

Pay or Play and Special Employment Classifications

Many employers hire employees with special employment classifications such as internships, “temporary” employees, H2A or H2B visa workers. Often these employees are hired for a short duration. These employees can create significant penalty risk under the Affordable Care Act’s Pay or Play mandate. There is no relief or special category under the ACA for fulltime employees that are expected to work only for a short period of time. How an employer deals with short-term hires depends on the method used for determining fulltime (FT) status under the Affordable Care Act (ACA). Under the ACA, “fulltime” is defined as working or paid for an average of 130 or more hours per month as determined using either the monthly method or the look-back safe harbor method. This chart addresses how offers of coverage should be handled to limit Pay or Play risk with these special category employees based on whether the employer uses the look-back measurement method or the monthly measurement method.

Employee Category		Look-Back Method
<ul style="list-style-type: none"> ¾ Short Duration Hires ¾ Paid Interns (unpaid interns do not have ACA hours of service so are not FT) ¾ H2A or H1B Visas ¾ Seasonal Employees 		
	<p>A position for which the customary annual employment is six months or less beginning each calendar year in approximately the same part of the year, such as summer or winter</p> <p>In unusual instances, employment can be extended in a particular year beyond its customary duration of six months or less</p>	<p>Assess ACA status in an initial measurement period and under first full standard measurement period after DOH</p> <p>Employment will generally be over before the IMP ends and the IMP is a limited non-assessment period under pay or play</p>
<ul style="list-style-type: none"> ¾ Variable Hour Employees 	<p>Based on the facts and circumstances on the employee’s start date, it cannot be determined whether the employee is reasonably expected to work an average of at least 30 hours per</p>	

Employee Category	Monthly Method	
<ul style="list-style-type: none"> ¾ Short Duration Hires ¾ Paid Interns (unpaid interns do not have ACA hours of service so are not FT) ¾ H2A or H1B Visas ¾ Seasonal Employees 	<p>No relief or special treatment</p>	<p>Option 1 (for no pay or play penalty exposure): These employees are made otherwise eligible for coverage but subject to a 60- or 90-day waiting period with the expectation that their employment will end before the waiting period ends</p> <p>There are potential no-discrimination issues for self-funded plans if other groups have a shorter waiting period</p> <p>Interns are in a limited non-assessment period during that waiting period (first full 3 months of employment) as long as they are otherwise eligible for coverage.</p> <p>Option 2 (for some small potential part (b) penalty exposure): If these employees remain ineligible, there MUST be few enough FT ineligible employees to avoid the part (a) penalty under the margin of error rule. (5%)</p> <p>Part (b) exposure for these employees should be assessed based on the likelihood they are eligible for Exchange subsidies (for example, many interns are covered by student insurance or a parent's plan)</p>