any member of the applicable large employer) before the end of the initial measurement period.

(B) *Additional factors for an employee hired by an employer for temporary placement at an unrelated entity.* In the case of an individual who, under all the facts and circumstances, is the employee of an entity (referred to solely for purposes of this paragraph (a)(49) as a ''temporary staffing firm'') that hired such individual for temporary placement at an unrelated entity that is not the common law employer, additional factors to consider to determine whether the employee is reasonably expected to be (or reasonably expected not to be) employed by the temporary staffing firm on average at least 30 hours of service per week during the initial measurement period include, but are not limited to, whether other employees in the same position of employment with the temporary staffing firm, as part of their continuing employment, retain the right to reject temporary placements that the temporary staffing firm offers the employee; typically have periods during which no offer of temporary placement is made; typically are offered temporary placements for differing periods of time; and typically are offered temporary placements that do not extend beyond 13 weeks.

(C) *Educational organizations.* An employer that is an educational organization cannot take into account the potential for, or likelihood of, an employment break period in determining its expectation of future hours of service.

(iii) *Application only for look-back measurement method.* The term *variable hour employee* is used as a category of employees under the look-back measurement method and is not relevant to the monthly measurement method.

(50) *Week.* The term *week* means any period of seven consecutive calendar days applied consistently by the applicable large employer member.

(b) *Effective/applicability date.* This section is applicable for periods after December 31, 2014.

[T.D. 9655, 79 FR 8577, Feb. 12, 2014]

§ 54.4980H–2 Applicable large employer and applicable large employer member.

(a) *In general.* Section 4980H applies to an applicable large employer and to all of the applicable large employer members that comprise that applicable large employer.

(b) *Determining applicable large employer status*—(1) *In general.* An employer's status as an applicable large employer for a calendar year is determined by taking the sum of the total number of full-time employees (including any seasonal workers) for each calendar month in the preceding calendar year and the total number of FTEs (including any seasonal workers) for each calendar month in the preceding calendar year, and dividing by 12. The result, if not a whole number, is then rounded to the next lowest whole number. If the result of this calculation is less than 50, the employer is not an applicable large employer for the current calendar year. If the result of this calculation is 50 or more, the employer is an applicable large employer for the current calendar year, unless the seasonal worker exception in paragraph (b)(2) of this section applies.

(2) *Seasonal worker exception.* If the sum of an employer's full-time employees and FTEs exceeds 50 for 120 days or less during the preceding calendar year, and the employees in excess of 50 who were employed during that period of no more than 120 days are seasonal workers, the employer is not considered to employ more than 50 full-time employees (including FTEs) and the employer is not an applicable large employer for the current calendar year. In the case of an employer that was not in existence on any business day during the preceding calendar year, if the employer reasonably expects that the sum of its full-time employees and FTEs for the current calendar year will exceed 50 for 120 days or less during the calendar year, and that the employees in excess of 50 who will be employed during that period of no more than 120 days will be seasonal workers, the employer is not an applicable large employer for the current calendar year. For purposes of this paragraph (b)(2) only, four calendar months may be treated as the equivalent of 120 days.

The four calendar months and the 120 days are not required to be consecutive.

(3) *Employers not in existence in preceding calendar year.* An employer not in existence throughout the preceding calendar year is an applicable large employer for the current calendar year if the employer is reasonably expected to employ an average of at least 50 full-time employees (taking into account FTEs) on business days during the current calendar year and it actually employs an average of at least 50 full-time employees (taking into account FTEs) on business days during the calendar year. An employer is treated as not having been in existence throughout the prior calendar year only if the employer was not in existence on any business day in the prior calendar year. See paragraph (b)(2) of this section for the application of the seasonal worker exception to employers not in existence in the preceding calendar year.

(4) *Special rules for government entities, churches, and conventions and associations of churches.* [Reserved]

(5) *Transition rule for an employer's first year as an applicable large employer.* With respect to an employee who was not offered coverage by the employer at any point during the prior calendar year, if the applicable large employer offers coverage to the employee on or before April 1 of the first calendar year for which the employer is an applicable large employer, the employer will not be subject to an assessable payment under section 4980H by reason of its failure to offer coverage to the employee for January through March of that year, provided that this relief applies only with respect to potential liability under section 4980H(b) (for January through March of the first calendar year for which the employer is an applicable large employer) if the coverage offered by April 1 provides minimum value. If the employer does not offer coverage to the employee by April 1, the employer may be subject to a section 4980H(a) assessable payment with respect January through March of the first calendar year for which the employer is an applicable large employer in addition to any later calendar months for which coverage was not offered. If the employer offers coverage to the employee by April 1 that does not provided minimum value, the employer may be subject to a section 4980H(b) assessable payment with respect to the employee for January through March of the first calendar year for which the employer is an applicable large employer in addition to any later calendar months for which coverage does not provide minimum value or is not affordable. This rule applies only during the first year that an employer is an applicable large employer (and would not apply if, for example, the employer falls below the 50 full-time employee (plus FTE) threshold for a subsequent calendar year and then increases employment and becomes an applicable large employer again).

(c) *Full-time equivalent employees (FTEs)*—(1) *In general.* In determining whether an employer is an applicable large employer, the number of FTEs it employed during the preceding calendar year is taken into account. All employees (including seasonal workers) who were not employed on average at least 30 hours of service per week for a calendar month in the preceding calendar year are included in calculating the employer's FTEs for that calendar month.

(2) *Calculating the number of FTEs.* The number of FTEs for each calendar month in the preceding calendar year is determined by calculating the aggregate number of hours of service for that calendar month for employees who were not full-time employees (but not more than 120 hours of service for any employee) and dividing that number by 120. In determining the number of FTEs for each calendar month, fractions are taken into account; an employer may round the number of FTEs for each calendar month to the nearest one hundredth.

(d) *Examples.* The following examples illustrate the rules of paragraphs (a) through (c) of this section. In these examples, hours of service are computed following the rules set forth in § 54.4980H–3, and references to years refer to calendar years unless otherwise specified. The employers in *Example 2* through *Example 6* are each the sole applicable large employer member

of the applicable large employer, as determined under section 414(b), (c), (m), and (o).

Example 1 (Applicable large employer/controlled group). (i) *Facts.* For all of 2015 and 2016, Corporation Z owns 100 percent of all classes of stock of Corporation Y and Corporation X. Corporation Z has no employees at any time in 2015. For every calendar month in 2015, Corporation Y has 40 full-time employees and Corporation X has 60 full-time employees. Corporations Z, Y, and X are a controlled group of corporations under section 414(b).

(ii) *Conclusion.* Because Corporations Z, Y and X have a combined total of 100 full-time employees during 2015, Corporations Z, Y, and X together are an applicable large employer for 2016. Each of Corporations Z, Y and X is an applicable large employer member for 2016.

Example 2 (Applicable large employer with FTEs). (i) *Facts.* During each calendar month of 2015, Employer W has 20 full-time employees each of whom averages 35 hours of service per week, 40 employees each of whom averages 90 hours of service per calendar month, and no seasonal workers.

(ii) *Conclusion.* Each of the 20 employees who average 35 hours of service per week count as one full-time employee for each calendar month. To determine the number of FTEs for each calendar month, the total hours of service of the employees who are not full-time employees (but not more than 120 hours of service per employee) are aggregated and divided by 120. The result is that the employer has 30 FTEs for each calendar month ($40 \times 90 = 3{,}600$, and $3{,}600 \div 120 = 30$). Because Employer W has 50 full-time employees (the sum of 20 full-time employees and 30 FTEs) during each calendar month in 2015, and because the seasonal worker exception is not applicable, Employer W is an applicable large employer for 2016.

Example 3 (Seasonal worker exception). (i) *Facts.* During 2015, Employer V has 40 full-time employees for the entire calendar year, none of whom are seasonal workers. In addition, Employer V also has 80 seasonal workers who are full-time employees and who work for Employer V from September through December 2015. Employer V has no FTEs during 2015.

(ii) *Conclusion.* Before applying the seasonal worker exception, Employer V has 40 full-time employees during each of eight calendar months of 2015, and 120 full-time employees during each of four calendar months of 2015, resulting in an average of 66.67 full-time employees for the year. However, Employer V's workforce exceeded 50 full-time employees (counting seasonal workers) for no more than four calendar months (treated as the equivalent of 120 days) in calendar year 2015, and the number of full-time employees would be less than 50 during those months if seasonal workers were disregarded. Accordingly, because after application of the seasonal worker exception described in paragraph (b)(2) of this section Employer V is not considered to employ more than 50 full-time employees, Employer V is not an applicable large employer for 2016.

Example 4 (Seasonal workers and other FTEs). (i) *Facts.* Same facts as *Example 3*, except that Employer V has 20 FTEs in August, some of whom are seasonal workers.

(ii) *Conclusion.* The seasonal worker exception described in paragraph (b)(2) of this section does not apply if the number of an employer's full-time employees (including seasonal workers) and FTEs exceeds 50 for more than 120 days during the calendar year. Because Employer V has at least 50 full-time employees for a period greater than four calendar months (treated as the equivalent of 120 days) during 2015, the exception described in paragraph (b)(2) of this section does not apply. Employer V averaged 68 full-time employees in 2015: $[(40 \times 7) + (60 \times 1) + (120 \times 4)] \div 12 = 68.33$, and accordingly, Employer V is an applicable large employer for calendar year 2016.

Example 5 (New employer). (i) *Facts.* Corporation S is incorporated on January 1, 2016. On January 1, 2016, Corporation S has three employees. However, prior to incorporation, Corporation S's owners purchased a factory intended to open within two calendar months of incorporation and to employ approximately 100 full-time employees. By March 15, 2016, Corporation S has more than 75 full-time employees.

(ii) *Conclusion.* Because Corporation S can reasonably be expected to employ on average at least 50 full-time employees on business days during 2016, and actually employs an average of at least 50 full-time employees on business days during 2016, Corporation S is an applicable large employer (and an applicable large employer member) for calendar year 2016.

Example 6 (First year as applicable large employer). (i) *Facts.* As of January 1, 2015, Employer R has been in existence for several years and did not average 50 or more full-time employees (including FTEs) on business days during 2014. Employer R averages 50 or more full-time employees on business days during 2015, so that for 2016 Employer R is an applicable large employer, for the first time. For all the calendar months of 2016, Employer R has the same 60 full-time employees. Employer R offered 20 of those full-time employees healthcare coverage during 2015, and offered those same employees coverage providing minimum value for 2016. With respect to the 40 full-time employees who were not offered coverage during 2015, Employer R offers coverage providing minimum value for calendar months April 2016 through December 2016.

(ii) *Conclusion.* For the 40 full-time employees not offered coverage during 2015 and offered coverage providing minimum value for the calendar months April 2016 through December 2016, the failure to offer coverage during the calendar months January 2016 through March 2016 will not result in an assessable payment under section 4980H with respect to those employees for those three calendar months. For those same 40 full-time employees, the offer of coverage during the calendar months April 2016 through December 2016 may result in an assessable payment under section 4980H(b) with respect to any employee for any calendar month for which the offer is not affordable and for which Employer R has received a Section 1411 Certification. For the other 20 full-time employees, the offer of coverage during 2016 may result in an assessable payment under section 4980H(b) for any calendar month if the offer is not affordable and Employer R has received a Section 1411 Certification with respect to the employee who received the offer of coverage. For all calendar months of 2016, Employer R will not be subject to an assessable payment under section 4980H(a).

(e) *Additional guidance.* With respect to an employer's status as an applicable large employer, the Commissioner may prescribe additional guidance of general applicability, published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter).

(f) *Effective/applicability date.* This section is applicable for periods after December 31, 2014.

[T.D. 9655, 79 FR 8577, Feb. 12, 2014]

§ 54.4980H–3 Determining full-time employees.

(a) *In general.* This section sets forth the rules for determining hours of service and status as a full-time employee for purposes of section 4980H. These regulations provide two methods for determining full-time employee status—the monthly measurement method, set forth in paragraph (c) of this section, and the look-back measurement method, set forth in paragraph (d) of this section. The monthly measurement method applies for purposes of determining and calculating liability under section 4980H(a) and (b), as well as, with respect to paragraph (c)(1) of this section, determination of applicable large employer status (except with respect to the weekly rule under the monthly measurement method). The look-back measurement method applies solely for purposes of determining and calculating liability under section 4980H(a) and (b) (and not for purposes of determining status as an applicable large employer). See § 54.4980H–1(a)(21) for the definition of full-time employee. The rules set forth in this section prescribe the minimum standards for determining status as a full-time employee for purposes of section 4980H; treatment of additional employees as full-time employees for other purposes does not affect section 4980H liability if those employees are not full-time employees under the look-back measurement method or the monthly measurement method.

(b) *Hours of service*—(1) *In general.* The following rules on the calculation of hours of service apply for purposes of applying both the look-back measurement method and the monthly measurement method.

(2) *Hourly employees calculation.* Under the look-back measurement method and the monthly measurement method, for employees paid on an hourly basis, an employer must calculate actual hours of service from records of hours worked and hours for which payment is made or due.

(3) *Non-hourly employees calculation*—(i) *In general.* Except as otherwise provided, under the look-back measurement method and the monthly measurement method, for employees paid on a non-hourly basis, an employer must calculate hours of service by using one of the following methods:

(A) Using actual hours of service from records of hours worked and hours for which payment is made or due;

(B) Using a days-worked equivalency whereby the employee is credited with eight hours of service for each day for which the employee would be required to be credited with at least one hour of service in accordance with paragraph (b)(2) of this section; or

(C) Using a weeks-worked equivalency whereby the employee is credited with 40 hours of service for each week for which the employee would be required to be credited with at least one hour of service in accordance with paragraph (b)(2) of this section.

(ii) *Change in method.* An employer must use one of the three methods in