunder) to a position at the same applicable large employer (including a different applicable large employer member that is part of the same applicable large employer) with respect to which substantially all of the compensation will constitute U.S. source income, the employer may treat that employee as a new hire to the extent consistent with the rules related to rehired employees in paragraph (d)(6) of this section.

(vi) *Anti-abuse rule.* For purposes of this paragraph (d)(6), any hour of service is disregarded if the hour of service is credited, or the services giving rise to the crediting of the hour of service are requested or required of the employee, for a purpose of avoiding or undermining the application of the employee rehire rules under paragraph (d)(6) of this section, or the application of the averaging method for employment break periods under paragraph (d)(6)(ii)(B) of this section. For example, if an employee of an educational organization would otherwise have a period with no hours of service to which the rules under paragraph (d)(6)(ii)(B) of this section would apply, but for the employer's request or requirement that the employee perform one or more hours of service for a purpose of avoiding the application of those rules, any such hours of service for the week are disregarded, and the rules under paragraph (d)(6)(ii)(B) of this section will apply.

(vii) *Examples.* The following examples illustrate the provisions of para-

graph (d)(6) of this section. All employers in these examples are applicable large employer members with 200 full-time employees (including full-time equivalent employees), each is in a different applicable large employer group, and each determines full-time employee status under the look-back measurement method. None of the periods during which an employee is not credited with an hour of service for an employer involve special unpaid leave or the employee being credited with hours of service for any applicable large employer member in the same applicable large employer as the employer.

*Example 1.* (i) *Facts.* As of April 1, 2015, Employee A has been an employee of Employer Z (which is not an educational organization) for 10 years. On April 1, 2015, Employee A terminates employment and is not credited with an hour of service until June 1, 2015, when Employer Z rehires Employee A and Employee A continues as an employee through December 31, 2015, which is the close of the measurement period as applied by Employer Z.

(ii) *Conclusion.* Because the period for which Employee A is not credited with any hours of service is not longer than Employee A's prior period of employment and is less than 13 weeks, Employee A is not treated as having terminated employment and been rehired for purposes of determining whether Employee A is treated as a new employee upon resumption of services. Therefore, Employee A's hours of service prior to termination are required to be taken into account for purposes of the measurement period, and Employee A's period with no hours of service is taken into account as a period of zero hours of service during the measurement period.

*Example 2.* (i) *Facts.* Same facts as *Example 1*, except that Employee A is rehired on December 1, 2015.

(ii) *Conclusion.* Because the period during which Employee A is not credited with an hour of service for Employer Z exceeds 13 weeks, Employee A is treated as having terminated employment on April 1, 2015, and having been rehired as a new employee on December 1, 2015, for purposes of determining Employee A's full-time employee status. Because Employee A is treated as a new employee, Employee A's hours of service prior to termination are not taken into account for purposes of the measurement period, and the period between termination and rehire with no hours of service is not taken into account in the new measurement period that begins after the employee is rehired.

*Example 3.* (i) *Facts.* Employee B is employed by Employer Y, an educational organization. Employee B is employed for 38 hours of service per week on average from September 7, 2014, through May 23, 2015, and then does not provide services (and is not otherwise credited with an hour of service) during the summer break when the school is generally not in session. Employee B resumes providing services for Employer Y on September 7, 2015, when the new school year begins.

(ii) *Conclusion.* Because the period from May 24, 2015 through September 5, 2015 (a total of 15 weeks), during which Employee B is not credited with an hour of service does not exceed 26 weeks, and also does not exceed the number of weeks of Employee B's immediately preceding period of employment, Employee B is not treated as having terminated employment on May 24, 2015, and having been rehired on September 6, 2015. Also, for purposes of determining Employee B's average hours of service per week for the measurement period, Employee B is credited, under the averaging method for employment break periods applicable to educational organizations, as having an average of 38 hours of service per week for the 15 weeks between May 24, 2015 and September 5, 2015, during which Employee B otherwise was credited with no hours of service. However, Employer Y is not required to credit more than 501 hours of service for the employment break period (15 weeks  $\times$  38 hours = 570 hours).

*Example 4.* (i) *Facts.* Same facts as *Example 3*, except that Employee B does not resume providing services for Employer Y until December 5, 2015.

(ii) *Conclusion.* Because the period from May 24, 2015 through December 5, 2015, exceeds 26 weeks, Employee B may be treated as having terminated employment on May 24, 2015, and having been rehired on December 5, 2015. Because Employee B is treated as a new employee on December 5, 2015, Employee B's hours of service prior to termination are not taken into account for purposes of the measurement period, and the period between termination and rehire with no hours of service is not taken into account in the new measurement period that begins after Employee B is rehired. The averaging method for employment break periods applicable to educational organizations does not apply because Employee B is treated as a new employee rather than a continuing employee as of the date of resumption of services.

(e) *Use of the look-back measurement method and the monthly measurement method for different categories of employees.* Different applicable large employer members of the same applicable large employer may use different methods of

determining full-time employee status (that is, either the monthly measurement method or the look-back measurement method). In addition, an applicable large employer member may use either the monthly measurement method or the look-back measurement method for each of the categories of employees set forth in paragraphs (d)(1)(v) and (d)(3)(v) of this section, and is not required to use the same method for all categories.

(f) *Changes in employment status resulting in a change in full-time employee determination method—(1) Change in employment status from a position to which a look-back measurement method applies to a position to which the monthly measurement method applies, or vice versa—(i) Change from look-back measurement method to monthly measurement method.* For an employee transferring from a position under which the look-back measurement method is used to determine the employee's status as a full-time employee, to a position under which the monthly measurement method is used to determine the employee's status as a full-time employee, the following rules apply:

(A) For an employee who at the time of the change of position is in a stability period under which the employee is treated as a full-time employee, the employer must continue to treat the employee as a full-time employee through the end of the stability period;

(B) For an employee who at the time of the change of position is in a stability period under which the employee is not treated as a full-time employee, the employer may continue to treat the employee as not a full-time employee through the end of the stability period, or may apply the monthly measurement method set forth in paragraph (c) of this section through the end of the stability period beginning with any calendar month including the calendar month in which the change in employment status occurs or any subsequent calendar month;

(C) For the stability period associated with the measurement period during which the change in employment status occurs, the employer must treat the employee as a full-time employee for any calendar month during which the employee either would be treated

as a full-time employee under the stability period that would have applied based on the measurement period in which the change in employment status occurred or would be treated as a full-time employee under the monthly measurement method; and

(D) For any calendar month subsequent to the stability period identified in paragraph (f)(1)(i)(C) of this section, the monthly measurement method applies for determination of the employee's status as a full-time employee.

(ii) *Change from monthly measurement method to look-back measurement method.* For an employee who is transferring from a position under which the monthly measurement method is used to determine the employee's status as a full-time employee, to a position under which a look-back measurement method is used to determine the employee's status as a full-time employee, the following rules apply:

(A) For the remainder of the applicable stability period during which the change in employment status occurs, the employer must continue to use the monthly measurement method to determine the employee's status as a full-time employee unless the employee's hours of service prior to the change in employment status would have resulted in the employee being treated as a full-time employee during the stability period in which the change in employment status occurs, in which case the employer must treat the employee as a full-time employee for that stability period;

(B) For the applicable stability period following the measurement period during which the change in employment status occurs, the employer must treat the employee as a full-time employee for any calendar month during which the employee either would be treated as a full-time employee based on the measurement period during which the change in employment status occurs or would be treated as a full-time employee under the monthly measurement method; and

(C) For any calendar month subsequent to the stability period identified in paragraph (f)(1)(ii)(B) of this section, the look-back measurement method applies for determination of the employee's status as a full-time employee.

(iii) *Examples.* The following examples illustrate the rules of this paragraph (f). In each example, the employer is an applicable large employer with 200 full-time employees (including FTEs). For each example, the employer uses the monthly measurement method for determining whether a salaried employee is a full-time employee, and the look-back measurement method for determining whether an hourly employee is a full-time employee with a measurement period from October 15 through October 14 of the following calendar year, and a stability period from January 1 through December 31. In each case, the relevant employee has been employed continuously for several years.

*Example 1 (Look-back measurement method to monthly measurement method).* Employee A is an hourly employee. Based on Employee A's hours of service from October 15, 2015, through October 14, 2016, Employee A is treated as a full-time employee from January 1, 2017, through December 31, 2017. On July 1, 2017, Employee A transfers from a position as an hourly employee to a position as a salaried employee. For the months July 2017 through December 2017, Employee A must be treated as a full-time employee. Employee A is employed for hours of service from October 15, 2016, through October 14, 2017, such that under the applicable look-back measurement method Employee A would be treated as a full-time employee for the period of January 1, 2018, through December 31, 2018. Accordingly, Employee A must be treated as a full-time employee for the calendar year 2018. For calendar year 2019, the determination of whether Employee A is a full-time employee is made under the monthly measurement method.

*Example 2 (Look-back measurement method to monthly measurement method).* Same facts as *Example 1*, except that based on Employee A's hours of service from October 15, 2015, through October 14, 2016, Employee A is not treated as a full-time employee from January 1, 2017, through December 31, 2017. For the months July 2017 through December 2017, Employer Z may either treat Employee A as not a full-time employee or apply the monthly measurement method to determine Employee A's status as a full-time employee. Employee A is employed for hours of service from October 15, 2016, through October 14, 2017, such that under the applicable look-back measurement method Employee A would be treated as a full-time employee for the period of January 1, 2018, through December 31, 2018. Employee A must be treated as a full-time employee for the calendar year

2018. For calendar year 2019, the determination of whether Employee A is a full-time employee is made under the monthly measurement method.

*Example 3 (Look-back measurement method to monthly measurement method).* Same facts as *Example 1*, except that Employee A is employed for hours of service from October 15, 2016, through October 14, 2017, such that under the applicable look-back measurement method Employee A would not be treated as a full-time employee for the period of January 1, 2018, through December 31, 2018. For the calendar year 2018, Employer Z must treat Employee A as a full-time employee only for calendar months during which Employee A would be a full-time employee under the monthly measurement method. For calendar year 2019, the determination of whether Employee A is a full-time employee is made under the monthly measurement method.

*Example 4 (Monthly measurement method to look-back measurement method).* Employee B is a salaried employee of Employer Y. On July 1, 2017, Employee B transfers to an hourly employee position. Based on Employee B's hours of service from October 15, 2015, through October 14, 2016, Employee B would have been treated as a full-time employee for the stability period from January 1, 2017, through December 31, 2017, had the look-back measurement method applicable to hourly employees applied to Employee B for the entire stability period. For the calendar months January 2017 through June 2017 (prior to Employee B's change to hourly employee status), Employee B's status as a full-time employee is determined using the monthly measurement method. For the calendar months July 2017 through December 2017, Employer Y must treat Employee B as a full-time employee because Employee B would have been treated as a full-time employee during that portion of the stability period had the look-back measurement method applied to Employee B for that entire stability period. Employee B is employed for hours of service from October 15, 2016, through October 14, 2017, such that under the applicable look-back measurement method Employee B would be treated as a full-time employee for the period January 1, 2018, through December 31, 2018. Accordingly, Employee B must be treated as a full-time employee for the calendar year 2018. For calendar year 2019, the determination of whether Employee B is a full-time employee is made under the applicable look-back measurement method.

*Example 5 (Monthly measurement method to look-back measurement method).* Same facts as *Example 4*, except that based on Employee B's hours of service from October 15, 2015, through October 14, 2016, Employee B would not have been treated as a full-time employee from January 1, 2017, through Decem-

ber 31, 2017. For the calendar months of 2017, Employer Y applies the monthly measurement method to determine Employee B's status as a full-time employee. Employee B is employed for hours of service from October 15, 2016, through October 14, 2017, such that under the applicable look-back measurement method Employee B would be treated as a full-time employee for the period January 1, 2018, through December 31, 2018. Accordingly, Employee B must be treated as a full-time employee for the calendar year 2018. For calendar year 2019, the determination of whether Employee B is a full-time employee is made under the applicable look-back measurement method.

*Example 6 (Monthly measurement method to look-back measurement method).* Same facts as *Example 4*, except that Employee B is employed for hours of service from October 15, 2016, through October 14, 2017, such that under the applicable look-back measurement method Employee B would not be treated as a full-time employee for the period of January 1, 2018, through December 31, 2018. For the calendar year 2018, Employer Y must treat Employee B as a full-time employee only for calendar months during which Employee B would be a full-time employee under the monthly measurement method.

(2) *Special rule for certain employees to whom minimum value coverage has been continuously offered—(i) In general.* Notwithstanding the rules in paragraphs (e) and (f) of this section, an employer using the look-back measurement method to determine the full-time employee status of an employee may apply the monthly measurement method to that employee beginning on the first day of the fourth full calendar month following the calendar month in which the employee experiences a change in employment status such that, if the employee had begun employment in the new position or status, the employee would have reasonably been expected not to be employed on average at least 30 hours of service per week (for example, the employee has changed to a part-time position of only 20 hours of service per week). This rule only applies with respect to an employee to whom the applicable large employer member offered minimum value coverage by the first day of the calendar month following the employee's initial three full calendar months of employment through the calendar

month in which the change in employment status described in this paragraph (f)(2) occurs, and only if the employee actually averages less than 30 hours of service per week for each of the three full calendar months following the change in employment status. For the three full calendar months between the employee's change in employment status and the application of the monthly measurement method, the employee's full-time employee status is determined based on the employee's status during the applicable stability period(s). Under this rule, an employer may apply the monthly measurement method to an employee even if the employer does not apply the monthly measurement method to the other employees in the same category of employees under paragraph (d)(1)(v) or (d)(3)(v) of this section (for example, under this method an employer could apply the monthly measurement method to an hourly employee, even if the employer uses the look-back measurement method to determine full-time employee status of all other hourly employees). The employer may continue to apply the monthly measurement method through the end of the first full measurement period (and any associated administrative period) that would have applied had the employee remained under the applicable look-back measurement method.

(ii) *Examples.* The following examples illustrate the rule of paragraphs (f)(2) of this section. In each example, the employer is an applicable large employer with 200 full-time employees (including FTEs).

*Example 1 (New variable hour employee, no delay in coverage, becomes non-full-time employee).* (i) *Facts.* Employer Z, an applicable large employer, uses the look-back measurement method to determine the full-time employee status for all of its employees. On May 10, 2015, Employer Z hired Employee A who is a variable hour employee. Although Employee A is a new variable hour employee, so that Employer Z could wait until the end of an initial measurement period to offer coverage to Employee A without an assessable payment under section 4980H with respect to Employee A, Employer Z offers coverage that provides minimum value to Employee A on September 1, 2015. For its ongoing employees, Employer Z has chosen to use a 12-month standard measurement period starting October 15 and a 12-month stability

period associated with that standard measurement period starting January 1. Employee A continues in employment with Employer Z for over five years and averages more than 30 hours of service per week for all measurement periods through the measurement period ending October 14, 2020. On February 12, 2021, Employee A experiences a change in position of employment with Employer Z to a position under which Employer Z reasonably expects Employee A to average less than 30 hours of service per week. For the calendar months after February 2021, Employee A averages less than 30 hours of service per week. Employer Z offered Employee A coverage that provided minimum value continuously from September 1, 2015, through May 31, 2021. Effective June 1, 2021, Employer Z elects to apply the monthly measurement method to determine Employee A's status as a full-time employee for the remainder of the stability period ending December 31, 2021, and the calendar year 2022 (which is through the end of the first full measurement period following the change in employment status plus the associated administrative period). Applying the stability period beginning January 1, 2021, Employer Z treats Employee A as a full-time employee for each calendar month from January 2021 through May 2021. Applying the monthly measurement method, for each calendar month from June 2021 through December 2022, Employer Z treats Employee A as not a full-time employee.

(ii) *Conclusion.* Because Employer Z offered coverage that provided minimum value to Employee A from no later than the first day of the fourth full calendar month following Employee A's start date through the calendar month in which the change in employment status occurred, and because Employee A did not average 30 hours of service per week for any of the three calendar months immediately following Employee A's change in employment status to an employee not reasonably expected to average 30 hours of service per week, Employer Z may use the monthly measurement method to determine the full-time employee status of Employee A beginning on the first day of the fourth month following the change in employment status (June 1, 2021) through the end of the first full measurement period (plus any associated administrative period) immediately following the change in employment status (December 31, 2022). Because Employee A did not average at least 30 hours of service per week for any calendar month from June 2021 through December 2022, Employer Z has properly treated Employee A as not a full-time employee for those calendar months.

*Example 2 (New full-time employee, no delay in coverage, becomes non-full-time employee).* (i) *Facts.* Same facts as *Example 1*, except that



at Employee A's start date, Employer Z reasonably expects that Employee A will average at least 30 hours of service per week. Accordingly, Employer Z offers coverage to Employee A beginning on September 1, 2015, and offers coverage continuously to Employee A for all calendar months through May 2021.

(ii) *Conclusion.* Same as *Example 1*.

(g) *Nonpayment or late payment of premiums.* An applicable large employer member will not be treated as failing to offer to a full-time employee (and his or her dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan for an employee whose coverage under the plan is terminated during the coverage period solely due to the employee failing to make a timely payment of the employee portion of the premium. This treatment continues only through the end of the coverage period (typically the plan year). For this purpose, the rules in § 54.4980B-8, Q&A-5(a), (c), (d) and (e) apply under this section to the payment for coverage with respect to a full-time employee in the same manner that they apply to payment for COBRA continuation coverage under § 54.4980B-8.

(h) *Additional guidance.* With respect to the determination of full-time employee status, including determination of hours of service, the Commissioner may prescribe additional guidance of general applicability, published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter).

(i) *Effective/applicability date.* This section is applicable for periods after December 31, 2014.

[T.D. 9655, 79 FR 8577, Feb. 12, 2014]

**§ 54.4980H-4 Assessable payments under section 4980H(a).**

(a) *In general.* If an applicable large employer member fails to offer to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan for any calendar month, and the applicable large employer member has received a Section 1411 Certification with respect to at least one full-time employee, an assessable payment is imposed. For the calendar month, the applicable large employer member will owe an assess-

able payment equal to the product of the section 4980H(a) applicable payment amount and the number of full-time employees of the applicable large employer member (other than employees in a limited non-assessment period for certain employees and as adjusted in accordance with paragraph (e) of this section). For purposes of this paragraph (a), an applicable large employer member is treated as offering such coverage to its full-time employees (and their dependents) for a calendar month if, for that month, it offers such coverage to all but five percent (or, if greater, five) of its full-time employees (provided that an employee is treated as having been offered coverage only if the employer also offers coverage to that employee's dependents). For purposes of the preceding sentence, an employee in a limited non-assessment period for certain employees is not included in the calculation.

(b) *Offer of coverage—(1) In general.* An applicable large employer member will not be treated as having made an offer of coverage to a full-time employee for a plan year if the employee does not have an effective opportunity to elect to enroll in the coverage at least once with respect to the plan year, or does not have an effective opportunity to decline to enroll if the coverage offered does not provide minimum value or requires an employee contribution for any calendar month of more than 9.5 percent of a monthly amount determined as the federal poverty line for a single individual for the applicable calendar year, divided by 12. For this purpose, the applicable federal poverty line is the federal poverty line for the 48 contiguous states and the District of Columbia. Whether an employee has an effective opportunity to enroll or to decline to enroll is determined based on all the relevant facts and circumstances, including adequacy of notice of the availability of the offer of coverage, the period of time during which acceptance of the offer of coverage may be made, and any other conditions on the offer. An employee's election of coverage from a prior year that continues for the next plan year unless the employee affirmatively