

Affordable Care Act (ACA) Waiting Period

The ACA law states:

- *'A group health plan and a health insurance issuer offering group health insurance coverage shall not apply any waiting period (as defined in section 2704(b)(4)) that exceeds 90 days.'*
- *This is effective for plan years starting on or after January 1, 2014.*

With respect to a group health plan (GHP) and an individual who is a potential participant or beneficiary in the plan, the term “waiting period” means time that must pass before the individual is eligible to be covered for benefits under the terms of the plan.

The following examples should help you understand this new requirement.



New hire

▶ Facts

Penny's Petunia Shop's GHP starts coverage for full-time employees on the first day of the first payroll period on or after the date the employee is hired and completes the forms. Tom is hired as a full-time employee on October 31, the first day of the payroll period. On November 2, he completes the forms. His coverage becomes effective on November 14, the first day of the first payroll period after completing forms.

▶ Conclusion

Tom may elect coverage that would begin on a date that does not exceed the 90-day waiting period limitation. This waiting period is permissible.



Six-month waiting period

▶ Facts

Employer's GHP has a six-month waiting period before a new full-time employee may enroll.

▶ Conclusion

The applicable waiting period exceeds 90 days. **This waiting period is not permissible.**



Part-time to full-time

▶ Facts

Employer's GHP covers full-time employees only. Coverage becomes effective on the first day of the month after the month in which the employee becomes full time. Employee begins working full time on April 11. Before then, the employee worked several years as a part-time employee. Employee enrolls and has coverage effective on May 1. The waiting period is April 11-30, and you do not count the part-time employment period for the 90-day waiting period rule.

▶ Conclusion

Full-time versus part-time status is a bona fide employment-based condition that is not considered to be a way to avoid compliance with the 90-day waiting period rule. This waiting period is permissible.





Variable hours for new hires

▶ Facts

Employer's GHP covers full-time employees only. Employee is hired on November 26 of Year 1 and her hours are reasonably expected to vary, depending on availability. Under plan terms of the plan, variable hour employees may enroll if they are determined to be full time after a 12-month measurement period. Coverage becomes effective no later than the first day of the first month after forms are received. Employee's measurement period is from November 26 of Year 1 to November 25 of Year 2. C is determined to be full time and is notified of eligibility. If employee elects, her first day of coverage will be January 1 of Year 3.

▶ Conclusion

The measurement period complies with the waiting period rule. The delay in coverage complies with the administrative period in the waiting period rule because coverage becomes effective no later than 13 months from the start date, plus the time remaining until the first day of the next month. This waiting period is permissible.



1200
HRS

Cumulative hours requirement (1,200 hours)

▶ Facts

Employee starts on January 3, working 25 hours per week. Employer's GHP covers both full- and part-time employees when they complete a cumulative 1,200 hours of service. Employee reaches this threshold on December 15. Employee elects coverage but coverage does not start until the first of the month after the month of eligibility (January 1).

▶ Conclusion

The cumulative hours requirement is not a way avoid compliance with the 90-day waiting period rule. Therefore, coverage must begin no later than the 91st day after the employee works 1,200 hours. This waiting period is permissible.



>1200
HRS

Cumulative hours requirement (more than 1,200 hours)

▶ Facts

Same as in previous example, except the cumulative hours requirement is 1,250 hours.

▶ Conclusion

If the plan's cumulative hours requirement exceeds 1,200 hours, this is a way to avoid compliance with the 90-day waiting period rule. **This waiting period is not permissible.**



Seasonal employees

▶ Facts

Employer offers a GHP to full-time employees. Employee is hired on December 1 as a salesperson and is expected to work full-time during the holiday season (December - February) and part-time the rest of the year. Employee works an average of 35 hours per week in December, January, and February and 20 hours per week in March, April, and May. The plan does not offer the employee coverage.

▶ Conclusion

If the three-month period of December through February is reasonably viewed as not representative of the average hours the employee is reasonably expected to work on an annual basis, the employer may use a second three-month period (March-May) as a look-back period. Failure to offer coverage during the first and second three-month periods complies with the 90-day waiting period rule. This waiting period is permissible.





Exclusion of certain job classifications

▶ Facts

Employer offers a GHP to full-time employees who work in the office. The plan excludes full-time employees who work in the field. The waiting period for office employees complies with the 90-day waiting period rule.

▶ Conclusion

The 90-day waiting period rule applies only to employees who are eligible per the plan terms. Field employees are excluded under the plan's eligibility criteria, and the plan's terms are not designed to avoid compliance with the 90-day waiting period rule. The employer may be subject to a shared responsibility payment for not providing coverage to the field employees. This waiting period is permissible.



First day of the next month after 90 days

▶ Facts

Currently, a common plan design is for the waiting period to last until the first day of the following month after an employee has worked 90 days. Employer's group health plan maintains this waiting period for plan years starting on or after January 1, 2014.

▶ Conclusion

Unless an employee is hired on the first of a month, the length of the waiting will necessarily exceed 90 days. **This waiting period is not permissible.**



HIPAA-excepted benefits

▶ Facts

Employer's GHP covers dental services on a stand-alone basis. The dental plan has a six-month waiting period.

▶ Conclusion

Stand-alone dental and vision plans are HIPAA-excepted benefits. So are most Health FSAs and retiree plans. This waiting period is permissible.

