



# The ACA Is (Apparently) Here To Stay: What Employers Need To Know

Insights

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Now that the Supreme Court has, for the second time, upheld a major portion of the Affordable Care Act (ACA), it might be a good time to review your practices to ensure you are in compliance. The ACA's new concept of what it means to be a full-time employee can significantly change how you administer benefits during employee leave, and might require you to alter your practices.

Many employers have also raised questions about whether the ACA's new mandates change the timing of when they must offer COBRA to those employees on leave. This article will explore these common inquiries and provide some practical suggestions.

## Which Employees Are Full-Time?

To comply with the Employer Mandate portion of the ACA, also known as the Employer Shared Responsibility Payment, employers who have 50 or more full-time equivalent employees must make an affordable and adequate offer of group health plan coverage to their employees. Failure to do so raises the possibility of a stiff penalty. And therein lies the rub: "full-time" is no longer defined as 40 hours per week. Instead, employees who work just 30 hours or more per week (130 hours per month) are considered full-time under the ACA, and thus eligible for a group health plan.

But the complexity doesn't stop there. You can't simply classify your employees into two categories – those who work 30 hours or more per week and those who work less – to determine who gets healthcare. Rather, you have to calculate who is full-time and who is not by using the "*monthly measurement*" method or the "*lookback measurement and stability period*" method. If you use the monthly measurement method, you grant group health plan coverage for a particular month to any employee who exceeds 130 hours for that particular month.

Easy enough, right? For employees who consistently work more than 30 hours per week, yes. But for employees who work variable hours, applying this eligibility method could have them joining and leaving your plan on a monthly basis. Also, you don't know until the end of the month which employees are eligible.

For workers with part-time or variable hours, the lookback measurement and stability period method allows you to measure hours over a set *measurement period*, which could be as much as a calendar year, and apply the resulting status over a *stability period*, which, in most cases, would be

the following calendar year. It is important to note that once employees achieve benefit-eligibility status, they maintain that status for an entire year, even if they work fewer hours than what is normally required to earn such benefits.

### **Did You Write It Down?**

But figuring out who is eligible for coverage is only the first step. Next you must document your full-time employee eligibility policy, clearly communicate it to your HR staff, and incorporate it into your Plan Document and Summary Plan Description.

Obviously, your full-time eligibility policy has to be more than just a simple statement along the lines of: “Employees who work 30 hours or more per week or more are eligible for coverage.” You must go much further and describe how your company will calculate eligibility.

And while you’re at it, you should probably review your Plan Document and Summary Plan Description for compliance with the final, major ACA changes that go into effect by January 1, 2016. Some things to look for:

- if you’re using a Plan Document provided by your insurance company or third-party administrator, make sure it is ERISA compliant (it may not be);
- similarly, if all you have is a Certificate of Coverage from the insurer, it is most likely not compliant with ERISA’s Plan Document and Summary Plan Description requirements; and
- finally, with the recent Supreme Court ruling extending marriage to same-sex couples, you’ll need to update the definition of “spouse” in your Plan Document if you haven’t already.

### **How Does This Impact Employee Leave?**

Once you have decided how you will determine the full-time status of employees, and once you’ve written down those rules, you can tackle an issue that employers face nearly every day: how to treat employees during leaves of absence. In the past, employers subject to the Family and Medical Leave Act (FMLA) would offer COBRA to employees who need additional time off upon the expiration of their protected FMLA leave. For employers not subject to FMLA, employees on approved leaves of absence would often be offered COBRA at the beginning of their leave.

That option is no longer available for employers who use the lookback measurement and stability period method to calculate eligibility. That’s because workers may be eligible for healthcare coverage throughout their leave – even your company’s own additional medical leave policy – if it falls within the stability period. Put another way, as long as the employee remains in your employment, they are entitled to employer-subsidized medical benefits for the duration of the stability period, whether they’re working or on leave.

The issues described in this article should be addressed with both your insurance advisor and your employee benefits counsel. If you have any questions about how these issues impact your company, contact your Fisher Phillips attorney and ask them to introduce you to one of the attorneys in our Benefits Practice Group.

## **ACTION PLAN**

1. Develop a full-time employee eligibility policy.
  2. Update or draft Plan Documents and Summary Plan Descriptions.
  3. Incorporate the full-time employee eligibility policy into Plan Documents and Summary Plan Descriptions.
  4. Revise handbook and leave policies to coordinate with these new benefit plan provisions.
  5. Educate frontline HR staff that will be addressing these issues on a daily basis.
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