

# WHAT DO WE DO NOW?

## *Executive Briefing on Healthcare Reform*



**Marc S. Wise, Esq.**

# EMPLOYEE HEALTH PLAN CHANGES - 2014

## Employee Health Plan Changes – 2014 Plan Year

1. No pre-existing condition exclusions.
2. 90-day waiting period maximum. Using the first day of the month following 90 days will not be permissible. Applies to all Plans
3. Grandfathered plans must now extend coverage to dependent children even if they are eligible for other employer coverage. SPDs should be modified
4. Employers may offer wellness programs that provide incentives of up to 30% of the cost of group health coverage (50% for smoking cessation programs) as opposed to 20% under current regulations
5. No annual or lifetime benefits – Essential health benefits – all plans

# PLANNING FOR PAY or PLAY

## Employer Shared Responsibility Rules Planning for Pay or Play

- IRC 4980H – Initially effective 1/1/14. Now delayed until 1/1/15
- Only applies to employers with 50 or more full-time equivalent employees
- Controlled group/affiliated service group rules apply

# PLANNING FOR PAY or PLAY

## Measurement Periods

**Initial Measurement Period** – The period determined by the employer for measuring hours of service for new employees. This period may range from 3 to 12 months.

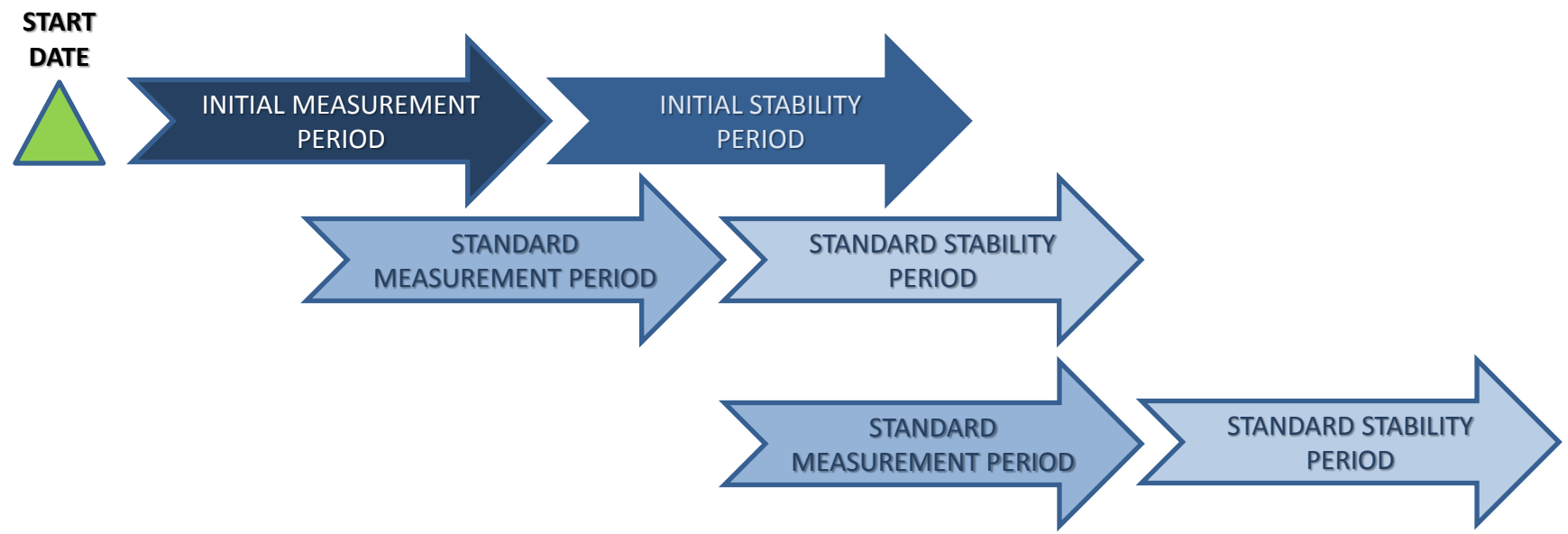
**Initial Stability Period** - The prospective period during which a new employee is treated as full-time or part-time. This period must be no shorter than the Initial Measurement Period, but not less than 6 months.

**Standard Measurement Period** – The period determined by the employer for measuring hours of service for existing employees. This period may range from 3 to 12 months.

**Stability Period** - The period for existing employees during which existing employees are treated as full-time or part-time. This period must be no shorter than the Standard Measurement Period, but not less than 6 months.

**Administrative Period** – A period of up to 90 days after the end of each measurement period to allow for calculations and employee enrollment for the next stability period.

# PLANNING FOR PAY or PLAY Measurement Periods



# PLANNING FOR PAY or PLAY

## Ongoing Employees

### EXAMPLE 1:

Measurement Period - 12-month period, from 10/15 through 10/14 each year

Stability Period - 12-month period, from 1/1 through 12/31 each year

Administrative Period – 10/15 through 12/31 each year

Plan Year – Calendar Year

Health Care Eligibility – 30 hours per week

# PLANNING FOR PAY or PLAY Ongoing Employees

## EXAMPLE – EMPLOYEE A

- Employee A hired in 2007
- Averages 30 hours per week from 10/15/13 to 10/14/14
- One standard measurement period
- Treat as full-time for the 1/1/15 to 12/31/15 stability period and administrative period

# PLANNING FOR PAY or PLAY

## Ongoing Employees

### EXAMPLE – EMPLOYEE B

- Averages less than 30 hours per week from 10/15/13 to 10/14/14
- One standard measurement period
- Not treated as full-time for the 2015 Plan Year
- BUT:
- Averages 30 hours per week from 10/15/14 to 10/14/15
- One standard measurement period
- Treated as full-time for the 2016 Plan Year
- Treat as full-time even if average hours drop below 30 for stability period ending 10/14/16



# **PLANNING FOR PAY or PLAY**

## **New Non-Variable-Hour Employee and Non-Seasonal Employee**

- Reasonably expected to be a full-time employee (i.e., work on average at least 30 hours or more per week)
- The initial measurement period and stability period safe harbors do not apply
- 90 day rule applies

# **PLANNING FOR PAY or PLAY**

## **New Variable-Hour and Seasonal Employees**

- Variable-Hour Employee
  - Assume employment of entire initial measurement period
  - Seasonal Employee
- Treat as a new variable-hour employee
- Measurement Period and Stability Period Applies

# PLANNING FOR PAY or PLAY New Variable-Hour Employees

## EXAMPLE

**Measurement Period** - 12-month period, from 10/15 through 10/14 each year

**Stability Period** - 12-month period, from 1/1 through 12/31 each year

**Administrative Period** – day after the last day of the initial measurement period and ending on the last day of the first calendar month that begins on or after the last day of the initial measurement period.

**Plan Year** – Calendar Year

**Health Care Eligibility** – 30 hours per week

# PLANNING FOR PAY or PLAY New Variable-Hour Employees

## EXAMPLE

- Employee C hired on 10/10/13
- The initial measurement period is 5/10/13 to 5/9/14
- Averages 30 hours per week from 10/15/13 to 10/14/14
- One standard measurement period
- Administrative period is from 5/10/14 (the day after the last day of the initial measurement period) to 6/30/14 ( the last day of the first calendar month that begins after the initial measurement period)
- Treat as full-time during the stability period from 1/1/15 to 6/30/15, regardless of actual hours worked

# **PLANNING FOR PAY or PLAY New Variable-Hour Employees**

- Must also measure hours during the standard measurement period from 10/15/13 to 10/14/14
- If Employee C averages at least 30 hours per week during the standard measurement period, C is treated as full-time from 1/1/15 to 12/31/15 regardless of actual 2015 hours worked.

# PLANNING FOR PAY or PLAY

## Part-Time to Full-Time

### **EXAMPLE**

**Measurement Period** - 12-month period, from 10/15 through 10/14 each year

**Stability Period** - 12-month period, from 1/1 through 12/31 each year

**Administrative Period** – day after the last day of the initial measurement period and ending on the last day of the first calendar month that begins on or after the last day of the initial measurement period.

**Plan Year** – Calendar Year

**Health Care Eligibility** – 30 hours per week

# PLANNING FOR PAY or PLAY

## Part-Time to Full-Time

### EXAMPLE - CONTINUED

- Employee hired on 5/10/13
- Initial measurement period is from 5/10/13 to 5/9/14
- Employee averages 28 hours per week during initial measurement period
- Employee does not have to be treated as full-time for the stability period from 7/1/14 to 6/30/15

# PLANNING FOR PAY or PLAY

## Part-Time to Full-Time

### EXAMPLE - CONTINUED

- Must also measure for the standard measurement period from 10/15/13 to 10/14/14
- Employee averages at least 30 hours per week during the standard measurement period
- Employee is treated as full-time from 1/1/15 to 12/31/15
- Full-time status during the standard measurement period overrides part-time status during the initial measurement period



# PLANNING FOR PAY or PLAY

## Seasonal Employees

### EXAMPLE

- Initial measurement period is the 12-month period beginning on the employees start date
- Employee is a ski instructor and starts employment on November 15, 2013.
- Ski season runs from 11/15/13 to 3/15/14
- Employer treats employee as a seasonal employee using a reasonable good faith interpretation
- Expected to work 50 hours per week during the season and under 30 hours per week during the initial 12-month measurement period
- Special rule for seasonal employees