

# AFFORDABLE CARE ACT TRAINING SESSION TWO

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“Pay or Play” Penalties

# Presenters

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# DISCLAIMER

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This ACA Training Session is for informational purposes only, and is not legal advice or a substitute for legal advice. It is designed only for employers that offer the Health Plan administered by the Georgia Municipal Association on behalf of the Georgia Municipal Employees Benefit System, and contains information that is not applicable to other employers. This ACA Training Session reflects the presenters' understanding of certain requirements of the Affordable Care Act as they existed on January 10, 2019.

While this ACA Training Session describes certain eligibility provisions of the Health Plan, it is not an official document of the Health Plan. Only the official Health Plan documents establish the terms of the Health Plan.

# GMA Affordable Care Act Training

- Session One: Waiting Period Rules, How to Determine Applicable Large Employer (“ALE”) Status (all Employers)
- Session Three: Minimum Essential Coverage Reporting (6055 Reporting on the 1094 and 1095-B Forms) (Small Employers)
- Session Two: Pay or Play Penalty Rules (ALEs only)
- Session Four: Pay or Play Penalty and Minimum Essential Coverage Reporting Requirements (6056 Reporting on the 1094 and 1095-C Forms)(ALEs only)

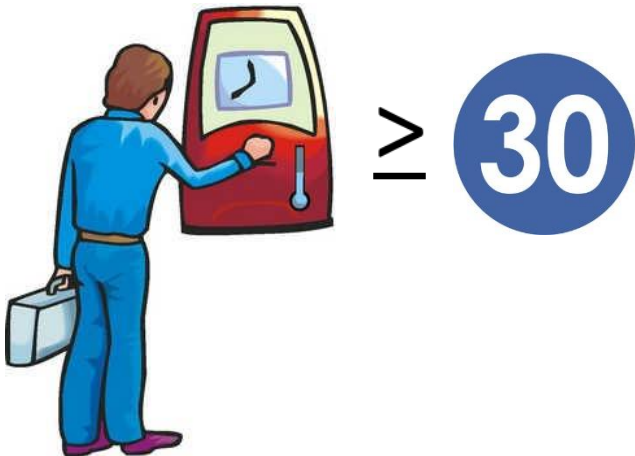
All training sessions are posted on [www.gmanet.com](http://www.gmanet.com) under Life & Health/More Info

# Pay or Play Penalties – Big Picture

- Penalties for ALEs (if triggered) are based on coverage offered in prior year.
- ALEs must offer (a) **“affordable,”** minimum value health coverage (b) to **substantially all ACA Full-Time Employees and their dependent children.** If not, they will have to pay penalties if an ACA Full-Time Employee (i) buys Exchange coverage and (ii) gets a federal subsidy
- ALEs must file reports with the IRS and give reports to employees about coverage offered (See Training Session Four for reporting instructions)

# Pay or Play Penalty Trigger

- “Pay or Play” penalty rules impose one of two types of penalties on the ALE if an ACA Full-Time Employee
  - enrolls in the Exchange AND
  - gets federal subsidy for any month



ACA Full-Time Employee



Buys insurance on exchange AND gets subsidy



# Pay or Play Penalty Trigger

- Persons described below cannot trigger a penalty (ineligible for federal subsidy):
  - household income > 4x the federal poverty line (FPL)
  - offered enrollment in an employer sponsored plan providing minimum value that was “affordable” (e.g., spouse’s plan or parent’s plan)
  - actually enrolled in an employer sponsored plan (even if not affordable, not minimum value)
  - eligible for other specified coverage (Medicare Part A, Medicaid, CHIP, TRICARE)



# Pay or Play Penalty Types

No Offer of Coverage/Sledgehammer



“Crummy Coverage”/Tack Hammer





# No Offer of Coverage/Sledgehammer

- Penalty applies if ALE did not offer minimum essential health coverage (employee + dependent children) to substantially all Full-Time Employees in the month and at least one Full-Time Employee triggered the penalty
- GMEBS coverage is “minimum essential health coverage”
- Substantially all means 95% of all ACA Full-Time Employees



See Training Session 4, slides 20-24

# No Offer of Coverage/Sledgehammer

- Penalty Amount for the month = Number of Full-Time Employees in the month (minus 30\*) x 1/12<sup>th</sup> of \$2,000



# No Offer of Coverage/Sledgehammer Penalty Example

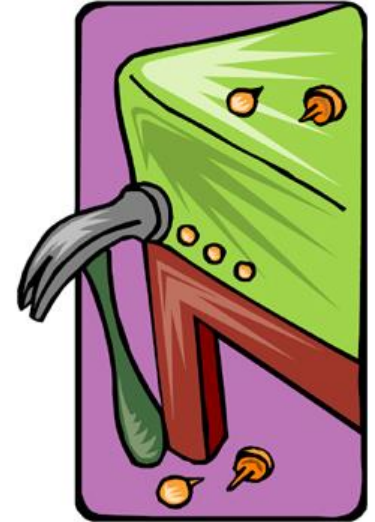
- Happy City employs 150 ACA Full-Time Employees, but does not offer coverage to at least 95% of ACA Full-Time Employees.
- At least one ACA Full-Time Employee triggers the penalty for every month
- **\$240,000** will be due



$$\begin{aligned} \$240K &= \$2,000 \times 120 \text{ Full-} \\ &\text{Time Employees [150 - 30} \\ &= 120] \end{aligned}$$

# “Crummy Coverage”/Tack Hammer

- If ALE is NOT subject to the No Offer of Coverage/Sledgehammer Penalty, it still might be subject to the “Crummy coverage/Tack hammer penalty”
- Two types of triggers for “Crummy coverage/Tack Hammer Penalty”



# “Crummy Coverage/Tack Hammer” Penalty Triggers

- Employer might pay the Tack Hammer penalty if an ACA Full-Time Employee gets the federal subsidy because:
  - Not offered coverage OR
  - Did not choose coverage that was offered, and coverage was not “affordable” to the Full-Time Employee or did not provide minimum value
- All GMEBS Health Plan options provide “minimum value,” so penalty exposure depends on whether the Employer fails to offer coverage or fails to make the coverage “affordable”

# “Affordable”



- “Affordability” is based on the cost of employee-only coverage for the cheapest option offered
- Spousal and/or family coverage can be expensive and the coverage can still be “affordable” under ACA

# Terms: “Affordable”

- For 2018, can't cost more than 9.56% of household income (9.86 for 2019)
- Three safe harbors: Federal Poverty Line, Rate of Pay, Form W-2
- Can use different methods for salaried, hourly, other reasonable business categories

# Terms: “Affordable” – Safe Harbors (2018)

Cheapest, employee-only option costs no more than . . .

\$0 (free)  
9.56% of Federal Poverty Line (just one calculation, can ignore actual wages)

9.56% of Pay based on Assumed Rate of Pay (requires calculations, but no review of actual hours or wages)

9.56% of W-2 Income (requires calculation for each employee, only sure after the end of the year, W-2 can change due to pre-tax contributions)



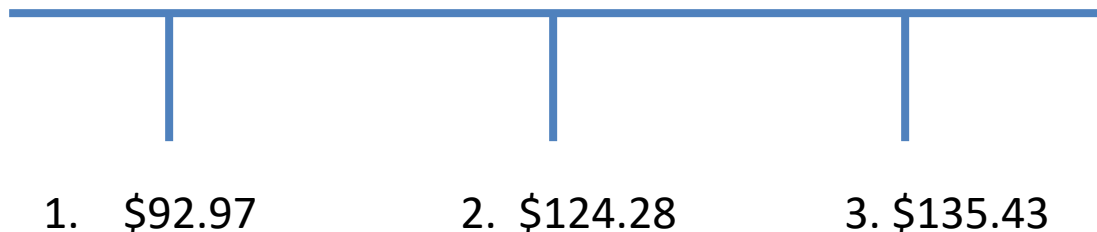
Easiest to Administer

Hardest to Administer



# Terms: “Affordability” Safe Harbor Comparison (2018)

- Joe (hourly employee) makes \$10 per hour; Joe’s W-2 income at the end of the year is \$17,000
- 1. Federal Poverty Line Safe Harbor – not more than  $[9.56\% \text{ of FPL}]/12$  (can plan ahead)
- 2. Rate of Pay Safe Harbor (can plan ahead)—not more than 9.56% of 130 hours x \$10 per hour
- 3. W-2 Safe Harbor – (retrospective) - not more than  $[9.56\% \times \text{W-2}]/12$



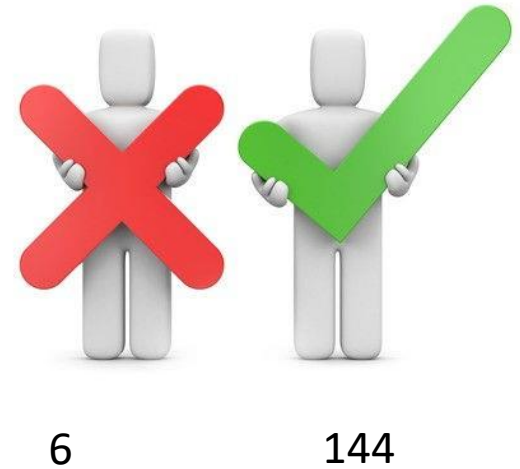
# Crummy Coverage/Tack Hammer

- Penalty Amount for the month =  
Number of Full-Time Employees  
in the month **who actually got  
the federal subsidy** x  $1/12^{\text{th}}$  of  
\$3,000
- Amount is capped at “no offer of  
coverage/sledgehammer”  
penalty amount



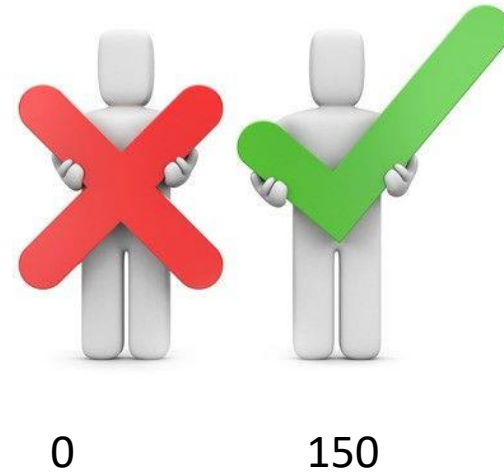
# Crummy Coverage/Tack Hammer Example

- Risky City offers coverage to **96%** of its 150 ACA Full-Time Employees (and their dependent children)
- Sledgehammer penalty doesn't apply
- Tackhammer penalty applies for a month if an ACA Full-Time Employee who was not offered coverage gets subsidized Exchange coverage for that month



# Crummy Coverage/Tack Hammer Example

- Central City offers coverage to **100%** of its 150 ACA Full-Time Employees
- Sledgehammer penalty doesn't apply
- Coverage is not “affordable” (as defined by ACA) for 2 ACA Full-Time Employees
- Tackhammer penalty triggered for each month that that an ACA Full-Time Employee gets a federal subsidy for Exchange Coverage because the coverage was not “affordable” for him or her.



# Penalty Comparisons

## No Offer of Coverage/Sledgehammer Penalty

- Number of Full-Time Employees (minus 30\*) x  $1/12^{\text{th}}$  of \$2,000 is due for each month in which any Full-Time Employee got a subsidy

## Crummy Coverage/Tack Hammer Penalty

- Number of Full-Time Employees who actually received the federal subsidy x  $1/12^{\text{th}}$  of \$3,000 per month
- Capped at “no offer of coverage/sledgehammer” penalty amount

# ACA Full-Time Employee

So who is an ACA Full-Time Employee to whom “affordable,” minimum value health coverage must be offered in order to avoid risk of penalties?

All ALEs must report the number of ACA Full-Time Employees to the IRS on Form 1094 C. Each ACA Full-Time Employee must get a Form 1095 C, even if not enrolled. See Training Session 4.



# Pay or Play Penalty Terms

- Full-Time Employee
- Hours of Service
- Standard Measurement Period
- Stability Period
- Initial Measurement Period
- Administrative Period
- Limited Non-Assessment Period



# Terms: ACA Full-Time Employee

- Common law employee credited, on average, with 30 or more Hours of Service each week during a month (or 130 Hours of Service per month)
- Count Hours during a Measurement Period to determine whether a worker must be classified as an ACA Full-Time Employee for a future Stability Period.



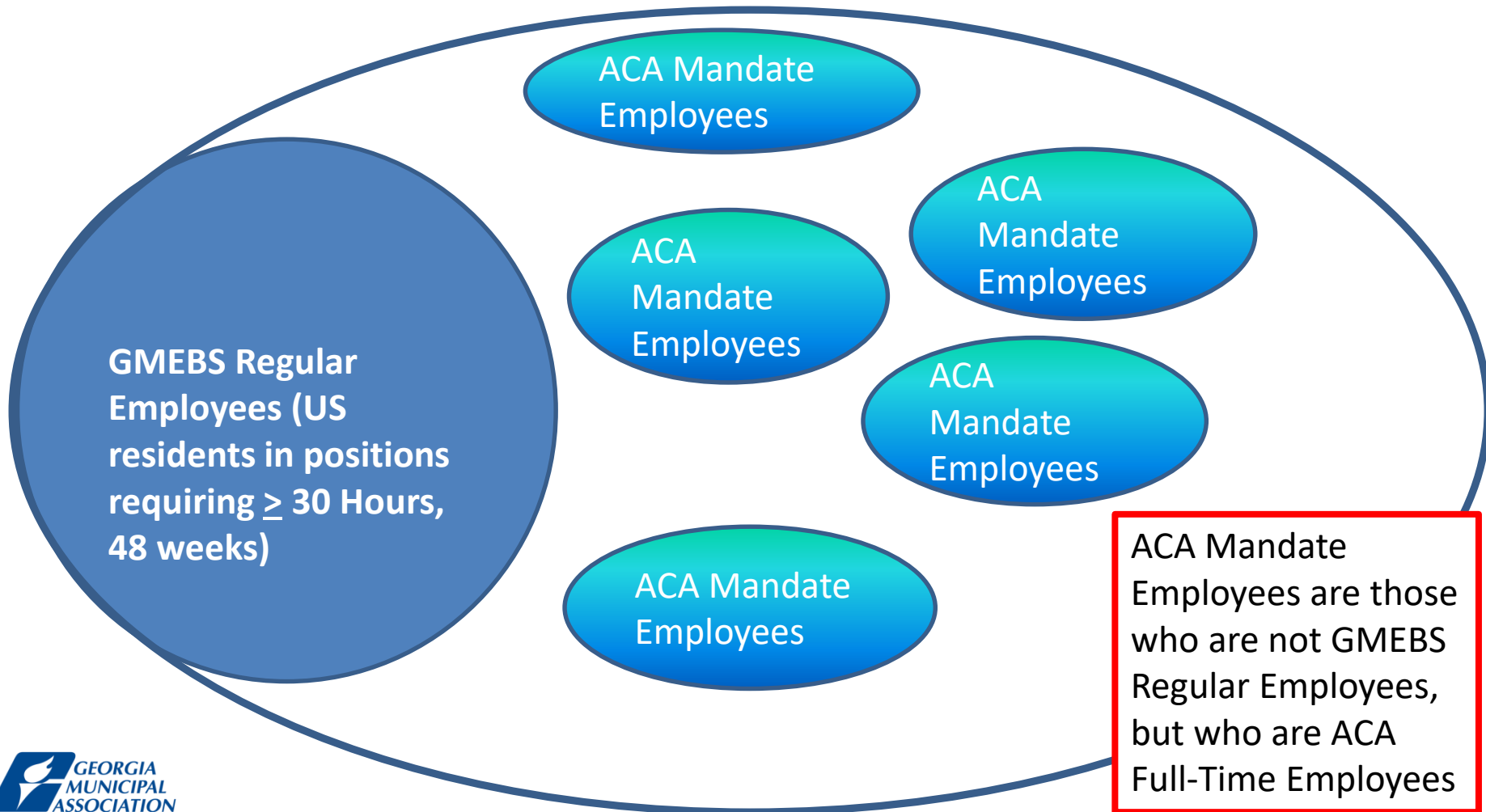
See ACA Training Session One for discussion of controlled group rules, common law employee definition, excluded employees.



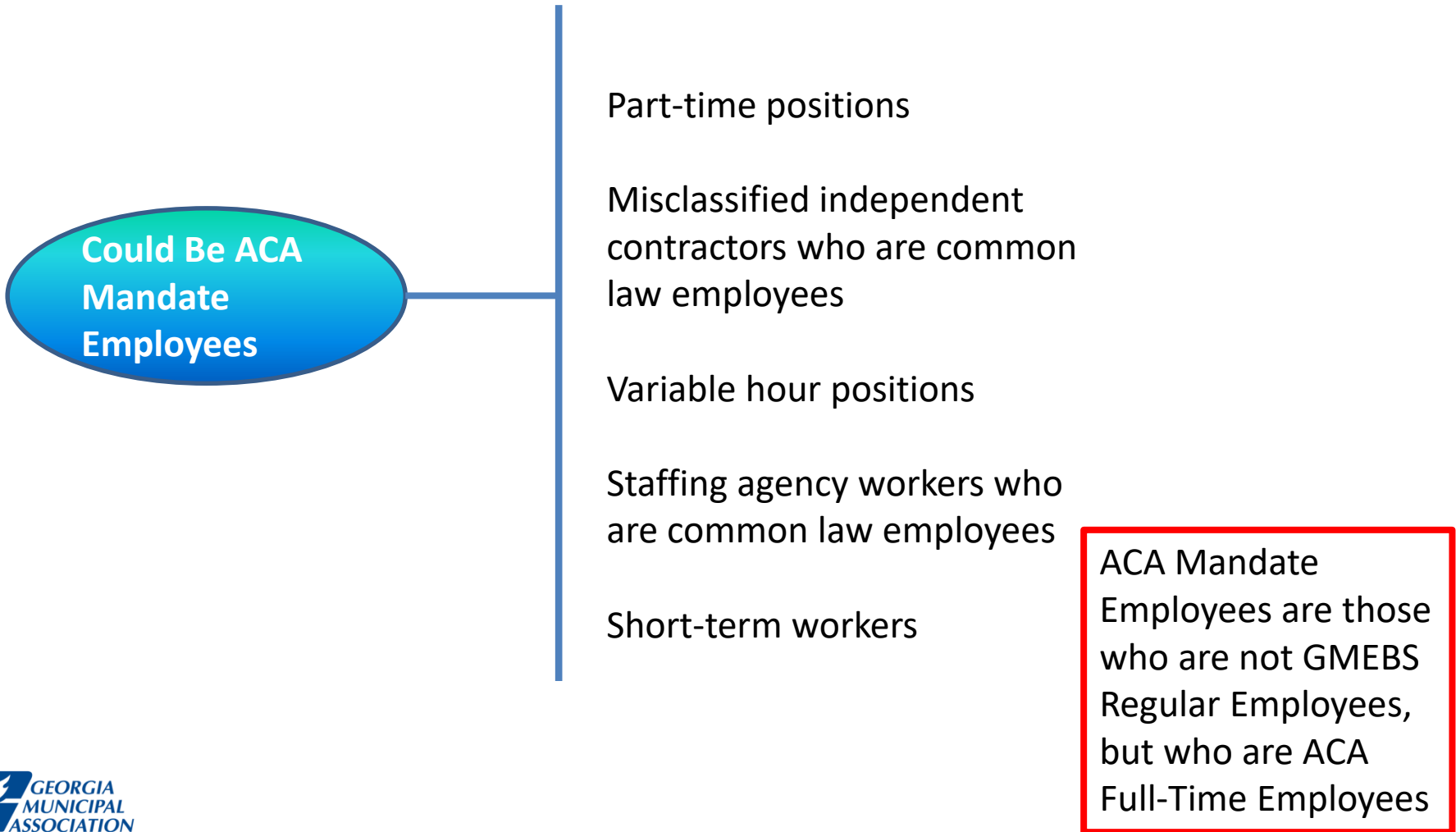
# GMEBS Declaration Page Enables ALEs to Offer Coverage to ACA Mandate Employees

- Starting 1/1/15, “Applicable Large Employers” may offer coverage to individuals who are not GMEBS Regular Employees, but who meet the ACA Full-Time Employee definition (ACA Mandate Employees)
- To avoid risk of penalties, the Employer should identify ACA Mandate Employees and offer them enrollment information

# ALE – GMEBS Eligible Employees (GMEBS Regular + ACA Mandate Employees)



# These Employees Could be ACA Mandate Employees



# Terms: Full-Time Employee . . . Hours of Service

- Each hour for which an employee is paid or is entitled to payment for performance of services and each hour of Paid Time Off
  - Hourly employees – use records of actual hours
  - Salaried employees – use equivalency methods (See ACA Training Session One)
- Special rules for unpaid FMLA, USERRA
- Special rules if ALE is part of a controlled group

# Terms: Measurement Period (Safe Harbor)

- Safe harbor lets employer look at Hours of Service during a measurement period and decide whether the employee will be treated as a Full-Time Employee for a future Stability Period (if employed)
- **The employer determines the measurement and stability periods.**
- Must use for all employees in the same permissible category (can use for hourly employees only, or salaried employees only, but can't use just for seasonal and variable employees)



Is Mary a Full-Time Employee? Look Back at Hours of Service in prior year.



# Terms: Measurement Period Example

- The only common law employees of Healthy City who aren't "GMEBS Regular Employees" are part-time position employees and variable hour employees.
- Healthy City applies Measurement Periods and counts hours during the Measurement Periods for:
  - 40 employees in part-time positions (<30 Hours of Service)
  - 30 employees in variable hour positions (some weeks <30 Hours of Service, some  $\geq$  30 Hours of Service)
- Healthy City determines that 8 of the "part-time" employees and 15 of the variable hour employees are "ACA Full-Time Employees" who must be offered coverage to avoid risk of penalties.

# Terms: Standard Measurement Period

- For ongoing employees, count Hours of Service for standard Look-Back period (3 - 12 consecutive months), then treat those Full-Time Employees as Full-Time Employees for a Stability Period (at least 6 months, and no shorter than Look-Back period)
  - Can use different measurement/stability periods for salaried and hourly employees
  - Can change length of periods from year to year, but not mid-year
- 12 month Look-Back Period and 12 month Stability Period is easiest to administer

# Terms: Standard Measurement Period . . .

## Ongoing Employees Example

Standard  
Measurement Period  
(9/30/2013 –  
10/1/2014)

Look at this period to identify Full-Time Employees.

Admin. Period  
(10/1/2014 –  
12/31/2014)

During annual enrollment (usually the month of October), provide enrollment information to all ACA Full-Time Employees, as well as to elected or appointed members of the Governing Authority, if applicable.

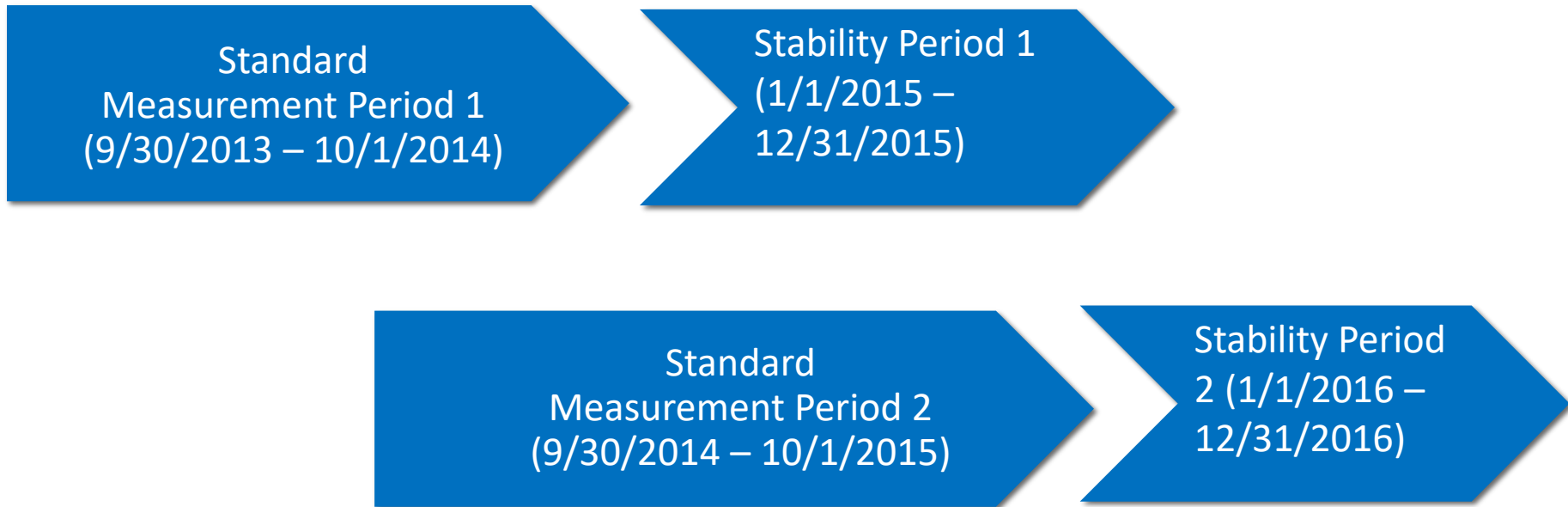
Stability Period  
(1/1/2015 –  
12/31/2015)

Those classified as ACA Full-Time Employees will not lose eligibility if their position changes to require less than 30 Hours of Service during the Stability Period.



# Terms: Standard Measurement Period

## Example – How Periods Overlap



# Terms: Initial Measurement Period For Some New Employees



- **Non-Variable:** Employees (other than seasonal employees) that the ALE reasonably expects to work 30 or more Hours of Service per week
- **Variable\*:** ALE cannot reasonably determine, because ALE knows that Hours of Service will vary above and below 30\*
- **Seasonal\*:** Employee works for 6 months or less at the same season each year (See ACA Training Session One)
- **Part-Time\*:** Employee reasonably expected to work less than 30 Hours of Service per week
- \*Note – employees in these positions are not “GMEBS Regular Employees” under the GMEBS Health Plan

# Terms: Initial Measurement Period For Some New Employees



When completing “C” forms, a new variable-hour employee, seasonal employee, or part-time employee is in a **“limited non-assessment period”** during the initial measurement period.

# Terms: Initial Measurement Period . . . New Employees

- Non-Variable New Employees are clearly ACA Full-Time Employees, so there is no Initial Measurement Period.
- Almost all will be “GMEBS Regular Employees” under GMEBS Health Plan.
- Offer coverage in accordance with the Waiting Period in the Declaration Page.

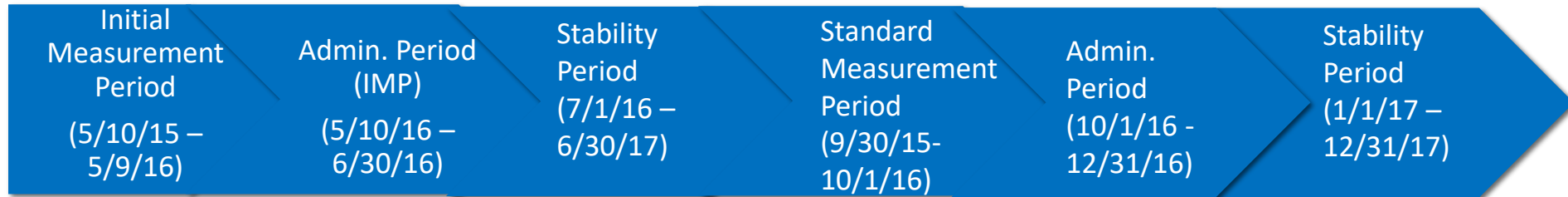


What do job descriptions or other documents say about Hours of Service? How was the position advertised?

# Terms: Initial Measurement Period . . . New Employees

- New Seasonal/Variable Hour/Part-Time Employees have an Initial Measurement Period (IMP) where there is no penalty for failure to offer coverage (a limited non-assessment period)
- IMP can be 3-12 months (12 is easiest to administer), and begins on any date between start date and first day of following month
- An optional administrative period follows the IMP (so ALE can determine whether the employee is a Full-Time Employee)(a limited non-assessment period)
- Stability period must be the same length as the stability period for ongoing employees
- Must also measure again during the first standard measurement period after date of hire and give additional stability period if applicable

# Terms: Measurement Period . . . New Employees Example



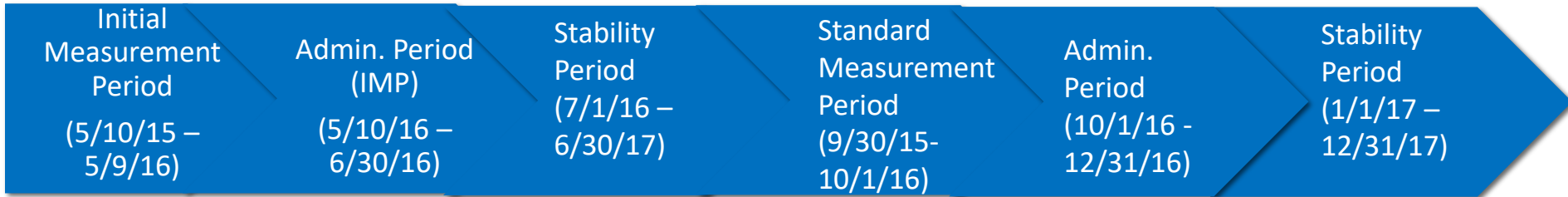
Bob starts a job on May 10, 2015, and the position states that hours are expected to vary above and below 30 Hours of Service per week. Bob's coverage starts over a year later – on July 1, 2016.

#1 - Bob averaged 30 or more Hours of Service during the IMP, so he is eligible to enroll for coverage starting 7/1/2016 (13 months from date of hire + balance of calendar month).

#2 - Bob averaged 30 or more Hours of Service during the measurement period for ongoing employees. His Stability period is extended to 12/31/17.



# Terms: Measurement Period . . . New Employees Example



Jeff starts a job as a lifeguard on May 10, 2015, and the position states that it requires 32 Hours of Service per week and will last through the summer season, until August 15. Jeff is not offered coverage.



Jeff did not average 30 or more Hours of Service during the IMP. He is not a Full-Time Employee, and there is no risk of penalties for failure to offer him coverage.

# What About the Waiting Period Rules?

- Using the Initial Measurement Period for Seasonal/Variable/Part-Time does not violate the Waiting Period Rules, as long as the employee determined to be ACA Full-Time is enrolled
  - Within 90 days of the end of the IMP (for short IMPs), but
  - No later than 13 months of the date of hire + balance of the calendar month.





# Terms: Initial Measurement Period . . . New Employees

- Special Rules for
  - Payroll periods
  - Variable/Seasonal/Part-Time employee changes to a Non-Variable (Full-Time) position during initial measurement period
  - Counting Hours of Service during special unpaid leave (FMLA, USERRA, jury duty)
  - Breaks of Service and Leaves of Absence
  - Change from hourly to salaried (or the reverse) causes a change in measurement method (either monthly to measurement period or the reverse)
- Contact GMA for general questions & development of FAQ



# Terms: Limited Non-Assessment Period

- When completing “C” Forms, Employer communicates to IRS that an active employee was not an ACA Full Time Employee for a month (and therefore could not trigger a Pay or Play Penalty) by entering a “Limited Non-Assessment Period” code.
- See Instructions to “C” forms for more information about Limited Non-Assessment Period.



# Exchange Notice Reminder

- All employers subject to the Fair Labor Standards Act (including small employers) are already required to communicate to employees about whether they might be eligible for subsidized coverage on the Exchange.
- Exchange Notice **must be provided to new hires within 14 days of hire.**
- See [www.gmanet.com/Insurance/Life-Health-Insurance-Fund](http://www.gmanet.com/Insurance/Life-Health-Insurance-Fund) GMA Life and Health Miscellaneous Forms FAQs for ACA Exchange Model Notice for instructions on how to complete the Exchange Notice

# Exchange Notice Reminder

- Exchange Notice must state
  - GMEBS Health Plan coverage is minimum essential coverage
  - GMEBS Health Plan coverage provides minimum value
  - GMEBS Health Plan eligibility rules
  - Whether the employer intends coverage to be “affordable.”
- Currently, no penalties for failure to provide or delay in providing

# Action Items for New ALEs

- Choose an “affordability” safe harbor and set the cost of employee-only coverage to meet the safe harbor
- Identify all common law employees who could be ACA Full-Time Employees (See ACA Training Session One)
- Identify GMEBS Regular Employees who must be offered GMEBS coverage based on position
- Choose a Look-Back Measurement Period and Stability Period
- Based on Hours of Service information from the Look-Back Measurement Period in prior year, identify “ACA Mandate Employees” (employees who aren’t eligible as GMEBS Regular Employees, but who are ACA Full-Time Employees who must be offered coverage for the Stability Period)
- Develop strategy for offering coverage to all ACA Mandate Employees or otherwise avoiding penalties

# Items to Discuss with Counsel

- If unsure about how to categorize a worker
- Before making any personnel changes (including changes to hours of work requirements) to avoid offering coverage or to avoid paying ACA penalties
- If unsure about how to revise staffing agency contract
- GMA provides information to City Attorneys when requested
- GIRMA Helpline provides free legal advice for GIRMA members



# For more information...

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