



# Full-Time Employee Status Determination

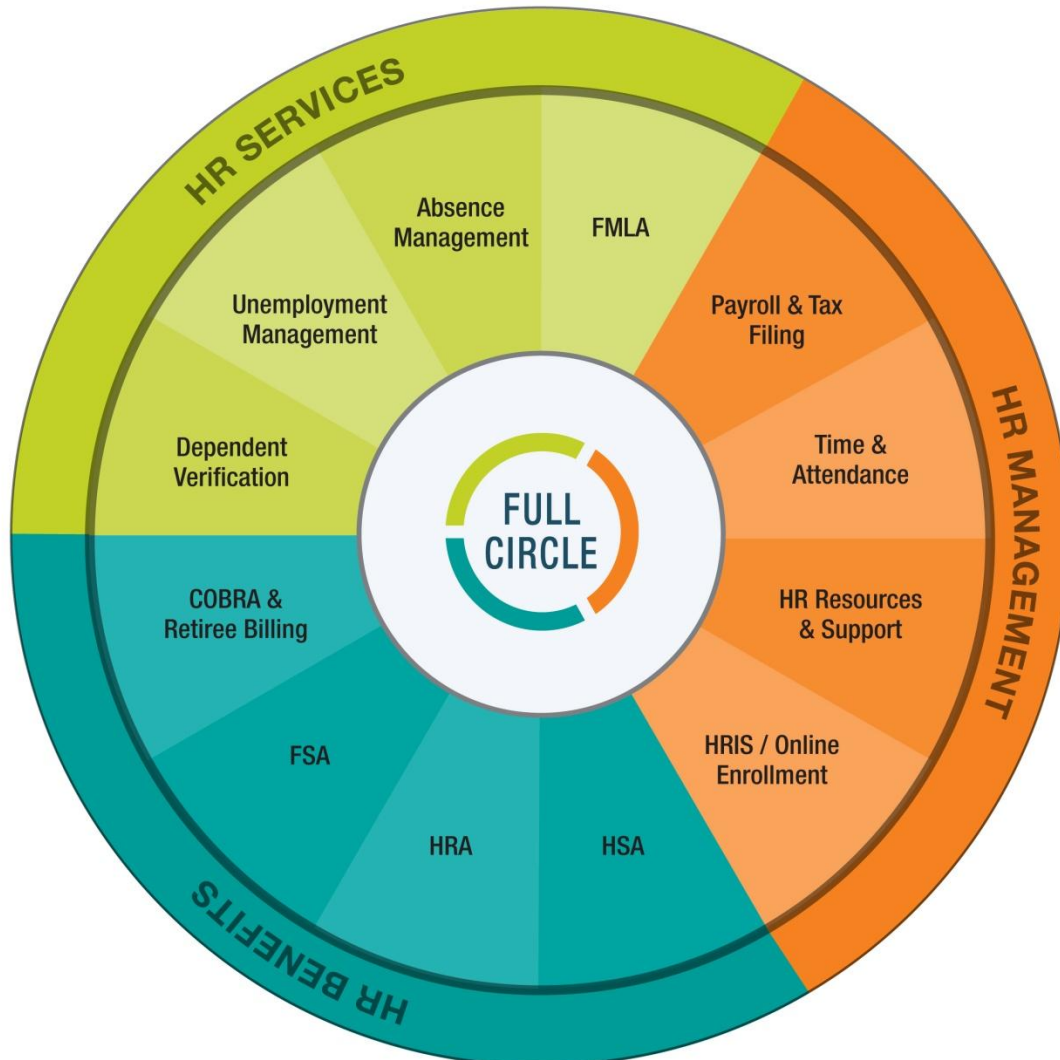
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# Introduction



- IRS Notice 2012-58 addresses when employees must be treated as full-time under the Act's employer shared-responsibility mandate.
- Effective Jan. 1, 2014, employers with 50 or more full-time equivalent employees must offer full-time employees (and their dependents) “affordable” health coverage with a “minimum value,” or face possible penalties.
- An employee averaging at least 30 hours of service per week is considered full-time for this mandate.

# Introduction



- The IRS guidance addresses how to measure full-time status for ongoing employees and new hires, with special rules for new variable-hour or seasonal employees who may work 30 hours per week during some months but not others.
- The guidance creates enforcement safe harbors; employers measuring full-time employee status as described in the relevant safe harbors may avoid paying shared-responsibility penalties.



# Introduction



- Employers can rely on guidance at least through the end of 2014.
- To take advantage of the safe harbor, however, employers may want to start tracking employees' work hours as of Oct. 15, 2012.
- Despite lingering uncertainties – particularly for employers with large part-time or seasonal workforces – regulators don't seem inclined to delay the Jan. 1, 2014, effective date.

# Safe Harbors



- For shared-responsibility purposes, a full-time employee is anyone who works on average at least 30 hours per week or – under expected regulations – 130 hours per month (sometimes referred to as the “minimum-hours threshold”).
- Full-time status is easy enough to determine when an employee is hired to work a regular number of hours each week on an ongoing basis.
- But for variable-hour employees, such as part-time or seasonal staff, the task is more challenging.

# Safe Harbors



- The IRS guidance provides two safe harbors that employers can use to decide if an employee has averaged 30 or more hours per week.
- One safe harbor applies to ongoing employees, the other to new employees.
- The safe harbors are complex, but both rely on some defined time periods that generally must be measured in a uniform fashion for all employees.

# Safe Harbors



- **Defined time periods.** The safe harbors allow employers to use these time periods to predict whether an employee will qualify as full-time for shared-responsibility purposes:
  - **Measurement period.** Employers select a fixed three- to 12-month measurement period for determining whether an employee has averaged at least 30 hours of service per week.



# Safe Harbors



- **Stability period.** After meeting the minimum-hours threshold during the measurement , employees must be treated as full-time – regardless of actual hours worked – during a subsequent “stability period,” provided they remain employed.
- Employees who fail to meet the minimum-hours threshold during the measurement period do not have full-time status during the stability period and will not trigger shared-responsibility penalties.

# Safe Harbors



- The stability period can't be shorter in duration (number of months) than its associated prior measurement period.
- If an employee meets the minimum-hours threshold during the measurement period, then the ensuing stability period for coverage availability must last at least six full, consecutive calendar months.
- If the employee did not meet the minimum-hours threshold, the stability period cannot be longer than the measurement period.

# Safe Harbors



- **Optional administrative period.** Employers may need time after the measurement period ends to decide which employees must be offered coverage during the ensuing stability period.
- The safe harbor allows an optional “administrative period” between the measurement and stability periods so employers can notify employees qualifying for coverage and handle enrollment tasks.
- The administrative period can’t exceed 90 days or be applied in a way that imposes a gap in employees’ coverage.

# Safe Harbors



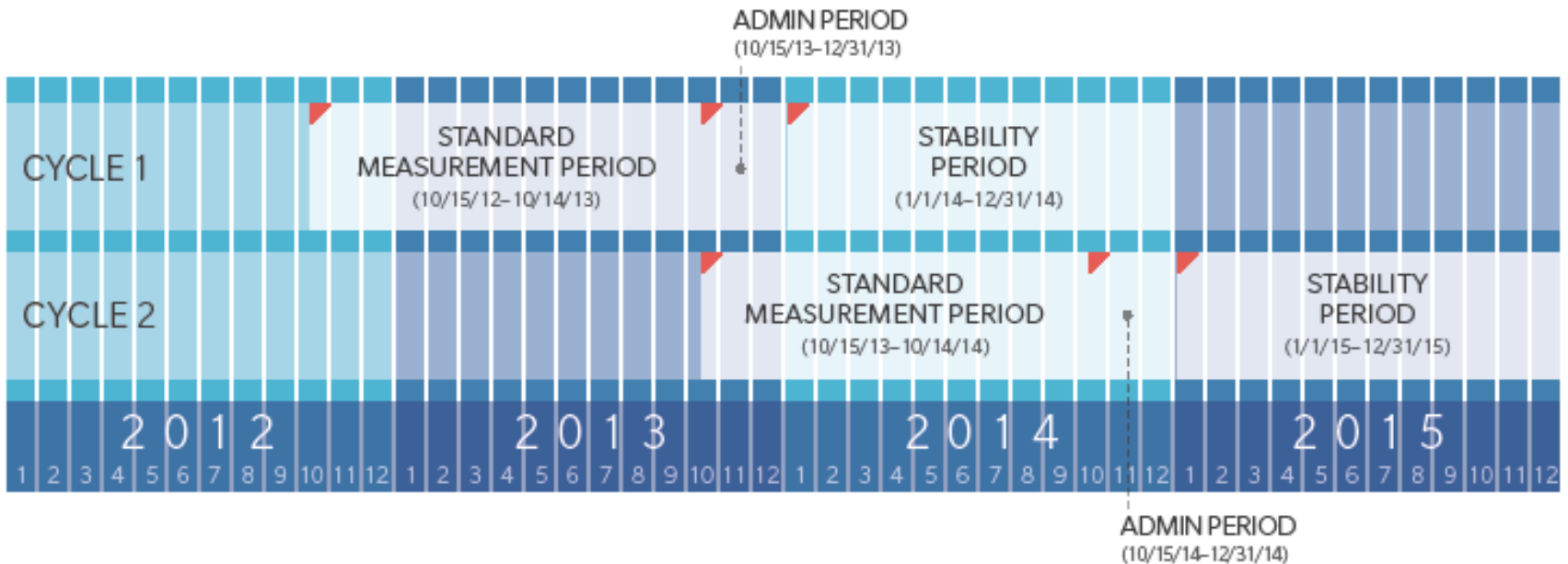
- **Uniform periods, except between certain employee groups.** An employer generally must apply its selected measurement and stability periods on a consistent basis to employees.
- But an employer's measurement and stability periods can vary in length and/or in starting and ending dates for different specified categories of employees:
  - Collectively bargained versus non-collectively bargained employees,
  - Salaried versus hourly employees,
  - Employees working in different entities, and
  - Employees located in different US states.

# Safe Harbor for Ongoing Employees



- One of two main safe harbors for determining full-time status applies to “ongoing employees”: those who have worked for the employer throughout at least one “standard” measurement period.
- **Standard measurement and stability periods.** The measurement and stability periods that an employer selects to apply to its ongoing employees are called its “standard” measurement and stability periods.
- **Optional administrative period.** Where employers decide to use this option, the administrative period adopted can’t reduce or increase the length of the standard measurement or standard stability period.
- To prevent the administrative period from causing any gaps in a person’s coverage (once the periods have completed a full cycle), the administrative period must overlap with the prior standard stability period.

# Safe Harbor for Ongoing Employees



# Safe Harbor for New Employees



- A second safe harbor applies for determining which new employees must be treated as meeting the minimum-hours threshold.
- This safe harbor has a simple rule for new hires expected to meet the threshold from their start dates, plus a series of more complex rules for new variable-hour and seasonal employees.
- In addition, an employer must establish separate “initial” measurement and stability periods for new hires that may overlap with its “standard” measurement and stability periods for ongoing employees.

# Safe Harbor for New Employees



- **New hires expected to work full time:** If a new employee in an eligible class is reasonably expected to average at least 30 hours of service per week, offering qualifying coverage that takes effect by the end of the employee's initial three full calendar months of employment satisfies the shared-responsibility mandate.
- But that may not satisfy the 90-day cap on waiting periods.
- Interaction with 90-day maximum waiting period.
  - The waiting-period guidance sets stricter timelines than the shared-responsibility safe harbor for these new employees.
  - Coverage for new hires expected to meet the minimum-hours threshold must become effective by the 91st day after the employee becomes eligible (assuming the employee timely completes any enrollment steps).



# Safe Harbor for New Employees



- Initial measurement and stability periods. The initial measurement and stability periods are unique to each new variable-hour or seasonal employee, reflecting the individual's actual start date or, alternatively, the start of the first calendar month after that date.
- Many employers might want to have all initial measurement periods start on the first of a calendar month; otherwise, every day of the year potentially could start a new measurement period.

# Applicable Rules



- Several limitations, however, must be considered in setting these periods and measuring variable-hour and seasonal employees' status for shared-responsibility purposes.
- These restrictions are highlighted below, followed by examples illustrating the key principles:
  - The initial measurement period and administrative period, combined, can't extend beyond 13 months, plus a fraction of a month. Specifically, the combined periods must end by the last day of the calendar month that starts on or immediately after the first anniversary of an employee's start date.
  - New employees' initial stability periods can't be shorter than the standard stability period for ongoing employees.
  - In operation, this restriction will generally require a 12-month initial stability period for new employees if an employer uses a 12-month standard stability period.

# Applicable Rules



- Once a new employee has completed an initial measurement period and an entire standard measurement period, the employee must be tested for full-time status.
- Starting with that standard measurement period, the employee's full-time status is determined at the same time and using the same conditions applied to other ongoing employees.
  - An employee who meets full-time status during the initial measurement period must be treated as full-time for the entire initial stability period.
  - This is so even if the employee's hours drop below the full-time threshold during the overlapping or immediately following standard measurement period.

# Important Conditions



- If an employee fails to meet full-time status during the initial measurement period, then both of these conditions apply:
  - The initial stability period can't be more than one month longer than the employee's initial measurement period and can't extend beyond the standard measurement period (plus any administrative period) in which the employee's initial measurement period ends.
  - If the employee meets full-time status during the overlapping or immediately ensuing standard measurement period, the employee must be treated as full-time for the entire stability period associated with that standard measurement period.
  - This is so even if that stability period starts before the close of the employee's initial stability period.

# 90 Day Waiting Period

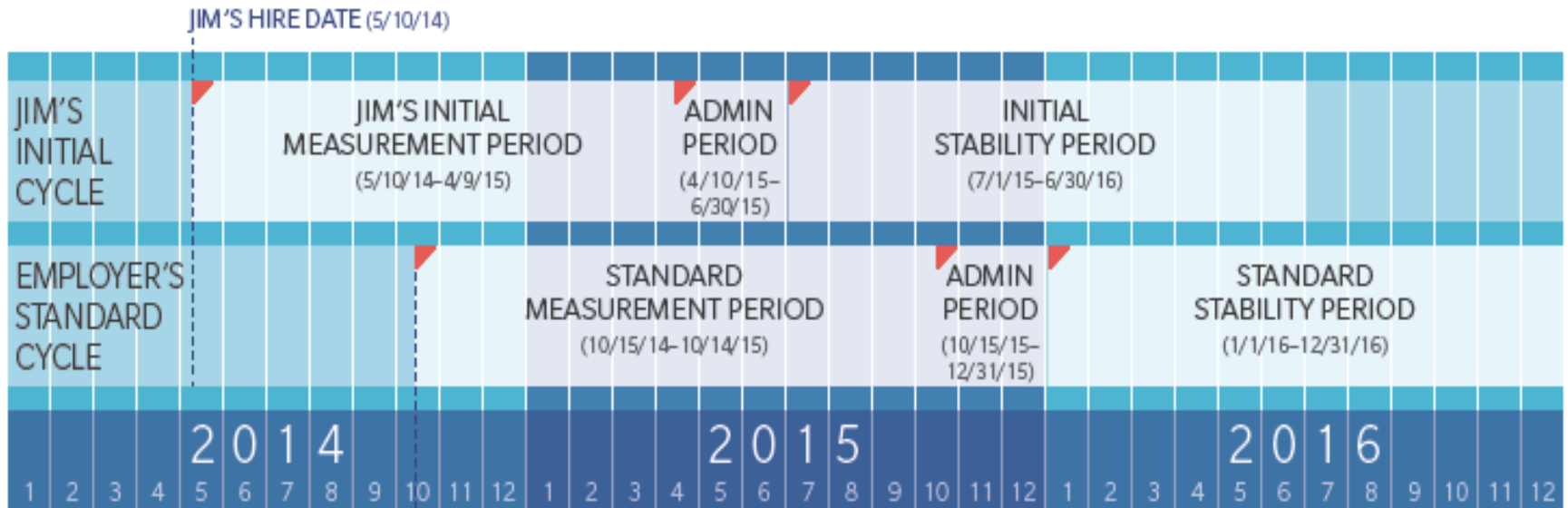


- For a new variable-hour or seasonal employee, calculating the 90-day limit on any administrative period uses total days between the start date and the date the employee is first offered coverage, reduced by the number of days in the initial measurement period.
- This means an employer choosing to simplify tracking by starting all initial measurement periods on the first of a month will have fewer days after the initial measurement period ends to handle the enrollment process before the employee's stability period must begin.

# Example



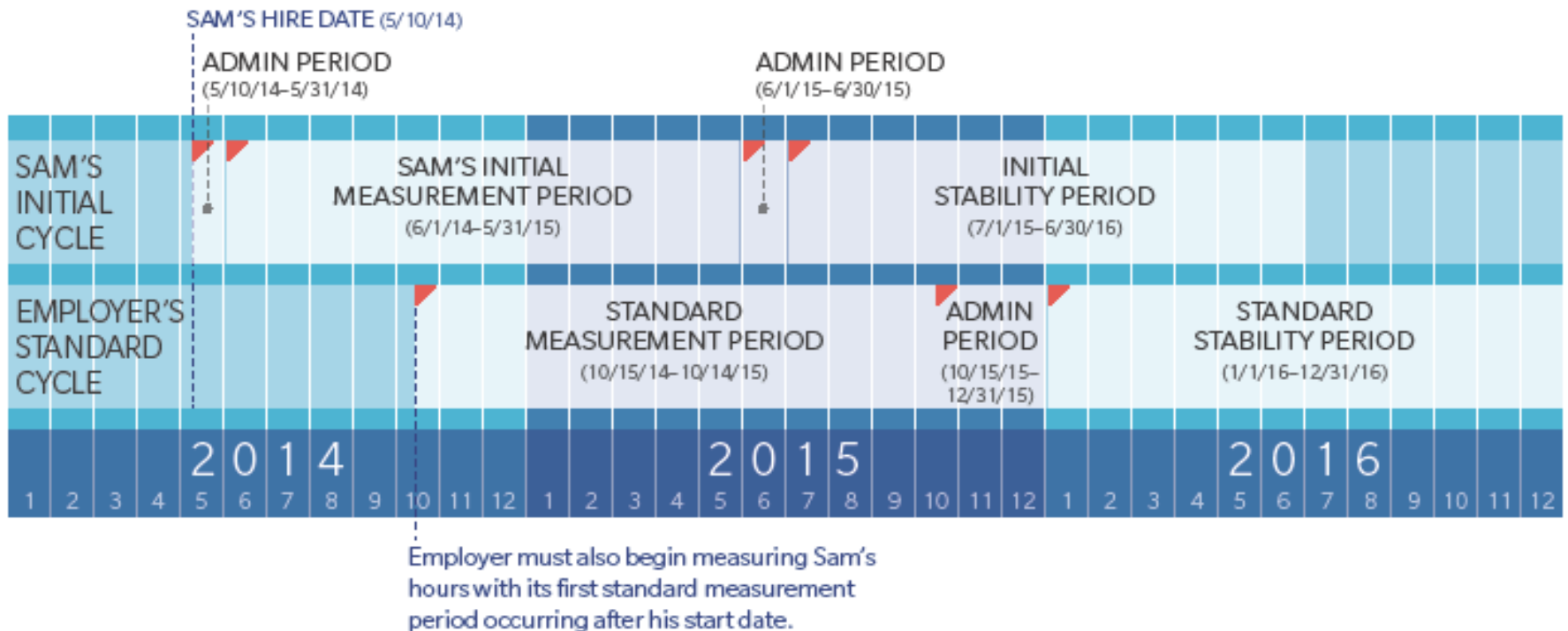
Example of variable-hour employee safe harbor and calendar-year plan: 11-month initial measurement period followed by single administrative period:



Employer must also begin measuring Jim's hours with its first standard measurement period occurring after his start date.



## Example of variable-hour employee safe harbor and calendar-year plan: 12-month initial measurement period using split administrative period



# Establishing Safe Harbor Time Periods



- The shared-responsibility safe harbors, applied with the waiting-period guidance, are quite complex, but many employers' current processes for determining employee benefit eligibility may generally fit within the safe harbors.
- One of the first compliance tasks for any employer is to determine appropriate measurement, administrative and stability periods for its plan.
- Onset of first measurement and stability periods is unclear.



# Establishing Safe Harbor Time Periods



- The safe-harbor guidance doesn't specify when employers' first stability periods need to begin.
- Regulators have stated informally that the first stability period must begin Jan. 1, 2014.
- However, the guidance only gives examples of employees hired after Jan. 1, 2014, which has led some practitioners to believe that the safe harbors permit employers to begin their first measurement periods on Jan. 1, 2014, then offer coverage in the first stability period after that date.

# Establishing Safe Harbor Time Periods



- Until further guidance is available, employers with calendar-year plans may want to play it safe and prepare for their first stability periods to begin Jan. 1, 2014.
- Under this approach, employers should consider determining – before 2014 – which employees currently ineligible for health coverage will meet the minimum-hours threshold.
- To avoid shared-responsibility penalties , employers must offer those employees coverage effective Jan. 1, 2014.

# Establishing Safe Harbor Time Periods



- Employers could extend this offer during annual enrollment in the fall of 2013.
- (Employers with non-calendar year plans could hold a special midyear enrollment for this purpose.)
- As mentioned above, however, exactly how this approach aligns with the 90-day, waiting-period guidance is unclear.

# Establishing Safe Harbor Time Periods



- **When to start measuring hours worked.** Some employers may want to impose a 12-month measurement period followed by an administrative period, with a stability period matching the calendar year.
- To do so, employers need to begin tracking hours of service by **Oct. 15, 2012**, to set the first stability period equal to calendar-year 2014.
- For employers that currently record hours of service, this may simply involve sharing already-captured payroll or workforce management data with benefit staff and enrollment vendors.
- For other employers, however, settling on a strategy and beginning to track needed data this autumn may prove more daunting.

# Establishing Safe-Harbor Time Periods



- Setting length of stability period. Many employers will want to use a 12-month stability period.
- Even for employee groups with erratic schedules, using a long measurement period should help reduce the odds that short periods of intense work will cause an employee to meet the minimum-hours threshold.
- A 12-month stability period also facilitates the traditional practice of offering ongoing employees an annual enrollment opportunity, which is easier for employers and their service vendors to administer than more frequent enrollment chances.
- Employers adopting this approach could still limit midyear enrollment to employees experiencing infrequent life events (such as a change in dependents), so newly eligible variable-hour workers could not exit and re-enter the plan every three or six months.

# Establishing Safe-Harbor Time Periods



- For employers with large numbers of short-term employees, shorter measurement and stability periods may be optimal, at least for certain permitted categories of employees.
- But when designing a health benefit strategy to minimize shared-responsibility penalties, a 12-month stability period generally should be considered before alternative approaches to determine eligibility.

# Special Considerations for January 2014 Strategy



- Some employers that want their first stability period to begin Jan. 1, 2014, may be unable to begin capturing needed data early enough (e.g., as of Oct. 15, 2012) to allow a 12-month first measurement period, followed by a nearly 90-day administrative period ending Dec. 31, 2013.
- Consequently, those employers may need to adopt a measurement period shorter than 12 months.

# Special Considerations for January 2014 Strategy



- That decision may impact the length of the first stability period starting Jan.1, 2014:
  - For ongoing employees not qualifying as full-time during the measurement period, the stability period cannot be longer than that measurement period, so the employer may not be able to adopt a 12-month first stability period for those employees.
  - For employees qualifying as full-time during the measurement period, the employer can use a 12-month first stability period, even though that measurement period was shorter.
  - Regulators haven't given any specifics but have informally acknowledged that employers may need flexible transition approaches.



# Employer Next Steps



- Employers may want to consider the following actions:
  - Decide whether or how to adjust plan waiting periods.
  - Gather data to determine whether or how the safe harbors are relevant.
  - Consider safe-harbor approaches for offering 2014 health coverage.
  - If using safe harbors, determine optimal measurement, administrative and stability periods.
  - Amend plan documents and other related materials.



# Questions



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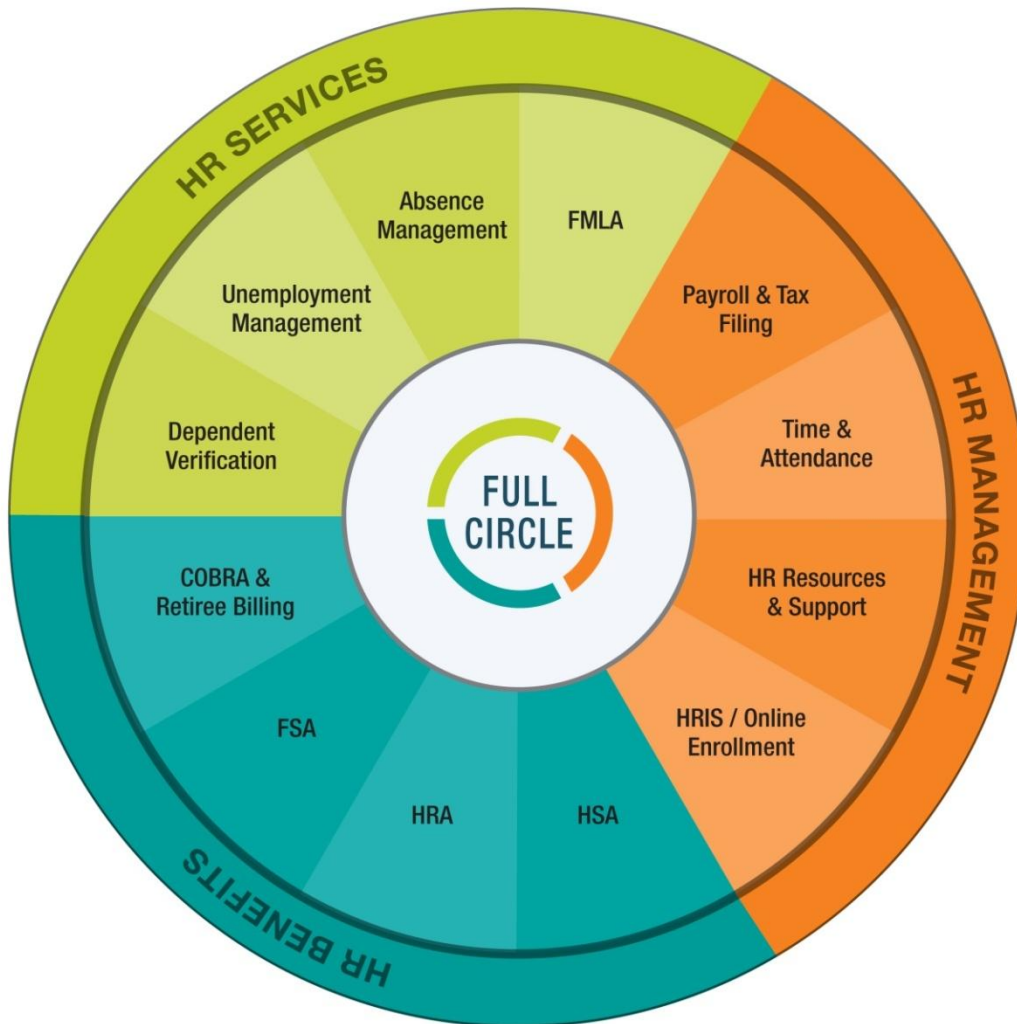
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