LCW LIEBERT CASSIDY WHITMORE

Preparing the Large Employer for the Affordable Care Act's Penalties

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ACA Mandates

- Individual Mandate – individual tax penalty for not *having* health coverage

- Employer Mandate (Shared Responsibility Payment) – employer tax penalty for not *offering* health coverage

Employer Mandate: Large Employer Penalties

- Effective January 1, **2015** (was 2014)
- Large Employers
- Trigger: FT employee purchases subsidized coverage in exchange

(Penalty A) Employer does not offer “minimum essential coverage” to “substantially all” FT employees & dependents; or

(Penalty B) Coverage is “unaffordable” or doesn’t provide “minimum value”

Penalty Trigger: Subsidized Coverage

Premium Tax Credit – eligibility:

Employer Plan does not provide **minimum value**; or

Employer Plan requires employee to contribute over 9.5% of household income (**not affordable**)

Eligibility based on household income of insured (up to 400% of FPL (federal poverty line).)

Penalty (A) “No Coverage”

Employer Mandate: Large Employer Penalties

- Effective January 1, 2015 (was 2014)
- Large Employers
- Trigger: FT employee purchases subsidized coverage in exchange

(A) Employer does not offer "**minimum essential coverage**" to "**substantially all**" **FT employees & dependents**; or

(B) Coverage is "unaffordable" or doesn't provide "minimum value"

What must be offered? To whom?

- To Avoid Penalty A
- Minimum essential coverage = group health plan offered by an employer to employee
- "Substantially All" FT Employees = 95%
  - Intended to account for small margin of error
  - Do not intentionally exclude 5%
- Full-Time Employees & their Dependents

How Much is Penalty A (Failure to Offer Coverage)?

Penalty A = $166.67 x (# of FT employees employed during that month – 30)

- $166.67 = Applicable Payment Amount per month in 2014
- Amount adjusts annually

Ex. Penalty A Calculation – Fails To Offer Coverage

No. of FT Employees	Assessable Payment '14	Formula	Monthly Penalty	Penalty Annualized
100	$166.67	$166.67 x (100 -30)	$11,667	$140,003
500	$166.67	$166.67 x (500 -30)	$78,335	$940,019
1,000	$166.67	$166.67 x (1,000 - 30)	$161,670	$1,940,039
2,000	$166.67	$166.67 x (2,000 - 30)	$328,340	$3,940,079
4,000	$166.67	$166.67 x (4,000 - 30)	$661,680	$7,940,159

Penalty (B)
"Unaffordable Coverage"

Employer Mandate: Large Employer Penalties

- Effective January 1, 2015 (was 2014)
- Large Employers
- Trigger: FT employee purchases subsidized coverage in exchange

(A) Employer does not offer “minimum essential coverage” to “substantially all” FT employees & dependents; or

(B) Coverage is “**unaffordable**” or doesn’t provide “**minimum value**”

Penalty B – Minimum Value

Providing Minimum Value Means:

- Employers must cover 60% of cost of total allowed costs of benefits
- Actuarial determination

3 Methods:

1. Use HHS calculator;
2. Safe Harbor plan designs; or
3. Actuarial Certification

Penalty B - Affordability

Coverage is affordable where:

- Employee's share of the premium for the employer's lowest cost, self-only plan is no more than 9.5% of household income

Safe Harbors for determining 9.5% of *household* income:

1. Form W-2
2. Rate of Pay
3. Federal Poverty Line

Affordability Safe Harbor Form W-2

Employer will not be subject to unaffordable coverage penalty if:

Employee's portion of the premium for the lowest cost self-only coverage does NOT exceed 9.5% of the employee's Form W-2 wages reported in Box 1.

Affordability Safe Harbor Rate of Pay

Not subject to unaffordable penalty if:

- Employee's portion of the premium for the lowest cost self-only coverage does NOT exceed 9.5% of monthly amount
- Monthly amount = Hourly rate of pay x 130 hrs./mo.

Affordability Safe Harbor Federal Poverty Line

Not subject to unaffordable penalty if:

- Employee's portion of the premium for the lowest cost self-only coverage does NOT exceed 9.5% of the monthly FPL
- FPL in 2013 was $1,091.55 per month
- 9.5% of $1,091.55 = $90.96/mo.

Thus, if employee contribution is lower than $90.96, it will automatically be affordable based on this safe harbor.

How much is Penalty B (Unaffordable Coverage)?

Monthly penalty is *lesser* of:

- Penalty A = $166.67 x (# of FT employees employed during that month – 30)

OR

- Penalty B = $250 x # of FT employees receiving subsidy during that month

Ex. Penalty B Calculation – Offers Unaffordable Coverage

Monthly penalty is *lesser* of two penalties:

No. of FT EEs	No. who enroll in subsidized coverage (here 2%)	Penalty B ($250 x No. subsidized)	Penalty A	Monthly Penalty (Penalty B is lesser)	Penalty Annualized
100	2	$500	$11,667	$500	$6,000
500	10	$2,500	$78,335	$2,500	$30,000
1,000	20	$5,000	$161,670	$5,000	$60,000
2,000	40	$10,000	$328,340	$10,000	$120,000
4,000	80	$20,000	$661,680	$20,000	$240,000

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Calculating Hours of Service

Penalty Trigger: Full-Time Employee

- Full-Time Employee
- Basic Definition
  - Average 30 hours of service per week in any given month
- Look Back Measurement Method Safe Harbor
  - Average 30 hours of service per week over a Standard Measurement Period (up to 12 mo)

Calculating Hours of Service

- Hourly – hours of service
- Non-hourly – 3 methods:
  1. Hours of service
  2. Days worked equivalency (8hr/day for each day entitled to pay/req'd to be credited with an hour of service)
  3. Weeks worked equivalency (40hr/wk for each week entitled to pay/req'd to be credited with an hour of service)

Adjunct Faculty Members

- Reasonable Method to Credit hours of service
- Not reasonable to only account for class time
- Should include hours necessary to perform duties (i.e., class preparation time)

American Council on Education's Comments to Proposed Regs.

1) Proposed Comment re: Safe Harbor Based on Percentage of Full-Time Course Load

   Full-time = course load ¾ or more of course load for full-time non-tenure- track (NTT) teaching faculty member in that academic dept. (not in CA)

Note: If use 75% of full time faculty will likely be underestimating - Do Not Recommend

American Council on Education's Comments to Proposed Regs.

2) Proposed comment re: Safe Harbor Based on One-to-One Ratio of Hours Teaching to Non-Classroom Work.

Credit one hour of work outside classroom for each hour teaching in classroom.

Recommended Approach

1:1 Ratio
Option for Reasonable Calculation

Teaching Units + Prep/Grading + Stipend Load Factor + Mandatory Office Hours + Other Hourly Work

= Total Reasonable Hours

$$\frac{\boldsymbol{Adjunct's\ number\ of\ class\ units}}{\boldsymbol{Full\text{–}Time\ LHE}}\ \textbf{X (5 or 10 Hours)}$$

= stipend load factor

Non-Instructional Adjuncts
Option for Reasonable Calculation

Load multiplied by Full-Time Faculty

(i.e. load of 0.5 x 40 hours = 20 hours)

+ Stipend Work (load x 5 or 10 hours) (if any)

5 or 10 hours = reasonable approx. of ancillary duties/office hours for full-time

<u>+ Other Hourly Work (if any)</u>

= Total Reasonable Hours

American Council on Education's Comments to Proposed Regs.

- Propose Safe Harbors for Student Workers (Institution of Higher Education)
  1. Nature of Work Safe Harbor –use standards in DOL's Field Operations Handbook to determine employee status
  2. Work-Study Safe Harbor – Exclude hours worked by student enrolled in classes at least half time & receives wages as part of work-study program

American Council on Education's Comments to Proposed Regs.

- Students Working as Part of Internship or Cooperative Educational Programs
  – Alternate semesters of academic study with semesters of intern/co-op full-time employment
- Proposed to Exempt These Students

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Look Back Measurement Method Safe Harbor

Purpose of the Safe Harbor

- Determining who is full-time
- Distinguished from determining FTE for Large Employer determination
- This safe harbor determines who is full-time for purposes of the assessable payment

How It Works

- Basic Concept:
  Measure employee for time period to determine full/part time – treat them as such during associated stability period
- Two main parts to Safe Harbor:

1) Ongoing Employees

2) New Variable Hour Employees

Ongoing Employees

- Ongoing Employees
  – Standard Measurement Period
  – Administrative Period (optional)
  – Stability Period
- If employee averages at least 30 hrs/week during “**Standard Measurement Period**”, employee treated as full-time during “**Stability Period**”

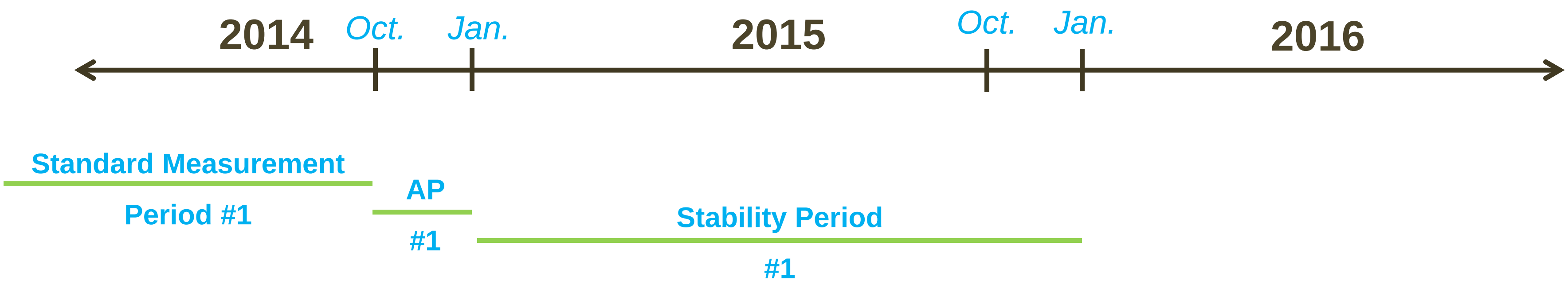
Ongoing Employees

- Standard Measurement Period (SMP)
  - Employer Determines Length (3-12 mos.)
  - Must be consecutive calendar months.
  - Consistent and uniform for all employees in same category
- Administrative Period
  - Time between SMP and Stability Period
  - Up to 90 days (60 due to CA waiting period)

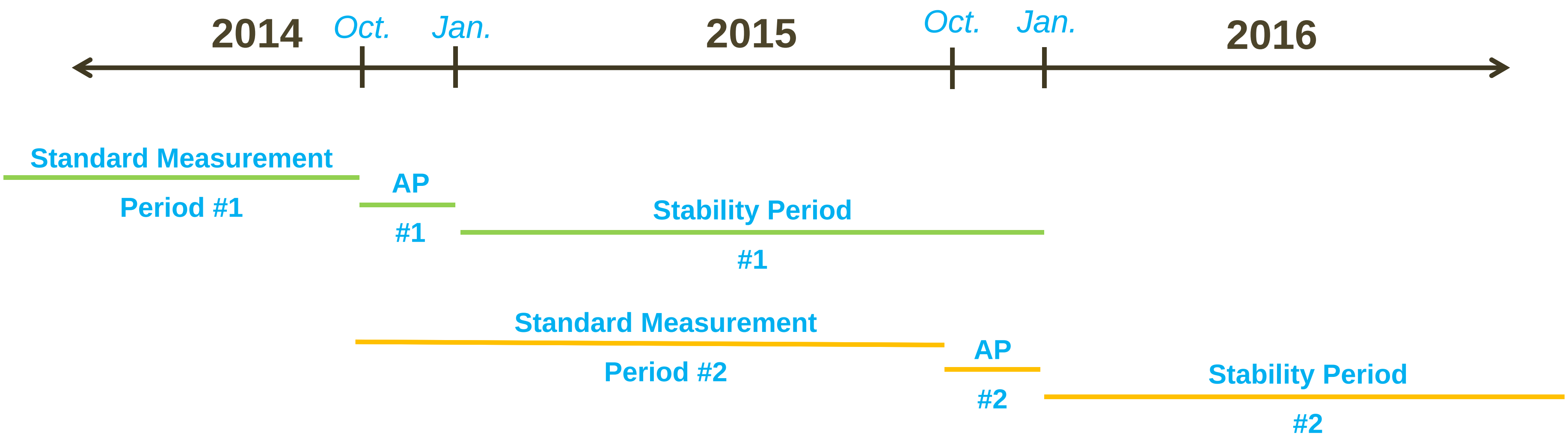
Ongoing Employees

- Ongoing Employees' Stability Period (SP)
  - At least 6 consecutive calendar months
  - At least as long as the Standard Measurement Period (SMP)

Ongoing Employees



Ongoing Employees



New Employees

New Employee @ Start Date, Ask:

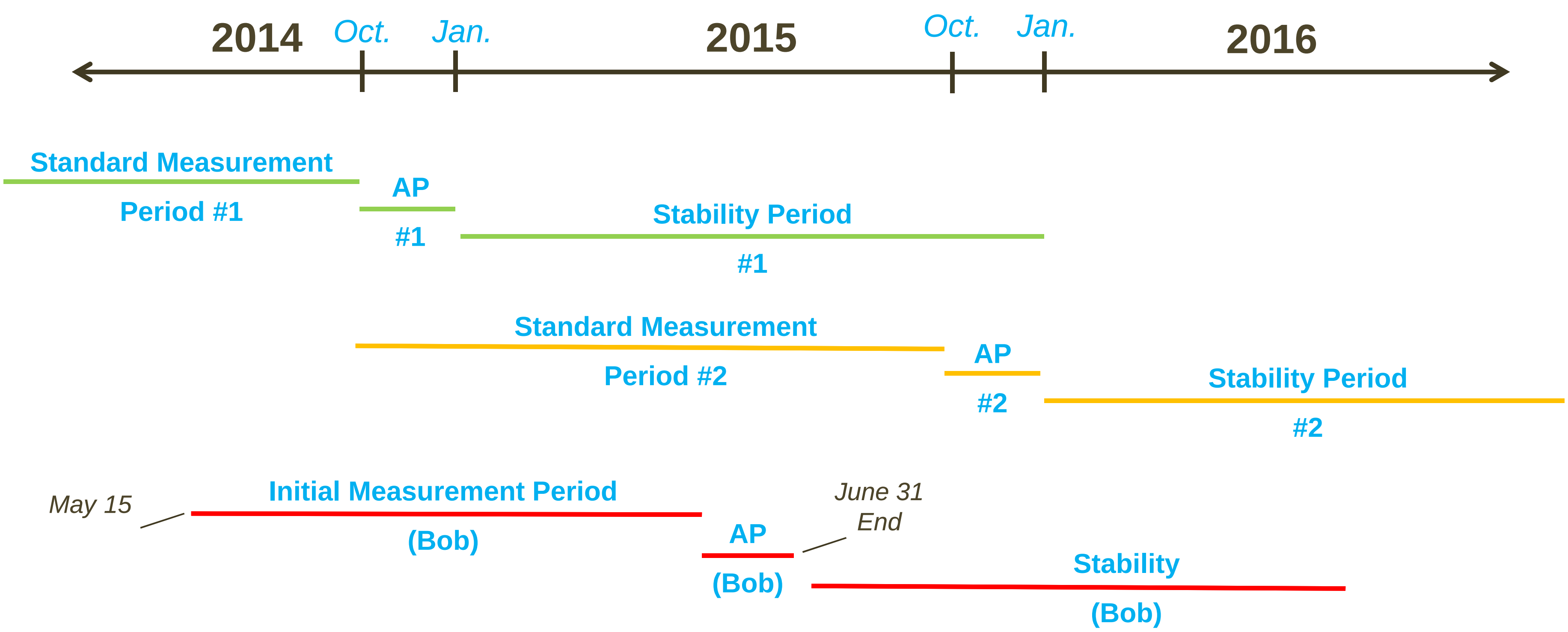
Is it reasonably expected he/she will average 30 or more service hours/week over the entire initial measurement period?

- If yes – treat as full-time
- If no – "New Variable Hour" employee - start measuring

Safe Harbor for New Employees - Variable Hour & Seasonal

- Initial Measurement Period (IMP)
  - 3 to 12 mo. (employer determines)
- Optional Administrative Period
  - 90 days max. (60 – CA law)
  - Time between start date and start of IMP counts toward the 90 days
  - Time between end of IMP and date offered coverage also counts toward the 90 days
- IMP + Admin. period must not extend beyond last day of first calendar mo. beginning on/after first anniversary of start date.

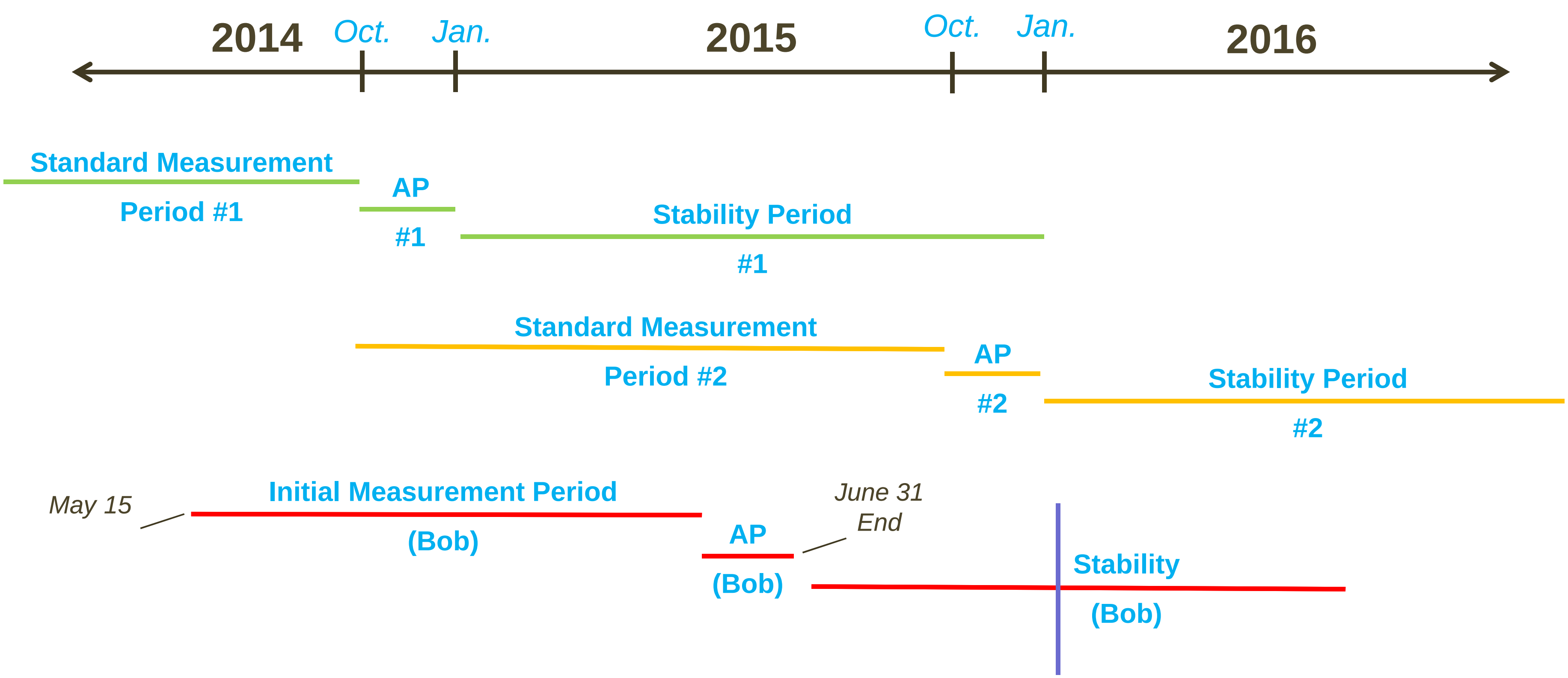
New Variable Hour



Safe Harbor for New Employees - Variable Hour & Seasonal (cont.)

- Stability Period
  - Must be same length as it is for ongoing employees
- Special rules for *length of stability period* depending on how employee measures during initial measurement period
  - If full – 6 mo or same as SMP (whichever longer)
  - If not full – cuts off at end SMP+AP

New Variable Hour



Transition from New to Ongoing

- Double Testing
  - Initial Measurement Period
  - First Standard Measurement Period
- IMP qualified as FT
  - Treated as FT during entire Stability Period that is related to IMP
- IMP qualified as PT, SMP qualified as FT
  - Treated as FT during entire Stability Period related to SMP

Rehires as New Employees?

- A rehire may be treated as a new EE if
  - 26 consecutive wks. of no qualifying hours, **OR**
  - Parity Rule: The break in service is at least 4 wks. long and the break is longer than the preceding period of service
- Not a new EE
  - If cannot qualify as new hire under above calculation, then the individual's previously used SMP and SP continue to apply, as if there were no break in service

Special Unpaid Leave

Averaging Method:

1. Exclude special unpaid leave/break period and apply average over entire measurement period; **or**

2. Impute hours of service for the special unpaid leave/break period at a rate equal to average weekly hours of service for weeks.

Employment Break Period

- At least 4 consecutive weeks (not incl. special unpaid leave) –
- Averaging Method:
  - (1) exclude the employment break period and apply average over entire measurement period; or
  - (2) credit with hours of service for the employment break period at a rate equal to the average weekly rate.
- 501 hours max./calendar year (of time excluded/credited, depending on method used)

Ohlone 2013/2014

- Fall Semester – 16 weeks
- Winter Break – 6 weeks
- Spring Semester – 16 weeks
- Spring Break – 1 week
- Summer Break – 13 weeks
- Ex. Bob Averages 32 hours during Fall & Spring Semesters & 0 hours for 21 weeks

Exclusion Method

- 20 week break period
- If apply 32 hour average, get 640 hours
- But, no more than 501 hours can be excluded from the average
- Average 32 hours means 15.6 weeks can be excluded (501 divided by 32 – 15.6 weeks)

Exclusion Method

Fall Semester		Spring Semester	
16 weeks			
	Winter break	Spring break	Summer break
	6 weeks	1 week	13 weeks

Total Break = 20 weeks

Exclude = 15.6 weeks

4.4 include at 0 hours

Average 32 hours over 32 weeks & 0 hours over 4.4 weeks

(32 x 32 = 1,024 ÷ 36.4 wk = 28.1 hr/wk)

Credit Method

- If credit 32 hours for 20 week break = 640 hours
- But only required to credit 501 hours
- Average 32 hours divided by 501 = 15.6 weeks

Credit Method

52 Weeks

Fall Semester — Spring Semester

16 weeks

Winter break	Spring break	Summer break
6 weeks	1 week	13 weeks

20 weeks of break

Credit 15.6 weeks @ 32 hours = 499.2

Hours of services during semesters

32 weeks @ 32 hours = 1, 024

1,523.2 hours

Average over measurement period = 29.2 hours per week

(1.523.2 ÷ 52)

Employer Appeal Opportunities

- **Appeal:** Exchange's Determination of Employee Eligibility for Subsidy
  - Exchange notifies employer
  - 90 days to appeal
  - Employer submits evidence
  - Review of appeal
  - Notice of decision within 90 days
- **Appeal:** IRS' Penalty Determination
  - Appeal Process expected in future guidance

Questions?

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