

Final ACA Regulations on How to Define Full-Time Employees

May 22, 2014



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- There will be no sound until we begin the webinar. When we begin, you can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.
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Employer Shared Responsibility Rules

- **Applicable large employers** must offer health coverage to all **full-time** employees or face possibility of “shared responsibility payments” (penalties)
 - “Applicable large employer”= employed an average of at least 50 full-time equivalent (FTE) employees in the prior calendar year
 - “Full-time Employees” = any employee averaging 30 hours of service per week (or 130/month)
- Shared Responsibility Rules often called “Pay or Play” or “Employer Mandate”
 - Pay or Play requirements delayed
 - 2015 for employers with 100+ FTE
 - 2016 for employers with 50-99 FTE



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Employer Shared Responsibility Rules

- 4980H(a) Penalty
 - Applies if employer does not offer minimum essential coverage to at least 95% (70% in 2015 only) of full-time employees and their dependent children and at least one employee who purchases individual coverage through a public Exchange/Marketplace and is certified to receive subsidies
 - \$166.67/mo. times number of full-time employees not counting first 30 (not counting first 80 in 2015 only)
- 4980H(b) Penalty
 - Applies if employer does offer minimum essential coverage to all full-time employees but coverage is “unaffordable” or not “minimum value”
 - \$250/mo. for each employee who purchases individual coverage through a public Exchange/Marketplace and is certified to receive subsidies



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Employer Shared Responsibility Rules

- Final Regulations Issued February 2014
 - Contained additional guidance and clarification on a number of issues
 - Counting Hours of Service
 - Variable hour employees
 - Change in employment status
 - Counting hours for certain non-hourly employees



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How to Define Full-Time Employees



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Full-Time Employees

- ACA generally defines a full-time employee as **30 hours of service** per week
 - 130 hours per month can be used as alternative to weekly average
 - This full-time definition is for purposes of ACA health insurance requirements only and does not change an employer's definition of full-time for other purposes
 - Retirement plans, wage and hour rules, other benefits, etc.
- Month-by-Month vs. Measurement Period Approach
 - Employers must decide to manage full time status on a month-by-month basis or implement an optional IRS safe harbor look-back measurement period approach



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Counting Hours of Service



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Hours of Service

- Counting Hours of Service
 - Each hour an employee is paid, or entitled to payment,
 - for the performance of duties for the employer, and
 - for vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty, or leave of absence
 - Hourly employees
 - Employer must calculate actual hours of service from records of hours worked and for non-worked hours for which payment is made or due (vacation, holiday, illness, incapacity, etc.)



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Hours of Service

- Counting Hours of Service
 - For employees not paid on an hourly basis, employer must calculate hours of service using one of three methods:
 - Implement an hour tracking system
 - Count actual hours worked & non-worked hours for which payment is due using a reasonable method of counting hours
 - Equivalency methods
 - Days-worked equivalency method - counting 8 hours of service for each day for which the employee is entitled to pay
 - Weeks-worked equivalency – counting 40 hours of service for each week for which the employee is entitled to pay
 - An employer is not permitted to use the days-worked or weeks-worked equivalency if the result is to substantially understate an employee's hours of service



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Hours of Service

- Hours of Service Guidance in Final Regulations
 - EXEMPTIONS – employers are not required to count/credit any hours of service for the following positions:
 - Bona fide volunteers - any volunteer who is an employee of a government entity or non-profit organization whose only compensation is:
 - reimbursement for reasonable expenses incurred in connection with the performance of services by volunteers, or
 - reasonable benefits (including length of service awards), and nominal fees, customarily paid by similar entities in connection with the performance of services by volunteers



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Hours of Service

- Hours of Service Guidance in Final Regulations
 - EXEMPTIONS – employers are not required to count/credit any hours of service for the following positions (cont.):
 - Federal or state work-study students
 - Interns if they are not paid
 - Certain members of religious orders
 - Important Note:
 - *No special provisions or exceptions were provided for short-term/temporary, high-turnover or paid intern positions. They are to be measured for full-time status as any other employee*



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Hours of Service

- Hours of Service Guidance in Final Regulations
 - Non-hourly positions
 - Pending further guidance, employers are required to use a reasonable method of crediting hours of service consistent with the shared responsibility rules (method does not substantially understate hours of service)
 - Specific guidance provided as to methods for certain positions:
 - On-call hours - credit hour of service for any on-call hour for which
 - payment is made or due by the employer,
 - employee is required to remain on-call on employer's premises, or
 - employee's activities while remaining on-call are subject to substantial restrictions that prevent the employee from using the time effectively for the employee's own purposes



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Hours of Service

- Hours of Service Guidance in Final Regulations
 - Specific guidance as to reasonable methods for certain positions:
 - Adjunct faculty -
 - Credit individual with 2 1/4 hours of service per week for each hour of teaching or classroom time, plus an hour of service per week for each additional hour outside of the classroom (meetings)
 - Layover hours (airline industry)
 - Credit hours of service for a layover if the employee receives compensation for the layover or if the layover is counted by the employer towards the required hours of service. If employee does not receive compensation or the layover is not counted toward required hours of service, credit an employee with 8 hours of service for each day on which an employee is required to stay overnight for business purposes



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Month-by-Month Method of Determining Full-Time Status



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Full-Time Employees

- Consideration When Determining Full-Time Monthly
 - ACA waiting period rule
 - Coverage must be effective no more than 90 calendar days from date of full-time eligibility
 - Break in service rules (covered later) may require returning/rehired employees to be treated as a ‘continuing employee,’ which means such employees cannot be subjected to a new waiting period
 - 4980H Regulations
 - Penalty does not apply if coverage is made available by first of month following three full calendar months
 - Applies only once during an “employment period”
 - Second time employee achieves full-time status, coverage must be made available as soon as “administratively practicable” - generally first of following month

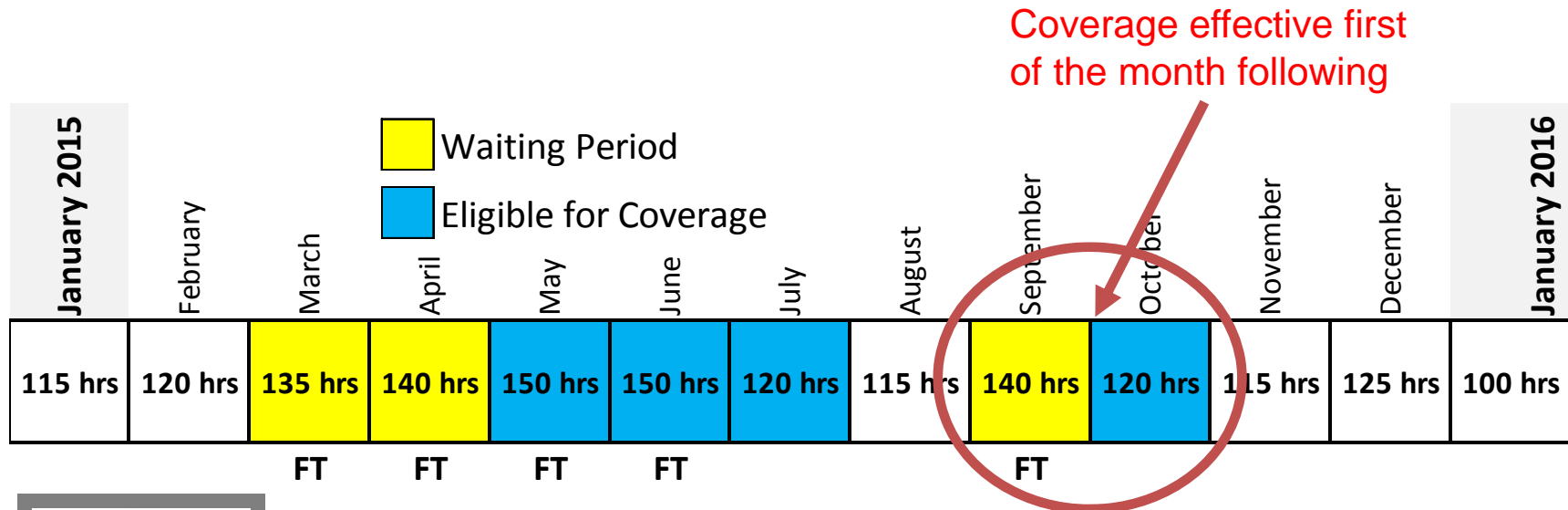


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Full Time Employees

- Continuing Monthly Determination of Full-Time Status
 - Example – assume employer’s monthly eligibility rules are:
 - Coverage effective first of month 60 days after employee reaches full-time status
 - Coverage terminated at end of month with <130 hours of service



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Measurement Period Approach to Determining Full-Time Status



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Full-Time Employees

- IRS Optional Safe Harbor Look-Back Measurement Method
 - Two types of Measurement Periods
 - Employers can choose a measurement period of 3-12 months
 - Employees who average 30 hours of service per week during measurement period must be treated as full-time (130/month)
 - Equals 1560 hours if using a 12-month measurement period
 - Standard Measurement Period
 - Applies to **all** ongoing employees in a class (i.e. hourly vs. salary)
 - New Hire Initial Measurement Period
 - New employee initial measurement period of 3-12 months may be applied only to **variable hour, seasonal or part-time employees** (more later)



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Standard Measurement Period for Ongoing Employees



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Full-Time Employees

- Standard Measurement Period
 - Standard measurement period applies equally to all employees within certain allowed employee categories:
 - Collectively bargained and non-collectively bargained employees or employees covered by different collective-bargaining agreements
 - Salaried or hourly employees
 - Primary places of employment in different states
 - Different entities within a controlled/affiliated service group
 - Example:
 - Employer may not use different standard measurement periods for different non-union hourly employees. If a measurement period is used for some hourly employees it must be used for all hourly employees



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Full-Time Employees

- Standard Administrative Period
 - Employer can choose to use up to a 90-day administrative period allowed between end of standard measurement period and beginning of stability period
 - Maximum is 90 calendar days (not 3 months), so employer cannot use an administrative period of October, November, and December for a plan that starts January 1 because that is more than 90 days!



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Full-Time Employees

- Standard Stability Period
 - Stability period must be as long as measurement period but no less than 6 months
 - If employee earns full-time status based on hours in measurement period, they must generally be treated as full-time for entire stability period (subject to new change in status exception described below)
 - If the employee does not earn full-time status based on hours in measurement period, they cannot be treated as part-time for any period longer than the measurement period
 - Example - Employers may not use a 6-month measurement period and then treat the employee as part-time for 12 months

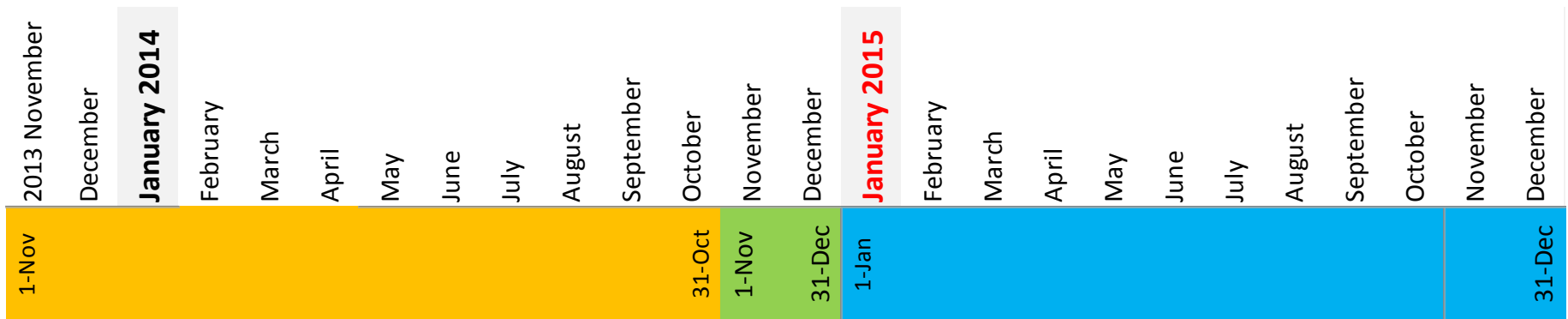





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Full-Time Employees

- Typical Example of a Standard Measurement Period
 - Employer using 12-month measurement and stability periods
 - Plan Year and Standard Stability Period = 01/01 – 12/31
 - Standard Administration Period = November and December
 - Standard Measurement Period 11/01 – 10/31



-  Standard Measurement Period
-  Stability Period - Eligibility guaranteed regardless of # of hours of service
-  Administrative Period

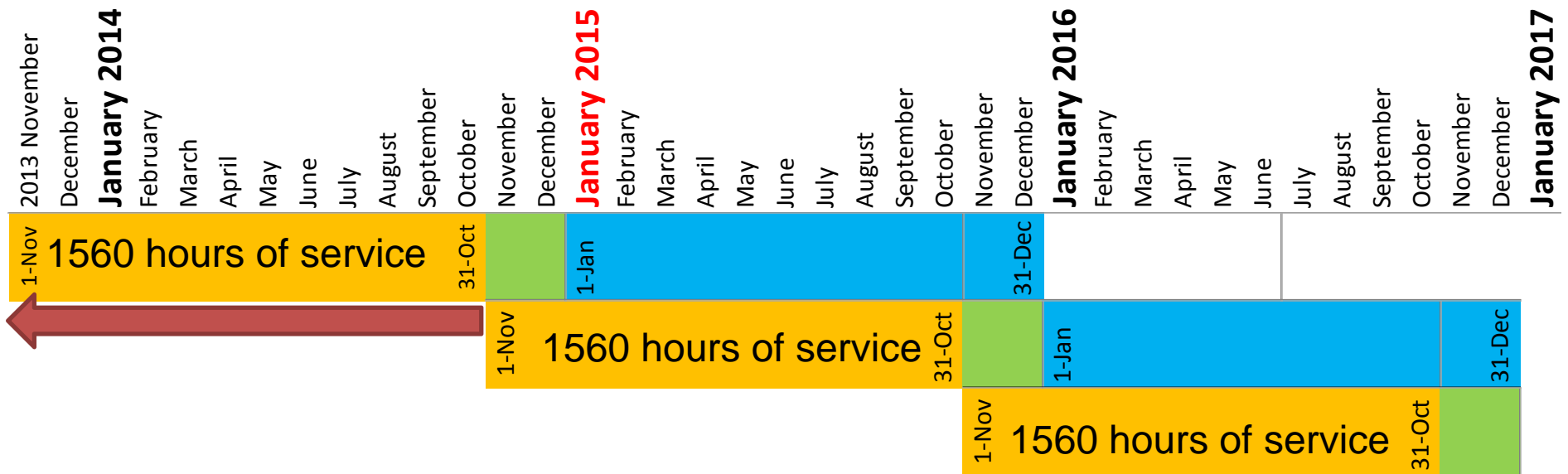


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Standard Measurement Period

Applicable to all ongoing employees in allowable class



- Standard Measurement Period
- Stability Period - Eligibility guaranteed regardless of # of hours of service
- Administrative Period



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Full-Time Employees

- Change In Status During Standard Stability Period
 - If an ongoing employee has a change in status (i.e. part-time to full-time or vice versa), eligibility for coverage is generally not affected through the end of the stability period
 - However, the final rules provided an exception -
 - For an employee originally hired as full-time (and offered coverage within the required 90 calendar days) that is then moved to a part-time position:
 - Employer may (but is not required to) terminate coverage the first of the fourth month following the status change to part-time
 - Employee must average less than 30 hours of service per week for the three months following the status change



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New Hire Initial Measurement Period



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Full-Time Employees

- New Employee Initial Measurement Period
 - Provides an alternative to the 90-day waiting period rule for certain types of employees
 - Maximum waiting period for “regular” full-time employees cannot exceed 90 calendar days beginning in 2014
 - Initial measurement period of 3-12 months can be applied only to variable hour, seasonal and part-time employees



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Full-Time Employees

- Who is a Variable Hour Employee?
 - *“Based on the facts and circumstances at the start date, it cannot be determined that the employee is reasonably expected to work at least 30 hours per week for entire measurement period”*
 - Final rules provided factors to consider when making the determination between variable hour and full-time, which include:
 - whether the employee is replacing an employee who was or was not a full-time employee,
 - the extent to which employees in the same or comparable positions are or are not full-time employees, and
 - whether the job was advertised, or otherwise communicated to the new hire or otherwise documented (for example, through a contract or job description), as requiring hours of service that would average 30 (or more) hours of service per week or less than 30 hours of service per week



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Full-Time Employees

- Variable Hour Employees
 - Example of variable hour employees
 - Retail worker hired full-time during holiday season, but may go to part-time after first of the year
 - Medical facility staff used to supplement full-time staff whose hours vary significantly from month-to-month
 - Not a variable hour employee
 - Full-time employee hired into a high turnover job
 - Even if employer expects many employees not to work entire ‘measurement period’ due to turnover – this is not a variable hour employee
 - Additional guidance also provided for temporary staffing firms to assist in defining “variable hour” employees



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Full-Time Employees

- Seasonal Employees
 - The proposed regulations issued early in 2013 did not define “seasonal employee” for purposes of using the look-back measurement method
 - Final rules defined “seasonal employee” as an employee in a position for which the customary annual employment is six months or less
 - 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
 - employee of an educational organization, who works during the active portions of the academic year may not be considered a seasonal employee



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Full-Time Employees

- New Employee Initial Measurement Period
 - Can begin any time from date of hire to the first of the month following date of hire
 - 13+ Month Rule
 - For new employees earning full-time status during initial measurement period, coverage must be offered no later than 13 months plus a partial month after the date of hire
 - Example:
 - Hire date July 15th with a 12-month initial measurement period
 - Coverage must be effective no later than September 1st after the 12-month initial measurement period

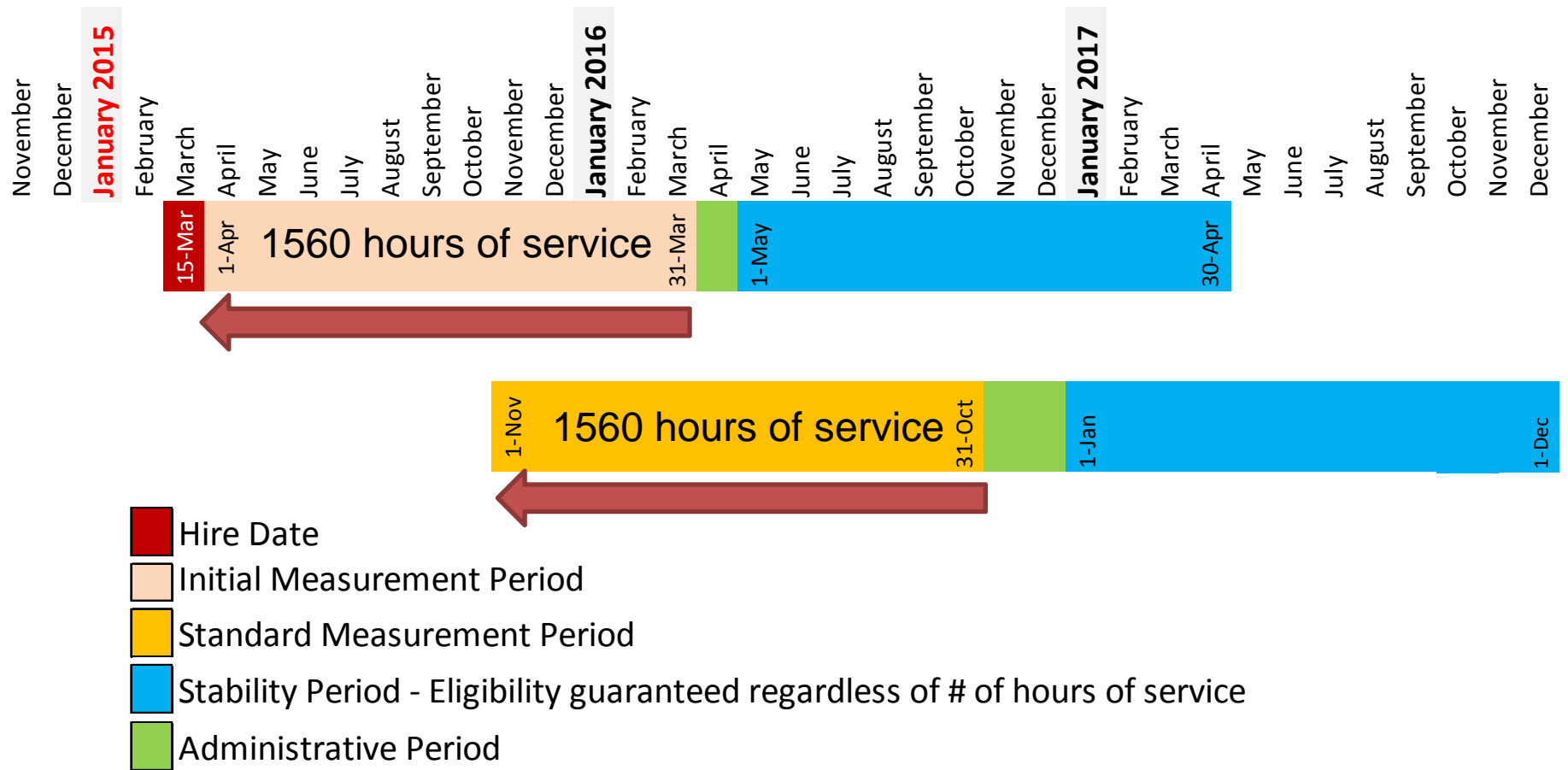


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New Hire Initial Measurement Period Transitioning into Standard Measurement Period

New variable hour employee hired March 15, 2015

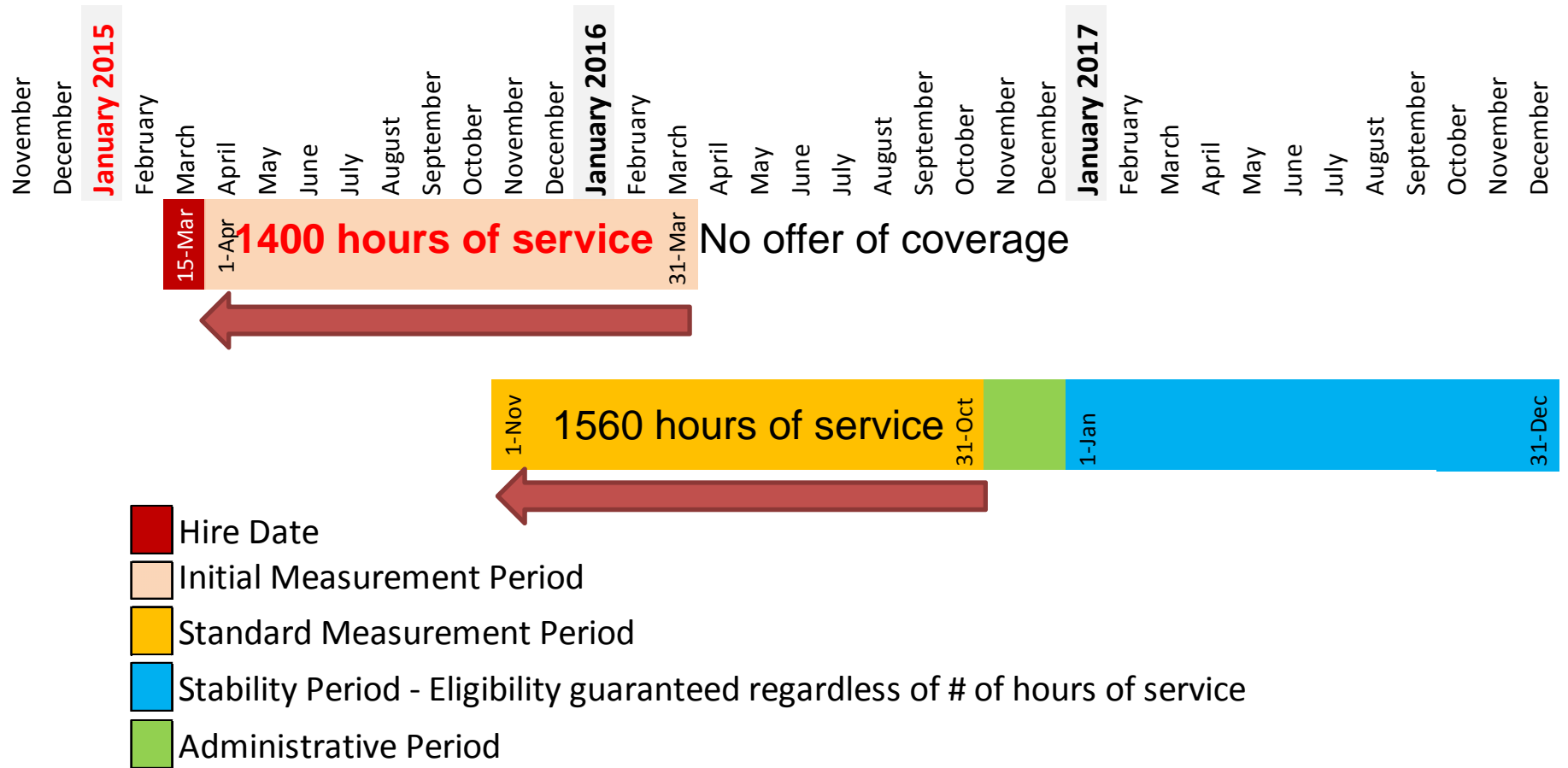


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New Hire Initial Measurement Period Transitioning into Standard Measurement Period

New variable hour employee hired March 15, 2015



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Break In Service Rules



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Break in Service

- Counting Hours of Service after a Break in Service
 - An employee returning to work following a period of absence with no hours of service (including a termination, unpaid non-FMLA leave, etc.) may need to be treated as a ‘continuing employee’
 - Treating employee as continuing employee vs new employee
 - If employee resumes employment after a period of at least 13 consecutive weeks with no hours of service, the employer can treat the employee as a new employee
 - ‘Rule of Parity’ for break period shorter than 13 consecutive weeks
 - Employee can be treated as new employee if the period of absence is at least four weeks long and longer than the weeks of employment prior to the break
 - Upon resumption of service, a continuing employee must be restored to their former status in the stability period



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Special Hours of Service Rules Related To Measurement Periods



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Hours of Service

- Counting Hours of Service
 - Averaging service for special unpaid leaves
 - Prevent periods of special unpaid leave from reducing an employee's hours of service during a measurement period
 - Special unpaid leave is unpaid leave under the FMLA, under the USERRA, or for jury duty
 - The employer can treat special unpaid leave in one of two ways:
 - Determine average hours of service by excluding any periods of special unpaid leave during the measurement period and applying that average for the remaining measurement period
 - Impute hours of service during the periods of special unpaid leave at a rate equal to the average weekly hours of service for weeks that are not part of a period of special unpaid leave



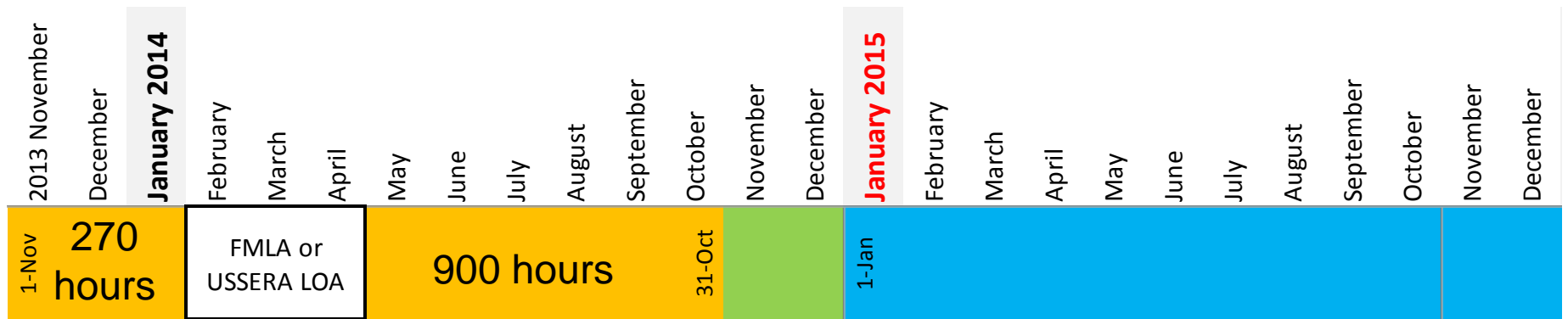
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Hours of Service

Special Leave of Absence Rule

3 Month Unpaid FMLA or USERRA LOA - No Hours of Service



1170 hours over 9 months = 130 hours per month

Employee considered full time during measurement period

- Standard Measurement Period
- Stability Period - Eligibility guaranteed regardless of # of hours of service
- Administrative Period



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Thank you.



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