Affordable Care Act frequently asked questions

1. How will employees be classified?

As of January 1, 2015, employees fall into one of three categories:

- New full-time employee (permanent or nonpermanent) – A newly hired employee who was determined by the employer, as of the date of hire, to be full-time and eligible for benefits.
- New variable-hour, part-time or seasonal employee – A newly hired employee who is not expected to be credited an average of 30 hours per week for the entire measurement period, as of the date of hire. Therefore, the employer cannot reasonably determine his eligibility for benefits as of the date of hire.
- Ongoing employee – Any employee who has worked with an employer for an entire Standard Measurement Period.

Benefits available to employees

2. Will full-time nonpermanent, variable-hour, part-time and seasonal employees be eligible for the same benefits as a full-time permanent employee?

Yes. Full-time nonpermanent, variable-hour, part-time and seasonal employees will be eligible for the same benefits as a full-time permanent employee if they are deemed eligible for those benefits.

Employer responsibilities

3. Is my group required to offer insurance to full-time nonpermanent and variable-hour employees?

Yes. All full-time permanent, full-time nonpermanent and ongoing variable-hour, part-time and seasonal employees are eligible for benefits. If an employee is full-time or meets the 30-hour eligibility requirement, he should be offered benefits.

4. Are all employers covered by PEBA considered the same employer for the purpose of administering the employer mandate of the ACA and ACA reporting?

No. Pursuant to S.C. Code Ann Sections 1-11-710 and 1-11-720, there are several categories of employers eligible to participate in the State Health Plan. These include departments of the state, other state agencies and boards, technical colleges, public universities, public school districts, certain public corporations and local subdivisions.

Federal regulations advised governmental entities to make a good faith effort in applying the employer mandate. A good faith interpretation of the mandate would be to group all employers that share a common payroll center as a single employer. Using this logic, all departments of state and other state agencies and boards that use CG payroll will be considered a single employer, called “The State.” Only one consolidated report, including the information for all employees of “The State,” will be filed on behalf of the State utilizing a single EIN. (See question 10 for more information.)

All other employers participating in the State Health Plan will each be considered an individual employer and will be responsible for submitting the forms for its employees. (See question 9 for more information).

Click here for a list of all employers included in "The State" ALE.

5. How will the IRS assess fees to employers?

Employers will be responsible for reporting information to the IRS beginning in 2016. Reporting is based on the employer's Federal Employer Identification Number (FEIN).

Reporting requirements

6. Are all employers (even small employers) responsible for reporting to the IRS?

Yes. There are two sections of the Internal Revenue Code related to reporting. PEBA has prepared the ACA reporting quick reference and the ACA reporting quick reference for "The State" ALE to help you understand the reporting requirements.

- Section 6056 of the Internal Revenue Code requires an Applicable Large Employer (employer with 50 or more full-time equivalent employees) to report information about the health coverage it offered to employees in the preceding calendar year and to provide a statement to employees about the coverage available to them.
- Section 6055 of the Internal Revenue Code applies to employers not subject to 6056 reporting (employers with fewer than 50 full-time equivalent employees) and employers who offer employer-sponsored self-insured health coverage to non-employees (retirees, COBRA subscribers and survivors). For purposes of 6055 reporting, a non-employee is an individual who was not employed with the employer at any time during the preceding calendar year, and whose primary health insurance was the State Health Plan.

7. What forms must be submitted to the IRS?

For employees

- 6056 Reporting for Applicable Large Employers:
  - 1095-C: Employer-Provided Health Insurance Offer and Coverage
  - 1094-C: Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Return
- 6055 Reporting for Small Employers (fewer than 50 full-time equivalent employees)
  - 1095-B: Health Coverage
  - 1094-B: Transmittal of Health Coverage Information Return

For non-employees

- 6055 Reporting for All Employers (Non-Medicare eligible retirees, COBRA subscribers and survivors):
  - 1095-B: Health Coverage
  - 1094-B: Transmittal of Health Coverage Information Return

8. Who will be responsible for submitting these forms to the IRS?

For employees
Each employer is responsible for filing forms for any individual who was full-time with them at any time during the preceding calendar year. If you are a state agency or division, you are "The State" ALE (see question 10 for more information).

For non-employees
PEBA will be responsible for making the returns and statements required for non-Medicare eligible retirees, COBRA subscribers and survivors of the ALE that is "The State." Click here for a list of employers included in "The State" ALE.

Other employers that participate in the State Health Plan pursuant to S.C. Code Ann § 1-11-710 (technical colleges, public universities, public school districts and certain public corporations) may designate PEBA as its Designated Governmental Entity (DGE) for making the returns and statements required for its non-Medicare eligible retirees, COBRA subscribers and survivors. Click here for a list of employers that can designate PEBA as its DGE.

PEBA will not allow employers that participate in the State Health Plan pursuant to S.C. Code Ann § 1-11-720 (local subdivisions) to designate PEBA to report for its non-Medicare eligible former employees. Local subdivisions must report for their own non-Medicare eligible former employees.

9. Who will be responsible for completing and submitting forms for active employees of "The State" ALE?

Representatives from the Comptroller General's Office, PEBA, SCEIS and OHR have been meeting regularly to discuss the best process for reporting for "The State" ALE. PEBA has been identified as the reporting entity for former non-Medicare eligible employees (retirees, survivors and COBRA subscribers) and their covered dependents. The specific reporting entity for active employees has not been identified at this time.

Regardless of which agency is designated as the reporting entity, it is important to note:

- All agencies should be tracking eligibility for benefits and offers of coverage for each of their employees.
- Only one consolidated report for active employees of the state will be submitted to the IRS. (Individual state agencies will not be responsible for compiling and submitting the forms for their employees.)
- The reporting entity for the state will compile the information required for reporting and file on the state's behalf. For this reason, the information on eligibility and offers of coverage must be entered in a consistent manner among the State ALE divisions and stored in a central reporting system.
- SCEIS is currently working on a mechanism for employers to use to ensure the information required for ACA reporting is captured in the system.
- Once the tracking mechanism is in place, agencies will be required to enter benefit eligibility and offers of coverage in SCEIS for any employee on payroll.

10. How does an employer designate PEBA as its Designated Governmental Entity (DGE) for its former non-Medicare eligible retirees, COBRA subscribers and survivors?

Employers that participate in the State Health Plan pursuant to S.C. Code Ann § 1-11-710 (technical colleges, public universities, public school districts and certain public corporations) may designate PEBA as their DGE by completing the *Designated Governmental Entity* form and returning the signed form via email to dge@peba.sc.gov.

If the employer is eligible to designate PEBA as its DGE, PEBA will sign and accept the designation and return the form to the employer via email. Please note, until the employer receives a signed accepted copy of the DGE form back from PEBA, PEBA is not responsible for the employer's 6055 reporting.

11. Will PEBA assist employers with the forms?

For employees
In Part III of the 1095-C, applicable large employers must report about the individuals covered by the plan. To facilitate the employer's reporting requirement, PEBA will provide employers with an electronic file that contains this information.

In Part IV of the 1095-B, small employers must report about the individuals covered by the plan. To facilitate the employer's reporting requirement, PEBA will provide employers with an electronic file that contains this information.

For non-employees
PEBA will prepare and submit the 1095-B and 1094-B forms for former non-Medicare eligible employees (retirees, survivors and COBRA subscribers) of "The State" and any other employer that designates PEBA as its Designated Governmental Entity (DGE).

Please note: Only employers that participate in the State Health Plan pursuant to S.C. Code Ann § 1-11-710 (technical colleges, public universities, public school districts and certain public corporations) may designate PEBA as their DGE.

If an employer does not or cannot designate PEBA as its DGE, PEBA will provide employers with an electronic file that contains information for the employer's former non-Medicare eligible employees and dependents. This information is required for Section IV of the form.

Determining eligibility

12. Does the employer have to measure the hours of service of all employees or just the variable-hour, part-time and seasonal employees?

All ongoing employees' hours should be measured using the Standard Measurement Period to determine eligibility for the next plan year.

All new variable-hour, part-time and seasonal employees' hours should be measured using an Initial Measurement Period.

However, full-time employees' eligibility is presumed based on their status, and their hours do not need to be measured for purposes of determining benefits eligibility unless there is a change in status such that the employee is no longer a full-time employee.

13. What is an hour of service?

Federal regulations define an hour of service as each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer; and each hour for which an employee is paid, or entitled to payment by the employer for a period of time during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence.

There are other special provisions regarding calculating hours of service, especially for academic employers. PEBA strongly encourages employers to consult with their legal counsel for guidance in calculating hours of service.

14. How does an employer determine eligibility for the upcoming plan year?

Ongoing employees' hours should be measured using the Standard Measurement Period.

The Standard Measurement Period for determining eligibility in the upcoming plan year is October 4 of the previous year through October 3 of the current year. If an employee is credited with an average of 30 hours per week or more during the Standard Measurement Period, the employee would be eligible for benefits for the upcoming plan year.

The Administrative Period is October 3 and ends December 31. Employers must offer coverage to eligible employees during the plan's open enrollment period, which ends October 31. All enrollment forms must be submitted to PEBA according to the open enrollment submission deadline. PEBA will use the remainder of the Administrative Period to process enrollments to ensure employees have access to coverage at the beginning of the Stability Period

The Stability Period is the period of time that the employee cannot lose eligibility regardless of the hours he works. If the employee is deemed eligible for coverage during the Administrative Period, he remains eligible for the entire plan year (January 1-December 31).

15. How does an employer determine eligibility for an employee who has not been employed for the entire Standard Measurement Period?

New variable-hour, part-time or seasonal employees

An employer may wait until the employee has completed an Initial Measurement Period to determine eligibility. An Initial Measurement Period begins the first of the month after the date of hire and ends 12 months later. The employer should review the employee's hours over the Initial Measurement Period to determine eligibility.

New Full-time employees

All new full-time employees (permanent or nonpermanent) should be offered benefits the first of the month following their date of hire (if hired on the first of the month, the employee could choose to enroll on that day).

16. How does the ACA affect other benefits-eligible employees who work fewer than 30 hours per week?

There are two types of benefits-eligible employees who work fewer than 30 hours per week: Part-time teachers and employees of 20-hour employers. From an ACA perspective, these employees would be

classified as part-time employees and their hours would be measured just like other part-time employees. Eligibility as a part-time teacher or employee of a 20-hour employer is not subject to the ACA 30-hour-per-week rule. These employees remain eligible for coverage even if they are credited with fewer than 30 hours per week over the measurement period.

17. What about working retirees?

Employers are required to determine eligibility for all employees, including working retirees. If a retiree is in a full-time position or works 30 hours or more per week, or is credited an average of 30 hours per week over the measurement period, the retiree would be eligible for benefits with the employer. The employer must offer the retiree active benefits just like any other employee who meets the eligibility threshold. Working retirees are considered active employees and may not continue on retiree coverage while eligible for active benefits.

18. If a full-time nonpermanent or variable-hour employee is married to a PEBA subscriber, can the employee refuse coverage as an active employee and remain covered as the spouse of a PEBA subscriber?

No. If the employee is eligible for his own benefits, he cannot remain covered as a dependent spouse of another PEBA subscriber. (*Exception*: The employee may continue to be covered under his spouse's Dependent Life-Spouse coverage.)

19. Are all new employees subject to an Initial Measurement Period and Initial Stability Period?

Only new variable-hour, part-time and seasonal employees are subject to an Initial Measurement Period and Initial Stability Period. New full-time employees are eligible for benefits the first of the month following their date of hire (or as indicated in question 16).

20. What happens to a variable-hour, part-time or seasonal employee's eligibility when his Initial Stability Period ends?

As soon as the employee has been employed for an entire Standard Stability Period, he is no longer a new employee. He is an ongoing employee and, if eligible for benefits, he should be offered coverage during the plan's open enrollment period with all other ongoing employees.

If the employee was deemed eligible for coverage using the Standard Measurement Period, the employee would be eligible for benefits for the entire plan year (January 1 to December 31).

If the employee was deemed ineligible for coverage using the Standard Measurement Period, the employee would not be eligible for coverage once his Initial Stability Period ended.

Dual employment and transfers

21. At the end of the measurement period, if an employee works for more than one PEBA covered employer, are the hours worked for all employers combined to determine eligibility? Or does each employer determine the employee's eligibility based on the number of hours the employee worked for it?

Eligibility for benefits is based on the number of hours the employee works for an employer. If an employee works for more than one member of the State ALE group, those hours would be combined to determine eligibility.

Example
If an employee works for Charleston County Government and The Citadel, Charleston County Government would not use any hours the employee worked for The Citadel in determining eligibility for benefits with Charleston County. Each employer is its own independent employer. On the other hand, if an employee works 20 hours for the Department of Public Safety (DPS) and 10 hours for the Department of Corrections (DOC), his hours would be combined to determine eligibility because DPS and DOC are both members of the State ALE group and therefore are considered the same employer.

22. If an employee becomes eligible for benefits as the result of combining his hours worked for two members of the State ALE group, which ALE member offers coverage?

The employer for whom the employee works the most hours would be responsible for offering benefits. In the case of a tie, the IRS has not provided specific guidance. It says only that insurance must be offered to the employee. If neither employer offers coverage, the IRS will determine which ALE member will be assessed the penalty.

23. What happens to an employee's insurance eligibility if he is currently working for a member of the State ALE group, and he accepts a second position with another member of the State ALE group?

If he is an ongoing employee, gaining employment with another State ALE member will not have any immediate effect on his insurance eligibility. Because members of the State ALE are considered the same employer, the hours worked for both State ALE members will be combined during the plan's open enrollment period to determine eligibility for the next plan year.

If he is a new variable-hour, part-time or seasonal employee and the second agency hires him in a full-time position (permanent or nonpermanent), the second employer can offer the employee coverage the first of the month following his date of hire.

If the employee is a new variable-hour, part-time or seasonal employee and the second agency hires him as a variable-hour, seasonal or part-time employee, the employee's eligibility will be determined at the end of his Initial Measurement Period (established with the first agency) by combining the hours worked for both State ALE members during the measurement period.

Example
Bobby was hired as a variable-hour employee with the Department of Juvenile Justice (DJJ). During his Initial Measurement Period, Bobby accepts another variable-hour position with the Department of

Corrections (DOC). During his Administrative Period, the hours worked for DJJ and DOC would be combined to determine eligibility for benefits.

24. What happens when an employee transfers from one PEBA employer to another PEBA employer?

An employee leaves employment with one State ALE member and is hired by another State ALE member within 13 weeks:
The employee was a "new" variable-hour, part-time or seasonal employee with losing employer. If the employee is hired by the gaining employer as a "new" variable-hour, part-time or seasonal employee, the employee's Initial Measurement Period (as established by the losing employer) would continue with the gaining employer.

Example
Steven accepted a position as a variable-hour employee with the State Library. During his Initial Measurement Period, Steven left employment with the State Library and accepted a new variable-hour position with the Department of Agriculture (State ALE member). Because he returned to employment as a variable-hour employee with the same employer within 13 weeks, his Initial Measurement Period remains the same.

If the employee is transferring from a benefits-eligible position to another benefits-eligible position with less than a 15-day calendar break (or no break in coverage occurs), the employee is a transfer. Coverage would continue between losing and gaining employers with no break in coverage. (Academic transfer rules may also apply.)

Example 1
Suzie accepted a full-time position with the S.C. Department of Transportation (DOT) and enrolled in benefits. Suzie leaves employment with DOT and her benefits with DOT ended the first of the month following her last day at work.

Within 15 days Suzie accepts a full-time position with Richland County School District One (a different employer). Richland County School District One would enroll Suzie (as a transfer) in the same benefits she had when she left DOT.

If the employee is transferring from a benefits-eligible position to a non-benefits-eligible position the employee's coverage would end with the losing employer the first of the month following his last day worked. The employee would begin a 12-month Initial Measurement Period with the gaining employer to determine future eligibility for benefits.

Example 2
Max accepted a full-time position with USC and enrolled in benefits. Max left USC and his benefits ended the first of the month following his last day at work

Within 15 days, Max accepts a variable-hour position with Winthrop (a different employer). Max would not be treated as a transfer because he is not being hired in a full-time position with his new employer. Instead, the new employer would measure his hours over an initial 12-month measurement period to determine his future eligibility for benefits.

If the employee has more than a 15-day calendar break (or he experiences a break in coverage), he is not a transfer. The gaining employer would determine eligibility as of the date of hire with the gaining employer.

Example 3
Jim accepted a full-time position with Sumter County and enrolled in benefits. Jim left employment with Sumter County and his benefits with the county ended the first of the month following his last day at work.

More than 15 days later, Jim accepts a position with Sumter County Schools (a different employer). Jim's eligibility is based on the position he accepts with Sumter County Schools. If he is hired as a full-time employee, Jim would be offered benefits the first of the month following his date of hire. If Jim is hired as a variable-hour employee, Jim would not be offered benefits at the time of hire. Instead, the employer would measure his hours over an initial 12-month measurement period to determine his future eligibility for benefits.

Change in employment status

25. What happens if a new employee changes employment status within his first year of employment?

Status changes for new variable-hour, part-time or seasonal employees can be made (negative or positive) until the employee enters his Initial Stability Period.

Status changes for new full-time employees can be made until the employee has been employed for an entire Standard Measurement Period.

A new variable-hour employee becomes full-time within his first year of employment.
If the employer determined the new employee was a variable-hour, part-time or seasonal employee as of the date of hire, the employee would not be offered benefits until he completed his Initial Measurement Period.

If the employer decides to reclassify the new employee as a full-time employee before the end of his Initial Measurement Period, he could do so. The employee would be eligible for benefits the first of the month following his reclassification.

Example
John was hired by Agency X as a variable-hour employee. John's position was reclassified to a full-time position (within the Initial Measurement Period). Agency X offered John benefits effective the first of the month after his change in status.

John's hours will be reviewed during the plan's next open enrollment period provided he has been employed for the entire Standard Measurement Period at that time. If not employed the entire Standard Measurement Period at that time, his hours would not be reviewed until the following open enrollment period.

A new full-time employee changes to part-time position before he has been employed for an entire Standard Measurement Period.
If the employer determined the new employee was full-time as of the date of hire, the employee would be offered benefits the first of the month following his date of hire.

If the employee later accepted a part-time position with the agency, the employee's coverage would end the first of the month following his reduction of hours and the employee would be offered COBRA continuation coverage due to a reduction of hours. The employee's eligibility for benefits would not be reviewed again until the plan's open enrollment period provided the employee has been employed for an entire Standard Measurement Period at that time.

Example
Agency Z hired Sue and determined that she would be working 30 hours per week and classified her as a full-time employee. Sue was offered benefits effective the first of the month after her date of hire.

Sue's position was reclassified to a part-time position. Sue has not been employed for the full Standard Measurement Period. Agency Z terminated Sue's coverage effective the first of the month after her change in status, and offered her COBRA continuation coverage due to a reduction of hours.

Because Sue began employment with Agency Z as a full-time employee, Sue does not have an Initial Measurement Period. Therefore, Sue's employer will use the hours worked during the Standard Measurement Period to determine eligibility.

26. What happens if an ongoing employee changes from full-time status to part-time within his Stability Period?

An employee cannot lose eligibility during his Stability Period regardless of the hours he works. He remains eligible for the entire plan year. During the next open enrollment period, if the employee does not qualify for coverage for the following plan year, the employer will submit an *Active Termination Form* to PEBA to terminate coverage effective January 1 due to a reduction in hours. The employee would be offered 18 months of COBRA continuation coverage.

Example
Mary is an adjunct professor. During the open enrollment period, University Y determined that Mary averaged 30 hours per week over the Standard Measurement Period (October 4-October 3). Mary is eligible for benefits beginning January 1. When the fall semester begins in August, Mary is only teaching two classes (less than 30 hours per week). Because Mary is within her Stability Period, she remains eligible for coverage the entire year regardless of the number of hours she works.

If Mary remains employed with University Y, Mary's hours would be reviewed during the next Standard Measurement Period to determine eligibility for the upcoming year.

27. What happens if an ongoing employee changes from part-time status to full-time within his Stability Period?

An employee can gain eligibility during the Stability Period if his employment status changes.

Example
Jack has worked for Agency A as a part-time employee for three years. During the Standard Measurement Period, it was determined that Jack averaged less than 30 hours per week and he was not eligible for benefits in the upcoming plan year. Jack's Stability Period is January 1-December 31.

In April, Agency A offered Jack a full-time position. Jack is eligible for benefits effective May 1, (first of the month following his change in status).

28. If an ongoing employee accepts a position with the same employer as a part-time teacher, can the employer terminate full-time benefits during the Stability Period and offer part-time benefits?

No. The employer could not terminate until the end of the Stability Period following the change in status. The employer would also need to offer part-time coverage and obtain a signed Part-time NOE electing or refusing coverage for part-time teachers.

Example
Laura is an ongoing employee with Richland County School District 1. When Laura completes the school year, she notifies her employer that she would like to teach part-time for the district in the fall. Laura's full-time teacher coverage would continue over the summer months and until the end of her Stability Period on December 31. Then, if Laura's reduction in hours does not lead to another Stability Period, the employer would submit an *Active Termination Form* to PEBA to terminate coverage due to a reduction in hours effective January 1.

The employer offers Laura coverage as a Part-time teacher effective January 1. A Part-time NOE would be submitted to PEBA either electing or refusing coverage effective January 1.

Break in service, leave of absence and reduction of hours

29. How do breaks in service affect an employee's eligibility for insurance benefits?

Less than a 13-week break in service (26 weeks for academic employers)
When a new variable-hour, part-time or seasonal employee is hired, the Initial Measurement Period begins the first of the month following his initial date of hire. This Initial Measurement Period continues for 12 months as long as the employee remains employed or does not have a break in service with the same employer of more than 13 weeks (26 weeks for academic employers).

Example
Mary was hired as a new variable-hour employee with Greenville County Schools at the beginning of the school year. Mary leaves employment at the end of the school year. Mary accepts another variable-hour position with Greenville County Schools (same employer) at the beginning of the next school year with less than a 26-week break. Mary's Initial Measurement Period remains the same.

Ongoing employees remain eligible for benefits through the end of the Stability Period as long as they remain employed with the employer. If an ongoing employee leaves employment and returns to work with the same employer within 13 weeks (26 weeks for academic employers), the employee is eligible for benefits the first of the month following his return to employment and he remains eligible through the end of his Stability Period.

Example
Rebecca is an ongoing employee enrolled in benefits with the Department of Transportation (DOT). Rebecca leaves employment during the year. DOT offers Rebecca COBRA continuation coverage due to her termination of employment. One month later, Rebecca accepts a part-time position with DOT (or any other State ALE member). Because Rebecca is returning to employment with the same employer with less than a 13-week break in service, Rebecca is eligible for benefits the first of the month following her return to employment. Rebecca remains eligible until the end of the Stability Period established before she left employment.

13-week break in service or longer (26 weeks for academic employers)
If the break in service is 13 weeks or longer (26 weeks or longer for academic employers), when the employee returns to employment, he is a new hire. If the employee was previously employed with the employer as a variable-hour employee, any previous Initial Measurement Period will start over the first of the month after he returns to work.

30. How would eligibility be determined for an employee who leaves employment before the beginning of the October enrollment period and then returns to work with the same employer within 13 weeks (26 weeks for academic employers)?

If an employee returns to employment within 13 weeks (within 26 weeks for academic employers), he is not a new employee. He is considered to be a continuing employee (as if he had not left employment). Eligibility for benefits would be based on the hours worked during the preceding measurement period (Initial Measurement Period for new variable-hour employees returning to work or Standard Measurement Period for ongoing employees returning to work).

Example 1 (non-academic employer)
John worked for Agency A from October 4 until September 15. During the October open enrollment period, John was not employed by Agency A. In December, John was rehired by Agency A. Because John returned to employment with the same employer within 13 weeks, his eligibility for benefits would be based on the number of hours he worked during the preceding Standard Measurement Period (October 4-October 3). Upon review of his hours, Agency A determined that John averaged 30 hours per week during the preceding measurement period. Therefore, John would be eligible for benefits effective January 1 (first of the month following his date of hire).

Example 2 (academic employer)
Paula worked for College Z from October 4, 2018, until September 4, 2019. During the October open enrollment period, Paula was not employed by College Z. In February 15, 2019, Paula was rehired by College Z. Because Paula returned to employment with the same academic employer within 26 weeks, her eligibility for benefits would be based on the number of hours she worked during the preceding Standard Measurement Period (October 4, 2018, through October 3, 2019). Upon review of her hours, College Z determined that Paula averaged 30 hours per week during the preceding measurement period. Therefore, Paula would be eligible for benefits effective March 1, 2020 (first of the month following her date of hire).

31. What do we do if an employee elects benefits during open enrollment, leaves employment before January 1, and then returns to work with the same employer within 13 weeks (26 weeks for academic employers)?

If an employee returns to employment within 13 weeks (26 weeks for academic employers), he is not a new employee. He is considered to be a continuing employee (as if he had not left employment). Eligibility for benefits would be based on the hours worked during the preceding measurement period (Initial Measurement Period for new variable-hour employees returning to work or Standard Measurement Period for ongoing employees returning to work).

Example
Tracy has been employed by Agency X for the entire Standard Measurement Period (October 4-October 3). In October, Agency X determined that Tracy was eligible for benefits for the upcoming plan year.

Tracy completed a Notice of Election (NOE) form during the October open enrollment period and enrolled in coverage effective January 1. In December, Tracy's contract ended and she left employment. Agency X submitted a Request for Review to PEBA to void the NOE because Tracy left employment before coverage began.

Tracy obtained a new contract with Agency X (same employer) and returned to employment in February (less than a 13-week break). Because Tracy was already deemed eligible for benefits during the open enrollment period, she remains eligible upon her return to employment. A new NOE should be submitted to PEBA for Tracy (either electing or refusing coverage) effective March 1 (first of the month following her return to employment).

32. If an employee returns to work with the same employer within 13 weeks (26 weeks for academic employers), can he only enroll in the benefits he had when he left employment or can he make new elections?

If the employee has less than a 15-day calendar break or he does not experience a break in coverage (as a result of him leaving employment), no changes can be made. If the employee has more than a 15-day calendar break or he experiences a break in coverage (as a result of him leaving employment), he would be eligible to make new elections the first of the month following his return to work (just like a new hire).

Example 1
An employee works for Charleston County Government. When she leaves employment, she is enrolled in subscriber-only coverage (health, dental). The employee is rehired with the same employer two months later. Because her break in coverage is more than 15 days, the employee could make new elections (just like a new hire).

Example 2
An employee works for Clemson University. Her last day at work is September 2, 2019. The employer terminates coverage effective October 1, 2019. The employee returns to work September 27, 2019 (before coverage terminates). The employer would submit a Request for Review to PEBA requesting the termination to be voided because the employee has returned to work.

Example 3
An employee works for Berkeley County Schools. His last day is November 23. The employer terminates coverage effective December 1. The employee returns to work on December 3 (less than a 15-day calendar break), then the employer would submit a Request for Review to PEBA requesting the termination to be voided because the employee has returned to work.

33. What do I do if an employee goes on an approved leave of absence or unpaid leave? Does his coverage continue or do I terminate coverage and then reinstate the coverage when he returns to work?

Eligibility for ongoing employees does not end during the Stability Period regardless of the number of hours worked by the employee. Coverage should be continued.

If a full-time employee has not been employed for the entire Standard Measurement Period (October 4-October 3), he is not in a Stability Period. If an employee is not in a Stability Period and he has a reduction in hours (less than 30 per week), then his eligibility for benefits will end the first of the month

following his reduction in hours, and the employee would be offered COBRA continuation coverage due to a reduction of hours. The employee's eligibility for benefits would not be reviewed again until the plan's open enrollment period provided the employee has been employed for an entire Standard Measurement Period at that time.

34. When an employee is on unpaid leave, can the employer charge the employee the employer's share of the premium?

No. Effective January 1, 2015, the ACA states an employee within a Stability Period remains employed and eligible for benefits even if his hours are reduced. This applies to any reduction in hours, including a reduction to zero hours. As long as an employee remains eligible for benefits, an employer cannot charge the employee the employer's share of the premium.

35. Can an employee voluntarily drop coverage within his Stability Period if he can no longer afford the premium?

If an employee's hours are reduced and it is reasonable to expect the employee will be credited less than 30 hours per week for the remainder of the Stability Period, and the employee intends to enroll in another health plan offered through the Health Insurance Marketplace within 31 days of terminating coverage with the employer, the employee can drop **all** coverage with the employer.

The employer would submit an *Active Termination Form* to PEBA.

The employee's termination of coverage is not a COBRA-qualifying event and the employee will not be eligible to reenroll in benefits with the employer until the next open enrollment period (provided he is eligible) or within 31 days of a special eligibility situation.

36. If an employee voluntarily terminates coverage, can he enroll as a dependent of another PEBA subscriber (parent or spouse)?

No. The employee did not lose eligibility for coverage. An eligible employee cannot be covered as a spouse. An eligible employee can be covered as a child; however, an eligible employee may only terminate coverage and enroll as a child during open enrollment, within 31 days of a special eligibility situation or within 31 days of leaving employment. A voluntary termination of coverage is not a special eligibility situation.

37. If an employee voluntarily terminates coverage to enroll in the Health Insurance Marketplace, and his child (who is eligible for coverage as the dependent of another PEBA subscriber) loses coverage as a result, can the child enroll in coverage with the other PEBA subscriber at that time?

Yes. An eligible child could be added to another PEBA subscriber's coverage within 31 days of losing PEBA coverage.

Example
Dana has a reduction of hours and cannot afford to continue her insurance. Dana advises her employer that she would like to terminate her coverage so that she can purchase coverage through the Health Insurance Marketplace. Dana is currently covering herself and her child, Cathy. Dana's ex-husband, David, is a state employee enrolled in insurance as a PEBA subscriber. David can add his daughter, Cathy, to his insurance within 31 days of her loss of state coverage.

38. How does an employer terminate an employee's coverage due to non-payment?

If an employee's paycheck is not large enough to cover the premiums, the employee can pay the employer for his premiums with a check (or any other means acceptable by the employer). If the employee fails to pay his premiums, the employer can terminate coverage for non-payment. The employer must allow a 30-day grace period for the employee to make the payment.

The BA does not have to wait for the 30-day grace period to elapse before submitting the termination to PEBA. To terminate coverage, the BA should send in an Active Termination form to terminate coverage due to nonpayment. This form should be sent to PEBA within 31 days of the employee failing to pay (termination will be applied back to the date last paid). If the employee pays the employer within the 30-day grace period, the BA can submit a Request for Review form to PEBA to reinstate coverage because payment was received during the grace period.

If the BA waits until the end of the 30-day grace period to notify PEBA of the termination, PEBA will not refund premiums retroactively. Instead, coverage will be terminated the first of the month following the date of request.

39. If an employee's coverage is terminated due to non-payment, can he enroll as a dependent of another PEBA subscriber (parent or spouse)?

No. The employee did not lose eligibility for coverage. An eligible employee cannot be covered as a spouse. An eligible employee can be covered as a child; however, an eligible employee may only terminate coverage and enroll as a child during open enrollment or within 31 days of leaving employment.

40. If an employee's coverage is terminated due to non-payment, and his child (who is eligible for coverage as the dependent of another PEBA subscriber) loses coverage as a result, can the child enroll in coverage with another PEBA subscriber at that time?

Yes. An eligible child could be added to another PEBA subscriber's coverage within 31 days of losing state coverage.

COBRA

41. If an employee's coverage is terminated due to non-payment, do we offer him COBRA?

No. Termination due to non-payment is not a COBRA-qualifying event. COBRA would not be offered.

42. If an employee loses eligibility at the end of the Stability Period, do we need to offer COBRA?

Yes. If the full-time nonpermanent employee was not credited with an average of 30 hours per week or more during the Standard Measurement Period, he would lose eligibility for benefits once his Stability Period ends. The COBRA-qualifying event would be the employee's reduction in hours. The employee and his covered dependents would be eligible for 18 months of COBRA continuation coverage at the end of his Stability Period.