Patient Protection & Affordable Care Act (PPACA): Employer Shared Responsibility Penalties and Reporting Requirements ("Play or Pay")

Document Purpose

Provide a high-level review of employer reporting requirements and potential penalty liability under IRC §4980H[1] Shared Responsibility for Employers Regarding Health Coverage (known as "Play or Pay") of the Patient Protection and Affordable Care Act (PPACA). This document also reflects Health Care Authority (HCA) and Public Employees Benefits Board (PEBB) decisions and assumptions regarding implementation of Play or Pay reporting. Regulations continue to be issued; this document is based on regulations and guidance known as of the revision date.

"Play or Pay" Summary

Beginning in 2015, "large employers" face penalty taxes under IRC §4980H[2] if they don't offer health care coverage to employees (and their dependent children[3]), who work at least 130 hours in a month; or if coverage for these employees doesn't meet minimum essential coverage, affordability, or minimum value standards. Employees who work at least 130 hours per month on average are referred to as "full-time" under PPACA.

The employer will only be penalized if a "full-time" employee enrolls in coverage through a Health Benefit Exchange *and* receives a premium tax credit. If the employee enrolls in minimum essential coverage other than Exchange coverage (e.g. an eligible employer-sponsored plan, or a government sponsored program such as Medicare Part A, Medicaid, or Tricare), they are not eligible for a premium tax credit and no employer penalty applies.

Penalties under IRC §4980H(a) are based on all "full-time" employees so the penalty could be very large. Penalties under IRC §4980H(b) are based on a single employee so the penalty should be relatively small compared to the IRC §4980H(a) penalty.

Only "large employers" face these penalties; those who employed an average of at least 50 "full-time" employees on business days during the preceding calendar year.[4] Special rules apply to "large employers" like the State of Washington which results in all state agencies and higher education institutions of any size being potentially liable for penalties.

Employers can choose how they determine employee eligibility for benefits, but are at-risk of penalties for failure to provide benefits to employees with 130 hours of service per month. Regulations provide very specific measurement methods to determine which months an employee meets the definition of "full-time." In many cases (through at least 2015), use of specific methods provides the employer safe harbor from penalties for failing to offer coverage to a "full-time" employee.

Large employers must annually report certain information on employer-provided health coverage to both "full-time" employees and the Internal Revenue Service (IRS).[5] The IRS report will show whether the employer meets the requirements of IRC §4980H. The first employer reports are due January 31, 2016 for the 2015 calendar year.[6]

---

[1] 26 CFR 54.4980H.

[2] Final regulations issued under Treasury Decision 9655 provide guidance to employers subject to IRC §4980H.

[3] "Dependent children" means an employee's child (consistent with PEBB's definition of child) who is under 26 years of age.

[4] IRC §4980H. For purposes of determining whether an employer is a "large employer" subject to the shared responsibility requirements, an employer counts all of its "full-time" employees (those who actually average 130 hours per month) and adds that number its "full-time equivalents." The number of full-time equivalents is the quotient obtained by dividing the total number of hours of service rendered by non-full-time employees (but not more than 120 for any one employee) divided by 120. If the sum of an employer's full-time employees and full-time equivalents, averaged over at least six months in 2014, is 50 or more, then the employer is a large employer subject to the shared responsibility rules.

[5] IRC §6056. Health insurance issuers, certain sponsors of self-insured plans, government agencies and certain others are additionally required to perform information reporting according to IRC §6055.

"Applicable Large Employer (ALE)" and "Applicable Large Employer Member (ALE-Member)"
Under Play or Pay regulations, the State of Washington is an applicable large employer (ALE). Final Treasury regulations direct government entities like the State of Washington to apply a reasonable, good faith interpretation of controlled group rules described in IRC §414 (b), (c), (m), and (o)[7] in determining the status of agencies and higher education institutions.[8] Under this direction, even if an individual agency or institution employs less than 50 "full-time" employees and equivalents, it is considered an "applicable large employer member (ALE-Member)" and is potentially liable for penalties. For governmental entities, controlled group regulations consider a measure of 80% "control" over another entity. Two different measures may inform the issue of control. First, if 80% of the directors, trustees, or other individual members of the controlled group's governing body are controlled by the ALE, then control criteria is met. Second, control exists if an entity provides at least 80% of operating funds *and* a degree of common management or supervision exists between the entities.

- Assumption: The State of Washington is an ALE.

- Assumption: Each state agency is a member of the State of Washington controlled group, and is specifically considered an ALE-Member, subject to IRC §4980H penalties. State agencies meet both control criteria described in regulations because agencies are established by the state legislature and funded through the state general fund, and directors, trustees and other individual members of the controlled group's governing body are controlled by the State of Washington.

- Assumption: Each higher education institution is a member of the State of Washington controlled group, and is specifically considered an ALE-Member, subject to IRC §4980H penalties. Institutions meet the first control criteria described in regulations because the governance of state and regional universities, The Evergreen State College, and Community and Technical Colleges are appointed by the Governor.

- Assumption: State of Washington school districts, charter schools, and educational service districts are not members of the State of Washington's controlled group. School districts, charter schools, and educational service districts do not meet a reasonable, good-faith interpretation of inclusion as a State of Washington controlled group member because their governing bodies are not controlled by the State of Washington (local school boards are elected, and local superintendents are hired by the local school board), and according to publicly available Office of Superintendent of Public Instruction (OSPI) data[9], the "80% of operating funds" test is not met. Washington state school districts, charter schools, and educational service districts will determine their ALE or ALE-Member status independent of the State of Washington.

- Assumption: Employer groups are not members of the State of Washington's controlled group. Employer groups do not meet a reasonable, good-faith interpretation of inclusion as a State of Washington controlled group member because neither their governing bodies nor budgets are controlled by the State of Washington. Employer groups will determine their ALE or ALE-Member status independent of the State of Washington.[10]

---

[6] IRS Notice 2013-45 provided transition relief from 2014 reporting requirements.

[7] 26 CFR 1.414.

[8] Department of Treasury; Shared Responsibility for Employers Regarding Health Coverage Final Regulations (pp 17-18).

[9] "Organization and Financing of Schools – 2011 Edition"; OSPI

[10] RCW 41.05.011 (6) defines employees of state agencies consistent with the definition of "state agency" in WAC 182-12-109. The statute refers to employees of employer groups in the context that they are employees of entities other than the State of Washington (e.g. employees of a county, municipality or other political subdivision).

Measuring "Full-time" Employment (130 hours of service per month)

"Full-time" means, with respect to a calendar month, an employee who is employed an average[11] of at least 30 hours of service per week. 130 hours of service in a calendar month is treated as the monthly equivalent of at least 30 hours of service per week.[12] If the State of Washington does not provide coverage to an employee who meets this "full-time" standard, it is potentially liable for penalties under IRC §4980H. All hours of service that an employee has with all ALE-Members of a single ALE must be aggregated for purposes of determining whether that employee is a "full-time" employee.

IRS regulations describe methods for counting hours for hourly and non-hourly employees. An employer can use different methods of counting different classifications of non-hourly employees, as long as classifications are reasonable and consistently applied. An employer may also change the method of counting non-hourly employees for each calendar year as desired.

Hourly Employees

- Each paid hour of service (or hour entitled to pay), and
- Each paid hour of service (or hour entitled to pay) for vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty, or leave of absence.

Non-hourly Employees[13]

- Counting actual hours of service as for hourly employees (described above); or
- Days-worked equivalency: Employee is credited with eight hours of service for each day the employee would be credited at least one paid hour of service under the hourly employee rule; or
- Weeks-worked equivalency: Employee is credited with 40 hours of service for each week the employee would be credited at least one paid hour of service under the hourly employee rule.
- Other Equivalencies: Employers of adjunct faculty (and others similarly employed) are required to use a reasonable method for crediting hours of service that accounts for hours outside of classroom or other instruction time, such as preparation time necessary to perform the employee's duties.

➢ Assumption: Higher education methods of assigning hours of service for faculty based on percentage of full-time academic workload is compliant with the "other equivalencies" method described in Play or Pay regulations, because methods used account for hours outside of classroom and other instruction time.

Regulations provide additional clarifications regarding hours of service for certain employees including students, on-call employees, seasonal employees and volunteers.[14]

IRC §6056 Reporting Requirements for "Full-time" Employees

PPACA requires large employers to report detailed information about "full-time" employees to the IRS and to "full-time" employees.[15] Annual reporting requirements apply to coverage provided after January 1, 2015, with reports first due beginning in 2016. The Treasury Department and the IRS issued final regulations March 10, 2014, which require each ALE-Member of a controlled group to prepare and submit reports to both the IRS and employees. A governmental employer may report on its own behalf, or may formally designate another entity to report on its behalf.

---

[11] Final regulations describe month-by-month measurement without averaging and look-back measurement with averaging.

[12] IRC §4980H-1(21)(ii). ((52x30) / 12 = 130)

[13] IRC §4980H-3(b)(iii). Days- or weeks-worked equivalency must reflect generally the hours actually worked.

[14] The PEBB Play or Pay project document "Affordable Care Act (ACA) Employee Status Code Instructions" describes these and other special considerations. The document is available by link from the Pers/Pay website: http://www.hca.wa.gov/perspay/pages/eligibility_tools.aspx

[15] IRC §6056. Employers who provide coverage on a self-insured basis (e.g. Uniform Medical Plan) must satisfy IRC §6056 and IRC §6055 requirements through combined reporting. Health insurance issuers, certain sponsors of self-insured plans, government agencies and certain others are required to perform information reporting according to IRC §6055.

Information Return to IRS (due annually March 31st; filed electronically)

1. Name, address and EIN of the ALE Member.
2. The name and telephone number of the ALE Member's contact person.
3. The calendar year for the information return.
4. Certification of whether the ALE Member offered its "full-time" employees (and their dependents) the opportunity to enroll in minimum essential coverage, by calendar month.
5. The number of "full-time" employees for each month during the calendar year, by calendar month.
6. For each "full-time" employee:
    a. The months during the year that minimum essential coverage was available,
    b. The employee's share of the lowest cost monthly premium for self-only coverage providing minimum value offered to that employee, by calendar month, and
    c. The name, address, and TIN of each "full-time" employee during the calendar year, and the months, if any, the employee was covered under an eligible employer-sponsored plan.
7. Any other information the Secretary of Treasury may require (in some cases, through the use of indicator codes), including:
    a. Whether coverage offered to "full-time" employees and their dependents provides minimum value and whether the employee had the opportunity to enroll his or her spouse in the coverage. If coverage was not offered to a "full-time" employee, a code identifying whether the employer is exempt from penalties (e.g. limited non-assessment period, not "full-time" for that month).
    b. Total employees, by calendar month.
    c. Whether an employee's effective date of coverage was affected by a permissible waiting period, by calendar month.
    d. Whether the ALE-Member had no employees or otherwise credited any hours of service during any particular month, by calendar month.
    e. Whether the ALE-Member is a member of an aggregated group, and the name and EIN of each ALE Member of the aggregated group on any day of the calendar year.
    f. The name, address and ID number of a formally designated governmental unit reporter or third party reporter.
    g. Whether coverage was offered to an employee who was not a "full-time" employee for a particular month.
    h. Whether a "full-time" employee was actually covered under the plan.
    i. Whether the ALE-Member met one of the affordability safe harbors with respect to an employee.

Written statement to "full-time" employees who are included in the report to IRS (due annually January 31st)

1. The name, address, and EIN of the ALE-Member, and
2. The information specific to the employee that was reported to the IRS.

- Assumption: A governmental employer may report on its own behalf, or may formally designate another entity to report on its behalf. Whether employing agencies or a designated agency on behalf of employing agencies will file IRS reports and written statements to employees still must be determined.

- Assumption: The PEBB program will develop data reporting systems and procedures to enable IRS reporting and written statements to employees.

IRC §4980H Penalties

The very large IRC §4980H(a) penalty and the relatively smaller IRC §4980H(b) penalties are described below. Penalty amounts will be adjusted for inflation after 2014. Neither penalty applies unless a "full-time" employee purchases medical coverage through an Exchange *and* receives a premium tax credit. Employees are not eligible for premium assistance (tax credit) per IRC §36B(c)(2)[16] if:

[16] 26 CFR 1.36B – Refundable credit for coverage under a qualified health plan.

1. The employee enrolls in PEBB benefits, or
2. The employee is eligible for PEBB benefits, and coverage does not fail minimum value or affordability tests described in "IRC §4980H(b) penalties" below.

Insurance Exchanges determine an applicant's eligibility for premium tax credits for coverage provided through the Exchange. The Exchange will notify the ALE-Member when any employee has been determined eligible for premium tax credit.[17] The notice does not represent a penalty or a potential penalty, because it is sent for both "full-time" and "not full-time" employees, and to both employees who didn't receive an offer of coverage and those who did. This notice, known as a Section 1411 certification, must:

1. Identify the employee who has been determined eligible for premium tax credit;
2. State that if the employer has 50 or more "full-time" employees they may be liable for IRC §4980H penalties; and
3. Notify the employer of the right to appeal the determination.

Large Penalty = [$166.67 per month] x [total # of "full-time" ALE-Member employees – 30][18]
(See adjustments to penalty formula in below assumption)
The larger IRC §4980H(a) penalty applies if the employer fails to offer minimum essential coverage[19] to substantially all (at least 95%)[20] of its "full-time" employees[21] for a month, and at least one "full-time" employee enrolls in coverage through an Exchange, *and* receives premium tax credit for that month.

- Assumption: The State of Washington will offer coverage to substantially all "full-time" employees under existing PEBB benefits eligibility rules and ALE-Members will not be liable for an IRC §4980H(a) large penalty.
- Assumption: If the State of Washington is subject to an IRC §4980H(a) penalty, it would be applied to the ALE-Member under "controlled group" rules; only the ALE-Member that fails the "substantially all" standard is penalized. For penalty calculation, the total number of "full-time" employees is the number at the specific ALE-Member. The first 30 "full-time" employees are excluded from penalty calculation.
- Assumption: Regulations clarify that each ALE-Member is liable for its own IRC §4980H penalties. The source of funds to pay assessed penalties still must be determined.

Small Penalty = [$250 per month] x [# of "full-time" ALE-Member employees who receive premium tax credit][22]
(See adjustments to penalty formula in assumption under #3 below)
The smaller IRC §4980H(b) penalty applies in the case of <u>any of the three</u> circumstances below.

1. Penalty if the plan's share of the total allowed costs of benefits provided under the plan is less than 60% of total costs (minimum value test).

   Regulations allow employers to determine minimum value three different ways:
   a. Use of a minimum value calculator provided by HHS,
   b. Use of a safe harbor checklist provided by HHS, or
   c. Actuarial review and certification.

[17] Notification is provided through a certification under Section 1411 of PPACA, provided to the employer.

[18] For 2015 only, the 30 "full-time" employee credit is 80. The 30 "full-time" employee credit is pro-rated among all ALE-Members in the controlled group; fractions of less than one round up to one FTE credit.

[19] By definition, as a government plan PEBB coverage is "minimum essential coverage" per IRC §5000A(f)(1), by reference to §2791(d)(8) of the Public Health Service Act.

[20] For 2015 only, the 95% threshold is decreased to 70%.

[21] Employer must offer coverage to "full-time employees (and their dependents)". Under PPACA, "full-time" means employed on average at least 30 hours per week, or 130 hours per month.

[22] The maximum penalty for failing to meet minimum essential coverage, affordable coverage, or minimum value standards is limited to the total number of full-time employees minus 30 (80 for 2015), multiplied by $166.67 for any applicable month.

- Assumption: PEBB coverage exceeds the 60% minimum value requirement. Milliman will provide actuarial review and certification. Milliman will determine whether or not to use the minimum value calculator or the safe harbor checklist provided by HHS in conducting their actuarial review and certification.

(OR)

2. Penalty if the employee's share of premium for PEBB's least expensive employee-only coverage exceeds 9.5% of the employee's household income (affordability test).

   Because determining household income would be very difficult, regulations provide three alternate safe harbor methods:
   - The W-2 method allows safe harbor if the employee's share of the premium for the least expensive employee-only coverage premium is less than 9.5% of the employee's Form W-2 wages for the year to which the penalty would apply.
   - The rate of pay method allows safe harbor if the employee's share of the premium for the least expensive employee-only coverage premium is less than the employee's rate of pay x 130 hours x 9.5%. For these purposes, the employee's rate of pay is generally determined as of the first day of the plan year and special rules apply if the employee's rate of pay is reduced during the plan year. Under Washington's current minimum wage rate of $9.32[23] per hour, PEBB coverage is affordable.
   - The federal poverty line method allows safe harbor if the employee's share of the premium for the least expensive employee-only coverage premium is equal to or less than 9.5% of the federal poverty line (in place 6 months before the plan year) for a single individual. Considering the current federal poverty line for a single individual, PEBB coverage is affordable.

   - Assumption: Because determining household income is difficult, and because the PAY 1 system does not have a place to store household income, the PEBB Program will need to use a safe harbor method to demonstrate that PEBB coverage meets affordability requirements. Both the rate of pay method (using Washington's minimum wage as a baseline pay standard) and the federal poverty line method result in PEBB coverage meeting the affordability standard. The federal poverty line method is the simpler method to administer, because it does not rely on unique employee information; a single calculation and determination applies to all employees. The federal poverty line method will be used to verify affordability of EPBB coverage.

(OR)

3. Penalty if the employer does provide coverage to "full-time" employees, but an individual employee is determined "full-time" and does not receive an offer of coverage.[24] For example, assume an ALE-Member offers coverage to 95% of its "full-time" employees, but fails to offer coverage to 5% of its "full-time" employees. If a "full-time" employee who is in the 5% who is not offered coverage receives a premium tax credit, the ALE-Member will be assessed a 4980H(b) penalty.

   - Assumption: Regulations clarify that each ALE-Member is liable for its own IRC §4980H penalties. The source of funds to pay assessed penalties still must be determined.

---

[23] www.lni.wa.gov/WorkplaceRights/Wages/Minimum/History/default.asp
A $9.32 minimum wage per hour is effective January 1, 2014. Initiative 688 requires L&I to make a cost-of-living adjustment to its minimum wage each year based on the federal Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W).

[24] The small IRC §4980H(b) penalty does not apply if the large IRC §4980H(a) penalty does apply. In 2015, an employer can fail to offer coverage to 30% of "full-time" employees before the large penalty applies. In 2016 and beyond, an employer can only fail to offer coverage to 5% of "full-time" employees before the large penalty applies.

"Play or Pay" penalties: Options to consider

PEBB considered the following options affect the likelihood and timing of potential small and large penalties under IRC §4980H(a) and (b) for failures to offer coverage to "full-time" employees. These options do not affect the likelihood of potential "minimum value" or "affordability" penalties under IRC §4980H(b).

OPTION 1: Keep existing PEBB eligibility; pay small and large penalties as assessed (Monthly Measurement Method)

The State of Washington could choose to continue to provide the employer contribution to PEBB coverage under existing PEBB eligibility and enrollment rules (WACs 182-12-114 and 182-12-131), and determine each employee's "full-time" status for annual reporting through a monthly summary of hours of service.

In cases where PPACA's definition of "full-time" exceeds PEBB eligibility (any month the employee provided 130 hours of service but did not qualify for PEBB benefits), employing agencies are at risk for the smaller employer penalty and depending on volume (less than 95% compliance) may be at risk for the larger penalty. The required annual report to the IRS will identify all months "full-time" employees were not covered by PEBB benefits; these months will result in a penalty if the employee enrolls in coverage through an Exchange and receives premium tax credits.

Current PEBB eligibility places employing agencies at risk of small and large penalties

A. **No "first-month" PEBB eligibility in some circumstances when the employee may work "full-time"**
In the following circumstances, employees do not qualify for PEBB benefits but could work enough hours to be considered "full-time" under PPACA:

- Employee not anticipated to work an average of 80 hours per month, or at least eight hours per month for six consecutive months;
- Seasonal employee not anticipated to work an average of 80 hours per month, or at least eight hours in each month of a season, or to return for the next annual season;
- Faculty member not anticipated to work sufficient hours to be determined half-time or more for the entire instructional year or equivalent 9-month period;
- Faculty members who work quarter-to-quarter or semester-to-semester are not eligible for the employer contribution toward PEBB coverage until their second consecutive quarter of half-time or more.

B. **Some hours of service are excluded from PEBB eligibility determinations**
Standby hours or temporary increases in work hours caused by training or emergencies are excluded. Under PPACA, an employer must count all hours of service in determining "full-time" status, unless specifically excluded in regulations (e.g. student work study hours).

C. **PEBB eligibility through stacking requires employee notice**
Employees, seasonal employees and faculty are required to notify the employing agency of their eligibility through stacking. Under PPACA, an employer must count all hours of service in determining "full-time" status regardless of notice from an employee.

- Hours when working two or more jobs at the same time, or when moving from one job to another, within the same employing agency;
- Current PEBB eligibility only allows faculty to count hours of service worked at more than one higher education institution. Under PPACA, employers must count cumulative hours of service across all state agencies and/or higher education institutions in determining "full-time" status. In other words, all hours worked at all ALE-Members within a single ALE must be aggregated for purposes of determining "full-time" employee status.

D. **Non-hourly employees**
Proposed regulations provide methods for counting non-hourly employee hours. If an employing agency uses a different method, it may be at risk of IRC §4980H(a) and (b) penalties for that month if the faculty member otherwise would have met the "full-time" standard.

OPTION 2: Keep existing PEBB eligibility; use PPACA look-back measurement method to potentially minimize small and large penalties (Look-Back Measurement Method)

The State of Washington could choose to continue to provide the employer contribution to PEBB coverage under existing eligibility and enrollment rules (WACs 182-12-114 and 182-12-131), but determine each employee's "full-time" status for annual reporting through use of an optional look-back measurement method developed by the Treasury Department. The look-back measurement allows the employing agency to determine a new or ongoing employee's "full-time" status, and provides safe harbor from potential small and large penalties for failing to offer coverage to "full-time" employees during the "measurement" and "stability" periods described below.

If an employing agency fails to offer the employer contribution for PEBB benefits during a "stability" period for which the employee was determined "full-time," employing agencies are at risk for the smaller employer penalty, and depending on volume (less than 95% compliance) may be at risk for the larger penalty. The required annual report to the IRS will identify all months "full-time" employees were not covered by PEBB benefits. These months will result in a penalty if the employee enrolls in coverage through an Exchange and receives premium tax credits.

- Assumption: PEBB eligibility will not be expanded. If the State of Washington implements a look-back measurement method, it will be liable for potential small and large penalties during any periods the employee is determined "full-time" but does not meet PEBB eligibility.

PPACA look-back measurement method overview:

- An employer determines an employee's "full-time" status by looking back at average hours of service over a measurement period set by the employer, which can range from 3-12 months.[25] If the employee works "full-time" during the measurement period, he or she is treated as "full-time" for a subsequent "stability period" of 6-12 months (but not less than the measurement period), regardless of hours worked during the stability period, as long as the employee remains actively employed.[26] Specific methods are provided for:
  - New "seasonal" employees and employees not reasonably expected to work full-time: If the new employee is "seasonal"[27] or the employer doesn't reasonably expect an employee to work "full-time" (or cannot reasonably make that determination at the time of hire), the employer can measure actual hours of service during an "initial measurement" period of 3-12 months. "Full-time" or not "full-time" status is applied during the following initial "stability period".[28]

[25] Employers who want a 12-month stability period in 2015 may use a (one-time) transitional initial measurement period in 2014 that is less than 12 months (but at least 6 months) in length because of limited implementation time. The shortened transitional measurement period must begin no later than July 1, 2014, and end no earlier than 90 days before the first day of the plan year.

[26] An employee who has no hours of service for 13 weeks (26 weeks for educational institutions) can be considered "terminated and rehired" for purposes of determining "full-time" status. A "rule of parity" allows a shorter period if the most recent period of employment is followed by a longer period of non-employment (of at least 4 weeks). For example, employee works 3 weeks; then doesn't work for 4 weeks; employee can be considered "terminated and rehired" when returning.

[27] A "seasonal" employee is an employee who is hired into a position for which the customary annual employment is six months or less. The reference to customary means that by nature of the position an employee in this position typically works for a period of six months or less, and that period should begin each calendar year in approximately the same part of the year, such as summer or winter.

[28] Stability period must be the same length as the stability period for ongoing employees. If determined "full-time" during the initial measurement period, the initial stability period must be at least six consecutive calendar months, and no shorter than the standard measurement period. If determined not "full-time" during the initial measurement period, the stability period can't be more than one month longer than the initial measurement period. Beginning in 2015, employers must assume variable employment will continue throughout the entire initial measurement period.

- Ongoing employees: If an employee has been employed for at least one complete "standard measurement" period of 3-12 months, the employer can look back at actual average hours of employment to verify the "full-time" status of ongoing employees. "Full-time" or not "full-time" status is applied during the following "stability period."[29]

- Regulations address the following topics:
  - Eligibility of "terminated and rehired" and "continuing" employees.
  - Employers must assume a variable hour employee's employment will continue throughout the entire "initial" measurement period.
  - For adjunct faculty (PEBB quarter-to-quarter or semester-to-semester faculty), employers must use a "reasonable method" for crediting service hours consistent with IRC 4980H.[30]
  - Educational organizations must exclude traditional employment break periods (e.g., summer vacations) when calculating average hours of services for measurement periods, up to 501 hours.
  - Employers must exclude special unpaid leave periods (FMLA, USERRA, and jury duty) when calculating average hours of services for measurement periods.

➢ Assumption: The State of Washington will use the look-back measurement method described in Option 2 to determine the "full time" status of employees to enable Play or Pay reporting. The PEBB program has developed the document *Play or Pay Business Requirements for Determining "Full Time" or "Not Full-Time"* which describes in detail implementation of the look-back measurement method for determining "full-time" status of employees.

OPTION 3: Change PEBB eligibility to minimize risk of small and large penalties

The State of Washington may choose to expand eligibility for the employer contribution to PEBB coverage, to reduce the potential liability of small and large penalties, but not through use of the look-back measurement method described in Option 2.

In cases where PPACA's definition of "full-time" is more generous than PEBB eligibility, the employing agency will potentially be subject to small and large penalties. Under this option, the State of Washington would reduce risk of penalties by expanding PEBB eligibility to reduce the number of circumstances described in Option 1 that develop potential risk of small and large penalties:

A. No "first-month" eligibility in some circumstances when the employee may work "full-time"
B. Some hours of service are excluded from eligibility determination
C. Eligibility through stacking requires employee notice to the employing agency
D. Non-hourly employees

[29] If determined "full-time" during the standard measurement period, the stability period must be at least six consecutive calendar months, and no shorter than the standard measurement period. If determined not "full-time" during the standard measurement period, the stability period can't be longer than the standard measurement period.

[30] Department of Treasury; Final regulation TD 9655; "...one (but not the only) method that is reasonable for this purpose would credit an adjunct faculty member of an institution of higher education with (a) 2 1/4 hours of service (representing a combination of teaching or classroom time and time performing related tasks such as class preparation and grading of examinations or papers) per week for each hour of teaching or classroom time (in other words, in addition to crediting an hour of service for each hour teaching in the classroom, this method would credit an additional 1 1/4 hours for activities such as class preparation and grading) and, separately, (b) an hour of service per week for each additional hour outside of the classroom the faculty member spends performing duties he or she is required to perform (such as required office hours or required attendance at faculty meetings).