Employers: Are You Ready for the Affordable Care Act?
By John H. Barkley, Esq.

This coming January, the rubber meets the road when it comes to employers having to provide minimum essential health insurance coverage to their full-time employees.

At first glance, the final regulations published by the IRS this past February seem serpentine, but they represent a good-faith effort by the IRS to create a workable system for employers to follow in order to comply with the Affordable Care Act ("ACA"). The Act and the Regs lay out what employers must do to follow the law, this article is meant to make certain aspects of the law easier to understand in real-life and suggest some "best practices" to avoid accidental violations.

Applicable Large Employers

The Employer Mandate only applies to Applicable Large Employers ("ALE"). The public perception is that the ACA applies only to businesses with 50 or more employees. While that's not exactly the case, any employer with at least 50 employees should be familiar with the ACA's rules. The reason for this is that since the rules are so complex it might be easy to accidentally conclude that a business is exempt, when it is not.

The ACA Employer Mandate applies to employers with 50 or more *full time employees*. However the definition of "full time employee" is rather complex, and requires an intense amount of very precise tracking of employees' time, and even requires consideration of vacation and sick leave. So, even an employer with only 20 full time employees and 30 "part-time" employees might accidentally trigger the ACA's requirements. Making this even more confusing is the fact that employers must evaluate their situation month-by-month, over the course of an entire year.

For employers in situations like this, failure to understand and decide how to approach the ACA could very easily lead to scrambling to figure it all out in the face of an IRS enforcement action.

The Employer Mandate

For Applicable Large Employers, the second, and more difficult question is: who must be covered and when?

The ACA and the IRS regulations lay out some pretty complex rules for determining which employees must be offered health coverage and when that coverage must be effective.

The regulations set out three categories of employees. (1) The current, on-going employees, (2) Those new employees that the employer believes will be full-time from the day they start, (3) Those new employees that the employer "can't reasonably determine" if they will be full-time from the day they start (so-called "Variable Hour Employees"). Each category has its own rules, and can sometimes even overlap (requiring the employer to apply more than one set of rules). **The diagram linked here** is meant to illustrate approximately how these rules apply over time.

Again, this comes down to intense and precise tracking of nearly every employee's hours of service to the employer.

Strictly speaking, the Regs for "Variable Hour Employees" could be read to only apply to those employees that the employer can't determine if they will be full-time or not. At first blush, this seems to indicate that if the business thinks they are hiring a part-time employee, they don't need to track that employees' time. If a business does so, it risks having someone "slip through the cracks" and trigger the penalties. So, prudent businesses should track all new employees as "Variable Hour" unless they're considered full-time from day one.

The Penalties:

The penalties are the most straight-forward part of the employer mandate. There are two kinds.

The first penalty is triggered if the employer fails to offer coverage to at least 95% of its full-time employees. This penalty equals $2,000 for every full-time employee. This includes all full-time employees, whether they were covered or not. There is an allowance that deducts from the total penalty, but this can still be a significant financial hit even after taking the allowance into account.

The second penalty is triggered if the employer offers coverage that is not affordable. This penalty equals $3,000 for every full-time employee who receives a tax credit against his or her insurance premiums. You also have to figure what your penalty would be under the first method, and take whichever is smaller as the final bill.

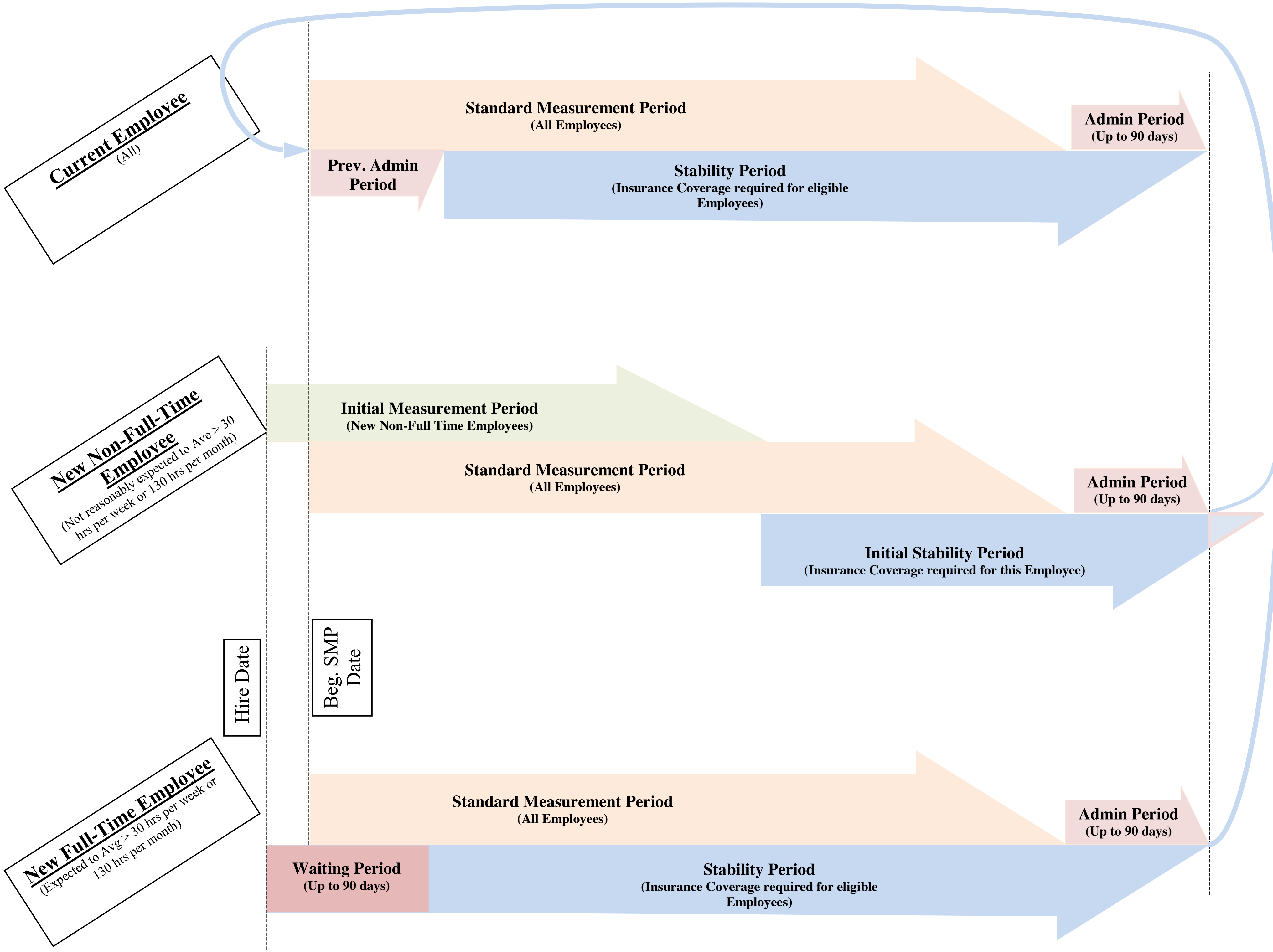
The one hidden feature of these penalties is that they are *excise taxes* and therefore not tax deductible. So practically speaking, the actual cost to the business is actually the penalty *plus* the business' effective tax rate (so a $20,000 penalty would cost a C Corp $20,000 in the year the penalty is assessed, and approximately $7,000 in additional income tax for that year depending on the corporation's actual tax bracket). So in addition to paying the penalties, a business will also later on have to pay at least some income tax on income it never had.

Final Thoughts

This article is meant as a very brief overview and to give some insight into some of the hidden dangers for employers in dealing with the ACA. The realities of the rules are far more complex than can be explained in brief. Navigating its rules for business' individual situations is an extremely complex task and any business that thinks there is any possibility of triggering the ACA should seek competent advisors on the subject.

About the author:

John H. Barkley is a Partner with Shustak & Partners, P.C. specializing in tax law, employment law, corporate law, and employer compliance with the Affordable Care Act. John also regularly consults on matters of internal accounting, business strategy, growth strategies, and strategic partnerships. To learn more about John and Shustak & Partners, P.C., visit www.shufirm.com.


Current Employee
(All)
Standard Measurement Period
(All Employees)
Admin Period
(Up to 90 days)
Prev. Admin Period
Stability Period
(Insurance Coverage required for eligible Employees)
New Non-Full-Time Employee
(Not reasonably expected to Ave > 30 hrs per week or 130 hrs per month)
Initial Measurement Period
(New Non-Full Time Employees)
Standard Measurement Period
(All Employees)
Admin Period
(Up to 90 days)
Initial Stability Period
(Insurance Coverage required for this Employee)
Hire Date
Beg. SMP Date
New Full-Time Employee
(Expected to Avg > 30 hrs per week or 130 hrs per month)
Standard Measurement Period
(All Employees)
Admin Period
(Up to 90 days)
Waiting Period
(Up to 90 days)
Stability Period
(Insurance Coverage required for eligible Employees)