

Time is of the Essence to Begin Administering Measurement Periods

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Under the employer shared responsibility provisions of the Affordable Care Act (the “**ACA**”), beginning as of January 1, 2015, an applicable large employer (“**Employer**”) that (i) does not offer “minimum essential coverage” under its group health plan to at least 95 percent of its full-time employees (“**F-T Employees**”) and their eligible dependents (not including spouses), or (ii) offers minimum essential coverage to its F-T Employees that is either unaffordable or does not provide “minimum value” (as determined under the ACA), will be subject to significant monetary penalties if any of the F-T Employees who qualify for a tax credit or a cost-sharing reduction purchases health insurance through an exchange established under the ACA. To date, the IRS has issued only proposed rules regarding the employer shared responsibility provisions. For this purpose, “employee” means a common law employee, and “full-time” generally means an average of 30 or more hours per week. If an employee is expected to work less than 30 hours per week, an Employer may determine whether the employee is full-time by using a “measurement period” of three to 12 consecutive months. A “look-back” measurement period applies to current employees and a “look-forward” period applies to new hires. In the event an employee is determined to be a F-T Employee during the applicable measurement period, the Employer must offer him or her coverage during the six-month period (or the period which is the length of the look-back period, if longer) immediately after the measurement period (this coverage period is called the “stability period”). For current employees, an “administrative period” of up to 90 days immediately following the measurement period may be used to enroll employees before the stability period begins. A shorter stability period may be applied to new hires who are eligible to participate after their initial measurement periods. Pending the IRS’s issuance of final regulations, an Employer that intends to utilize measurement periods for determining F-T Employees must implement administrative processes for tracking hours and other needed information. For a 12-month stability period beginning January 1, 2015, and taking into consideration a 90-day administrative period, the Employer must capture and measure hours beginning in 2013.