AFFORDABLE CARE ACT COMPLIANCE

Q&A Bulletin #5

June, 2016

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Q & A Bulletin # 5 Dated June 2016

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Welcome to the Affordable Care Act (ACA) Q&A Bulletin!

The Georgia Department of Administrative Services provides the ACA Q&A Bulletin to keep HR leaders in the State of Georgia Executive Branch agencies informed on evolving ACA requirements and to offer practical guidance about how to manage their workforces to minimize related risks. Please note that the information provided in this document is not intended and should not be construed as legal advice. Please consult your organization's attorney for legal advice regarding how the law applies to your organization.

We hope that you find this Bulletin helpful in obtaining answers to your questions efficiently. Each new Bulletin is an accumulation of all previous ACA questions and answers. You do not need to keep prior editions. This edition of the Bulletin has been completely revised and reflects our current analysis of the ACA Final regulations. The revision includes a new organization, modifications to our answers to existing questions, and the addition of new questions. As our understanding of the ACA has evolved, so have our answers to these questions. For this reason, we recommend that even readers who are familiar with the prior versions of the document take the time to review the document in its entirety.

You may review the Bulletin by scrolling through the document or you may click on the link on the Table of Contents page to quickly identify only those questions and answers of interest. The Appendix contains all scenarios and decision trees for visual demonstrations of situations described within the Bulletin.

We understand there may be additional questions as you continue with compliance assessments, and there may be operational issues that we have not yet contemplated. Please keep the lines of communication open by directing any questions to Autumn Cole on the HRA Policy and Compliance team at autumn.cole@doas.ga.gov or 404-463-7057.

Terms and Definitions

The terms below are defined by the ACA Final Regulations and should be applied in all situations involving compliance with the ACA.

TERMS	DEFINITIONS
ADMINISTRATIVE PERIOD	The ACA defines the term administrative period as an optional period, selected by an Applicable Large Employer member, of no longer than ninety (90) days beginning immediately following the end of a look-back / measurement period and ending immediately before the start of the associated stability period. The administrative period is intended to allow time to provide notice to employees of eligibility changes, to offer health coverage, and for employees to enroll in healthcare. The administrative period also includes the period between a new employee's start date and the beginning of the initial look-back / measurement period, if the initial look-back / measurement period does not begin on the employee's start date.
APPLICABLE LARGE EMPLOYER	Applicable Large Employer is a status under the ACA given to an employer that has an obligation to offer minimum essential coverage to full-time employees. This status is established by the total number of full-time employees (including any seasonal workers) for the prior calendar year. If the total number of full-time employees is 50 or more, the employer is an Applicable Larger Employer. See also Section 1, Question 1 for an exception that applies if the employees in excess of 50 were employed for 120 days or less and meet the definition of seasonal.
FULL-TIME EMPLOYEES	A full time employee is an employee working thirty (30) hours a week on average in one month, unless an employer uses a look-back / measurement period, then a full-time employee is an employee with work hours of thirty (30) hours a week on average during a look-back / measurement period.
FULL-TIME EQUIVALENT EMPLOYEES	Generally in determining whether an employer is an Applicable Large Employer, the number of full time equivalent employees (FTEs) it employed during the preceding calendar year is taken into account. All employees (including seasonal workers) who were not employed on average at least thirty (30) hours of service per week for a calendar month in the preceding calendar year are included in calculating the employer's fulltime equivalent employees for that calendar month. To determine the number of FTEs for a particular month, the employer must add up the number of hours of service for all employees who were not employed for at least 30 hours on average per week for that month, then divide that number by 120. The result is the number of FTEs for that calendar month. All fractions are disregarded (for example, 49.5 full-time employees (Including FTEs) for preceding calendar year would be rounded to 49 employees).
LOOK-BACK / MEASURMENT PERIOD	A look-back / measurement period is a period of time allowed under the ACA for an employer to determine whether an employee is considered a full time employee for purposes of the ACA. During the look-back / measurement period the employer monitoring the employee's hours of service for a period of time. At the end of the look-back / measurement period, the employer will average the employee's number of hours of service during that time period. This average will be used to determine whether the employee should be offered healthcare coverage. The State of Georgia will be using a 12 month standard look-back / measurement period. ➢ **Note**: The final regulations authorize large employers to use a look-back / measurement period for variable hour and seasonal employees to test their eligibility

	for healthcare. Therefore, the State's "hourly" employees that meet the definition of variable hour or seasonal employees (see definitions above) do not become immediately eligible to enroll in healthcare within 3 calendar months as other new employees do, even knowing they will work 30 or more hours per week for the season. This outcome results from using a 12 month look-back / measurement period which will most likely average the seasonal worker's hours as being less than 30 hours per week over the measurement period.
ONGOING EMPLOYEE	The term ongoing employee means an employee who has been employed by an Applicable Large Employer member for at least one complete standard look-back / measurement period.
PARITY RULE EXEPTION	Employees with a break in service of less than 13 weeks may still qualify as a new hire if the individual's break in service was more than 4 weeks, and the break in service was longer in duration than the last employment period.
PART-TIME	A part-time employee is an employee reasonably expected to work less than thirty (30) on average during a look-back / measurement period. ➢ **Note:** There is no general definition for a temporary employee. The IRS refers to various temporary employment arrangements as "short-term" and has acknowledge consideration of whether they should issue further guidance regarding "short-term" employment arrangements. Unless and until the IRS issues such guidance, the most important change brought about by the ACA that you must understand is that healthcare eligibility is not tied to duration of employment, but to the number of hours an employee is anticipated to work weekly on average at the time of hire. There are two exceptions – variable hour or seasonal employment.
SEASONAL EMPLOYEES	The ACA defines seasonal employee in two ways: 1) First in the context of determining whether you are a large employer subject to the employer mandate provision of the ACA. See also Section 1, Question 1 below. Employers with employees that work 120 or fewer days a year may subtract this number from their workforce count, if the employer is a large employer due only to seasonal employees. 2) The ACA provides a second definition of a seasonal employee for purposes of eligibility. In this context, seasonal employees are defined as those that typically work six months or less, and whose work begins at approximately the same time each year, such as winter or summer. In some instances, the employee may still be considered seasonal even if the seasonal employment period is extended in a particular year beyond its customary duration (regardless of whether the customary duration is six months or less than six months). An example of such an instance would be a ski instructor with a period of employment with a customary duration of six months, working a seventh month in a particular year due to an unusually long snow season. ➢ ***Note on change in employment status for seasonal employees***: The final regulations provide that if a seasonal employee experiences a change in employment status before the end of the initial look-back / measurement period that transfers the seasonal employee into a permanent, full time (working 30 or more hours per week) position, the employer has to offer insurance within three calendar months following the change in employment status OR if the employee averaged 30 hours or more during the look-back / measurement period, by the first day after the end of the initial look-back / measurement period's administrative period, whichever is shorter.
STABILITY PERIOD	Under the ACA, the term stability period means a period selected by an applicable large employer member that immediately follows, and is associated with, a standard look-back / measurement period (and, if elected by the employer, the administrative period associated with that standard look-back / measurement period or initial look-back / measurement period).

	The Stability period is the period for which an employee's eligibility status is "locked" in. It must at a minimum be as long as the look-back / measurement period. Thus, if an employee is determined to be healthcare eligible using a 12 month look-back / measurement period, then the employee must receive healthcare coverage for the 12 months following the administrative period – regardless of whether the employee's hours fall below the 30 hour a week average during the stability period.
VARIABLE HOUR EMPLOYEE	A new hire is a variable hour employee if at the time of hire you do not know whether the employee will work 30 hours a week on average, or you reasonably believe the employee will work 30 or more hours a week on average for a short period of time only, then work less than 30-hour weeks.
WAITING PERIOD	A waiting period is the period that must pass before coverage for an employee who is otherwise eligible to enroll in health coverage can become effective. This is the period that occurs between an employee's hire date and coverage becoming effective. No waiting period may exceed 90 days.

SECTION 1: GENERAL

1) Is the Affordable Healthcare Act relevant to my agency?

Most likely. The ACA requires employers with 50 or more full-time or full-time equivalent employees (referred to as a large employer) to offer full-time employees healthcare coverage that meets minimum value and is affordable. The Department of Community Health advised in an August, 2013 memo that entities participating in the State Health Benefit Plan may assume that all options offered meet the "affordable" and "minimum value" requirements. Note a copy of the DCH memo can be found in the Appendix of this Bulletin.

A full-time employee is someone that works 30 hours or more a week on average in any month, or someone that works 130 hours in one calendar month. It is important to remember that workers assigned to your agency from a staffing firm could factor into your full-time or full-time equivalent headcount. See Section 6 for a more in-depth conversation regarding how workers assigned from staffing firms may be considered a full-time employee of your agency under the ACA.

For this initial threshold question about whether you are a large employer for purposes of the ACA, you will look at the prior calendar year, count full-time employees (using the ACA definition of at least 30 weekly hours, or the equivalent for salaried employees), pro-rate employees working less than 30 hours per week to determine full-time equivalents, and exclude seasonal employees working 120 or fewer days from the count. Calculate the total for all business days in each month to derive your agency's *average* headcount for the year. If your agency operates 24/7 all days of the week are business days for you.

Example 1: Agency with 30 FLSA-exempt and nonexempt employees working 40 hours a week, 10 part-time employees working 20 hours a week, and 15 additional non-seasonal "hourly" employees working 30 or more hours a week has a workforce count of 51 full-time and full-time equivalent employees. (Calculation: 30+ 15 full-time employees + 10 part-time employees X 80hrs = 800 aggregate hrs. / 120 monthly full-time hrs. = 6 full-time equivalents = 51 total employees. Note: That by dividing by 120, just the first 120 hours of non-full-time employees count. Agency is a large employer

subject to the ACA.

Example 2: Agency with 30 FLSA-exempt and nonexempt employees working 40 hours a week, 15 non-seasonal "hourly" employees working 30 or more hours weekly, and 25 seasonal employees working 30 or more hours weekly for a short period has a workforce count of 45 for most of the year. (Calculation: 30+15 = 45 total employees). Agency is not a large employer subject to the ACA. Because agency only becomes a large employer seasonally, employer may exclude seasonal employees from the count and will not be subject to ACA penalties.

Based on workforce totals in PeopleSoft, the ACA may impact all but five State employers. Please note that the answer in this question assumes each state agency is an individual employer, which is not addressed directly within the ACA for public sector entities. Until such time that further guidance is issued, State agencies are considered separate employers for purposes of the ACA based on the reservation of application of aggregation rules to government entities by the IRS in the Final Regulations.

2) What has changed for employees?

Beginning January 2014 all individuals (with limited exceptions) were required to purchase health insurance after a 90-day grace period or pay a penalty of $95 or up to 1% of income, whichever is greater, progressing to $695 or up to 2.5% of income by 2016. If employees are not offered affordable health insurance that meets minimum value through their employer, they may seek to purchase coverage through the Federal Healthcare Exchange and may be eligible to receive a Federal tax subsidy to offset premium and certain out of pocket costs.

Open enrollment for the Federal Exchange is usually November 1 of the current year through January 31 of the benefit plan year. To view updated information on the current or next benefit plan year enrollments go to: https://www.healthcare.gov/glossary/open-enrollment-period/ .

Therefore, eligible employees not offered affordable health insurance that meets minimum value through the State Health Benefit Plan will have ample time beyond the State's open enrollment period to determine eligibility through the healthcare exchange.

Individuals without healthcare coverage may be assessed a fee when filing income taxes in the following year. There are exceptions and exemptions which employees must coordinate on their own with the IRS, along with specific rules governing coverage for dependents. Precisely how the IRS plans to consolidate ACA-related information from the various reporting sources remains unclear at this time.

State agencies are not responsible for assisting employees with healthcare exchange eligibility and enrollment questions and should avoid providing tax advice to employees. Because employees will likely turn to their HR departments with questions, we have included some federally sponsored online resources. Employees may visit the Federal insurance Exchange website at *HealthCare.gov* to learn more or join a chat room, or call the exchange customer service call center at 1-800-318-2596. Question and Answers by the Internal Revenue Service (IRS) on the Affordable Care Act's provisions and requirements can be accessed here: https://www.irs.gov/Affordable-Care-Act/Affordable-Care-Act-Tax-Provisions-Questions-and-Answers. For questions regarding the 1095-C tax form employees may call the third party

administrator for Information Reporting, Ernst and Young, Helpdesk at 855-314-4222.

3) What has changed for employers?

Prior to the ACA, employers rather than the Fair Labor Standards Act or Georgia State law defined full-time employment or working hour limits for adult employees. The ACA now defines a full-time employee as someone employed for 30 hours or more per week on average in any month. This definition requires agencies to track each employee's full-time status monthly. Alternatively, agencies may retrospectively average hours worked or paid over a longer period of time to project an employee's future full-time status by using the IRS method of look-back / measurement and Stability periods. This method allows agencies to test for full-time status before extending ACA- compliant healthcare benefits to employees who may appear to meet the threshold.

Historically, the State has not determined benefit eligibility based solely on the number of hours worked, but rather on working hours and whether the type of employment relationship was deemed temporary or non-temporary. The State has a number of employment relationships deemed temporary that are not eligible for benefits: temporary; time-limited; seasonal; casual; and interns. With few exceptions, individuals in these positions are hired with an established end-date of 9 months or sooner. Casual employees work on-call and intermittently as needed. Agencies refer to these types of employment relations in the aggregate as "hourly" due to the manner in which wages are calculated. Under the State's past practice, "hourly" employees are not benefit-eligible because they do not meet the two threshold criteria of hours worked and duration of employment. Because they are hired to work a limited period they may have also worked any number of hours without benefits.

By contrast, non-temporary full-time or part-time employees are hired with no established end date and may be paid on an hourly or salaried basis. Part-time employees may be eligible for benefits depending on the number of hours worked. For example, part-time employees in "agencies" (as the term is statutorily defined) that are subject to the State Personnel Board Rules working at least 20 hours a week are eligible for leave. If they work at least 30 hours a week they are deemed full-time for purposes of major healthcare and flexible benefits eligibility. Retirement eligibility begins at 35 hours a week.

Under the ACA, any employee employed for a period of more than three months for 30 hours or more per week must be offered health coverage that meets federally-mandated minimum requirements. Therefore, the ACA changes how we are accustomed to defining benefit-eligible employment relationships. While healthcare eligibility for non-temporary full-time and part-time employees working 30 or more hours will not be impacted, some "hourly" employees working at least three months may now be eligible for healthcare. Agencies will now be required to routinely monitor working hours for these employees, offer healthcare benefits if they reach the new full- time threshold, and report certain information to the IRS. As a result of the ACA, State employers have a number of new employment definitions to consider when making hiring decisions that impact the type of benefits for which employees may be eligible.

4) What happens if I do not offer healthcare coverage to a full-time employee?

Your agency could be subject to costly penalties. There are two types of penalties that may apply depending on whether

eligible employees were offered healthcare insurance at all, or offered healthcare insurance that meets the federally-mandated minimum requirements. Together the penalties are referred to a Pay or Play penalties. Employers with 50 or more full-time or full-time equivalent employees that offer no healthcare insurance to eligible employees will be subject to a penalty of $2,160 for each full-time employee on payroll, minus the first 30, if just one employee purchases insurance on the healthcare exchange. Employers that fail to offer "affordable" health insurance will be subject to the lesser of the above $2,160 per employee penalty, or $3,240 for each employee that purchases from the exchange and qualifies and receives a premium tax credit. There is also a "minimum value" requirement not addressed here. The Federal Department of Health and Human Services (DHHS) will determine when penalties are appropriate and the IRS will enforce the penalties. The IRS began enforcing penalties effective January 2016 for the 2015 benefit plan year.

5) What are my specific responsibilities under the ACA as an HR Leader?

Your responsibilities are:

1**) Identify full-time employees** without benefits today that meet the new full-time threshold, determine whether it is feasible to reduce hours to 29 or less, and make adjustments immediately.

2) Comply with the Fair Labor Standards Act notice requirements for the ACA by **providing written notice** of prescribed content to all new hires on first day of hire;

3) Continue to **monitor working hours** of the workforce to avoid unintentional expansion of employer-subsidized healthcare or noncompliance penalties. Any State entities whose IRS reporting is managed by a third party vendor must diligently review reports provided monthly to identify and address potential risk of noncompliance prior to the Federal Exchange or SHBP open enrollment periods; and

4) **Offer healthcare coverage** to full-time employees as defined by the ACA.

6) What is the prescribed content of the ACA notice to employees?

Employers subject to the Fair Labor Standards Act are required to provide notice of certain benefits to employees. The ACA created a new FLSA provision governing healthcare benefits notice, including timing and content of such notice.

In May 2013 the Federal Department of Labor issued guidance in Technical Release 2013-02 explaining the requirements and what constitutes compliance. Currently there are no penalties for failure to provide notice or timely notice. Although you are free to create your own notice form, the model DOL forms provide assurance that you have included all required content. The model DOL forms as well as Technical Release 2013-02 can be access here: http://www.dol.gov/ebsa/healthreform/regulations/coverageoptionsnotice.html.

7) Can I provide notice of the healthcare exchange to employees electronically?

Yes, if you are confident that you can do so in compliance with the DOL's electronic disclosure safe harbor regulation.

Electronic delivery is sufficient when regular access to a computer is an integral part of an employee's duties. Alternatively, electronic notice may be sufficient if you have an agreement on file with employees in which they have consented to receiving benefit information electronically. Keep in mind that you may meet these requirements for certain groups of employees, but not others. In all cases, ensure you can demonstrate that the employee actually received the information. If in doubt, distribute paper copies. See, http://www.dol.gov/ebsa/newsroom/tr13-02.html for further guidance.

8) Will Georgia mandate a 29-hour workweek for hourly paid employees like other states, local governments, and private employers have done?

No. Assuming that all salaried employees are already eligible for healthcare coverage, the ACA only impacts healthcare eligibility for a subset of the State's hourly wage earners. Many agencies hold work hours for these employees below the 29-hour threshold as a matter of routine business, and have already taken steps to eliminate the variable nature of hours worked by these employees to keep the average below 30 hours a week. The decision not to mandate a 29-hour workweek means that compliance with the ACA will not be centrally controlled, but the responsibility of each State employer. Specifically, HR leaders will be called upon to manage working hours of non-benefit eligible staff.

9) Should I manage new hires differently?

Yes, if you hire different types of employees. The types of employees recognized under the ACA are full-time employees, part-time employees, and variable hour or seasonal employees. For purposes of the ACA, full-time employees must be offered healthcare within 3 calendar months of their hire date. The ACA does not require employers to cover part-time employees (as defined by the ACA, see Definitions Section). Employers may test eligibility of variable hour or seasonal employees using the look-back / measurement period before offering healthcare.

10) Does the ACA change the definition of a seasonal employee?

Yes. The definition of seasonal employee has been ambiguous under various regulations, including the proposed version of the ACA regulations. The final regulations provide a more concrete definition – a seasonal employee is defined as those that typically work six months or less, and whose work begins at approximately the same time each year, such as winter or summer. In some instances, the employee may still be considered seasonal even if the seasonal employment period is extended in a particular year beyond its customary duration (regardless of whether the customary duration is six months or less than six months). An example of such an instance would be a ski instructor with a period of employment with a customary duration of six months, working a seventh month in a particular year due to an unusually long snow season.

See the Definitions Section for additional information on eligibility of seasonal employees under the ACA.

11) What should I be doing right now to ensure my agency is in compliance with the ACA?

Step 1: If you have not already begun to do so, evaluate the different types of employment relationships that

you employ and evaluate whether it is desirable to implement the conservative approaches outlined in this document with regard to individuals hired to work less than one year or from temporary staffing agencies.

Step 2: Communicate any new policy or procedures pertaining to hiring to all hiring managers. It would also be prudent to ensure future hires are coordinated through HR so that you can conduct the proper hiring analyses in a timely manner.

Step 3: Between now and the next open enrollment period, ensure that you have checked full-time status of all employees hired on or before October 16 of the previous year , that meet the full-time threshold as determined at the end of the standard look-back / measurement period. At that time you may offer healthcare coverage as appropriate and in time for the next open enrollment for coverage during the next benefit year.

Step 4: Send communication to employees losing health coverage for the next stability period because it was determined they did not meet the full-time threshold at the end of the look-back /measurement period.

Step 5: Use the available PeopleSoft Queries to monitor working hours at periodic intervals during the standard look-back period and make adjustments to working hours as necessary.

Step 6: Continue to communicate ACA questions and concerns to the DOAS HRA Division.

Step 7: Communicate significant fiscal impact concerns to your budget officers immediately.

Step 8: If a third party administrator is managing your IRS reporting, notify the vendor immediately of any IRS notice that an employee has applied to the Federal exchange for healthcare coverage. Failure to provide the vendor timely notice may result in unnecessary penalties.

SECTION 2: ELIGIBILITY

1) Should I offer healthcare enrollment to all employees to be safe?

No. The State has considered a number of options to determine how best to respond to the ACA. The options included whether to do nothing (pay rather than play), to extend healthcare to all employees, or to prevent additional costs. Because healthcare is employer-subsidized and we must be good stewards of taxpayer dollars, the State has chosen to take steps to prevent additional costs to taxpayers.

2) How can I identify all of my full-time employees?

The regulations allow two methods for determining full-time status: monthly measurement method or the look-back / measurement period method. The State has chosen a 12 month look-back / measurement period. See Section 3 below for more information on how the look-back / measurement period method works.

3) When must agencies offer healthcare to "hourly" employees to comply with the ACA?

It depends. If the employee is hired with the knowledge that he or she will be working 30 hours or more per week on average, health coverage must be offered at the time of hire, after the State's waiting period. However, if the average number of hours worked by the employee will vary, then the employee's hours can be tested under the 12 month look-back / measurement period, and offered health coverage upon verification of eligibility. Review Section 3 for an overview of the how the State's standard look-back / measurement period works and how to apply the look-back / measurement

4) Can non-State entities or entities that do not use PeopleSoft payroll use the public queries?

No. The public queries were tailored for State agencies using PeopleSoft payroll only. However, non-State entities and entities using other payroll systems may benefit from the manual formula noted above when devising their own tracking tool.

5) What if we hire an employee to work six months and the employee works 30 hours a week? When does the employee become eligible for healthcare?

Employers must determine at the time of hire whether the individual is a part-time or full-time employee eligible for healthcare, a variable employee, or a seasonal employee. If the employee is a part-time, variable, or seasonal employee, you are not required to offer healthcare until you test them for eligibility at the end of a full look-back / measurement period. If at the time of employment it is determined that the employee will work 30 or more hours per week and will be employed for a period exceeding 90 days, health coverage must be offered immediately, unless the employee meets the definition of seasonal employee (See Definitions Section).

See Section 1 and Appendix, Attachment 1.

6) Should I manage rehires differently than new hires?

Yes. An individual rehired after a break in service of at least 13 weeks is a new hire. An individual hired after a break in service of less than 13 weeks is a rehire. For educational institutions, an individual rehired after a break in service of at least 26 weeks is a new hire.

The significance of determining whether a hired individual is a new hire or a rehire is that the answer impacts how you will evaluate the individual's full-time status and healthcare eligibility, and therefore ultimately determine when you must offer healthcare coverage. A returning employee with a break in service of less than 13 weeks will be considered as continuing his or her employment, must be credited for hours worked during the most recent look-back / measurement period, and offered immediate healthcare enrollment if the employee's average hours worked or paid meet the full- time threshold.

Exception: Employees with a break in service of less than 13 weeks may still qualify as a new hire if the individual's break in service was more than 4 weeks, and the break in service was longer in duration than the last employment period.

7) An hourly employee works full-time to cover for an employee who is out on long-term leave and who is expected to be granted disability retirement. If the hourly employee is hired permanently, when will the employee become eligible for healthcare?

You must determine at the time of hire for all employees, *regardless of how their pay accrues (hourly or salaried) or the timing of that payment (weekly, semi-monthly, monthly)* whether they are a new hire or rehire, and whether they will work 30 or more hours. If they will work 30 hours or more, you must determine whether they meet the definition of a variable hour employee. In this case, given the term "hourly employee" in the question we assume the individual was hired as an employee, and not from a temporary staffing agency. Because you knew at the time of hire that the individual would work full-time, you are required to offer healthcare coverage. Although you may have initially anticipated the employee to work only a short period of time, that short period of time was not defined with an end date nor was it a defined season. See Section 1 and Appendix, Attachment 1.

8) If the combined hours of an employee working for two State agencies meet the full-time threshold, is the employee eligible for healthcare coverage?

No, unless the employee works 30 hours a week on average at one of the agencies. State agencies are individual employers for purposes of the ACA. See also Section 1, Question 1.

9) If an employee works part-time at a State agency and a technical school, is the employee eligible for healthcare? If so, which entity should pay for coverage? If neither entity offers coverage which entity will pay the penalty?

While technical schools are "agencies" within the meaning of the State Personnel Board Rules, State agencies are individual employers for purposes of the ACA. (See Section 1, Question 1). Therefore, both the technical school and

the State agency is required to individually track the working hours of the employee during the look-back / measurement period and offer healthcare when appropriate. However, we interpret this question as getting at the broader issue of which agency will pay the employer contribution for a dual employed employee. The employer for whom the employee works an average of 30 hours or more per week carries the responsibility for offering healthcare and paying the employer contribution. Non-permanent employees that work less than an average of 30 hours weekly in any one month for two different employers are not eligible for healthcare.

It is important to remember that whether State agencies are individual employers or one employer varies among different laws. For example, under the Family and Medical Leave Act (FMLA), State agencies are considered one employer. Therefore, an employee's entitlement to 12 weeks (or 26 weeks for military caregiver leave) of unpaid leave for qualifying reasons is spread among all State agency employers. The hours worked by an employee for multiple State agencies are combined for purposes of determining FMLA eligibility. This is in contrast to the ACA, under which the hours worked are not combined for determining healthcare coverage eligibility when an employee works for multiple State agencies.

10) When a temporary employee is offered med-only coverage under the ACA, but later experiences an employment status change to regular, non-temporary employee, will the employee be offered health insurance again upon the status change?

No. In this situation, the employee was hired as a temporary employee and with the knowledge that he or she would be working 30 hours or more per week for longer than 3 months, requiring the employing agency to offer med-only insurance coverage upon hire. Then upon the employment status change to a regular, non-temporary employee, the employee was coded in PeopleSoft / TeamWorks as full-benefits eligible (rather than med-only). However, there was no change in the employee's eligibility for health coverage, and no qualifying event to initiate a change in benefit election. It may be helpful to review the SHBP Eligibility & Enrollment document, see Section 3 on Qualifying Events That Allow Coverage Changes: http://dch.georgia.gov/sites/dch.georgia.gov/files/related_files/site_page/Eligibility-and-Enrollment-Provisions-Effective-January-1-2016.pdf.

11) My agency hires employees on an hourly position for a 3-month probationary period. At the end of the probationary period, some are moved to a full-time position, some are terminated, and some may be extended before a final hiring decision is made. How does the ACA impact this program?

We assume from your question that you hire year-round and not seasonally. We likewise assume these employees would not meet the variable employee definition of the ACA. They will work at least 30 hours weekly during the probationary period and working hours will not be reduced at some point within the year. Therefore, unless you are able to hold weekly hours below 30 or reduce the duration of the probationary period, these employees will be eligible for healthcare. See Section 1 and Appendix, Attachment 1.

SECTION 3: LOOK-BACK PERIOD / STABILITY PERIOD / ADMINISTRATIVE PERIOD / WAITING PERIOD

1) What does it mean to use a Look-back/Measurement or Stability period?

The ACA requires employers to offer healthcare coverage to all full-time employees, defined as anyone that works a weekly average of 30 hours for a period of employment more than three months. Look-back /measurement period and Stability periods refer to a practical method for identifying full-time employees other than month-to-month calculations. The look-back / measurement period allows you to look backwards at the average weekly hours actually worked by employees to determine if they should be considered full-time and offered healthcare during a future stability period.

Regulations also authorize an administrative period of no more than 90 days between the look-back / measurement period and stability period to give you time to provide notice of eligibility changes, to offer health coverage, and for employees to enroll in healthcare either through the State Health Benefit Plan or Federal Health Insurance Exchange.

The look-back/measurement period must be at least 3 months, but no more than 12 months. The longer the look-back / measurement period the greater chance that fluctuation in working hours will average out. Whatever period used to measure eligibility becomes the minimum period used during the stability period. The stability period can be longer, but not shorter than the look-back / measurement period, but may in no circumstances be less than 6 months. The stability period must also immediately follow the administrative period, or the look-back / measurement period, if no administrative period is used.

See Question 6 in this Section below for information on the standard look-back / measurement period chosen by the State, and Question 8 for a discussion of the administrative period that will be used by the State.

2) What is the overall process for using the Look-back / Measurement and Stability periods?

Example: Using a 12-month look-back / measurement period, an administrative period of less than 90 days that incorporates an Open Enrollment period of Oct 21- Nov 8, and a stability period of 12 months:

Step 1: Calculate average weekly hours for the look-back / measurement period chosen:

$$\frac{\text{Total working hours}}{\text{\# Wks. in look-back /measurement period}} = \text{Average weekly hours}$$

Agencies with small workforces and minimal number of hourly employees can calculate full-time status manually as noted above.

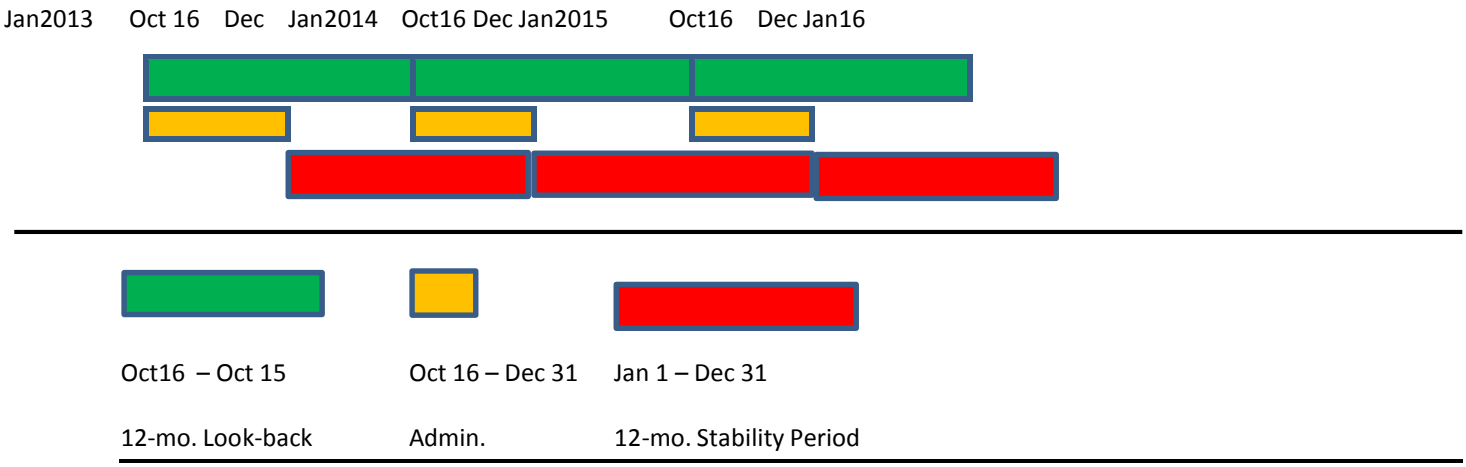
For the convenience of agencies with larger workforces and a significant number of hourly employees, HRA has partnered with the State Accounting Office to provide a semi-automated manner for agencies using TeamWorks (PeopleSoft) payroll

to identify full-time employees using public queries. Please refer to this link for additional detailed guidance: Queries for ACA Look-back. These queries are for entities that use TeamWorks (PeopleSoft) payroll only and will work for agencies on monthly or semi-monthly payroll cycles.

You will also have the ability to spot check working hours of employees throughout the look-back /measurement period using 3, 6, and 9 month queries, which will allow you to make adjustments as necessary throughout the look-back /measurement period. Once the standard look-back /measurement period ends, any employee that worked 30 hours weekly on average must be offered healthcare coverage for the duration of the subsequent stability period.

Step 2: Provide notice of healthcare eligibility and enrollment to newly identified full-time employees during the Administrative period.

Step 3: Repeat. The periods will necessarily overlap to avoid gaps in coverage as depicted below:



In the above graph, the standard look-back /measurement period is October 16 in year 1 to October 15 in year 2. The administrative period encompasses the current Open Enrollment period to allow employees employed for the entire look-back /measurement period meeting the full-time threshold to enroll in healthcare. The administrative period is less than 90 days and immediately follows a 12-month look-back / measurement period. The stability period runs concurrently with the normal benefit plan year of January through December.

3) What is included in total working hours?

Total working hours used in calculating average hours worked by an employee includes time actually worked, any paid time off, and any unpaid protected leave, such as Family Medical Leave, Military Leave, jury duty, among others. There are two calculation methods from which to choose to account for a ***returning*** employee's period of absence during the look-back / measurement period due to special unpaid leave.

(1) The employer would determine the employee's average hours of service for a look-back / measurement period by computing the average after excluding any special unpaid leave during that look-back / measurement period

and using that average as the average for the entire look-back / measurement period; or

(2) Alternately, the employer could treat the employee as credited with hours of service for any periods of special unpaid leave during that look-back / measurement period at a rate equal to the average weekly rate at which the employee worked during that same measurement period.

There is no clean system solution to automate this calculation because the period of leave will be so varied. We recommend that you ensure you know which employees are out on protected leave and do a manual calculation for those employees. Please reference the scenario examples attached to this document.

See also Appendix, Examples 8 and 9.

4) Is the Stability period always the calendar year/plan year time frame of January – December?

The standard stability period is always the calendar year / plan year time frame of January – December. Some employees may have an initial stability period associated with the employee's initial look-back / measurement period. See the Appendix for visual examples of how the initial look-back / measurement and stability periods interact with the standard look-back / measurement and stability periods.

5) What is the waiting period for any part-time employee once they have been deemed eligible for health benefit?

Reference the definition of part-time employee contained in Definitions Section. An individual hired to work 30 hours per week is considered a full-time employee eligible for healthcare. Such an employee should be offered healthcare upon hire. Part-time employees are not eligible for healthcare. If a part-time employee is later found to be working 30 hours or more on average for a full look-back / measurement period the employee becomes a full-time employee for purposes of healthcare coverage during the subsequent stability period. The employer would offer the, now, full-time employee healthcare coverage during the next regular open enrollment period.

All employees, including employees not eligible for healthcare, are tested for full-time status after the standard look-back / measurement period. The benefit of using the look-back / measurement period is that it locks down an employee's eligibility or non-eligibility for the duration of the subsequent Stability period, and therefore assures employers they will not be subject to penalties, regardless of the hours employees may be working during the Stability period. Said another way, eligibility is not determined in real time. It is determined by the past look-back / measurement period. Therefore, an employee who did not meet the full-time threshold during a previous look-back / measurement period whose hours increase to full-time during a current Stability period is not offered healthcare until the next open enrollment period because the State's standard stability period begins January 1.

If an employee on a part time position is transferred to a full time position during a look-back / measurement period, the employee will then become eligible for health insurance coverage within the 90 day period following the transition. However, because the State's waiting period is less than 90 days, in practice the employee in this situation would be offered healthcare immediately.

6) Will Georgia have a standard look-back / measurement period?

Yes. The standard look-back / measurement period will be 12 months. A 12-month look-back / measurement period helps to minimize the administrative burden associated with repeated determination of full-time status; helps to limit enrollment activity; and provides cushion to adjust hours of employees coming close to the weekly average before the look-back / measurement period ends. The State's standard look-back / measurement period will be October 16 to October 15 of the following year.

Please note that the final regulations authorize Applicable Large Employers to use a look-back / measurement period for variable hour and seasonal employees to test their eligibility for healthcare. Therefore, the State's "hourly" employees that meet the definition of variable hour or seasonal employees (see Definitions Section) do not become immediately eligible to enroll in healthcare within 3 calendar months as other new employees do, even knowing they will work 30 or more hours per week for the season. This outcome results from using a 12 month look-back / measurement period which will most likely average the seasonal worker's hours as being less than 30 hours per week.

7) Does using the look-back / measurement and administrative periods mean that the State's open enrollment period will be extended?

No. Georgia's Open Enrollment period will remain standardized for all employees. Just like today, all current employees should enroll during the State's open enrollment period. New hires, rehires, and newly eligible variable hour employees may enroll upon hire or upon eligibility, whichever the case. When a new hire, rehire, or newly eligible variable hour employee is coded in PeopleSoft/TeamWorks as being med-only eligible in either the HNF or HBP Benefit Program code, a 31-day enrollment window is opened for benefits selection.

8) Is an administrative period required?

No. The ACA permits up to a 90-day gap between the look-back / measurement and the stability periods to allow time to coordinate written notice of benefits eligibility and enrollment administration. Georgia will take advantage of such a period. However, because the State has chosen a 12 month look-back / measurement period, the administrative period can only be 30 days, as the ACA regulations require that a new hire be placed on health insurance coverage no more than 13 months after the first day of hire.

Please note that 90 days does not mean three months.

9) There are multiple time frames to consider. How are they related?

The ACA requires large employers to offer healthcare coverage within *3 calendar months* to employees hired to work at least 30 hours a week.

By contrast, the federally-imposed maximum waiting period is *90 days*. A waiting period is the period that must pass before coverage for an employee who is otherwise eligible to enroll in health coverage can become effective. For some

employees you will know the employee's eligibility status at the time of hire. For such employees, the waiting period is the period that lapses between coding the employee as benefit eligible in PeopleSoft/TeamWorks, and when the employee's coverage, if elected, becomes effective. For other employees (seasonal or variable hour) you will want to test their full-time status during a look-back / measurement period, either because you don't know how many hours they will work or they will work fluctuating hours, before you can determine eligibility.

Although the federally-imposed maximum for a waiting period is 90 days, the *State Health Benefit Plan waiting period is up to 60 days*. Healthcare coverage "shall become effective on the first of the month following employment for the full preceding calendar month if the employee has not terminated employment on or before that date." DCH Board Rule 111-4-1-.05. Therefore, to treat all employees eligible for healthcare at hire equally, employers must offer healthcare within the timeframe outlined in the above-cited DCH Board Rule, regardless of the more liberal Federal waiting period maximum.

The ACA administrative period may be no longer than *90 days*. The administrative period comes into play after you have tested for full-time status during the standardized 12-month look-back / measurement period. The State's standard administrative period was carefully designed to incorporate the above Federal and State requirements.

Finally, the first question of this Q&A document referred to a 120-day threshold. The 120-day timeframe comes into consideration only when determining whether your agency is a large employer subject to the ACA.

10) How do I manage employees hired in the middle of the standard look-back/measurement period?

Below is a written explanation. For a pictorial explanation see Attachment 1: ACA Decision making Flowchart.

When hiring, agencies must now ask a number of questions at the time of hire:

1) is the individual a new hire or rehire?
2) Will the individual work 30 hours a week?
3) If the individual is a new hire that you anticipate will work 30 hours a week or more, is the individual a variable hour or seasonal employee?

If the person hired will definitively work less than 30 hours a week there is no requirement to offer healthcare coverage until there is an employment status change that requires the workers hours to increase to 30 hours or more.

If the person is a new hire that will work 30 hours or more a week you must offer healthcare coverage after the State's waiting period.

If the person hired is a rehired full-time employee, you must deem the employee full-time and offer healthcare coverage

immediately. If the rehire is a variable hour employee, .once the rehire is employed for a full look-back/measurement period you can test again to determine whether the rehire has remained eligible.

If the person hired is a new hire and a variable hour or seasonal employee, you will not offer healthcare coverage immediately. You will use a 12-month look-back / measurement that begins on their date of hire. This is an *Initial look-back / measurement period.* An initial look-back / measurement period differs from the State's standard look-back / measurement period described in Section 3 in that an Initial period begins on the date of hire. For variable hour and seasonal employees you will test two times for eligibility within the first year of employment. You will test for healthcare eligibility at the end of the Initial Look-back / Measurement period, and again at the end of the State's standard look-back / measurement period.

Alternatively, rather than ask yourself these questions at the time of hire, you may implement a conservative approach within your agency and mandate that all new staff hired to work less than a year work no more than 29 hours weekly.

Caution: If the same seasonal or temporary employee returns to employment repeatedly, be sure to conduct the new hire and rehire analysis. The individual may be a new hire upon the first hire date, but become a rehire thereafter.

Caution: Considering the lack of ACA or regulatory guidance regarding multiple government entities in the context of calculating Play or Pay penalties, hiring individuals that worked at other State entities may also require agencies to consider individuals as rehires rather than new hires. Take care to enforce State Personnel Board Rule 7 regarding secondary employment, and to ask applicants about work at other State entities upon hire, so that you can make an informed hiring decision.

See Appendix, Examples 5 through 7.

11) If an hourly person is hired or determined to be eligible for coverage in the middle of the standard look- back / measurement period, would they sign up for coverage at that time?

No. You must determine at the time of hire for all employees, *regardless of how their pay accrues (hourly or salaried) or the timing of that payment (weekly, semi-monthly, monthly)* whether they are a new hire or rehire, and whether they will work 30 or more hours. You may refer to Section 1, above, for information about how the ACA changes how State employers must define benefit-eligible employees.

A variable hour or seasonal employee that begins employment outside of the standard look-back / measurement period will have his/her initial look-back / measurement period begin at the point of employment and continue for 12 months. At that point, a determination must be made as to the person's eligibility for health insurance. The ACA allows for a 13 month window from the date of hire. In contrast to the standard look-back / measurement period used for ongoing employees, when an initial look-back / measurement period of 12 months is used for new employees the Administrative period is reduced to one month.

(12mos. look-back / measurement + 1 admin = 13 months). See also Appendix, Examples 1 through 4.

12) What happens when a variable hour employee's Stability Period ends sometime after the standard open enrollment period in October, and employee will be losing coverage due to a drop in hourly average below 30 hours per week?

In this situation, the employee in his or her initial look-back / measurement period averaged 30 hours or more per week, was offered coverage, and that coverage eligibility was locked in for the next 12 months of the stability period, ending at some point after the standard open enrollment in October (sometime in November or December). During that 12 month stability period the employee's hours then dropped below 30 hours per week on average. However, because the employee's eligibility was locked in through the end of the stability period, the employee will still be in a benefits eligible code in PeopleSoft / TeamWorks during open enrollment, despite the fact the employee is no long eligible for the next benefit plan year due to the drop in average weekly hours. The employee will receive open enrollment notifications in October, but then be removed from the benefits eligible code at the end of the stability period (November or December), before the new benefits plan year begins. There is no system fix to prevent such an employee from receiving the open enrollment notifications. Therefore, it is imperative that agencies monitor these situations closely and communicate to the employee about the loss in coverage eligibility, and that the open enrollment notifications will not affect the employee's loss in eligibility for the next plan year.

13) Must I continue to offer health coverage to an employee who has an employment status change from a full-time position to a part-time position working?

It depends on when the employment status change occurs and if the employee's employment is continuous. If the employment status change occurs in the middle of a stability period (see Section 3), then the employee remains benefit eligible for med-only benefits (not flexible benefits) through the end of the current stability period. This is only if the current stability period relates to a look-back / measurement period during which the employee averaged 30 hours or more per week. If the employment status change occurs during the middle of a look-back / measurement period, the employee's benefit eligibility for the associated stability period will still depend on the amount of hours worked over the course of the look-back / measurement period. Therefore, the timing of the employment status change (whether at the beginning or end of a look-back / measurement period) will determine if there is an obligation to continue health coverage, and for how long.

For example, Employee A had an employment status change from full-time to part-time in July of 2015, during the standard look-back / measurement period from October 2014 to October 2015, and averaged 30 hours or more per week over the course of that look-back / measurement period. Regardless of the number of hours Employee A is currently working, Employee A is eligible for healthcare coverage for the entire associated stability period beginning January 1, 2016, and ending December 31, 2016.

Therefore, it is recommended to take timing into consideration before allowing an employee to have an employment status change from full-time to part-time during the middle of a look-back / measurement period or stability period.

14) What happens when an employee has an employment status change from part-time to full-time?

It depends on whether the employee is ongoing, or if the employment change occurred during the initial look-back / measurement period. If the employee is a variable hour or seasonal employee, and the employment status change to full-time (working 30 or more hours per week) occurs during the initial look-back / measurement period, you must offer health coverage within three calendar months following the change in employment status. OR if the employee averaged 30 hours or more during the look-back / measurement, by the first day after the end of the initial look-back / measurement period's administrative period, whichever is shorter.

If an *ongoing employee* experiences a change in employment status before the end of a stability period, the change will not affect the classification of the employee for the remainder of the stability period (see Section 3 for information on stability periods). Therefore, if an ongoing employee experiences a change from a part-time to full-time status during the middle of a stability period, the employee remains not eligible for benefits until the end of the stability period, despite the fact the employee is now working 30 hours or more per week.

SECTION 4: EMPLOYER AND EMPLOYEE PREMIUMS

1) How do we pay SHBP cost for hourly positions?

Employer-paid contributions are based on an agency's prorated portion of the State's payroll. Contributions are based on an agency's benefit-eligible positions. If an hourly position is coded as having medical coverage eligibility, it will be included in the monthly bill allocated to the agency.

2) Will employing agencies be required to pay the employer share of SHBP health coverage for ACA eligible temporary or other hourly employees?

Yes. Employer contribution will begin once an employee is placed in one of the med-only benefit programs (either HNF or HBP Benefit Program code) in PeopleSoft/TeamWorks.

3) What is the effective date of the employer premium?

The employer premiums are dependent on when the employee is placed in one of the med-only benefit programs (either HNF or HBP Benefit Program code), and begin the month before the first month of med-only eligibility. For more information please see the State Health Benefit Plan ACA Effective Date Guide in the Appendix of this Bulletin.

4) How will an employing agency collect the employee's portion of the premium if working hours have been significantly reduced during the stability period?

Assuming the employee elected coverage under SHBP, the premium would show on the agency bill. Therefore, the employee would pay the agency directly, in a similar manner to the Leave without Pay process.

SECTION 5: REHIRED RETIREES

1) How should I manage rehired retirees?

Rehired retirees should be managed with the same attention that you will now manage other employees. The ACA and related regulations do not contemplate state-specific laws such as Georgia's law governing rehired retirees. You must conduct the same analysis with rehired retirees as you would with other hires to determine whether they are new hires or rehires.

It will also become increasingly important to avoid misclassifying rehired retirees as independent contractors, unless you are confident the designation will withstand IRS scrutiny. Independent contractors are not employees subject to the ACA.

One quick way to test whether a re-employed retiree is an employee or a bona fide independent contractor is to determine whether the retiree is registered to conduct business in the State and has other clients. If the answer is yes, the retiree has likely become a bona fide independent contractor depending on all the circumstances. Independent contractors are not placed on State positions within PeopleSoft, but governed by a written contractual agreement. Therefore, they would not be identified through the payroll process.

2) Can a rehired retiree elect to have the employee portion of the healthcare premium continue to be deducted from the ERS pension (because the rehired retiree chooses not to enroll in health coverage as an "active employee")? And if so, would the hiring agency avoid responsibility for the employer portion of the premium?

No. There is no choice as to where the employee portion of the premium is deducted if the rehired retiree is eligible for ACA med-only coverage. When a retiree returns to work and becomes eligible for ACA med-only coverage, the SHBP Rules require employee premiums to be taken from the employing agency payroll as an active member, rather than from the retiree pension. This is regardless of whether the retiree is only planning on working 1,040 hours during the calendar year. The key is that the individual is working an average of 30 hours per week. The hiring agency will be responsible for the employer portion of the premium, regardless of whether the rehired retiree elects coverage as an "active employee."

3) When a rehired retiree is entered into PeopleSoft/TeamWorks by the hiring agency, and the PeopleSoft code makes the rehired retiree eligible for health coverage, what ADP/SHBP actions are generated by the entry?

A 31-day enrollment window is opened for the rehired retiree's benefits selection. Furthermore, based on the rehired retiree being an active employee, the file sent to ERS/TRS from SHBP will automatically terminate the retiree health coverage.

4) If a rehired retiree declines coverage as an "employee," does the hiring agency avoid responsibility for the employer portion of the premium?

No. The hiring agency will be responsible for the employer portion of the premium regardless of whether the rehired retiree elects coverage. The hiring agency becomes responsible for the employer portion of the premium as soon as the rehired retiree is entered into PeopleSoft/TeamWorks as being ACA benefit eligible (or full benefits eligible).

5) What actions need to take place to reinstate coverage through ERS when an ACA eligible rehired retiree terminates employment?

SHBP is in the process of developing a policy for this process in collaboration with ADP. In the meantime, the following steps must be taken to ensure the retiree's coverage through ERS is reinstated.

- Agency must enter termination action in PeopleSoft
- Retiree must contact SHBP member services and request to reinstate coverage through ERS and have premiums taken from pension

Note: If a premium is missed, it can be paid by the rehired retiree member directly to SHBP (i.e., direct pay status).

SECTION 6: STAFFING AGENCIES / CONTRACTORS (1099) / INTERNS

These answers are based on what is known at this time and draw upon resources such as the Fair Labor Standards Act provisions, DOL Fact Sheets, and case law as necessary. The IRS has expressed intention to address the need for further guidance regarding short-term employees (defined in this document as non-seasonal employees on State positions hired to work less than a year); employees borrowed from temporary staffing agencies; and interns. Future answers to these same questions may change.

1) Does the ACA apply to independent contractors?

No. The ACA applies to employees, not independent contractors. Nevertheless, it will become increasingly important that you are precise when designating individuals as independent contractors (1099 employees) rather than employees. The consequences for misclassification include the inconvenience of a Federal DOL audit, costly settlement or litigation, and now the added cost of ACA penalties with retroactive employer-paid subsidies likely. Whether an individual is an employee or independent contractor is a fact-intensive, multi-factor test. It would be prudent to work with your normal legal advisor if you have questions about whether individuals working in your workforce are bona fide independent contractors.

2) How do we handle temporary employees?

For purposes of this question, a temporary employee is defined as a new hire hired to work more than 90 days, but less than 12 months, on a non-seasonal basis. The ACA calls this relationship a "short-term" employee. A short-term employee that will work less than 30 hours a week is not eligible for healthcare. If the employee will work 30 or more hours a week, you must offer healthcare coverage within 3 calendar months of the hire date.

3) Are students that rotate between school and their educational institution (co-ops) or interns in general eligible for healthcare coverage?

The ACA does not apply to unpaid interns/externs because the definition of "hours of service" under Section 4890H applies only to hours for which an employee is paid or entitled to payment. For a number of reasons, we anticipate that agencies will not need to offer healthcare coverage to paid interns/externs hired for the first time due to the short length of employment. Because interns/externs traditionally work on a semester basis, they will not be subject to ACA because they will work for less than 90 days initially. Where they work for a longer period of time, or on a recurring basis, we anticipate they will meet the part-time or variable hour definitions of the ACA, and as such will not become eligible for healthcare either because they will not work 30 hour weeks or they will not work for a full look-back / measurement period. However, if you hire a paid intern/extern to work more than 90 days, at 30 hours or more, you will need to offer med-only coverage.

As for paid interns/externs, the final regulations for ACA provide an exception for hours of service performed by students which are subsidized by a Federal work study program or a substantially similar program of a State or political subdivision. Hours of service for which the student employee is paid other than through the Federal work study program or similar State or government equivalent are required to be counted in determining whether an employee meets full time eligibility. Due to the potential for misuse, the final regulations do not provide an exception for paid

internships or externships; therefore, employees in those arrangements should be treated in the same manner as other employees. Meaning, agencies should evaluate interns/externs using the same analysis applied with other hires as outlined within this document.

Therefore, for the above reasons the DOAS HRA Division must recommend a conservative approach when hiring interns/externs. Hire interns/externs to work no longer than three months or keep working hours below 30 hours, and avoid rehiring within the same calendar year. If you are an agency on the cusp of becoming a large employer, manage the total number of interns/externs hired to stay below the 50-employee threshold.

4) If I contract for labor from a staffing firm, must my agency offer healthcare to the worker?

Yes. Assuming the worker works full time hours for more than 3 months, your agency has an obligation to offer affordable healthcare coverage to the worker only if your agency is the common law employer. Note that SHBP cannot accept temp staffing workers as members of the SHBP. See below to gain a full understanding of your obligations in third-party employment arrangements and how to fulfill them by invoking the ACA Safe Harbor Exemption.

5) How do I know whether my agency is the common law employer?

You will need to examine the circumstances for each assigned worker against the IRS common law employer standard, often used in the context of whether a worker is an independent contractor or employee. Whether your agency is the common law employer of an employee assigned by a staffing firm depends on multiple factors, which you can view here: https://www.irs.gov/taxtopics/tc762.html. You will note that the test for common law employer is the same as is applied to independent contractors for tax purposes. No one factor is controlling. The IRS will consider all factors together to determine who controls what work must be done and how it must be done.

Based on review of past IRS guidance to other employers in the employment tax context, there will be circumstances in which a staffing firm is the common law employer, and circumstances in which the client of the staffing firm is the common law employer. Because the circumstances of each placement from a staffing agency differ, DOAS strongly encourages HR leaders and normal legal counsel to apply the above-referenced IRS common law employer test to each placement.

6) What if the staffing firm designates itself as the common law employer in contract and offers healthcare to the worker?

The staffing firm's self-designation as the common law employer will not shield against penalties if the IRS determines the agency is the common law employer.

7) If the staffing firm pays the employee assigned to my agency, isn't the staffing firm the common law employer?

Not necessarily. Whether your agency is the common law employer is not a straightforward test, and unfortunately guidance thus far from the IRS has not been direct or practical in the specific context of the ACA and third-party employment relationships.

Traditionally, we have relied on the belief that because a staffing firm actually pays a worker, the assigned worker is an employee of the staffing firm. However the IRS deems the entity that administers pay, and sometimes other benefits, as merely the Employer of Record. The Employer of Record is different from the Common Law Employer. According to the IRS common law employer test, the common law employer is the entity that controls what work is done and how the work is done. You will note that the IRS common law test does not list the party that pays the employee as a determining factor. See Section 6, Question 5 above for information on the IRS common law employer standard.

8) If my agency is the common law employer, can a staffing firm offer healthcare benefits to the employee on my behalf?

Yes. The ACA Final Rule clarified that "in the typical case in which the professional employer organization or staffing firm is not the common law employer…," offers of coverage made by the staffing firm on behalf of an employer fulfill the employer's obligation under the Employer Mandate if the fee the employer pays to the staffing firm is higher than the fee paid for the same employee if the employee did not enroll in healthcare coverage." 26 C.F.R. § 54.4980H-4(b)(2). The ACA Final Regulations provide no guidance about the adequacy of the fee in terms of whether it must cover the cost of healthcare coverage for the assigned employee. DOAS will negotiate these fees with each vendor awarded on a statewide contract, and renegotiate such fees as necessary when the option to renew is exercised or upon new awards. DOAS will also require vendors to report this fee transparently to client agencies on the last invoice of the month per assigned employee enrolled in coverage on behalf of the client agency. An across-the-board fee for all employees will not serve as a safe harbor against IRS penalties imposed upon a common law employer that failed to offer healthcare or failed to offer the proper level of healthcare coverage. Rather, the fee must be paid as a differential for employees whose assignment with a State agency makes them eligible for healthcare coverage under the ACA. Agencies that do not utilize vendors on the statewide contract must manage these ACA related risks associated with the use of temporary staff on their own.

Agencies should only pay the additional ACA fee if they believe they are the common law employer, rather than the staffing firm. If an agency is the common law employer the agency must ensure the temporary worker has been offered ACA coverage. The agency may meet its obligation to offer healthcare to its common law employees by taking advantage of the Safe Harbor Exemption provision in the ACA regulations. To take advantage of the Safe Harbor Exemption the agency common law employer must pay an additional fee as explained in the above paragraph.

To manage the risk of IRS penalties, the State will require temporary staffing firms to offer healthcare coverage to its workers and indemnify the agencies from any potential penalties. There are two potential penalties tied to the employer mandate of the ACA. The offer of Minimum Essential Coverage (MEC) by the staffing firm on behalf of the client agency manages the risk for State agencies against receiving the first type of penalty. The second penalty will only occur if a

worker goes out to the health exchange and receives a premium tax credit and the MEC plan offered on behalf of the common law employer is unaffordable and does not meet minimum value requirements. Therefore, both of these risks will be centrally managed by DOAS for agencies that purchase off of the statewide contract.

We encourage you to work closely with your normal legal counsel to evaluate the specific circumstances of each placement from a staffing firm against the common law employer test used by the IRS and to reconcile invoices from a staffing firm to ensure your agency pays additional fees for temporary staffing assignments only when appropriate. The additional fee should only be paid for workers assigned to your agency that are eligible for health care based on hours worked for your agency. As a reminder, the obligation to offer affordable healthcare that meets minimum value or to pay applicable penalties will be based on the size of the full-time workforce of the common law employer. If an agency is the common law employer, all workers assigned from a staffing firm must be included in the agency's FTE count.

While using only those vendors on the statewide contract is not mandatory, DOAS strongly encourages agencies to consider this option going forward to assist in managing this risk and the potential impact to you budgets. Keep in mind that agencies will not receive additional appropriations to pay the ACA Safe Harbor fees.

9) My agency often uses a temp-to-perm method, in which a temporary staffing firm assigns an employee short term, after which we offer State employment to the worker. How do I manage this situation?

During the period the individual is assigned short term from a temporary staffing firm you should analyze the employment relationship against the common law employer test to determine whether the staffing firm or your agency is the common law employer. The result of that analysis will determine how you should manage the individual until you hire the individual as a State employee, at which time your agency would manage the individual as you would any other employee.

Note: Although the IRS has announced intent to provide future guidance, it is unclear whether such guidance will address the narrow hypothetical scenarios presented in the proposed and final regulations concerning improper use of a staffing company, or provide new guidance about whether the staffing company or client of the staffing company is the common law employer. In the meantime, we encourage HR leaders to discuss this Q&A guidance with their leadership staff, including their normal legal counsel, to determine whether your agency is a common law employer, and to consider centralizing management of temporary staffing utilization and billing within their agencies to better manage associated ACA risks. As a reminder, ACA penalties were first applicable to the 2015 plan year. Employers must ensure they offered Minimum Essential Coverage to at least 70% of their total full-time workforce in 2015, and at least 95% in 2016. If you are the common law employer of an individual assigned to your agency, your employee count for purposes of determining whether the ACA is applicable, and the above percentages must include full time individuals assigned by a staffing agency.

SECTION 7: TECHNICAL--PEOPLESOFT DATA INPUT

1) Once we have identified full-time employees eligible for healthcare coverage, how should we create the record in PS to show that they are eligible for flexible benefits or healthcare?

The ACA pertains to healthcare eligibility only. The Federal law does not mandate eligibility for any other employment benefit, including flexible benefits or paid leave. The State will not be extending flexible benefits participation to temporary employees or hourly employees eligible for healthcare coverage under the ACA (working 30 hours or more per week), but who do not meet the State's requirement for flexible benefits eligibility of regular, non-temporary employment of more than 9 months at 30 hours or more. This decision is based on the temporary nature of these employment relationships and the fact that the State's payroll, including pay deductions, is administered on a lag, among other considerations.

Two new benefits codes were established to assign qualifying employees for healthcare coverage under the ACA for agencies using TeamWorks PeopleSoft. See the ACA Med-only Assignment Job Aide attached in the Appendix of this Bulletin for more information.

2) Can we rely on the PS public queries to identify our healthcare eligible employees?

Yes.

3) Does "Hrly Emp Type" with "RGH" listed for all employees in the PS public query refer to "Regular Hours"?

Yes.

4) Does "Hourly Hours" mean the total number of hours worked?

Yes. This label is found on the ACA query and should contain the total regular hours without overtime worked during the designated period.

5) Does "Sum OT Hrs." mean a summary of overtime hours worked?

Yes. "Sum OT Hrs." adds together all overtime hours worked.

6) Should I add "Sum OT Hrs." to "Hourly Hours" to determine total hours worked?

No. "Sum OT Hrs." and "Hourly Hours" are added together in column R labeled "Total Hours".

7) Does "12 Month Avg per Week" reflect the average hours worked per week for the query period?

Yes.

8) If an ACA eligible temporary or other hourly employee does NOT enroll in SHBP coverage, should the employing agency still change the employee's benefit program code to reflect eligibility?

Yes, the benefit program code is based on eligibility, not whether an employee selects coverage. The employee **must** remain in the selected Benefit Program until the employee is no longer eligible, has a job change that affects the eligibility, etc. Even if the employee does not enroll in SHBP coverage, the ACA eligibility does not change, and therefore the system coding should remain the same.

9) Do eligible temporary employees need to be on separate positions from non-eligible temporary employees for budget projection and labor distribution purposes?

The Budget Projection Report does not project health insurance for employees in HBP or HNF benefit programs. SAO is in the process of modifying the Budget Projection Report to project health insurance for employees in either HBP or HNF benefit programs. Regarding Labor Distribution, the ACA eligible employees do not need to be on separate position from employees who are not ACA eligible.

SECTION 8: REPORTING AND PENALTIES

The final Regulation on ACA Reporting became effective on March 10, 2014. An interagency ACA working group determined that the State will engage in centralized reporting for PeopleSoft payroll agencies. An RFP for a third party vendor was issued in June 2015 and a vendor was selected in October 2015. SAO is the business owner of the contract and Ernst & Young was selected as the vendor for centralized ACA Reporting. Only PeopleSoft / TeamWorks agencies and DFCS are in-scope for the contract.

1) How will the IRS know an individual's employer offered affordable healthcare?

Applicable Large Employers and employees are among those required to report information to the IRS which will include whether an employee was offered affordable healthcare. The Federal Health and Human Services agency, which will determine an individual's eligibility to purchase healthcare from the Federal Exchange, will also share information with the IRS.

2) What happens if I do not offer healthcare coverage to a full-time employee?

Your agency could be subject to costly penalties. The US Department of Health and Human Services (DHHS) will determine when penalties are appropriate and the IRS will enforce the penalties. The IRS will begin enforcing penalties effective January 2016 for the 2015 benefit year.

There are two types of penalties that may apply depending on whether eligible employees were offered healthcare insurance at all, or offered healthcare insurance that meets the federally -- mandated minimum requirements. Together the penalties are referred to a Pay or Play penalties. The first penalty is tied to an employer's failure to offer Minimum Essential Coverage to at least 95% of its full-time workforce. If just one employee purchases healthcare off of the Federal Exchange and receives the federal tax premium to subsidize the healthcare, then the employer will be penalized $2,160 for each full-time employee on payroll, minus the first 30 FTE employees. The second penalty is tied to the employer's failure to offer MEC plan that is affordable and meets minimum value. In this instance the employer will be penalized the lesser of $3,240 per full-time employee receiving a subsidy or $2,160 per FTE minus 30.

3) What will the exact penalty be if my agency doesn't offer health insurance coverage to eligible employees?

For an illustration of potential penalties, refer to the example provided by Cigna in the following link:

Http: //www.cigna.com/health-care-reform/employer-mandate

4) Are there penalties for non-compliance with the ACA reporting requirements?

Yes. Separate penalties can be incurred for non-compliance with each of the following four reporting requirements.

Minimum Essential Coverage Information Reporting

a) Employer Sponsored Plan Information Return
b) Primary Insured Statement

Applicable Large Employer Information Reporting

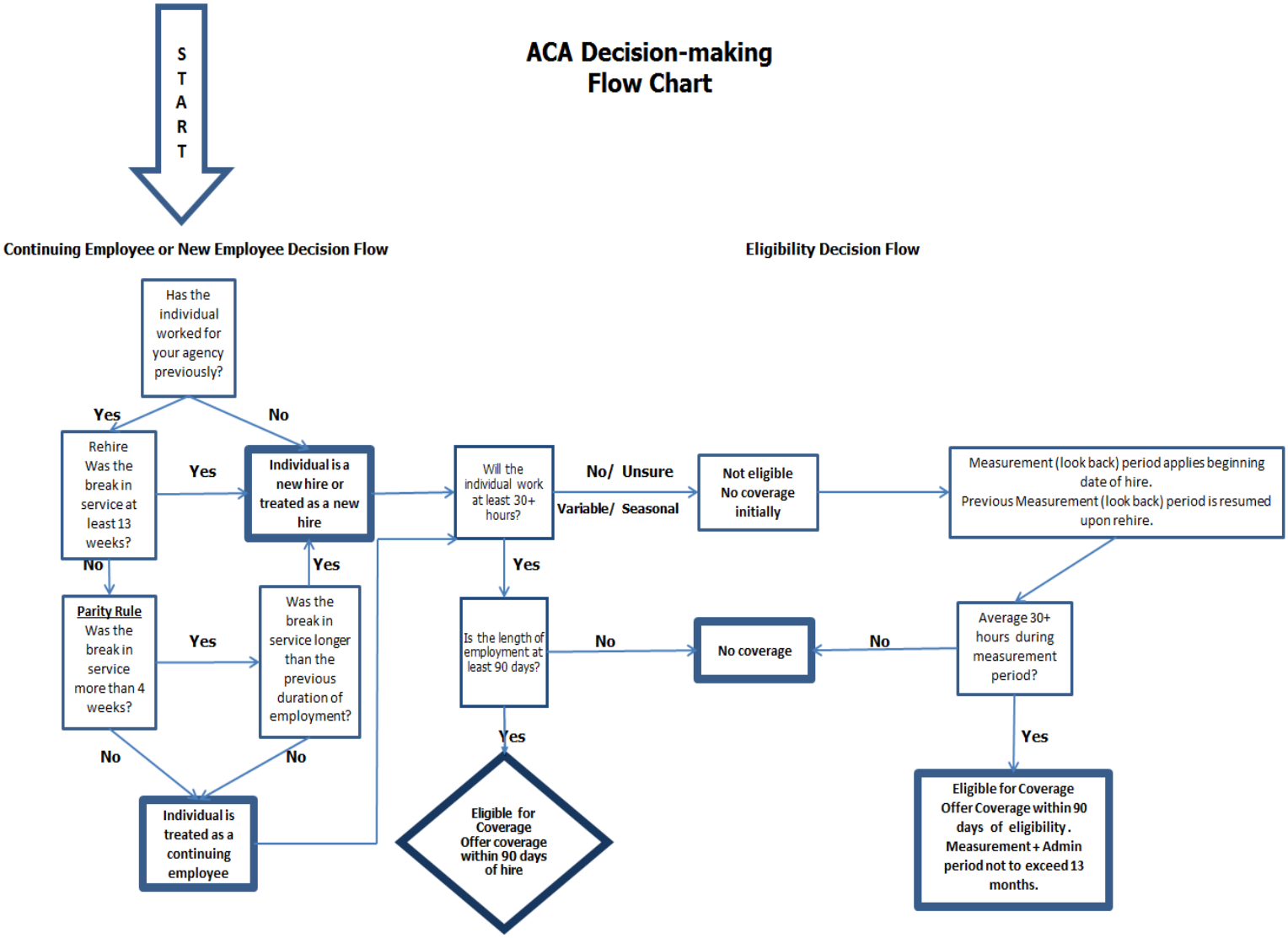
a) Applicable Large Employer Information Return
b) Employee Statement

Appendix:

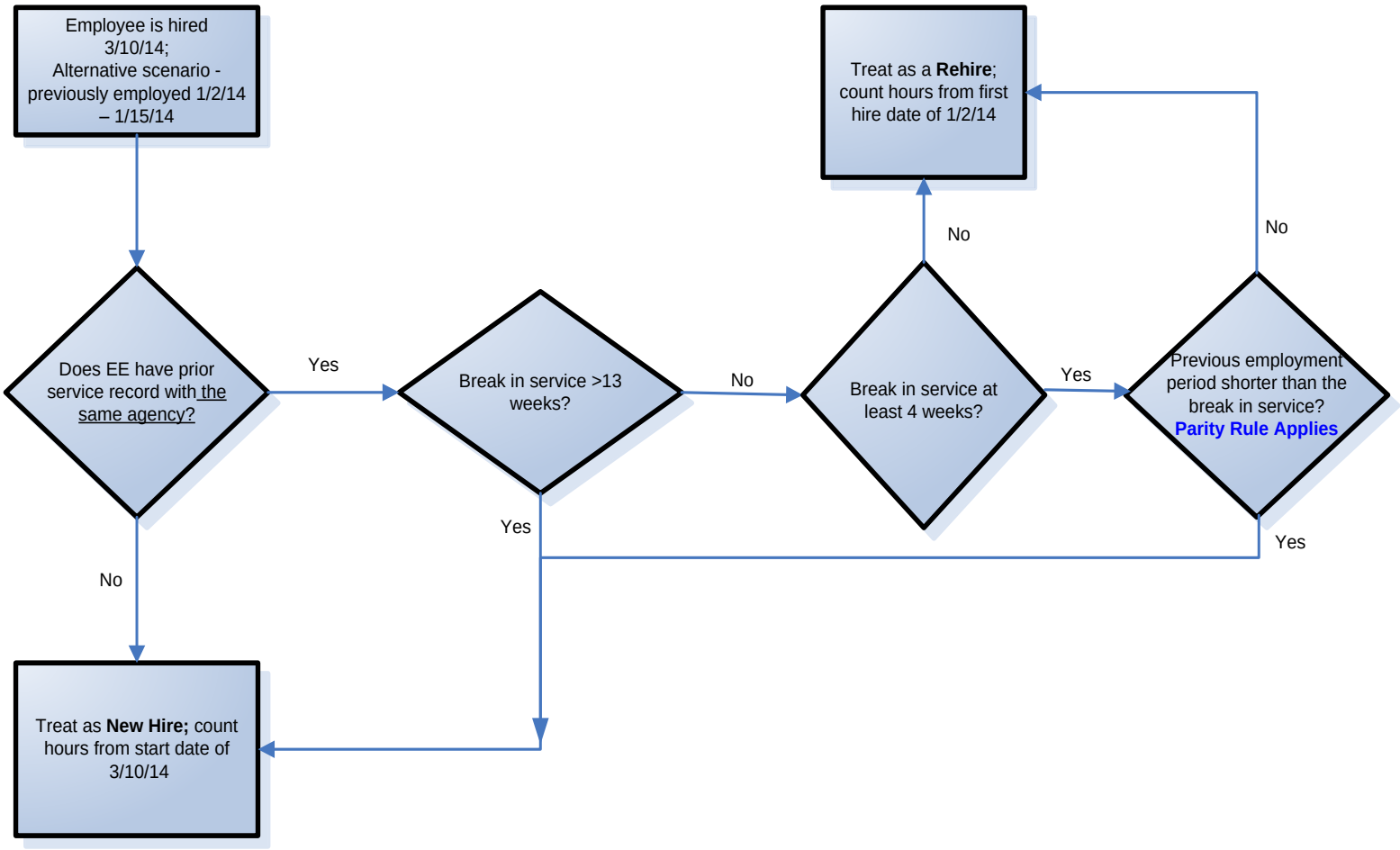
In this Appendix you will find:

- ACA Decision-Making Flow Chart
- Rehire Decision Tree
- Examples of Various Scenarios using the Look-Back / Measurement Period and Stability Period
- ACA Med-Only Assignment Job Aid
- HBP Effective Date Guide
- DCH Memorandum Dated 8/30/2013

ACA Decision-making Flow Chart



Rehire Decision Tree
DOAS HRA 4.3.14



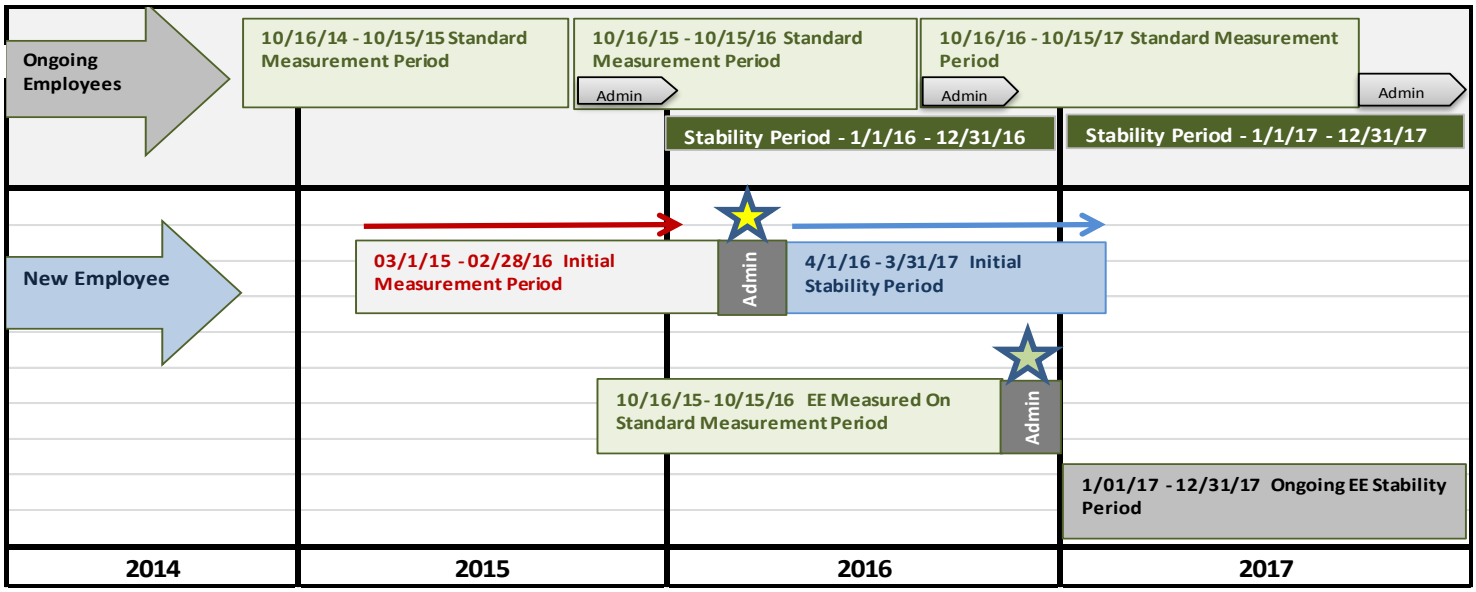
Please Note: Educational institutions will maintain a 26 week break in service threshold to determine status upon rehire. Additionally, the Technical College System of Georgia is considered one employer for purpose of ACA.

Example 1:

Employee A is a new variable hour employee who starts work on March 1, 2015. Her initial measurement period runs from March 1, 2015, through February 28, 2016. During the administrative period immediately following the initial measurement period, it's determined she works an average of 31 hours per week. She is eligible for coverage effective April 1, 2016 for a full 12 month period ending March 31, 2017. This is termed the initial stability period. Employee A is then measured again during the administrative period in 2016 along with all Ongoing Employees (those who have worked a full standard measurement period). During this period, she averages 34 hours and again meets the FT threshold. She is eligible for continued coverage during the ongoing employee stability period effective 01-01-2017. The employee's initial stability period and ongoing employee stability period will overlap during the first three months of 2017.

Test #1 – First Administrative Period: 3/1/16 – 3/31/16

Test #2 – Ongoing Employee Administrative Period: 10/16/16 – 12/31/16



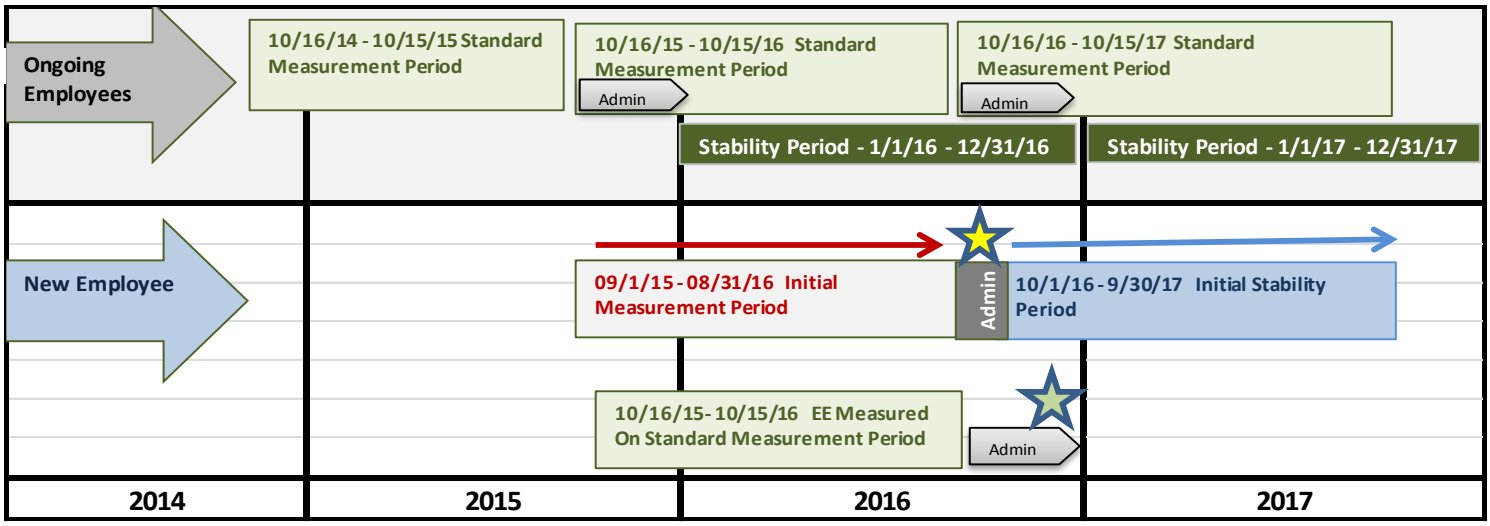
Example 2:

Employee B is a new variable hour employee who starts work on September 1, 2015. Her initial measurement period runs from September 1, 2015, through August 31, 2016. During the administrative period immediately following the initial measurement period, it's determined she works an average of 34 hours per week. She is eligible for coverage effective October 1, 2016 for a full 12 month period ending September 30, 2017.

This is termed the initial stability period. Employee B is then measured again during the administrative period in 2016 along with all Ongoing Employees (those who have worked a full standard measurement period). During this period, she averages 27 hours and does not meet the threshold. Therefore, she will not be offered health coverage for the ongoing employee stability period from 01/01/17 - 12/31/2017. Her last day of health coverage would be September 30, 2017.

Test #1 – First Administrative Period: 09/1/16 – 09/30/16

Test #2 – Ongoing Employee Administrative Period: 10/16/16 – 12/31/16

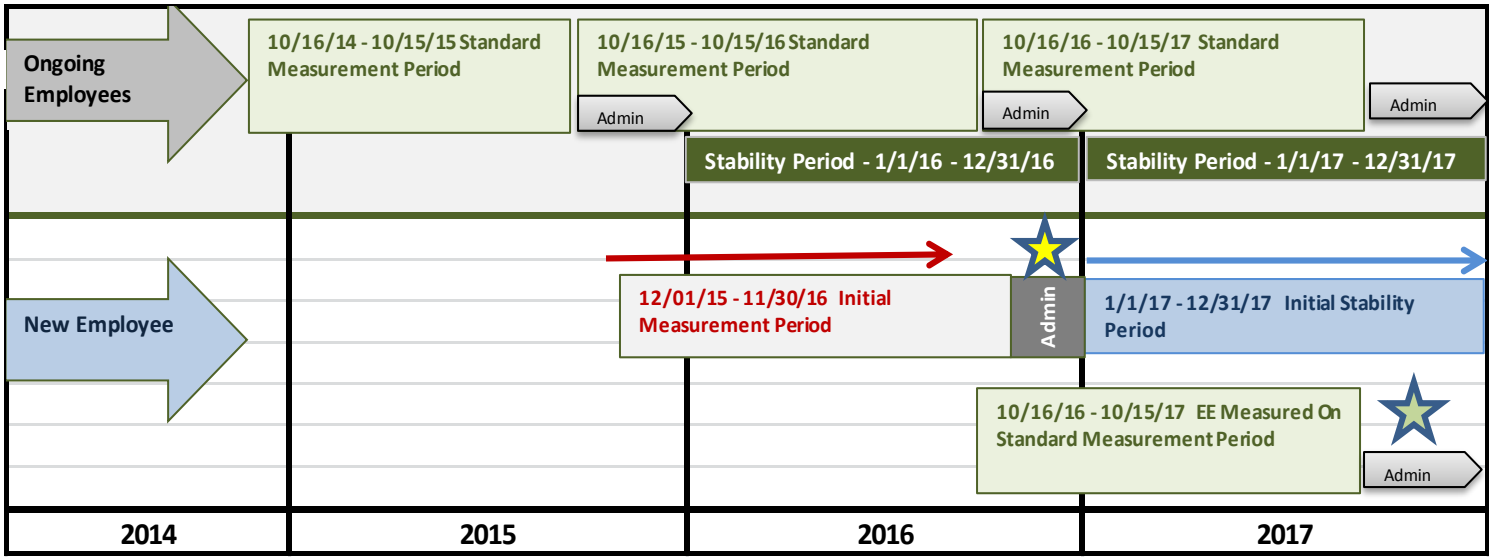


Example 3:

Employee C is a new variable hour employee who starts work on December 1, 2015. His initial measurement period runs from December 1, 2015, through November 30, 2016. During the administrative period immediately following the initial measurement period, it's determined he works an average of 36 hours per week. He is eligible for coverage effective January 1, 2017 for a full 12 month period ending December 31, 2017. This is termed the initial stability period. Employee C is then measured again during the administrative period in 2017 along with all Ongoing Employees (those who have worked a full standard measurement period). If he meets the fulltime threshold again during the standard measurement period, he will be eligible for coverage effective January 1, 2018.

Test #1 – First Administrative Period: 12/1/16 – 12/31/16

Test #2 – Ongoing Employee Administrative Period: 10/16/17 – 12/31/17

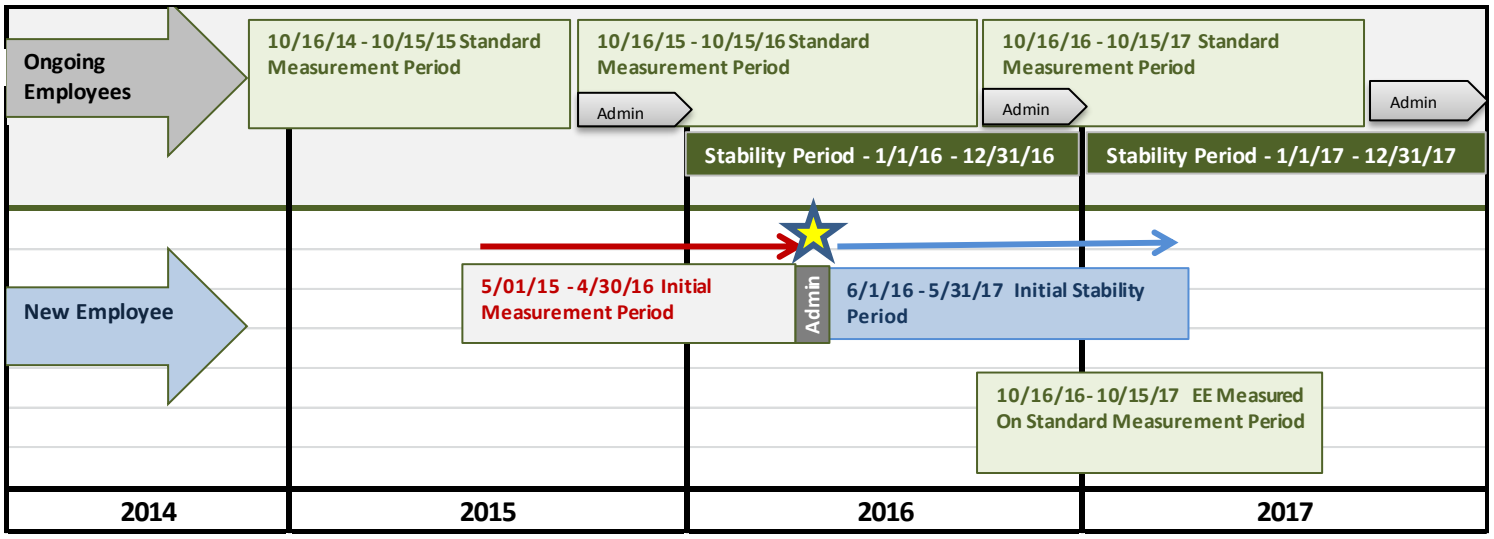


Example 4:

Employee D is a seasonal worker who starts work on May 1, 2015. He will work 35 hours each week during the busy tourist months of May - July. His initial measurement period runs from May 1, 2015, through April 30, 2016. During the administrative period immediately following the initial measurement period, it's determined he works an average of 12 hours per week. While he did work above 30 hours a week during the first three months, he did not average 30 hours during the entire initial look-back / measurement period, therefore he is not offered coverage during the initial stability period.

Test #1 – First Administrative Period: 5/1/16 – 05/31/16

Test #2 – Ongoing Employee Administrative Period: 10/16/16 – 12/31/16



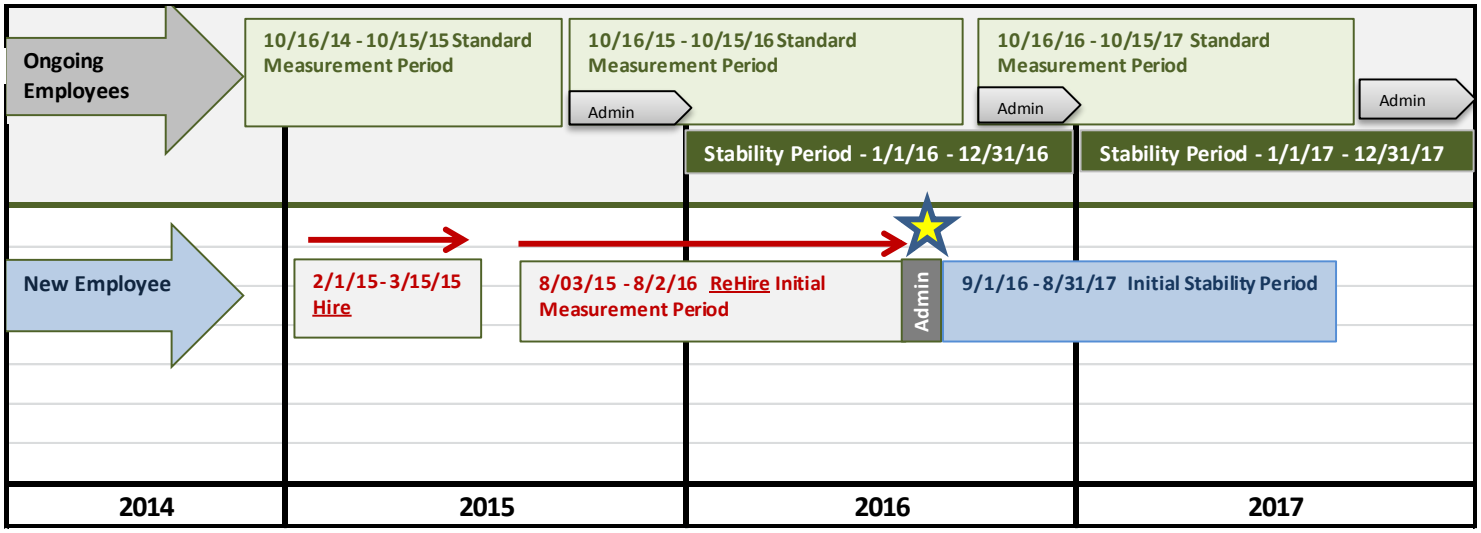
Example 5 (Rehire):

Employee F was hired effective 02/1/2015 to fill a short term assignment lasting six weeks and working an average of 40 hours per week. The assignment was completed on time and ended on March 15, 2015. He was not offered health coverage due to the length of the assignment.

The same agency decided to rehire Employee F effective 8/3/2015 for a similar assignment - a period of 19 weeks from his last day of work. Employees returning after a break in service of 13 weeks or more will be considered to be a new hire. Thus, Employee F will be treated as a new, variable hour employee. His hours per week are anticipated to range between 25 – 40 hours and the assignment is expected to last at least through the December 2015. His hours worked per week would be averaged over the 12 month initial measurement period beginning on his rehire date of 8/3/15.

Conclusion: In this example, the employee's first assignment lasted six weeks. He was rehired 19 weeks from his separation date which is greater than the 13 week threshold for considering a returning employee as a rehire. In this case, the employee would be treated as a new, variable hour employee.

Test #1 – First Administrative Period: 8/3/16 – 08/31/16



Example 6 (Rehire Continuous):

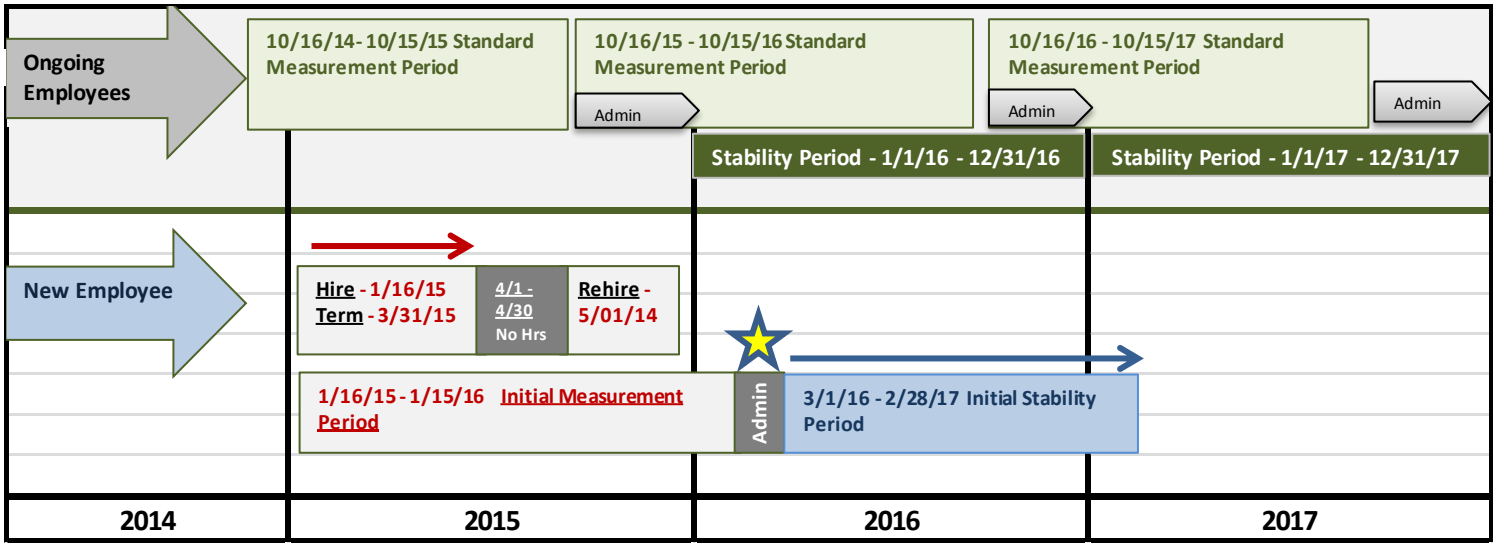
Employee J was hired on 1/16/15 to fill a temporary assignment lasting 10 weeks and working an average of 24 hours per week. He was not offered health coverage due to his part-time status. The assignment ended on March 31, 2015.

The agency rehires Employee J effective 05/1/2015, a period of just over four weeks from his last day on 3/31/15. A four week break in service is within the 13 week threshold for considering a returning employee as a rehire. Therefore, Employee J will be considered a rehire. His hours of work are anticipated to range between 20 – 40 hours for approximately six months.

Employee J is determined to be a variable hour employee; his hours worked per week would be averaged over 12 months beginning on his first hire date of 1/16/15. He would be credited with 0 hours of work from 4/1/15 – 4/30/15.

Conclusion: In this example, the employee's initial assignment was 10 weeks long and he was rehired with the same agency after a four week break which is less than the 13 week rehire threshold. Therefore, he will be treated as a continuous, variable hour rehired employee with hours measured from the initial hire date.

Test #1 – First Administrative Period: 1/16/16 – 02/28/16



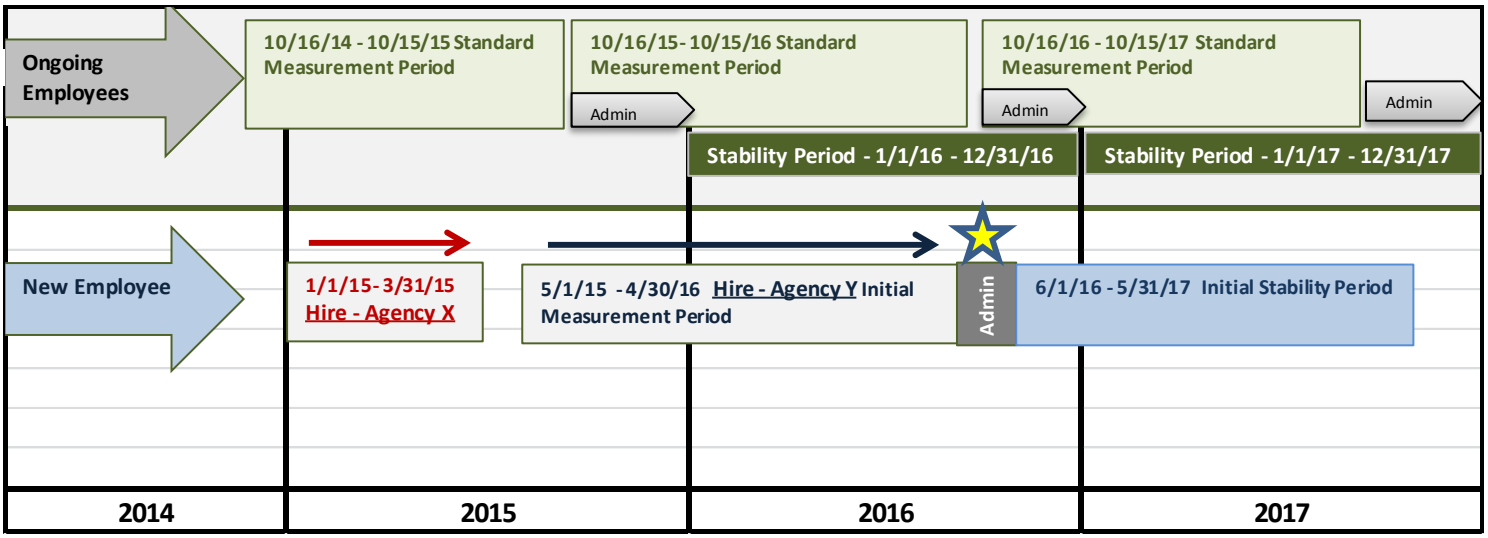
Example 7 (Rehire - Different Agency):

Effective 1/1/15, Employee H was hired to fill a short term assignment lasting three months for

Agency X. During this period, she worked an average of 32 hours each week. The assignment completed on time and ended on March 31, 2015. She was not offered health coverage due to the length of the assignment. She was referred for another temporary position with **Agency Y**. Her start date with **Agency Y** was May 1, 2015. She accepted the variable hour position with work hours to range between 20 - 40 hours for approximately 6 months. Her hours worked per week would be averaged over the 12 month initial measurement period beginning on her hire date with **Agency Y** of 5/1/15.

Conclusion: In this example, the employee's first assignment was with **Agency X**. She was later hired for a different assignment with Agency Y. As State agencies are separate entities for the purposes of ACA, she will be treated as a new, variable hour employee with **Agency Y**.

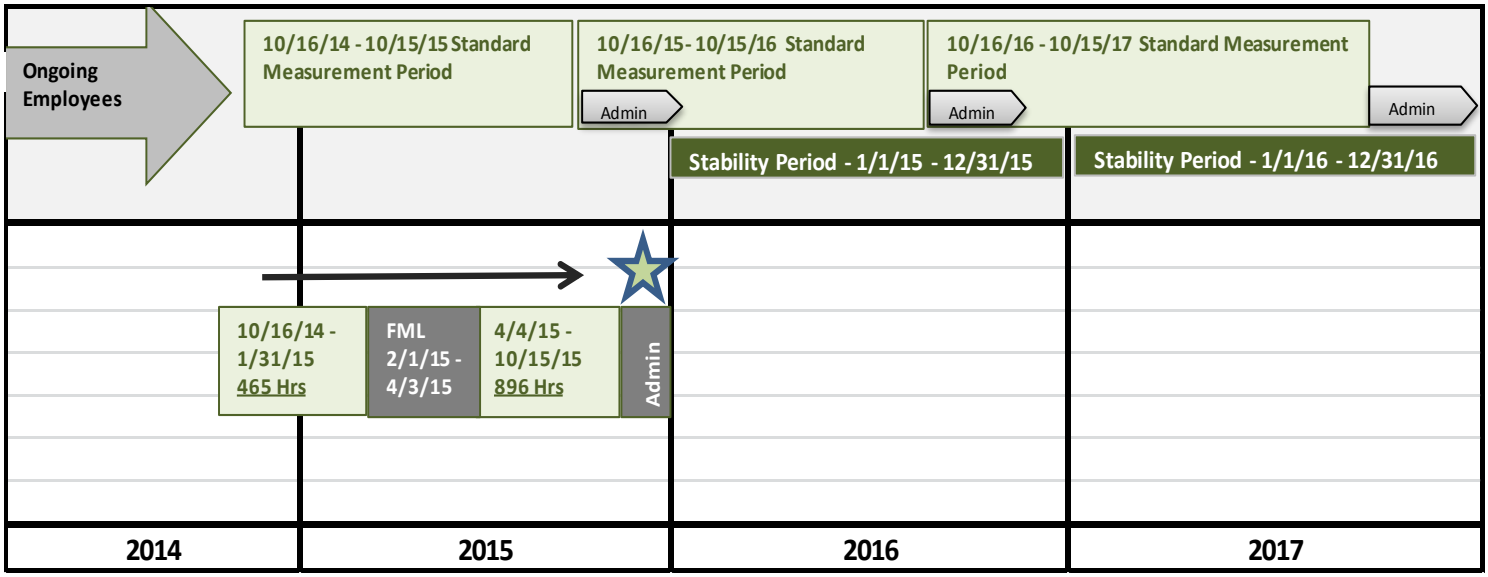
Test #1 – First Administrative Period: 5/1/16 – 5/31/16



Example 8 (Protected Leave - Extract FML Weeks):

Employee A was hired with Agency X as a variable hour employee on January 2, 2014. He was employed through the standard 12 month look-back / measurement period beginning October 16, 2014 and ending October 15, 2015. From February 1, 2015 – April 3, 2015 Employee A was out on unpaid Family and Medical Leave. During the 2 month period, Employee A worked no hours and received no compensation.

One way to calculate whether Employee A averaged 30 hours per week during the measurement period is to calculate Employee A's total hours worked from October 16,2014 to January 31, 2015 and from April 4, 2015 to October 15, 2015 (excluding from the calculation the nine weeks that Employee A was out on protected FMLA leave). The total number of hours worked for these two periods should be divided by 43 weeks to receive the correct calculation for whether Employee A averaged 30 hours per week during the measurement period, excluding the nine weeks out on protected leave.



Employee A's total hours worked (465 + 896) will be averaged over the 43 weeks he worked during the standard look-back / measurement period. He will be offered medical coverage if he averages 30+ hours per week over the period.

Example 9 Protected Leave - Credit Equal Hours:

Same facts as above. The second way to calculate whether Employee A averaged 30 hours per week during the measurement period is to credit Employee A with hours of service from February 1, 2015 to April 3, 2015 at a rate equal to Employee A's average weekly rate during the rest of the measurement period. Therefore, if Employee A averaged 31 hours per week from October, 16 2014 to January 31, 2015 and from April 4 , 2015 to October 15, 2016, then you would add 279 hours (31 hours times 9 weeks) to the total of hours worked for your calculation, using the full 12 months of the measurement period.

ACA Med-Only Assignment Job Aid

Purpose:

Assign eligible full-time contingent employees in appropriate ACA medical-only benefit program on the non-zero record. This job aid is provided to assist entities using PeopleSoft for payroll processing.

Background:

Agency Human Resources should consider the guidance provided in the DOAS Human Resources Administration ACA Q&A Bulletin before assigning full time employees in the medical only plan. Eligible employees may be assigned at various times dependent on their employment status:

- Upon hire or rehire
- After meeting the threshold of an ongoing period or an initial measurement period
- Change in employment status during an initial measurement period (PT to FT-30 hours OR change from seasonal / variable hour to FT-30 hours)

Benefit Plans:

Today, when onboarding new hires in PeopleSoft you select a benefit plan from among three primary options – FLX, NBP, and NOF. Two new benefit programs have been established to assign qualifying employees for healthcare coverage under the ACA; they are outlined in blue in the chart below.

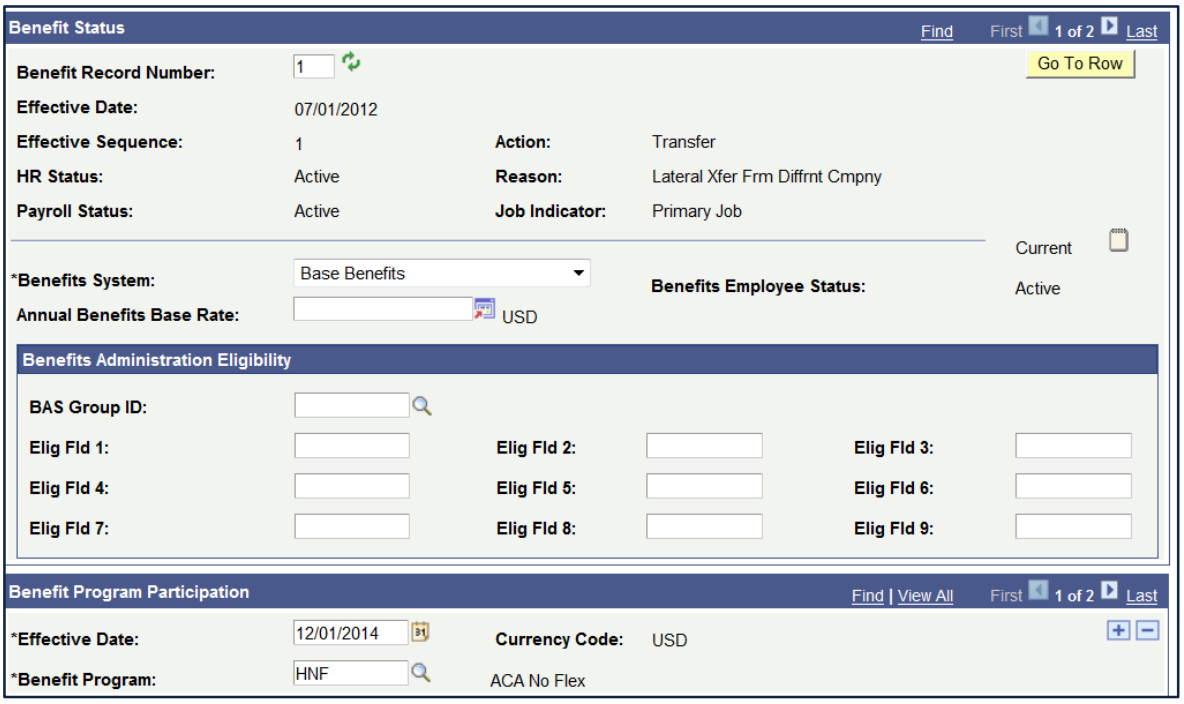
Benefit Program	Allowable Empl Record	SCOA Employment Types	Employment Duration	Avg Hrs Per Week	Benefits / Programs
FLX	**0**	**Regular** OR **Perm Labor**	No established end date OR Extended Time Limited (Salaried)	30 - 40	All
				20 - 29	Leave, GDCP
NBP	Non - 0	**Temporary** including: seasonal, rehired retiree, casual, on-call, student &/or interns	≤ 3 Month	up to 40	GDCP
			> 3 Months - 9 Months	less than 30	
HBP	Non - 0		**> 3 Months - 9 Months**	**30 or more**	**ACA Healthcare,** GDCP
NOF	Non - 0	**Perm Labor –** Ongoing hourly paid employees; may be subject to special funding	> 9 Months	20 - 29	Leave, GDCP, Peach State Reserves 401(k)/457 Plans
HNF	Non 0		**> 9 Months**	**30 or more**	**ACA Healthcare** Leave, GDCP, Peach State 401(k) / 457 Plans

HNF corresponds with the existing NOF benefit program while the **HBP** code corresponds with the existing NBP benefit program.

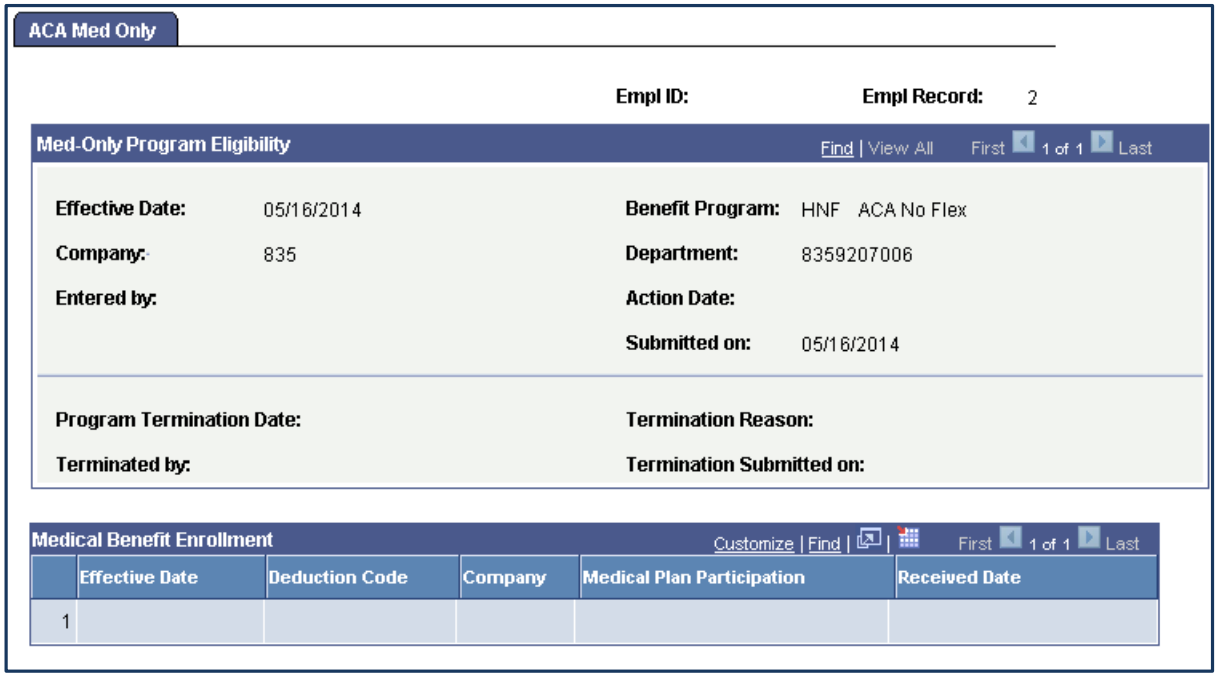
Benefit Program Dates:

- **Hire or Rehire**: If employee is determined to be full-time (30 or more hours per week) at the time of hire or rehire and will work greater than three months, benefit program participation is upon hire/rehire and allowing for the State's waiting period. Refer to Examples 1 – 4 in the SHBP ACA Guide.
- **Ongoing Employee**: Benefit program effective December 1st preceding the corresponding stability period beginning on January 1st. Refer to Example 5 in the SHBP ACA Guide.
- **Seasonal/Variable Hour Employee**: 1st of the month following the initial 12 month measurement period and associated administrative period. Refer to Examples 6 & 7 in the SHBP ACA Guide. **Note:** The initial measurement period and administrative period cannot extend beyond the last day of the first calendar month beginning on or after the first anniversary of the employee's start date.
- **Change in Employment Status** – Effective upon becoming full time and allowing for State's mandatory waiting period. Refer to Examples 8 & 9 in the SHBP ACA Guide.

Once it is determined the employee is eligible for ACA Med Only coverage, follow the steps outlined in the TeamWorks HCM Online Training, Changing an Employee's Benefit Program or Hiring & Rehiring Employees - Non Flex to assign the employee to the appropriate program. Note: Action / Reasons codes are not required to update an employee's benefit program.



Enrollment status can be confirmed after nightly processing by viewing the information on the Benefits Verification Page. Navigation: Benefits → Review Employee Benefits → ACA Med Only



State Health Benefit Plan ACA Effective Date Guide

State Health Benefit Plan			
Employee Types	**Example**	**Hire / ReHire Assignment Date**	**Health Insurance Effective Date**
Hire or Rehire *(outside of 30 days)*	**1**	1/2/2015	2/1/2015
	2	1/6/2015	3/1/2015
ReHire *(within 30 days)	**3**	2/5/2015	3/1/2015
	4	2/28/2015	3/1/2015
Ongoing Employee	**5**	12/1/2014	1/1/2015
Seasonal/Variable Employee	**6**	1/2/2015	2/1/2015
	7	1/6/2015	3/1/2015
Change in Employment Status	**8**	1/2/2015	2/1/2015
	9	1/6/2015	3/1/2015
Notes:			
1. The same waiting periods apply to all employee types.			
2. All employees are provided a 31-day window of allowance for enrollment. However, the enrollment window will close after 31 days from the date of Hire/Rehire/Eligibility.			
3. A Human Resource Administrator, with the applicable security clearance, will have 46 days to make an election through the enrollment window. However, the enrollment window will close 47 days from the Date of Hire/Rehire/Eligibility.			
4. The examples above reference eligibility for enrollment into the health plan only.			
***Employees, rehired within 30 days, are reinstated with the same coverage which existed prior to the termination date. An "enrollment window" does not apply open in this situation.**			
First Work Day Schedule for 2015			
January 2, 2015 - (1st is Thursday an Official State Holiday)			
February 2, 2015 - (1st is a Sunday)			
March 2, 2015 - (1st is a Sunday)			
April 1st			
May 1, 2015			
June 1, 2015			
July 1, 2015			
August 3, 2015 - (1st is a Saturday and 2nd is a Sunday)			
September 1, 2015			
October 1, 2015			
November 2, 2015 - (1st is a Sunday)			
December 1, 2015			

GEORGIA DEPARTMENT OF COMMUNITY HEALTH

M E M O R A N D U M

TO: All Payroll Locations

FROM: State Health Benefit Plan

SUBJECT: Patient Protection and Affordable Care Act

On August 8, 2013, the Board of Community Health approved the new plan designs for the State Health Benefit Plan ("SHBP"). These options were created so that state agencies, school systems, and other employers that offer SHBP could comply with the Patient Protection and Affordable Care Act ("ACA" or "the Act") rules regarding plan designs (i.e., "affordability" and "minimal value"). In response to inquiries regarding the ACA, SHBP would like to address what steps it will be taking regarding the ACA, and take the opportunity to highlight the importance of employers ensuring that they comply with the ACA. Please be advised that none of the information in this response should be considered to be legal advice or even as guidance from the Department of Community Health ("DCH"). Only the Attorney General's Office can provide legal guidance on behalf of the State, and as discussed below, it is imperative that employers obtain their own legal counsel when navigating the requirements of the ACA.

Steps SHBP is Taking

SHBP has taken the following steps in response to the requirements of the ACA:

1. Ensuring 60% minimum actuarial value to allow employers that offer SHBP to comply with the ACA "minimum value" requirement.

2. Ensuring affordability in 2014, meaning that for at least one plan option, single coverage, the premium will meet the 9.5% family income affordability requirement.

3. Handling the Patient-Centered Outcomes Research Institute (PCORI) fees and the reinsurance fees.

4. Providing the COBRA rates for purposes of employer costs of the health plan for W-2 purposes.

5. Providing the Summary of Benefits and Coverage ("SBC") required.

Steps SHBP Plans to Take (*subject to change*)

1. When auto-enrollment becomes mandatory, SHBP intends to load the files for those employers who send us payroll files inclusive of the number of work hours per week and auto-enroll an employee in one of the health plan options; that employee should then be able to go to the web portal and change options, enroll their dependents, or opt out of coverage completely.

2. Prepare regulations or other guidance to clarify that an employer may enroll an employee that is a "temporary or emergency worker" in SHBP if the employee meets the definition of a full-time employee under the ACA. (Note: SHBP eligibility provisions currently exclude many temporary and emergency workers).

3. Prepare regulations or other guidance to clarify that employers are responsible for compliance with ACA requirements and are solely responsible for any penalties or taxes incurred due to non-compliance.

4. Provide information about the SHBP that may be used with the FLSA notice (see below for more information).

Employer Responsibilities

The ACA is a complex piece of legislation with many requirements that impact employers. It is the employers' responsibility to ensure that they have fully complied with the ACA's applicable provisions (i.e., the 30 hour requirement, look-back / measurement periods, etc.). SHBP will not issue legal guidance regarding these requirements. Rather, each employer is responsible for securing its own legal counsel to help it navigate the ACA. Moreover, any penalties or taxes incurred due to non-compliance with the ACA will be borne solely by the employer. Thus, it is important that each employer takes the steps necessary to understand what is required of it and that it has satisfied the applicable provisions of the Act.

FLSA Notice Regarding the Health Insurance Marketplace

On May 8, 2013, the DOL issued Technical Release No. 2013-02, which discussed, in part, the ACA's requirement that applicable employers provide a notice to employees informing them of the Health Insurance Marketplace. This notice must be provided by October 1, 2013 to current employees, and to new employees hired after October 1, 2013, within 14 days of their start date. Although employers are responsible for ensuring they satisfy these requirements, SHBP has provided some information that might help when completing this notice.

The DOL has provided a model notice that may be used for this purpose at http://www.dol.gov/ebsa/pdf/FLSAwithplans.pdf. Employers offering the SHBP may enter the responses set forth on the attached model notice.

We hope that this Memo will help inform you of the actions SHBP has taken and the steps we anticipate taking in the future.