

A banner image showing a close-up of a stethoscope resting on a surface, with an American flag in the background. The text "What Employers Need to Know Right Now About Health Care Reform" is overlaid on the image in a white, serif font.

## What Employers Need to Know Right Now About Health Care Reform

### Frequently Asked Questions about Eligibility Waiting Periods

Updated February 2014

**Q1: Does the Patient Protection and Affordable Care Act (PPACA) affect eligibility waiting periods?**

A1: Yes. PPACA prohibits waiting periods longer than 90 calendar days after the employee becomes eligible for coverage.

**Q2: May a plan use a “first of the month following 90 days of employment” waiting period?**

A2: No, it may not. The 90-day limit is absolute.

**Q3: May a plan use a 3-month waiting period?**

A3: No, it may not. The 90-day limit is absolute, and if there are consecutive 31-day months (as happens with July-August and December-January), three months would exceed 90 days.

**Q4: May a plan require that the 90 days be consecutive?**

A4: A plan generally may not impose a requirement that the employee be actively at work for the full 90 days.

**Q5: May a plan impose eligibility requirements that don’t relate to time employed?**

A5: Yes. A plan may require an employee to be in an eligible class to be eligible for the plan. This means, for example, that a plan may limit coverage to employees who work full-time, have certain job titles, have obtained needed licenses, have met production requirements, etc.

*Example:* The plan of Victor’s employer provides that only employees that have achieved specified certifications are eligible for coverage under the plan. Victor is hired on May 3, 2014, and receives the required certification on September 22, 2014. Victor, therefore, becomes eligible for coverage on September 22, 2014. His waiting period begins on September 22 and his coverage must be available no later than December 21, 2014.

*Caution:* Once the employer-shared responsibility (“play or pay”) requirement applies to larger employers (generally 100 or more full-time or full-time equivalent employees for 2015 and 50 or more full-time or full-

time equivalent employees for 2016 and later), excluding any employees who work 30 or more hours per week may trigger play or pay penalties for those employers.

**Q6: May a plan impose a cumulative service eligibility requirement before applying a waiting period?**

A6: As long as the requirement is not a subterfuge to avoid the waiting period, cumulative service requirements are allowed; however, the employer may not require that the employee complete more than 1,200 hours of service under a cumulative service requirement before becoming eligible. To avoid being considered a subterfuge, the employer generally needs a separate business reason for the requirement. For example, many union plans have a “cumulative hours of service” requirement to address sporadic work – that is allowed. Employers that add a cumulative service requirement period now are at greater risk of challenge than those who have long-held requirements of this type.

*Example:* Hope begins working 25 hours per week for Acme on January 3, 2014. Acme’s plan provides coverage to part-time employees after they have completed a total of 1,200 hours of service. Hope works her 1,200th hour for Acme on December 15, 2014. Hope’s 90-day waiting period begins on December 15, so she must be offered coverage with an effective date no later than March 15, 2015.

**Q7: May a plan impose a probationary or orientation period before applying a waiting period?**

A7: The general rule is that an eligibility requirement that is not a subterfuge to avoid the waiting period requirements will be allowed. However, in a proposed regulation released February 20, 2014, the regulatory agencies said they are considering limiting permissible probationary and orientation periods to one month (at least to the extent that period affects eligibility for plan coverage).

**Q8: Are there any special rules for multiemployer plans?**

A8: The regulation generally permits any eligibility requirements that are not designed to avoid the waiting period requirement, particularly if they are needed because of a unique operating structure. Hours banks are mentioned as a unique operating structure. The regulations also give this arrangement as an acceptable design:

*Example:* A multiemployer plan has an eligibility provision that allows employees to become eligible for coverage by working a specified number of hours of covered employment for multiple contributing employers. The plan aggregates hours in a calendar quarter and then, if enough hours are earned, coverage begins the first day of the next calendar quarter. The plan also permits coverage to extend for the next full calendar quarter, regardless of whether an employee’s employment has terminated. This arrangement satisfies the regulation.

**Q9: May an employer limit coverage to those who have completed a certain amount of service, such as one year of service?**

A9: A requirement that an employee work more than 90 days to be eligible for coverage would violate the waiting period requirement. It also appears that a requirement that an employee work more than 90 days to be eligible for an enhanced plan would violate this requirement. Basing the employer contribution on length of service would not violate the waiting period requirement (although it might raise discrimination issues).

**Q10: If a plan moves to a first of the month following 60 days of employment approach, will that satisfy the requirement?**

A10: Yes, it will. Note, however, that the first of the month after two months of employment will not work for employees who are hired very early in a month when there are consecutive 31-day months (July-August and December-January).

**Q11: When must plans meet this requirement?**

A11: Plans must meet this requirement on the first day of their 2014 plan year. The plan year often, but not always, is the plan's renewal year. The "official" plan year should be stated in the plan document or summary plan description (SPD) or on IRS Form 5500. If neither of these exists, the plan year will either be the policy year or the deductible year.

**Q12: How do plans that need to change their waiting period handle employees hired under the prior rules?**

A12: The 90-day limit applies as of the start of the 2014 plan year, even for those hired under the prior plan rules. This means that an employee who had worked 90 days by the start of the 2014 plan year must be covered as of the start of the year. Those who had worked fewer than 90 days must be credited with all time worked.

*Examples:*

Ellen was hired October 2, 2013. Ellen's employer has a calendar year plan and, during 2013, it used a "first of the month after 90 days of employment" waiting period. Ellen must be offered coverage on January 1, 2014, because she will have completed at least 90 days of employment by that date.

Fred was hired October 22, 2013. Fred's employer has a calendar year plan and, during 2013, it used a six-month waiting period. Fred must be offered coverage with an effective date on or before January 20, 2014, because that is Fred's 91st day of employment.

Jane was hired December 10, 2013, and Jim was hired January 29, 2014. Jane and Jim's employer has a May 1 plan year and has been using a "first of the month after 90 days" waiting period. The employer is switching to a "first of the month after 45 days" waiting period as of May 1, 2014. Jane must be offered coverage with an effective date of April 1, 2014, (because the first of the month after 90 days is allowable for Jane's employer until May 1). Jim must be offered coverage with an effective date of May 1, 2014, because Jim will have completed 90 days of employment by then.

**Q13: May an employer that has moved to a shorter waiting period (such as 60 calendar days) still apply the full 90 days to a person hired under the old rules?**

A13: Yes. Based on the regulation, this appears to be allowed.

**Q14: How, exactly, are days in the waiting period counted?**

A14: The employer must start counting as of the date the employee is hired (or moves into an eligible class) and coverage must begin by the 91st day. If the 91st day falls on a weekend or holiday, the plan may not wait to begin coverage until the following work day. In that situation, the plan will need to begin coverage on the Friday before the end of the allowed waiting period.

*Example:* Dave is hired January 3, 2014. Dave's employer has a 90-day waiting period and a calendar year plan. Dave's coverage must be available on April 3, 2014, (29 days in January + 28 in February + 31 in March + 2 in April = 90).

**Q15: Must the employee elect coverage by the 91st day to meet the eligibility waiting period requirement?**

A15: No. If the employee could have had coverage in effect by the 91st day if he acted promptly, that is sufficient.

*Example:* Rose Corporation's group health plan provides for coverage to begin on the first day of the first payroll period on or after the date an employee is hired and completes the applicable enrollment forms. Enrollment forms are distributed on an employee's start date and must be completed within 90 days. Dawn is hired and starts on October 31, 2014, which is the first day of a pay period. Dawn completes the

enrollment forms and submits them on January 28, 2015, which is the 90th day after her start date. Coverage is effective seven days later, on February 4, 2015, which is the first day of the next pay period. Because Dawn's coverage could have been effective as early as October 31, 2014, the Rose plan meets the eligibility period requirements

**Q16: What happens if an employee terminates employment and is rehired?**

A16: An employer may use any rehire rule that is reasonable. Many plans provide that an employee who terminates and is reinstated within 30 days will be automatically restored to his/her former coverage, while those with a slightly longer break in employment must re-satisfy the waiting period. It appears that this practice will be allowed under the eligibility waiting period rules.

*Caution:* The employer-shared responsibility ("play or pay") rules require reinstatement after breaks in service of varying lengths – large employers should not forget this additional requirement.

**Q17: Does this requirement apply to small employers?**

A17: Yes. This requirement applies to all employers that offer group medical coverage, regardless of size.

**Q18: Does this requirement apply to self-funded plans?**

A18: Yes. This requirement applies to both fully insured and self-funded plans.

**Q19: Does this requirement apply to grandfathered plans?**

A19: Yes. Grandfathered plans must meet this requirement.

**Q20: Does this requirement apply to dental and vision plans?**

A20: This requirement does not apply to dental and vision plans that are "excepted benefits." Basically, this means that a dental or vision plan that the employee may elect separately from the medical plan (or which is provided under a separate policy if the plan is insured) does not need to meet PPACA eligibility waiting period requirements.

**Q21: Who is responsible for making sure the waiting period rules are followed?**

A21: Both the plan sponsor/employer and the insurer are responsible for complying with the waiting period requirements. However, the insurer may rely on an employer's representations that the rule is being followed. Employers with fully insured plans may be asked to provide a certification of compliance to their insurer.

**Q22: What if state insurance requirements are different than the PPACA requirement?**

A22: The 90-day waiting period requirement is the minimum requirement. If a state requires a shorter period, such as 60 days, fully insured plans in that state must follow the state requirement. If a state's requirement for the eligibility waiting period is longer than 90 days, the 90-day limit must be followed. (State requirements generally do not apply to self-funded plans.)

**Q23: May an employer require an employee to work more than 30 hours per week to be eligible?**

A23: The waiting period requirements apply to all eligible employees, but they do not require that coverage be offered to anyone. However, once the employer-shared responsibility ("play or pay") requirement applies to larger employers (generally 100 or more full-time or full-time equivalent employees in 2015 and 50 or more full-time or full-time equivalent in 2016 and later), excluding employees who work 30 or more hours per week may trigger play or pay penalties (but not waiting period penalties).

**Q24: How may an employer with an “hours scheduled or worked” requirement handle new employees with uncertain schedules?**

A24: The regulations provide that a waiting period that is longer than 90 days is allowed for new, variable hours employees while the employer determines whether the employee will work enough to meet the plan’s hours requirements. The employee must truly be in a job with variable hours. The employer may measure hours over a period of up to 12 months. Once the measurement period has elapsed and the employee’s average hours are determined, the waiting period may be imposed as long as both the measurement and waiting periods are completed by the first day of the month following completion of 13 months of employment.

*Examples:*

Ann is a variable hours employee because she is an on-call nurse. Ann’s employer provides coverage to employees who work 30 or more hours per week. Ann’s employer uses a 12-month measurement period for variable hours employees and has a 60-day waiting period. Ann is hired May 10, 2014. If Ann averages 30 or more hours per week during the measurement period of May 10, 2014, through May 9, 2015, she must be offered coverage with an effective date of July 1, 2015, or sooner (because that is the start of Ann’s 13th month of employment).

Pat is a variable hours employee because he is a waiter. Pat’s employer provides coverage to employees who work 30 or more hours per week. Pat’s employer uses a six-month measurement period for variable hours employees and has a 60-day waiting period. Pat is hired May 10, 2014. If Pat averages 30 or more hours per week during the measurement period of May 10, 2014, through November 9, 2014, he must be offered coverage with an effective date of January 8, 2015, (because that is the 61st day of Pat’s employment).

**Q25: What are the penalties for violating the eligibility waiting period requirements?**

A25: The penalty for not meeting this requirement is \$100 per affected person per day.

The [final regulations](#) and the [proposed rules on orientation periods](#) are both available.

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