

DRAFT ACA Questions & Answers

Revised: September 24, 2014

QUESTION:	ANSWER:
DEFINITIONS	
1) What do the ACA terms Standard Measurement Period, Administrative Period and Stability Period refer to?	<p>Standard Measurement Period - Time period of between 3 & 12 consecutive months where employer tracks on-going employees' hours of service and determines if employees works an average of 30 hours per week and are considered full-time. (Employer also uses "Initial Measurement Period" for new employees)</p> <p>Administrative Period: Optional time period between Measurement and Stability periods to calculate full-time status, communicate status to employee and conduct open enrollment. (The combined length of Initial Measurement Period + Administrative period for New Employees, determined to be full-time, cannot exceed the first of the month following new employee's one-year anniversary from hire date.)</p> <p>Stability Period: Time period of not less than 6 months that employees determined to be full-time during the Standard measurement period are offered full-time coverage. Stability period can correspond to the plan year or to another time period as defined by employer.</p>
2) What are the various definitions of employee in the ACA?	<p>Full-Time Employee: Position is defined as full-time with the expectation that employee will work an average of 30 or more hours per week.</p> <p>Variable Hour Employee: Employer cannot determine if position is "reasonably expected" to average 30 or more hours per week and can utilize a safe harbor look-back measurement period to determine if employee is full-time.</p> <p>Seasonal Employee: Position occurs during the same season each year and is 6 months or less in duration (Final Regulations). Positions determined to be seasonal can be subject to a look-back measurement period if applicable.</p>

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	<p>Part-Time Employee: Position is defined as not full-time with the expectation that employee will always work less than 30 hours per week and is not a variable hour or seasonal employee.</p>
ELIGIBILITY	
3) If you have an employee and you determine that they meet the federal full-time employee (FTE) definition, do you offer them coverage and then tell them what their premium contribution will be?	Yes, once you determine an employee meets the ACA definition of FTE, you will need to offer them coverage effective the first of the month following date of hire. You should also visit with them regarding the affordability of coverage and what their premium requirement would be if they elect coverage.
4) If a person has 3 types of jobs that they are performing with the same employer, do you evaluate each job separately for determining eligibility?	ACA would have you sum the hours within the same employer to determine if the individual meets ACA FTE definition and should be offered coverage.
5) How should employees handled through a temporary staffing service be handled?	A person employed through a temporary staffing service is an employee of the staffing service as long as the staffing service fulfills the common-law definition of the employer, including controlling the details of how services are performed, providing compensation and benefits, and acting as the employer for payroll tax purposes. For information on the distinction between an employee and an independent contractor, see http://www.nd.gov/labor/contractor/index.html
6) If you have an employee out on FMLA and you hire a temporary employee, do you need to offer the temporary employee coverage?	If the employee is reasonably expected to work at least 30 hours per week/130 hours in a month, then you would want to offer them coverage effective 1 st of month following hire. If you cannot determine this, then you would need to do an initial measurement period and determine at the end of this period. If eligible, you would offer coverage during the stability period. If not, no coverage offer is needed.
7) If you have a variable hour employee who after the initial measurement period is determined to be eligible during the stability period, but they are then not eligible during the next measurement period, you no longer offer them coverage	Yes, that is correct.

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during the next stability period, right?	
8) If an employee is seasonal (below 6 months), is it necessary to perform a look back?	As long as employment hours are below 6 months and position is a recurring seasonal position, you would start the measurement period over each year when they return.
9) What happens if the seasonal employee goes back to work 1) under a federal work study program or 2) not under a work study program – just returns to work?	Needs further review.
10) How should employers handle students that are first employed under a federal work study program and then stay employed but are no longer on work study?	Needs further review.
11) Are volunteers considered employees?	Needs further review.
12) How do you handle a part-time/seasonal employee who exceeds 1560 hours in a five month period?	The look-back period would determine eligibility and since exceeded, the employee would meet the requirements and should then be offered coverage.
13) If someone qualifies and is in the stability period and then terminates, do we have to continue to pay for duration of stability period?	No, once person terminates, the obligation of the employer to pay ends the month following the month of termination.
14) How do you handle an employee that is a full-time permanent employee with benefits during most of the current look back period prior to 1/1/15 but then moves into a variable hour temporary position?	See page 8595 & 8596 of the Federal Register. The example indicates that because the individual is moving from a monthly measurement as a permanent employee to the look-back determination as a variable hour employee, if they meet the required hours, including the hours as a permanent employee, then they will be entitled to the insurance for the full stability period. If they remain a variable hour employee, then they will roll into the next year's look back period and will be eligible only if they meet the necessary hours ongoing.
15) How do you handle an employee that does not meet the ACA FT definition during measurement period but then increases hours and is now working in a position that is reasonably expected to meet requirements. Do you offer coverage immediately (first of month following change) or wait until the end of the current look-back measurement period & evaluate based on all hours in measurement period.	General guidance appears to indicate that once a person changes their hours where it is reasonably expected that they will meet the ACA FT definition, they should be offered coverage rather than waiting to the end of the look-back measurement period.
16) Will 12 month university & school employees be subject to the 26 week rehire rule or the 13 week rehire rule since they work	This item is under review.

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year-round?	
<p>17) Can you provide direction as to whether a summer intern (law student intern) would be a seasonal employee under the ACA?</p> <p>Every summer, several of our offices hire a law student intern to work. They usually work 40 hours per week, but only for the summer break.</p> <p>So if there is no change of that, they are considered “seasonal”. Any issue with the person who comes back the following summer? Or who works one summer, and then following graduation applies for a job with us?</p>	<p>If there is a chance a summer intern could be retained for additional hours beyond the summer, it would not be allowed to classify them as a “seasonal worker”.</p> <p>For interns that return the following summer, as long as there is a break of more than 13 weeks in employment, which I believe in this case there would be, they would be considered a new hire when they return whether it is to intern or for more permanent employment following graduation. They would at that time be evaluated for whether they are working full time (more than 130 hours/month) and offered insurance, or if they are deemed seasonal, then it would not be required to offer them insurance.</p>
18) If after a year the employee is no longer eligible for the health insurance, will COBRA coverage be available?	Yes, COBRA is available any time a covered individual loses eligibility to the insurance plan.
19) Will this be the same policy (coverage) we currently have with NDPERS for benefitted employees?	Yes, it will be the same plan.
20) Should the employer offer coverage to an eligible employee if the employee is or can be covered by a spouse’s or parent’s plan?	Yes, according to the ACA, an employee who meets eligibility must be offered coverage regardless of being covered by a spouse’s or parent’s plan.
AFFORDABILITY/SAFE HARBOR/PREMIUM	
21) When determining the affordability piece, you apply the 9.5% based upon single coverage. However, must we offer the non-spouse dependents coverage as well?	Yes, that is correct.
22) If the employee decides the family rate is too expensive, can they send the wife and children to the marketplace for their coverage? Will they be eligible for the subsidy?	Anyone can apply for coverage on the exchange. However, if employer coverage was offered and it is deemed affordable, then the individual will not be eligible for the subsidy.
23) If we use the W-2 to report, do we just use income and the single premium amount?	Yes, you may need to request W-2 from previous year if dealing with a new hire, to determine affordability.
24) When determining premiums, for state agencies, are the temporary/LOA premiums the applicable premium? For	Correct.

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political subs, there are not special premiums, so is it based on single/family coverage?	
25) Will NDPERS be offering Individual + Dependent Coverage?	The rates are set through June 30, 2015 and do not include an Individual + Dependent Coverage so this will not be offered at this time.
26) Grandfathered status – If the full premium for a temporary employee was paid as of 3/2010 and then the employer changes and charges the employee 9.5% of wages, won't this cause a potential loss in GF status?	An employer should not decrease the amount they are paying towards insurance by more than 5% as this could impact the plan's Grandfathered Status.
27) If an employee works sporadically, how do they pay their portion of the premium when there isn't a paycheck?	NDPERS will bill the employer for the full premium. The agency will then need to collect the required premium from the employee, whether through payroll deduction or personal check.
STATE AGENCY RELATED QUESTIONS	
28) Who will decide if the State is the employer or individual agencies are the employer for the definition of "Large Employer"?	The State of North Dakota will be the employer for all state organizations. For reporting purposes, there will be two Large Employer Members within the state which are 1) state agencies & 2) higher education.
29) For state agencies, if an agency hires a temporary employee who previously worked for another state agency, how is this administered for determining eligibility?	The state is the employer and therefore, the total hours worked within the measurement period for the state would need to be considered for determining eligibility.
30) If a state agency has been paying for a temporary employee's insurance and now the agency wants to request funds from the OMB pool, is that possible? How will it work?	OMB is developing a reimbursement process.
31) Is there any difference if the employee works for two state agencies but is a student under one of them?	Needs further review.
32) How will married state employees be handled? Will NDPERS still only allow one contract?	Decline Offer of Coverage form should be completed by the spouse that is not the contract holder. The form should be completed each year.
33) Does the ACA allow us not to track permanent state eligible employees who are fully benefited?	They are to be tracked under ACA guidance, however, since they are being offered coverage, concerns of penalty do not apply.
34) How to handle "workforce experience" participants at Job Service?	This will need further review.

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<p>This is a federally funded program through the Dept. of Labor (DOL). We are currently checking with our DOL representative (as suggested by Sparb Monday) to see if they have established any criteria or procedure on how to incorporate ACA into this program or whether they have made any decisions on whether participants should be offered coverage if they are deemed eligible by us at Job Service or the employers they are doing the work for. In doing some research, I have found that Job Service does pay wages, Social Security, and Medicare taxes. Although these participants are not independent contractors, I am not sure that Job Service controls the “what will be done and how it will be done” section of common law below:</p> <p>Under common-law rules, anyone who performs services for you is generally your employee if you have the right to control what will be done and how it will be done. This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed.</p> <p>We’ve also reached out to DHS because one of their programs has many similarities so I’ve copied Marcie into the conversation as well. Any guidance or suggestions the committee has would be helpful.</p>	
POLITICAL SUBDIVISION RELATED QUESTIONS	
35) How should county boards be handled? Will they count towards the full time employee number?	Under ACA, they would not meet the FTE definition if they are not working on average 30 hours per week/130 hours per month. However, under NDCC 54-52.1, they would continue to be offered coverage as they are now. If they don’t meet the FTE definition, then they will not count towards the number of FTE needing to be offered coverage.
36) For political subdivisions, what can they expect for premium increase?	Current projection is a 21% increase.

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37) If a political subdivision is a small employer, is their only requirement to have provided access to the marketplace to all employees by October 1 and new hires thereafter.	At this time, yes, that is only requirement we are aware of.
38) For a small employer who loses GF status, do they have to come off NDPERS?	Yes, by losing GF status as a small employer, ACA requires that the employer to have a metallic plan. Therefore, the small employer must come off NDPERS as our plan does not meet ACA requirements for metallic plan.
NOTICES/FORMS/TAX REPORTING	
39) Will there be a standard waiver form available?	Yes, there will be a standard decline form available from NDPERS or an employer can choose to have their own form.
40) Report 6056 – Do you have recommendations for what information will be needed for support in record-keeping/reporting?	IRS regulations were released in August 2014.
41) How soon after hiring should the marketplace notice be provided? Does the notice need to be provided to terminating employees?	Within 14 days of hire, the notice should be provided. The notice does not need to be provided to terminating employees. NDPERS will provide them with a COBRA notice.