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### Does Your Health Plan Document and SPD Show How You Determine Full-Time Status?

To avoid ACA tax penalties, large employers – 50 or more full-time equivalents in the previous calendar year – are allowed to determine if their employees are full-time either (i) on a monthly basis or (ii) on a “look-back” basis described in ACA regulations. Employers can use look-back or monthly method for IRS-designated classes of employees: hourly, salaried, employed in different states, or covered by a collective bargaining agreement. Typically, we see employers with variable hour work forces, such as restaurant owners, use the look-back method for hourly employees.

The main advantage of the “look-back” method is that coverage is not required for employees who do not regularly work 30 hours per week, but who occasionally do so. Under the look-back method, employees will not be considered full-time unless they average at least 130 hours per month during an entire look-back period, in which event they then are deemed full-time during a following “stability period,” regardless of hours in the stability period.

Look-back periods are selected by the employer in advance. They will typically be 12 months long and must end within 90 days preceding a stability period, which usually starts on the first day of a plan year and lasts for the longer of 6 months or the length of the look-back period.

The look-back method also requires initial measurement periods and initial stability periods for new hires while they transition to the look-back and stability periods used for ongoing employees. However, unless a new employee is part-time or variable hour, the monthly method is required under look-back for new hires until the employee has completed the standard measurement period applicable to ongoing employees. The look-back rules are complicated but are popular with large employers whose part-time, variable hour, and seasonal employees occasionally work full-time in busy months.

There is more involved than taxes. What if a part-time employee who worked more than 30 hours per week in a busy month (and is not offered coverage because the employer is using the look-back method) needs medical care? Are you ready for the lawyer who asks: “Why wasn’t my client and his family offered health insurance? He was working full-time that month.” The employer whose health plan does not specifically mention that the look-back method is being used, with actual details about the measurement periods and stability periods in use, is in a very weak position.

*Advice: do not just rely on the booklet the insurance company provides. ERISA requires that you have a plan document and a summary plan description which describes the rules of your health plan.*