

Purpose

The University of Wisconsin System (UW System) adopted the following procedural guidance in an effort to remain compliant with the Affordable Care Act (ACA) and Chapter 40 of the Wisconsin state statutes.

The ACA requires the UW System to offer health insurance to all employees, including temporary and student employees, who are considered to be “full-time employees” or potentially face an Employer Shared Responsibility penalty. Under the ACA, a full-time employee is an employee who works an average of 30 or more hours per week or 130 hours per month (not including work study hours). As such, the ACA’s definition of who is to be considered as a full-time employee differs from that found under Wisconsin state statute. In addition, under the ACA, the UW System is considered to be a single legal entity with regard to Employer Shared Responsibility penalties and reporting under Sections 6055 and 6056 of the Internal Revenue Code. In order to limit potential penalties under the ACA, it is necessary to implement policies and procedures across the UW System that provide a uniform set of standards for employees who are full-time employees under the ACA but who are not classified as benefits eligible under Wisconsin law and/or employees who are paid on a non-hourly basis.

This document has been created in an attempt to summarize and give guidance surrounding these policies and procedures.

Background

The ACA is the health care reform legislation signed into law by President Obama in March 2010. Many of the key provisions of the law were designed to extend health insurance coverage to the uninsured, improve the quality and affordability of health insurance, and reduce health care costs. The law was designed to phase in requirements to accomplish these goals and two of the major requirements that became effective beginning in 2015 are the Employer Shared Responsibility Mandate and Sections 6055 and 6056 reporting. These provisions of the law require applicable large employers (i.e., those with 50 or more full-time and full-time equivalent employees) to offer affordable, minimum essential health care coverage to at least 95% of their full-time employees (as defined by the ACA) and to report the offerings and results to the IRS to confirm compliance. Section 6055 of the law requires providers of health care coverage to report to the IRS the type of coverage provided and to whom it was provided. Section 6056 requires employers to report to the IRS the type of coverage offered to their ACA defined, full-time employees. These mandates require action on the part of reporting employers in order to be compliant and avoid penalties.

Penalties:

If the UW System does not offer coverage or offers coverage to fewer than 95% of its full-time employees (and their dependents), it will owe an Employer Shared Responsibility payment equal to the number of full-time employees the employer employed for the year (minus up to 30) multiplied by \$2,500 (for 2019 and indexed annually), as long as at least one full-time employee goes to the Marketplace and receives a premium tax credit. For the UW System, this penalty is estimated to be approximately \$67.3M.

If the UW System offers coverage to at least 95% of its full-time employees (and their dependents), but has one or more full-time employees who go to the Marketplace and receive a premium tax credit, the payment is computed separately for each month. The amount of the payment for the month equals the number of full-time employees who receive a premium tax credit for that month multiplied by 1/12 of \$3,750 (for 2019 and indexed annually).

The Employer Shared Responsibility payment penalty will be increased over time. Penalties reference: <http://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act>.

In order for an employee to be eligible for a premium tax credit while enrolled in Marketplace coverage, the lowest cost coverage available through the UW System must either be unaffordable or not provide minimum value. Minimum value is a reference to providing at least 60% of the overall costs of benefits offered under the plan (i.e., the plan is at least as “rich” as a Bronze Level plan offered through the Marketplace). The lowest cost coverage offered by the UW System has been determined to provide minimum value. Employees who are benefits eligible will not trigger penalties for the UW System unless that coverage is unaffordable; however, employees who are not benefits eligible may trigger a penalty if those employees are considered full-time under the ACA.

Employment Categories as Defined by the ACA

The Federal ACA regulations categorize employees into the following groups:

Full-time:

Employees who are hired into a position with a known expectation of working at least 30 hours per week (130 hours/month).

Under the ACA, full-time employees are considered to be benefit eligible upon hire and must be offered coverage no later than the 1st of the fourth month of employment. Full-time employees are subject to standard measurement periods to determine future eligibility.

Part-time:

Employees who are hired into a position with a known expectation of working less than 30 hours per week (130 hours/month).

Part-time employees are not considered to be benefit eligible upon hire under the ACA and are subject to standard measurement periods to determine future eligibility.

Seasonal:

Employees who are hired into a position for which the “customary” annual employment is six months or less. Customary means that, by the nature of the position, an employee 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. The job that is being performed must be a job that, due to the nature of the work (and NOT business needs), cannot be performed at any other point during the year.

It is advised that institutions share job descriptions of those positions they believe to be “Seasonal” in nature with UW System Human Resources so that the positions can be evaluated by UW System Office of General Counsel (OGC) and/or UW System’s external consultants to determine if, indeed, they are truly “Seasonal” as defined by ACA. An exception is made for positions that have an annual employment period of six months or less AND occurs during the summer break (May to August) or winter break (December to January) -- a compliance review is not required for these positions.

Employees who are truly “Seasonal” in nature (as defined by ACA) are not benefit eligible under the ACA. However, if the employee has other employment within the UW System that causes them to average 30 or more hours per week in total during the standard measurement period, then they will be considered benefit eligible under the ACA for the corresponding stability period.

Variable Hour:

An employee is a variable hour employee if, based on the facts and circumstances at the date the employee begins providing services to the employer (the start date), it cannot be determined that the employee is reasonably expected to work on average at least 30 hours per week.

To determine benefits eligibility under the ACA, a 12-month initial measurement period is used. After the initial measurement period, variable hour employees are subject to the standard measurement periods to determine future eligibility.

The employment categories outlined above are for ACA compliance purposes only and, as such, do not necessarily represent employment categories or benefit eligibility under UW System policies.

UW System Benefit Eligibility

If an employee is eligible for the Wisconsin Retirement System (WRS), they are eligible for the WRS Benefit Package. If an employee (excluding University Staff) is not eligible for WRS, he/she may be eligible for the Graduate Assistant/Short-Term Benefit Package.

WRS Eligibility Requirements

1. Must be in an Faculty, Academic Staff, OT1 or Limited appointment, or a University Staff appointment; and
2. Be expected to work for one full year, and
 - a) 365 days
 - b) 2 full semesters with an expectation to return for a third semester for Academic Year Employees
3. Expected to meet threshold of hours worked (2/3 of full time for newly eligible employees)
 - a) Evaluate on 1/3 of full time criteria if WRS Creditable Service prior to July 1, 2011

Employee Type	No WRS Prior to July 1, 2011 (2/3 of full time for 1 year)		WRS prior to July 1, 2011 (1/3 of full time for 1 year)	
	Hours	FTE%	Hours	FTE%
Bi-Weekly/University Staff and Executives (General/Executive/Protective)	1200	58%	600	29%
Monthly A-basis/Annual 12 month (Excludes Executives)	880	42%	440	21%
Monthly C-basis/Academic 9 month	880	56%	440	28%

The WRS eligibility criteria must be met independently at each state agency or local government employer.

Note: All UW System Institutions are considered to be one employer under the WRS.

WRS Enrollment Opportunities

Several opportunities exist in statute for an employee to be eligible for participation in the WRS. The various opportunities for the eligibility criteria to be met are:

- When initially employed – Hire or transfer into eligible classification.
- When expectations change – Contract changes for eligible classifications.
- Lookback – 1 year review to see if hours worked meets criteria once duration is met.

Non-WRS (Graduate Assistant/Short-Term)

If an individual is **not** eligible for the WRS, they may be eligible for the Graduate Assistant/Short-Term Benefit Package.

- Student Assistants = Research Assistant, Fellow, Advanced Opportunity Fellow, Scholar, Trainee, Teaching Assistant, Project Assistant or Program Assistant
- Employees-in-Training = Grad Intern/Trainee, Postdoc Fellow, Postdoc Trainee, Postgrad Trainee (1-7), Intern (non-physician), Research Intern or Research Associate

University Staff employees and rehired annuitants are not eligible to participate in Graduate Assistant/Short-Term Benefit Package.

Benefit Program	Employee Type	12 Month	9 Month
Graduate Assistant	Student Assistants and Employees-in-Training	33% for at least 6 months	33% for at least one semester
Short-Term	Academic Staff, Limited, OT1	21% for at least 6 months	28% for at least one semester

Student Help

Student Help employees are not eligible for health insurance through employment per Chapter 40 of the state statutes. See [UW System Administrative Policy 1237 \(formerly GEN 20\) Student Employment](#) for more guidelines.

UW System Employment Categories and Procedures for Each

Benefits eligibility at UW System does not always correspond with that required by the ACA and this is much to do with the fact that many of the positions creating issues were never intended to be regular, full-time positions. To help the UW System minimize risk, policies, procedures and guidelines have been put into place and are as follows.

University Staff

University Staff must report hours for payroll purposes. The same hours that are reported for payroll are also used to determine employee status under the ACA. Benefits eligibility under the WRS is more generous than what is required by the ACA with the exception of University Staff-Temporary employees.

University Staff-Temporary

University Staff-Temporary employees are only eligible for health benefits under the WRS if they have multiple positions or become eligible via the WRS look back.

For purposes of ACA, University Staff-Temporary employees are often considered “Variable Hour”.

Some University Staff-Temporary positions may also be considered “Seasonal” and, therefore, would not be considered to be full-time employees under the ACA. In order to determine whether or not a position is truly “Seasonal”, the job description should be sent to UW System Human Resources so that input from UW System Office of General Counsel (OGC) and/or the UW System’s external consultants can be obtained. It is important to note that if the employee also works other positions within the UW System, the hours worked as a “Seasonal” University Staff-Temporary employee combined with all other hours worked in the UW System, cannot average 30 hours or more per week or the employee would still be deemed to be a full-time employee under the ACA.

Institutions should monitor employees’ hours worked to ensure they don’t become full-time employees under ACA (see Reporting & Monitoring of Hours Worked section).

Faculty, Academic Staff & Limited Appointees (FA/AS/LI)

For purposes of determining employee status under the ACA, employees in this category are allocated hours based on their FTE percentage in HRS, with the exception of lump sum employees (FTE of .025%). For example, someone with an FTE of 75% would be considered to work 30 hours per week.

FA/AS/LI Employees Paid via Lump Sum

Institutions are asked to convert lump sums to hourly or salaried with an FTE. When this is not possible, employees in this category will need to track all hours worked for the lump sum appointment in Time & Labor. A special pay code, ACAHW, has been set up for this purpose. Use of the code will not impact an employee’s pay as it is strictly used for purposes of reporting hours under the ACA. For more information on how to track hours in Time & Labor, see the “Lump Sum Payments: Tracking Hours in Time & Labor (TL)” section of this document.

If hours are not tracked in Time & Labor, the employee will be credited with a “days worked equivalency” of 8 hours for each day of the appointment. In cases where the employee is actually working more than 8 hours per day on a regular basis, this method of crediting 8 hours/day is strictly prohibited under the ACA as it will substantially understate actual hours worked. In cases such as these, actual hours worked MUST be recorded.

Graduate Assistants: Short-Term Academic Staff, Student Assistants and Employees-in-Training

Individuals falling into this category are treated the same as FA/AS/LI employees. Review the “Faculty, Academic Staff & Limited Appointees (FA/AS/LI)” section as well as “FA/AS/LI Employees Paid via Lump Sum” section above for procedural guidance.

Student Help Employees

Under [Wis. Stat. §40.02\(25\)\(b\)](#), student help employees are not eligible for employer-sponsored health insurance coverage through UW System. The ACA, however, does not provide an exception for student help so policies and procedures have been drafted to attempt to comply with both the ACA and state statute. [UW System Administrative Policy 1237 \(formerly GEN 20\) Student Employment](#) was created for this reason.

[UW System Administrative Policy 1237 \(formerly GEN 20\) Student Employment](#) limits the number of hours a student help employee can work in a week to 25 when classes are in session. This policy does leave room for exceptions with the approval of the Institutional HR Director; however, it is important to use extreme caution here as it could ultimately cause your employee to average 30 or more hours per week in the measurement period and therefore be considered as a full-time employee under the ACA. Utilize the [tool](#) available on the ACA Administrator’s site to better visualize the impact of allowing policy exceptions. “Resident Assistants/Resident

Advisors/Resident Counselors” have been temporarily exempted from this policy due to the on-call nature of their positions.

Although [UW System Administrative Policy 1237 \(formerly GEN 20\) Student Employment](#) does not specifically address a cap on hours worked during academic breaks, best practice is to limit the hours during these breaks to 40 hours per week or less for a maximum of 12 weeks if at all possible. This is because, if the student works more than 40 hours per week, that may reduce the number of hours they can work over the course of the rest of the year to make certain they don't go over 1,559 in any given measurement period. The 12-week limit is put in to place to ensure that these employees are not viewed as full-time under the ACA. If they are viewed as full-time under the ACA, then, under the ACA, we have an obligation to offer them health insurance in order to avoid penalties no later than the 1st of the fourth month following full-time employment or change in job expectation. Since we are prohibited from offering them health insurance under state statute, this would be problematic.

In order to make sure the student understands the limitation on hours under [UW System Administrative Policy 1237 \(formerly GEN 20\) Student Employment](#), an acknowledgement form should be signed by the student at the start of his/her employment. The [Agreement and Verification of Hours of Work for Student Employment](#) form has been created for this purpose by the UW System Office of General Counsel (OGC) and can be found on the ACA Administrator page of the UW System Human Resources website.

Seasonal Student Help Employees:

Some Student Help positions may also be considered “Seasonal” and not considered to be full-time employees under the ACA, therefore, not subject to the guidelines set forth above. In order to determine whether or not a position is truly seasonal, the job description should be sent to UW System Human Resources so that input from the UW System’s external consultants and the UW System Office of General Counsel (OGC) can be obtained. It is important to note that if the employee also works other positions within the UW System, the hours worked as a “Seasonal” Student Help employee combined with all other hours worked in the UW System, still cannot average 30 hours or more per week or the employee would be deemed to be a full-time employee under the ACA.

Tracking Time for Student Help:

Student help employees are often considered to be “Variable Hour” employees and paid one of two ways - hourly or via lump sum. If the student is paid hourly, the same hours that are tracked for purposes of payroll (with the exception of work study hours) are also used for purposes of determining employee status under the ACA. For cases in which lump sums cannot be avoided, students will be required to track their hours in Time & Labor using a special pay code, ACAHW. This code is only used for purposes of tracking hours under the ACA and, as such, will not have any impact on the student’s pay. For more information on how to track hours in Time & Labor, see the “Lump Sum Payments: Tracking Hours in Time & Labor (TL)” section of this document.

If hours are not tracked in Time & Labor, the employee will be credited with a “days worked equivalency” of 8 hours for each day of the appointment. In cases where the employee is actually working more than 8 hours per day on a regular basis, this method of crediting 8 hours/day is strictly prohibited under the ACA as it will substantially understate actual hours worked. In cases such as these, actual hours worked MUST be recorded.

Resident Assistants/Resident Advisors/Resident Counselors

As mentioned above, this group of employees has been provided a temporary exemption under [UW System Administrative Policy 1237 \(formerly GEN 20\) Student Employment](#), which is the policy that prohibits students from working more than 25 hours per week while class is in session. This is only a

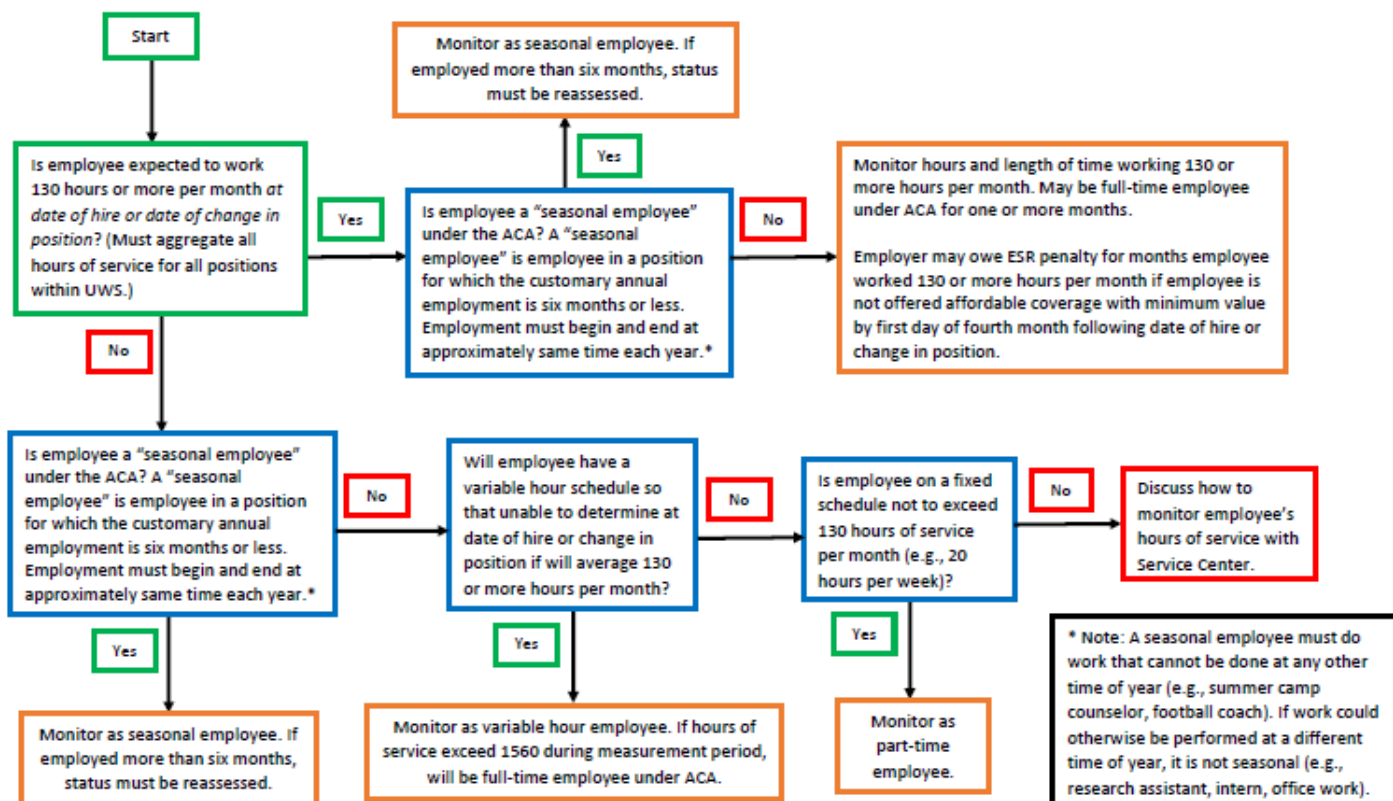
temporary exemption until further clarification is released. This group of student help employees will be given a separate job code and institutions will be responsible for tracking their hours of service.

Things to Consider/Do When Hiring

Since the Employer Shared Responsibility provision of the ACA went into effect, there are additional steps that need to be taken and items to be considered when hiring for a position.

1. If the position is meant to be a “Variable Hour” position under the ACA, make sure the position is not posted outlining full-time expectations. (i.e., M-F, 7:30 a.m. – 3:30 p.m.)
2. If you are hiring for a position that you think may be an issue under the ACA, whether it be from an hours reporting standpoint or a benefits eligibility standpoint, think of ways you can work with the supervisor to simplify and/or more accurately report hours or what could be done with the position itself to potentially get that employee under the WRS. If it is not possible to get them under the WRS, then discuss how you will work to make sure they don’t become eligible full-time employee (i.e., working 30 or more hours per week) under the ACA.
3. Make sure University Staff-Temporary employees, student help employees, and those employees paid via lump sum who are otherwise not offered health insurance through UW System know what is expected of them as it pertains to ACA compliance upon hire (i.e., communication of other positions held within the UW System, limiting hours, recording hours worked, etc.). Supervisors must also be well informed.

The following decision tree is helpful in providing insight as to why the ACA needs to be taken into consideration well before a hire is made.



Lump Sum Payments: Tracking Hours in Time & Labor (TL)

As part of the changes due to implementation of the ACA, employees paid lump sum payments must record actual hours worked. Changes were made to the HRS Time and Labor module to assist with this tracking.

Changes to Time & Labor Module:

A time reporting code (TRC) of ACAHW was created to allow employees, who are being paid via a lump sum, to record hours worked. Active employees will be automatically enrolled to be able to use Self Service; however, depending upon the institution's preference, hours can also be entered by the Payroll Coordinator. In the event that an employee is paid a lump sum in addition to regular hours worked, the TRC will be available to differentiate the hours.

Hours entered using this TRC do not need to be approved and will not process through payroll, therefore streamlining the entry procedure and preventing duplicate payments. As with TL setup currently, the TL Security page will need to be created if the employee will be entering the time through Employee Self Service. Supervisors may also be added to the TL Security page to allow for review of hours worked. Queries/reports will be available to audit time entered using this new time reporting code.

Timesheet Setup:

Employees being paid via lump sum, who record hours, will need to be set up in Time & Labor. Once the appointment is entered, the timesheet will be created and Self Service will be provisioned automatically. The Payroll Coordinator will need to create the TL Security page. This includes both new hire lump sum appointments and those appointments that had not been paid in the past year and were not setup initially.

Measurement and Stability Periods Under the ACA

A measurement period is a period of time that is used to determine employees' employment status under the ACA based on the average number of hours worked. The status earned during a particular measurement period will result in consideration as either full-time or not full-time (for purposes of the ACA only) during the corresponding stability period.

There are two types of measurement periods – initial and standard. All employees may be subject to the “standard measurement period” while only some employees are subject to an “initial measurement period” upon hire.

The standard measurement period is October 1 – September 30. The initial measurement period varies based on the employees hire date.

See the ["ACA Measurement and Stability Periods Illustration"](#) or the ["Hours worked per Month Illustration"](#) on the Administrator ACA page for examples of measurement periods.

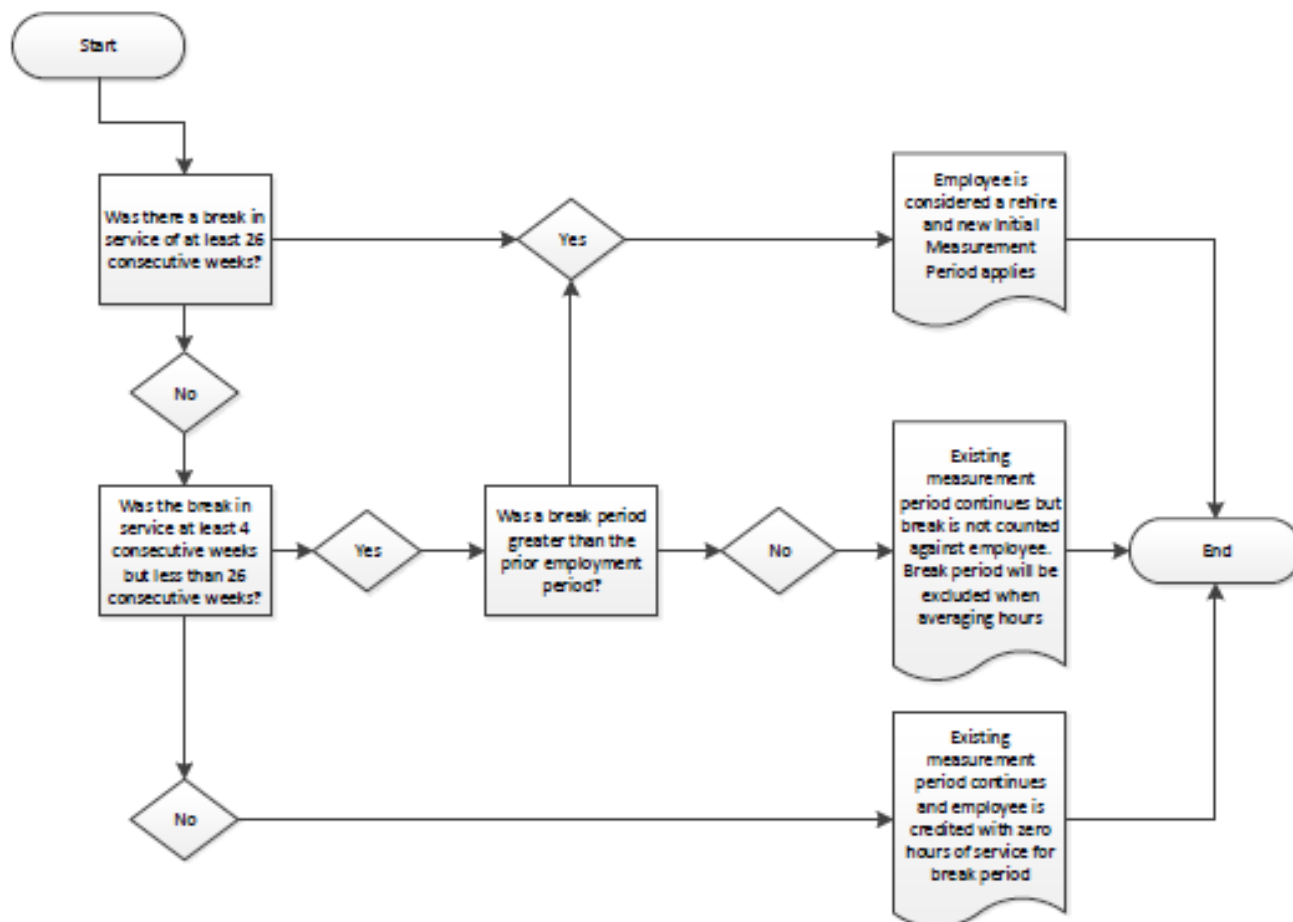
Leave of Absence/Breaks in Employment Under the ACA

There are specific rules that must be followed when calculating hours for someone who is or was on a leave of absence or experienced a break in service. Unless the break in service was not a protected leave either under 4 weeks in length or over 26 weeks in length, then the leave/break time cannot be factored into the calculation or disadvantage the employee in any way. See the chart and diagram below for more information.

Length of Break in Service	Impact on Measurement/Stability Period
Less than 4 consecutive weeks	Continue existing measurement & stability periods; zero hours will be considered during break to determine average hours.
Break is at least 4 but less than 26 consecutive weeks ¹	Continue existing measurement & stability periods; exclude the break period in averaging hours. Use the average as the average for the entire measurement period.
26 ¹ or more consecutive weeks	Consider as rehire; begin a new initial measurement period.
<p>Active employees who are in the types of leave status below should not have the time counted against them during the measurement period; instances where these leaves apply will have the break periods excluded when calculating average hours:</p> <ul style="list-style-type: none"> • FMLA leave • Military leave • Jury Duty • Educational breaks when not scheduled to work (e.g., summer months for 9-month term employees) 	

¹ If break period is greater than prior employment, then employee may be considered a rehire and subject to a new initial measurement period.

Measurement Periods and Breaks in Service



NOTE:

Active employees who are in the types of leave status below should not have the time counted against them during the measurement period; instances where these leaves apply will have the break periods excluded when calculating average hours:

- FMLA leave
- Military leave
- Jury Duty
- Educational breaks when not scheduled to work (e.g. summer months for 9-month term employees)

Reporting & Monitoring of Hours Worked

There will be some individuals who are not benefits eligible that could become ACA full-time employees if not carefully monitored. Institutions are supplied with a variety of reports (listed below) that can be used to monitor their employees' hours so that they don't become full-time employees under ACA. See [KB 65060](#) for directions on how to run the reports. Since the UW System is considered to be one legal entity, these reports will take into account hours worked at all UW System institutions.

- Missing ACAHW Hours (UW_ACAHWREQ) - Lump sum payments with no ACAHW hours reported where Days-Worked Equivalency method is being used
- Unmatched ACAHW Hours (UW_ACAHWNUSE) - Time that has been entered in Time & Labor using ACAHW time reporting code with no corresponding lump sum payment
- ACA Hours Report (UW_ACAHRSRPT) - Summary report showing all hours (regular, work study, ACAHW, and Days-Worked Equivalency)

- ACA Full-Time Trending Report (UW_ACA_TREND) - Identify borderline full-time eligible and full-time eligible employees whose current total hours and their expected hours are equal to or greater than 120 hours
- Not Affordable Full-Time Employees (UW_ACANAFTRP) - Employees by month that were ACA full time and not offered coverage or the coverage was not affordable
- Measurement Period Report (UW_ACA_MPRPT) – Best run for a single employee only. Does not break down by campus

Definitions:

ACA Time Reporting Code (TRC): Tracks actual hours worked, which count towards ACA eligibility. For salaried (exempt) employees, these hours are used for ACA hours' tracking only and do not affect pay.

Affordable Care Act (ACA): One of the most common terms used to refer to two separate pieces of legislation signed into law by President Barack Obama on March 23, 2010. The two pieces of legislation were the Patient Protection and Affordable Care Act (PPACA) and the Health Care and Education Reconciliation Act of 2010.

Applicable Large Employer (ALE): Employers subject to the Employer Shared Responsibility provisions of the ACA.

Benefits Eligible: Employees are eligible for the Wisconsin Retirement System (WRS) Benefit Package or the Graduate/Short-Term Benefit Package based on their employment at the UW System. See more on benefits eligibility at: <https://www.wisconsin.edu/ohrwd/benefits/general-employee-info/>.

Form 1095-A: The Health Insurance Marketplace statement. You'll get this statement if you bought health coverage through the "Marketplace" - the web-based insurance markets that the federal government and states set up under the ACA.

Form 1095-B: A statement from your health insurance company verifying that you and other members of your household had insurance coverage that met the requirements of the ACA during the prior year. This is for people whose coverage was fully insured with an insurance carrier.

Form 1095-C: A statement from your employer providing details about your employer-sponsored health insurance benefits. This form will be used to report information related to the employer responsibility provisions of the ACA to the IRS as well as to furnish information to taxpayers about the coverage that they have been offered by their employer. Individuals that purchased health insurance coverage through the Health Insurance Marketplace, also called the Exchange, will use the information found on this form to determine if they are eligible for a premium tax credit.

Individual Mandate: The Affordable Care Act (ACA) requires nearly everyone to have health insurance that meets minimum standards. The Individual Mandate is in effect for 2018, but has been repealed as of January 1, 2019.

Initial Measurement Period: See "Measurement Period" below.

Measurement Period: For ongoing employees, the standard measurement period runs from October 1 to September 30. Newly hired employees who, upon hire, are not determined to be full-time under the ACA also have a 12-month initial measurement period and must be tracked in both periods until they are blended into the standard measurement period. Each measurement period has its own separate 12-month stability period. The stability periods, much like the measurement periods, overlap.

- Initial Measurement Period:
A 12-month period starting the first of the month following a variable hour or seasonal employee's date of hire in which all hours of service are averaged to determine the employee's full-time or part-time status under ACA for the corresponding 12-month stability period.

- **Standard Measurement Period:**
The 12-month period in which the hours of on-going employees are averaged to determine their full-time or part-time status under the ACA for the corresponding 12-month stability period. This period is from October 1 to September 30.

Minimum Essential Coverage (MEC): MEC is generally any type of employer-sponsored health coverage, certain types of governmental coverage such as Medicare or Medicaid, and other types of health coverage specifically identified by the Department of Health and Human Services.

Minimum Value: Minimum value is provided by the plan if it pays for at least 60% of the costs of benefits and provides inpatient hospitalization services and physician services.

Stability Period: The 12-month period following a measurement period in which an employee's status as full-time or non-full-time under ACA is effectively "locked in."

Standard Measurement Period: See "Measurement Period" above.