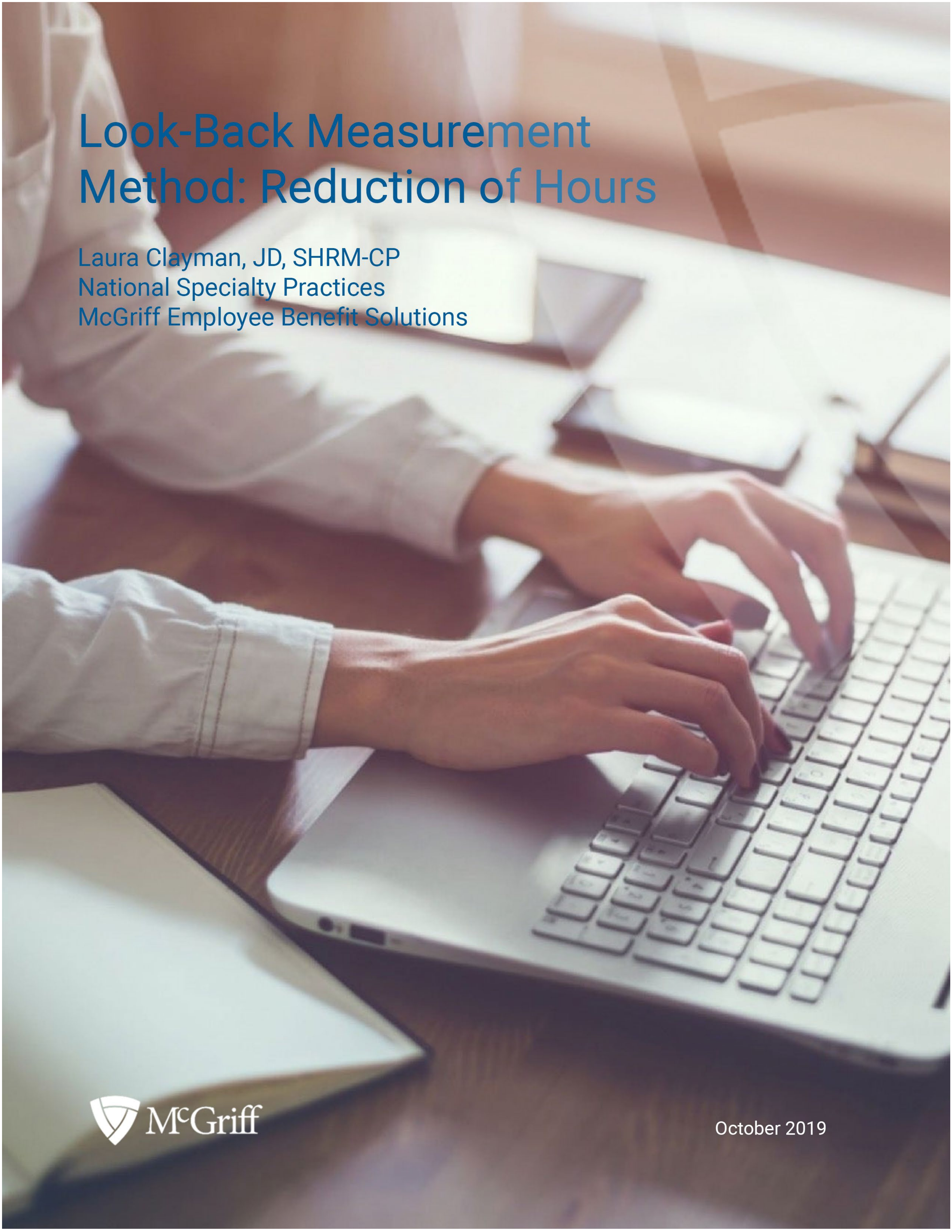

Look-Back Measurement Method: Reduction of Hours

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Question: I am an Applicable Large Employer (ALE) that uses the look-back measurement method to identify full-time employees. I recently hired an employee who was expected to work full-time hours and was, therefore, offered medical coverage. This employee has now dropped to part-time hours. What should I do about her benefits?

Summary: If an employee who is initially hired as full-time experiences a reduction in hours before completing a standard measurement period, the Affordable Care Act (ACA) allows the employer to use the monthly measurement method until that employee completes a full standard measurement period. As a result, this will likely result in the termination of benefits if this employee continues to work part-time hours.

An employer can choose to adopt a more generous ACA eligibility policy and allow an employee to remain eligible.

Detail: If an employer is an ALE[1], it is subject to the employer shared responsibility mandate, also known as "Pay or Play." This means that the employer must make certain offers of health insurance coverage to its full-time employees and their dependents or risk a tax penalty.

An employee is classified as "full-time" if she has at least 130 hours of service a month (or 30 hours per week).[2] The IRS provides only two ways an employer can measure the full-time status of its employees: the monthly and/or the look-back measurement methods.[3]

The monthly measurement method counts an employee's actual hours of service each month. If the employee works full-time hours that month, she is classified as a full-time employee and must be offered coverage by the first day of the fourth month after hire to avoid potential tax penalties.[4] If an ALE is using the monthly measurement method, then the reduction of hours will likely make that employee ineligible for coverage.[5]

Under the look-back measurement method, an employee is treated as full-time for a specified stability period if the employee averaged 130 or more hours of service per month during the applicable measurement period preceding that stability period. ALEs who utilize the look-back measurement method will use an initial measurement period to measure new, variable-hour, seasonal, or part-time employees.[6] A standard measurement period is used to

[1] If an employer has at least 50 full-time employees, including full-time equivalent employees, on average during the prior year, the employer is an Applicable Large Employer (ALE) for the current calendar year, and is therefore subject to the employer shared responsibility mandate and Affordable Care Act's (ACA) Section 6056 reporting requirements. Treas. Reg. § 54.4980H–2.

[2] Treas. Reg. § 54.4980H–1(a)(21).

[3] Treas. Reg. § 54.4980H–3(c) and (d).

[4] Note: the ACA also prohibits group health plans from applying any waiting period that exceeds 90 days. However, other eligibility conditions, such as a one month orientation period (that is not based solely on the lapse of time), are generally allowed.

[5] An employer using the monthly measurement period must look to the terms of its plan document to determine whether a part-time employee will remain eligible; in most cases, the reduction of hours will make the employee lose eligibility for coverage.

[6] Treas. Reg. § 54.4980H–3(d)(3).

measure ongoing employees, or those employees who have been employed for at least one standard measurement period and is not limited to variable-hour, seasonal, or part-time employees.[7]

If an ALE is using the look-back measurement method, the answer to our original question can vary based on a couple of different factors. The employer must ask is this is a *new* employee or an *ongoing* employee who has already completed a standard measurement period. **If an employee who is initially hired as full-time experiences a reduction in hours before completing a standard measurement period, the ACA allows the employer to use the monthly measurement method until that employee completes a full standard measurement period.**[8] The monthly measurement method would allow the employer to terminate the employee's benefits for any month in which her hours of service were less than 130. The employer would then measure the employee's hours at the end of the first standard measurement period to determine if the employee averaged 130 hours per month in order to qualify for coverage for the subsequent stability period.

Example:

- Laura is hired as a full-time employee on July 10, 2019.
- Her employer's standard measurement period runs from October 15, 2019, to October 14, 2020.
- Laura moved from full-time to part-time status on December 1, 2019.

In the example above, Laura experienced a reduction in hours and moved to part-time status before completing her employer's standard measurement period running from October 15, 2019, to October 14, 2020. As a result of this reduction in hours, her employer is allowed to measure her on a monthly basis until Laura completes a full standard measurement period, or until October 14, 2020. This approach will likely result in the termination of benefits in December if Laura measures less than 130 hours of service.

This result of this scenario can certainly be influenced by an employer's written ACA eligibility policy. Some employers will choose to draft a more generous policy, allowing employees who are hired as full-time to retain their full-time status until the beginning of the stability period following their completion of the first full standard measurement period, even if the employees experience a reduction in hours. Many employers will choose to adopt a more generous policy due to the difficulties in applying the monthly measurement method, under which an employer will not know if someone qualifies for coverage until the month is over and it is effectively too late to offer coverage required under the employer mandate.

If this is an ongoing employee who has been with the company for at least one standard measurement period, then that employee

[7] Treas. Reg. § 54.4980H–3(d)(1).

[8] Treas. Reg. § 54.4980H–3(d)(2).

will remain eligible for the remainder of the stability period. The IRS recognized that there may be a monetary hardship caused by this continued eligibility for employees if hours drop but coverage is not lost due to a stability period. In that case, the employee may *want* to revoke an election if the employee's hours of service are reduced such that the employee is expected to average less than 30 hours of service. If the employee's premiums for coverage are being taken out on a pre-tax basis, the employer will have to consider Internal Revenue Code Section 125 cafeteria plan rules. A cafeteria plan generally has an irrevocable election of coverage and a reduction of hours without a corresponding loss of coverage would ordinarily not be a qualifying event that would allow an employee to drop coverage mid-year.

Post ACA, however, a cafeteria plan *may* now allow an employee to prospectively revoke an election of coverage under a group health plan if both of the following conditions are met: (1) an employee who was reasonably expected to average at least 30 hours of service per week has a change in employment status so that the employee will reasonably be expected to average less than 30 hours of service per week after the change (even if that reduction does not result in the employee ceasing to be eligible under the group health plan); and (2) the revocation of the election of coverage under the group health plan corresponds to the intended enrollment of the employee (and any related individuals who cease coverage due to the revocation) in another plan that provides at least minimum essential coverage. The new coverage must be effective no later than the first day of the second month after the month in which the original coverage is revoked.[9] An employer's cafeteria plan would need to be amended to include this qualifying event to allow a mid-year change in election and allow the employee to drop coverage during the stability period.

Conclusion: If an employer is using the look-back measurement method, and a full-time employee drops to part-time status, there are special rules to consider for employees who have not been with the company long enough to complete an entire standard measurement period. ALEs using the look-back measurement method should consider whether they want to draft their ACA eligibility policy to reflect the standard rules, or to be more generous and allow an employee who drops to part-time status to remain eligible for the remainder of the stability period.

[9] IRS Notice 2014-55.