

A New Normal?

2020 Open Enrollment Considerations



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CDC Guidance Update (July 20, 2020)

- ▼ **Link:** <https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html>
- ▼ **A test-based strategy is no longer recommended to determine when to discontinue home isolation, except in certain circumstances.**
- ▼ **Persons with COVID-19 who have symptoms and were directed to care for themselves at home may discontinue isolation under the following conditions:**
 - ▼ **At least 10 days* have passed since symptom onset and**
 - ▼ **At least 24 hours have passed since resolution of fever without the use of fever-reducing medications and**
 - ▼ **Other symptoms have improved.**
 - ▼ ***A limited number of persons with severe illness may produce replication-competent virus beyond 10 days, that may warrant extending duration of isolation for up to 20 days after symptom onset. Consider consultation with infection control experts. See [Discontinuation of Transmission-Based Precautions and Disposition of Patients with COVID-19 in Healthcare Settings \(Interim Guidance\)](#).**

CDC Guidance Update (July 20, 2020)

- ▼ More questions than answers...
 - ▼ When did symptoms first appear?
 - ▼ How do we know when fever has been resolved without the use of medication? How do we document this?
 - ▼ How do we know when symptoms have “improved”? How much—marginally, completely?
 - ▼ How is an employer to know what is/is not “severe”?
- ▼ Should employers adopt the new 20-day standard?
- ▼ Testing is still important for employers’ return to work strategies:
 - ▼ Testing is objective and does not require employers to get an infectious disease consult to determine whether it is safe to return an employee to work
 - ▼ Testing continues to be authorized by EEOC
 - ▼ Testing is generally necessary to meeting an employer’s legal obligations under OSHA

Open Enrollment 2020

- ▼ Education and Enrollment
- ▼ Satisfy Notice and Disclosure Requirements
- ▼ Cafeteria plan rules generally limit when employees can make changes to their pre-tax elections during a plan year
- ▼ ACA determinations and offers of coverage
- ▼ Election methods:
 - ▼ Affirmative elections
 - ▼ Negative elections
 - ▼ Rolling (or evergreen) elections

Open Enrollment 2020

- ▼ Plan changes
 - ▼ Cafeteria Plan changes
 - ▼ Health Plan changes
 - ▼ Telehealth
- ▼ Consider financial wellness, EAP/mental wellness

Notices & Disclosures

- ▼ **Summary Plan Description (SPD) and Summary of Material Modification (SMM)**
 - ▼ Must be distributed to all participants not later than 210 days after end of plan year in which change is adopted
 - ▼ SMM for material reduction in group health plan benefits or services = within 60 days
- ▼ **Summary of Benefits and Coverage (SBC)**
 - ▼ Must provide to participants with enrollment materials and upon renewal or reissuance of coverage
 - ▼ Must also provide to special enrollees no later than the date by which an SPD is required (90 days from enrollment)
 - ▼ If re-enrollment is automatic, must be provided no later than 30 days prior to the first day of the new plan year
- ▼ **Group Health Plan Notices**

Outbreak Period Extensions Include Relief for Notices and Disclosures

- ▼ *An employee benefit plan and the responsible plan fiduciary will not be in violation of ERISA for a failure to timely furnish a notice, disclosure, or document that must be furnished between March 1, 2020, and 60 days after the announced end of the COVID-19 National Emergency **if the plan and responsible fiduciary act in good faith and furnish the notice, disclosure, or document as soon as administratively practicable under the circumstances***
 - ▼ *Good faith acts include use of electronic alternative means of communicating with plan participants and beneficiaries who the plan fiduciary reasonably believes have effective access to electronic means of communication, including email, text messages, and continuous access websites*
- ▼ *The guiding principle for plans must be to act reasonably, prudently, and in the interest of the covered workers and their families who rely on their health, retirement, and other employee benefit plans for their physical and economic wellbeing*
- ▼ *Departments' approach to enforcement will emphasize compliance assistance and include grace periods and other relief where appropriate*

Cafeteria Plans: Special **Midyear Election** **Change** Guidance

- ▼ **Health Plan Elections:** For midyear elections made during calendar year 2020, a cafeteria plan may permit eligible employees to:
 - ▼ (1) make a new, prospective election for coverage if they initially declined employer-sponsored health coverage
 - ▼ (2) revoke an existing election and make a new, prospective election to enroll in different employer-sponsored health coverage
 - ▼ (3) revoke an existing election on a prospective basis, provided that the employee attests in writing they are or will be enrolled in other health coverage not sponsored by the employer
 - ▼ Model attestation provided in [IRS Notice 2020-29](#)
 - ▼ Employer may rely on the written attestation provided by the employee, unless the employer has actual knowledge that the employee's attestation is inaccurate
- ▼ Relief applies for self-funded plans and fully-insured plans
- ▼ Still unclear if **health plans** include plans like dental, vision, etc.

Cafeteria Plans: Special **Midyear Election** **Change** Guidance

- ▼ **FSA & DCAP Elections:** Cafeteria plan may permit eligible employees to revoke an election, make a new election, or increase or decrease an election
- ▼ Applies to all health FSAs, including limited purpose health FSAs compatible with HSAs
- ▼ **Protections from loss for employers** – employers are permitted to limit midyear elections to amounts no less than amounts already reimbursed

Cafeteria Plans: Special **Extended Use** of **Grace Period Funds**

- ▼ For unused amounts remaining in a health FSA or a DCAP as of the end of a **grace period or plan year ending in 2020**, a cafeteria plan may permit employees to apply those unused amounts to pay or reimburse medical care expenses or dependent care expenses, respectively, incurred through December 31, 2020
- ▼ **Timeline:**
 - ▼ Only applies to funds remaining at the end of a **grace period or plan year ending in 2020**
 - ▼ May also apply to plans with carryovers, as long as the plan year ends in 2020 (so, not for calendar year plans with carryovers)
- ▼ HEALS Act would extend this through 2021

Increased Maximum Amount for Health FSA Carryover

- ▼ Health FSA carryover limit previously set at \$500 (in 2013)
- ▼ **IRS Notice 2020-33** increases the amount that may be carried over from one plan year to the next to reflect indexing for inflation—designed to parallel the indexing applicable to the limit on salary reduction contributions (\$2,750 for 2020)
- ▼ **New Rule:** maximum carryover amount may be equal to 20 percent of the maximum salary reduction contribution for the applicable plan year
 - ▼ For 2020, the maximum amount that may be carried over to the immediately following plan year beginning in 2021 is **\$550**
- ▼ Implementation of changes **for 2020** requires amendment to cafeteria plan by **December 31, 2021**
 - ▼ Normal amendment rules apply for subsequent years
 - ▼ **Recommendation:** Amend plan to permit maximum amount allowed/as indexed for inflation

NEW **125 Cafeteria Plan Guidance**

- ▼ All are **optional**
- ▼ Implementation requires amendment to cafeteria plan by December 31, 2021
- ▼ Changes to the plan may also implicate other applicable laws, such as notice requirements under ERISA
- ▼ Don't forget...
 - ▼ FSAs may (once again) cover **OTC Medications and Menstrual Products**
 - ▼ For most plans, implementation will require plan amendment

Important ACA Employee Classifications

Classification	Description
Full-Time	Under ACA, a full-time employee is any employee that performs an average of 30 or more hours of service per week. In general, 130 hours of service in a calendar month is treated as the monthly equivalent of at least 30 hours of service per week.
Part-Time	An employee who is reasonably expected at the employee's start date not to be a full-time employee (and who is not a variable hour employee or a seasonal employee).
Ongoing Employee	Employees that have been employed for at least one standard measurement period (and have not experienced a break in service of more than 13 weeks) .
Variable Hour Employee	Employees that have not yet been employed for at least one standard measurement period and for which there is not a reasonable basis to believe that they will perform an average of 30 or more hours of service per week.

Important ACA Employee Classifications

Classification	Description
Seasonal <u>Worker</u>	Labor is performed on a seasonal basis where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year. Employers may use a reasonable, good faith interpretation of the statutory definition of seasonal worker.
Seasonal <u>Employee</u>	The term seasonal employee means an employee who is hired into a position for which the <i>customary</i> annual employment is six months or less.
Temporary <u>Employee</u>	ACA does not specifically address how to classify employees as “temporary,” but under existing standards temporary employees from temporary staffing agencies are generally considered employees of the staffing agency and not the work-site employer.

Full-Time Status Determination Methods

- ▼ Month-to-Month
- ▼ Look Back Safe Harbor
 - ▼ New Employees:
 - ▼ New Full-Time Employees → Three-Month Grace Period
 - ▼ New Variable Hour, Part-Time, or Seasonal Employees → Initial Measurement Period Safe Harbor
 - ▼ **Ongoing Employees:**
 - ▼ Look Back Safe Harbor using Standard Measurement Period

Employee Classification & Coverage Determinations

▼ Initial Measurement Period Look Back Safe Harbor

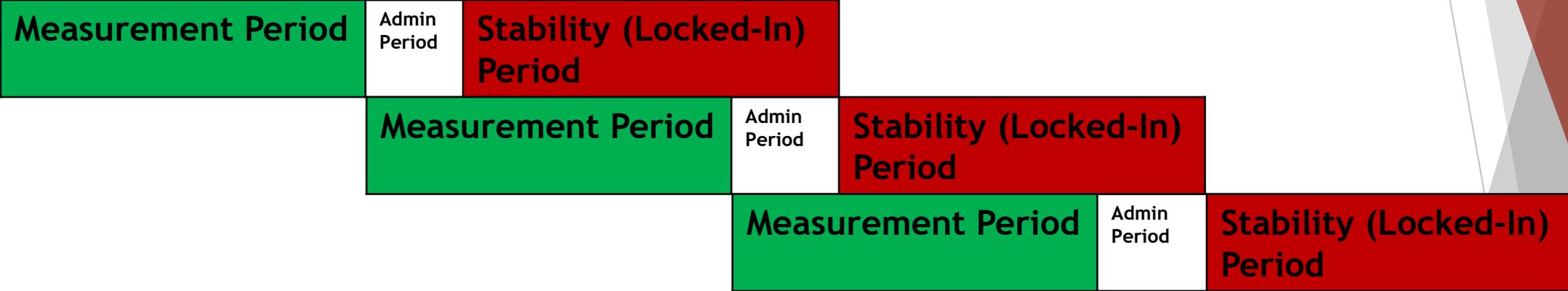
- ▼ Initial Measurement period = 3-12 months
- ▼ Administrative period = up to 90 days
- ▼ (Initial) Stability period = generally, no less than 6 months and no longer than the length of the measurement period

▼ Standard Measurement Period Look Back Safe Harbor

- ▼ Standard Measurement period = 3-12 months
- ▼ Administrative period = up to 90 days
- ▼ (Standard) Stability period = generally, no less than 6 months and no longer than the length of the measurement period

<u>Measurement Period</u>	<u>Admin Period</u>	<u>Stability (Locked-In) Period</u>
Hours here determine full-time status during corresponding stability period		Hours here do not affect full-time status during (this) stability period

Employee Classification & Coverage Determinations



Employee Classification & Coverage Determinations

▼ Furloughed Employees

- ▼ Were they terminated?
- ▼ Did they remain employed?
- ▼ Reduced hours?
- ▼ Maintain benefits (health plan) eligibility?

▼ Magic Number: 13 weeks

- ▼ > Ongoing employee
- ▼ < New employee

▼ ACA Reporting

- ▼ Important to have consistent position

Employee Classification & Coverage Determinations

- ▼ **Newly Hired Full-Time Employees:** A new employee that is reasonably expected to work full-time (average of 30 hours or more per week or 130 hours per month)
 - ▼ Factors to consider for “reasonably expected to work full-time” include, but are not limited to:
 - ▼ whether the employee is replacing an employee who was or was not a full-time employee
 - ▼ the extent to which employees in the same or comparable positions are or are not full-time employees
 - ▼ and whether the job was advertised, or otherwise communicated to the new hire or otherwise documented (for example, through a contract or job description), as requiring hours of service that would average 30 (or more) hours of service per week or less than 30 hours of service per week

Employee Classification & Coverage Determinations

- ▼ **Offering coverage to newly hired full-time employees:**
 - ▼ **Until the employee has been employed for a standard measurement period, the new full-time employee's full-time employee status is based on that employee's hours of service each calendar month**
 - ▼ **No penalty for initial three full months of employment if (1) the employee is otherwise eligible for an offer of coverage during those three months and (2) is offered MV coverage by the first day of the month immediately following the conclusion of the employee's initial three full calendar months of employment**

Open Enrollment 2020

▼ Affordability & Safe Harbors

- ▼ W-2 Safe Harbor

- ▼ Rate of Pay Safe Harbor

- ▼ FPL Safe Harbor

- ▼ 2021 Affordability Percentage: 9.83% (up from 9.78% for 2020)

- ▼ FPL Safe Harbor:

- ▼ $\$12,760 \times .0983 = \$1,254.31$ (annual)

- ▼ $\$1,254.31 / 12 = \104.53 (monthly)

- ▼ $\$1,254.31 / 26 = \48.24 (bi-weekly)

Return to Work Considerations

- ▼ **Pregame for Round 2: What actions should we take to prepare for a potential second wave?**
 - ▼ Requests for protected leave? Unprotected leave?
 - ▼ Anticipate categories of requests and employees
 - ▼ Revisit job descriptions
 - ▼ Is in-person attendance an essential job function?
 - ▼ Focus on flexibility and encouragement to report symptoms



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