

RESOLUTION NO. 2014-04

THE FREMONT COUNTY BOARD OF COMMISSIONERS DESIRES TO ADOPT BY RESOLUTION A POLICY ON FULL-TIME EMPLOYEE TRACKING & APPLICATION, AND TO ESTABLISH AN EFFECTIVE DATE.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF FREMONT COUNTY, IDAHO, AS FOLLOWS:

That the policy attached as the **Full-time Employees Tracking & Application Policy** shall be adopted as part of this resolution.

This Resolution shall be in full force and effect from and after the date of its passage. Duly approved, passed and adopted this 16th day of December, 2013, by the BOARD OF COUNTY COMMISSIONERS:

This resolution shall be in full force and effect immediately upon its passage.

PASSED THIS 16th DAY OF DECEMBER, 2013, BY THE BOARD OF COUNTY COMMISSIONERS OF FREMONT COUNTY, IDAHO.

BOARD OF COUNTY COMMISSIONERS
FREMONT COUNTY, IDAHO

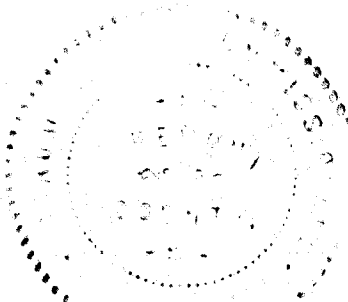


LEE MILLER, CHAIRMAN

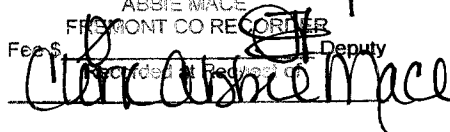
ATTEST:



ABBIE MACE, COUNTY CLERK



Microfilm 547106

Day Dec 20 13
At 3:21 O'Clock PM
ABBIE MACE
FREMONT CO RECORDER
Fee \$ _____ Deputy
Recorder at Recorder's Office


Full-time Employees
Tracking & Application Policy
INTERNAL REVENUE CODE § 4980H
TREASURY REGULATION § 54.4980H-3

I. Overview and Background

Effective January 2014, *Large Employers* face liability for two new, potential 'shared responsibility assessments'. The Internal Revenue Service (*IRS*) will assess a *Large Employer* that

- (a) does not offer *MEC* to at least 95% or all but five of its *Full-time Employees* (and their dependents)—a group shared responsibility assessment—or
- (b) does so offer *MEC* but either
 - i. the offered *MEC* does not provide the *Full-time Employee* at least *Bronze value* (Internal Revenue Code—IRC § 36B(c)(2)(C)(ii)), or
 - ii. the offered *MEC* is *unaffordable* for the *Full-time Employee*, an individually-calculated shared responsibility assessment.

IRC § 4980H(a) and (b), respectively.

The group shared responsibility assessment is \$166.67 per calendar month for the number of *Full-time Employees* the *Large Employer* has in excess of 30. The group shared responsibility assessment is triggered if the offered *MEC* is *unaffordable* to one or more of its *Full-time Employees* that purchases health coverage at a Health Insurance Exchange.

The individually-calculated shared responsibility assessment a *Large Employer* must pay is \$250.00 per calendar month but only for each *Fulltime Employee* that actually purchases health coverage at a Health Insurance Exchange. This individually-calculated shared responsibility assessment only applies if either the offered *MEC* does not provide at least *Bronze value* or would be *unaffordable* for that particular *Full-time Employee*.

The U.S. Department of Treasury has proposed regulations, 26 Code of

Federal Regulations § 54.4980H-3 (the *Rules*), setting forth how a *Large Employer* must measure and determine the average *Weekly Hours of Service of Employees*. The *Rules* also specify how many and to which calendar months the *Large Employer* must then treat and count an *Employee* as a *Full-time Employee*.

Accordingly, Fremont County, Idaho adopts this Policy within the discretion and parameters set forth in the *Rules* for purposes of determining for which calendar months an *Employee* must be treated and counted as a *Full-time Employee* for purposes of IRC § 4980H, to the complete IRS Forms 1095-C and 1094-C to report the Fremont County, Idaho's monthly counts of *Full-time Employees* to the IRS after the calendar year has ended.

Fremont County, Idaho also adopts this Policy for purposes of determining which *Employees* meet the hours per week requirement (if any) for eligibility for coverage under any group health plans that Fremont County, Idaho might offer to its *Employees*, and to each other employee benefit determination that involves average hours per week for which no different method is required to be used to determine such average. If the hours per week for eligibility requirement of a group health plan or other employee benefit specifies a number of hours per week other than 30, the principles and methodologies specified herein shall, for purposes of eligibility in that group health plan or for that other employee benefit only, be applied substituting that other number for 30 for that purpose. For purposes of IRC § 4980H and IRS Forms 1095-C and 1094-C, this Policy shall nevertheless be applied at 30 *Hours of Service per Week*.

II. *Terminology as Defined for this Policy*

The following terms, as defined in this Part II, and other italicized terms defined in the operative provisions of this Policy, apply for all purposes of this Policy, except as otherwise specified or modified in context or necessarily and reasonably implied from the context:

Fremont County, Idaho: Fremont County, Idaho and/or any other employer with which Fremont County, Idaho must be grouped pursuant to *INTERNAL REVENUE CODE* §§ 414(b), (c) or (m)).

Large Employer: an employer that, for a calendar year (2015 or later), averages from the prior calendar year a monthly count of 50 or more,

Full-time Employees Tracking & Application Policy

Fremont County, Idaho

Page 2 of 11

26 CFR §54.4980H-3

counting 1 for each *Employee* that has 130 or more *Hours of Service* in the calendar month, and adding to that count the result of dividing by 120 the aggregate *Hours of Service* of all other *Employees* for that calendar month.

Employee: an employee of *Fremont County*, including any other worker who is also considered a common law employee of *Fremont County* whether or not a 'leased employee' (*INTERNAL REVENUE CODE* §§ 414(o)).

Full-time Employee: as to an *Application Month*, an *Employee* that averaged 30 or more *Hours of Service* per *Week* during the associated *Recurring Tracking Period* or associated *Probationary Tracking Period*. IRC § 4980H(c)(4) and 26 Code of Federal Regulations § 54.4980H-1(a)(18). Also, a *New Employee* is a *Full-time Employee* as to an earlier *Application Month* as required to be so treated and counted per Part V below.

MEC: 'minimum essential coverage' as defined in *INTERNAL REVENUE CODE* § 5000A(f) and *TREASURY REGULATION* § 54.4980H-1(a)(23).

Bronze value: MEC that provides a 'minimum value' (*INTERNAL REVENUE CODE* § 36B(c)(2)(C)(ii) and *TREASURY REGULATION* § 54.4980H-1(a)(24)).

Unaffordable: MEC for which the *Full-time Employee* must pay for employee-only coverage more than 9.5% of 'household income' (*INTERNAL REVENUE CODE* § 36B(d)(2), as indicated in a Section 1411 Certification from the IRS) or 9.5% of Box 1, Form W-2 wages when the *Large Employer* may be availing itself of the Form W-2 safe harbor (*TREASURY REGULATION* §§ 54.4980H-5(e)(2)(ii) and -1(a)(17)).

Start Date: the first day an *Employee* has an *Hour of Service* with *Fremont County* and also the first day the *Employee* has an *Hour of Service* with *Fremont County* after a *Re-start Break*.

New Seasonal Employee: An *Employee* that *Fremont County* reasonably expects, as of the *Employee's Start Date*, will

1. be employed by *Fremont County* only as a retail worker employed exclusively during holiday seasons, and/or
2. perform duties for *Fremont County* only of a kind or kinds performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout

the year, such as yard maintenance not needed in the colder winter months, seasonal agricultural work, snow removal in winter, ski instructor in winter, beach life guard in warm weather months, etc.

New Regular Employee: An Employee that is not a New Seasonal Employee but is reasonably expected by Fremont County, as of the Employee's Start Date and considering all the facts and circumstances (other than the likelihood that the Employee might quit before completing his or her Probationary Tracking Period) to average 30 or more Hours of Service per Week from his or her Probationary Tracking Period.

New Part-time Employee: An Employee that is neither a New Seasonal Employee nor reasonably expected by Fremont County, as of the Employee's Start Date and considering all the facts and circumstances (other than the likelihood that the Employee might quit before completing his or her Probationary Tracking Period) to average 30 or more Hours of Service per Week from his or her Probationary Tracking Period because hired to work a schedule of less than 30 Hours of Service per Week.

New Variable Hours Employee: An Employee that is neither a New Seasonal Employee nor reasonably expected by Fremont County, as of the Employee's Start Date and considering all the facts and circumstances (other than the likelihood that the Employee might quit before completing his or her Probationary Tracking Period) to average 30 or more Hours of Service per Week from his or her Probationary Tracking Period because hired on an as-needed basis that is too indefinite to permit a reasonable expectation as of the Employee's Start Date that the Employee would be a New Regular Employee.

New Temporary Employee: An Employee that is neither a New Seasonal Employee nor reasonably expected by Fremont County, as of the Employee's Start Date and considering all the facts and circumstances (other than the likelihood that the Employee might quit before completing his or her Probationary Tracking Period) to average 30 or more Hours of Service per Week from his or her Probationary Tracking Period because for a temporary position less than 12 months, and when the scheduled hours over the length of the temporary position are taken into account, it is reasonably unlikely that he or she will average 30 or more Hours of Service

per *Week* from his or her entire 12-month *Probationary Tracking Period* that will last beyond the expected end of the temporary position.

Hours of Service: time measured in hours for which an *Employee* is paid, or entitled to payment, for

1. performing duties for *Fremont County* (which can include time while activities are restricted for on-call availability), or
2. paid time off (e.g., vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or other paid leave),

but not hours for which the payment would be income from sources outside the United States (*INTERNAL REVENUE CODE* § 862(a)(3)).

Week: seven consecutive days, beginning with Sunday and ending with the following Saturday; *Weekly* means per *Week*.

Re-start Break: either

1. 26 consecutive *Weeks* in which the *Employee* has no *Hours of Service*, is not on unpaid FMLA leave or unpaid USERRA leave, and is not absent for jury duty, or
2. 5 to 25 consecutive *Weeks* in which the *Employee* has no *Hours of Service*, is not on unpaid FMLA leave or unpaid USERRA leave, and is not absent for jury duty, but only if such consecutive *Weeks* are at least one *Week* more in number than the *Weeks* prior thereto for which the *Employee* had any *Hours of Service*, was on unpaid FMLA leave or unpaid USERRA leave, or was absent for jury duty.

III. Application Months

Whenever an *Employee* is determined to be a *Full-time Employee* from averaging that *Employee's Hours of Service per Week* from either a *Recurring Tracking Period* or his or her *Probationary Tracking Period* (both as defined below) that *Employee* shall be treated and counted as a *Fulltime Employee* for each of 12 consecutive *Application Months* (aka 'stability period').

IV. Recurring Tracking Periods and Administrative Gaps

Fremont County, Idaho hereby sets 12 calendar month *Recurring Tracking*

Periods (aka 'look-back measurement periods') to begin each September and continue through the next August. At times when *Fremont County's* payroll periods are either *Weekly* or *bi-Weekly*, the *Recurring Tracking Period* actually begins with the payroll period that includes September 1 and ends with the last payroll period to end before and does not include the next August 31.

A *Recurring Tracking Period* shall only apply to and be used to measure and determine an average *Hours of Service per Week* of those employed by *Fremont County* on that is the first day of that *Recurring Tracking Period*. An employee is a *New Employee* through October after his or her first *Recurring Tracking Period* that begins on or after his or her (most recent) *Start Date*.

Fremont County, Idaho also specifies that the September and October first following the end of a *Recurring Tracking Period* shall be a 2-calendar month *Administrative Gap* (aka 'administrative period') before the associated 12 consecutive *Application Months* shall begin with November (and continue through the following October). An *Employee* determined to be a *Full-time Employee* from a *Recurring Tracking Period* (approximately September-August) shall be so treated and counted as such for each of the associated *Application Months* (next November-October) unless it is a calendar month

1. during which the *Employee* has no *Hours of Service* and is not on unpaid FMLA leave, not on unpaid USERRA leave and not absent due to unpaid jury duty, or
2. that is after a *Re-start Break* that ended during any of those 12 consecutive *Application Months*.

An *Ongoing Employee* will only be treated and counted as a *Full-time Employee* for those *Application Months* if that *Ongoing Employee's Weekly Hours of Service* averaged 30 or more during the associated *Recurring Tracking Period*.

V. New Employees

From *Start Date* through the December after the 1st *Recurring Tracking Period* that applies to an employee, he is a *New Employee*. As of a *New Employee's Start Date*, the *New Employee* shall be classified by Fremont County, Idaho as either

Full-time Employees Tracking & Application Policy
Fremont County, Idaho

Page 6 of 11
26 CFR §54.4980H-3

- A. a *New Part-time Employee*, or
- B. a *New Temporary Employee*, or
- C. a *New Variable Hours Employee*, or
- D. a *New Seasonal Employee*, or
- E. a *New Regular Employee*.

If Fremont County, Idaho offers *MEC* to a *New Regular Employee* that, if chosen at his or her first opportunity, could take effect no later than with the 4th calendar month to begin on or after the *Employee's Start Date* (i.e., by the end of the 3rd full calendar month of employment), the *New Regular Employee* shall not be counted as a *Full-time Employee* until the first calendar month that such coverage could take effect if chosen by the *New Regular Employee* at the earliest opportunity. If Fremont County, Idaho does not offer *MEC* to a *Full-time Employee* or only offers *MEC* that could not take effect until sometime after that 4th calendar month has begun, then the *Employee* shall be counted as a *Full-time Employee* beginning with the calendar month of the *New Employee's Start Date*.

Fremont County, Idaho imposes a 12 calendar month *Probationary Tracking Period* on each *New Seasonal Employee*, *New Part-time Employee*, *New Variable Hours Employee* or *New Temporary Employee*, from which that *Employee's Hours of Service per Week* will be averaged. The 12 calendar month *Probationary Tracking Period* will begin with the first full calendar month to begin on or after that *Employee's Start Date*.

Following the end of a *New Employee's* 12 calendar month *Probationary Tracking Period*, there shall be a 1-calendar month *Administrative Gap* before his or her associated 12 consecutive *Application Months* begin. Therefore, if the *New Seasonal Employee*, *New Part-time Employee*, *New Variable Hours Employee* or *New Temporary Employee* averages 30 or more *Hours of Service per Week* during that *Employee's* 12 calendar month *Probationary Tracking Period*, then that *Employee* shall be treated and counted as a *Full-time Employee* for each of 12 consecutive *Application Months* beginning with the 14th calendar month to begin on or after the *Employee's Start Date* (i.e., with the calendar month after that *New Employee's* 13th full calendar month of employment). Nevertheless the *New Seasonal Employee*, *New Part-time Employee*, *New Variable Hours Employee* or *New Temporary Employee* shall not be treated or counted as a *Full-time Employee* for an *Application Month*

1. during which the *Employee* has no *Hours of Service*, is not on unpaid FMLA leave, is not on unpaid USERRA leave and is not absent due to unpaid jury duty, or
2. that is after a *Re-start Break* that ended during any of those 12 consecutive *Application Months*.

A *New Seasonal Employee*, *New Part-time Employee*, *New Variable Hours Employee* or *New Temporary Employee* might become and therefore treated as a *New Regular Employee* before the end of his or her *Probationary Tracking Period*. If before the end of the *Probationary Tracking Period* applied to such a *New Employee*,

- (a) the *New Part-time Employee's* position of employment materially changes such that if the date of change was that *Employee's Start Date* he or she would be classified as a *New Regular Employee* (e.g., his or her work schedule going forward is increased to 30 or more *Hours of Service per Week*), or
- (b) the *New Temporary Employee's* position of employment materially changes such that if the date of change was that *Employee's Start Date* he or she would be classified as a *New Regular Employee* (e.g., he or she is moved into a permanent position from the temporary one for which hired), or
- (c) the *New Variable Hours Employee's* position of employment materially changes such that if the date of change was that *Employee's Start Date* he or she would be classified as a *New Regular Employee* (e.g., his or her work schedule becomes more definite at 30 or more *Hours of Service per Week*), or
- (d) the *New Seasonal Employee's* position of employment changes to include non-seasonal-type duties, and the *New Seasonal Employee* would be classified as a *New Regular Employee* from the date of that change as if it were that *Employee's Start Date*, then that *New Employee* shall be treated as a *Full-time Employee* beginning with the earlier calendar month that is
 - the first calendar month that he or she could elect to have MEC coverage if that is no later than the 4th calendar month that begins on or after the re-classification as a *New Regular Employee*, or
 - the calendar month of re-classification to be a *New Regular Employee* if MEC is not offered or could only be first elected for coverage begin later than the 4th calendar month that

begins on or after the re-classification as a *New Regular Employee*, or

- the first of the 12 consecutive *Application Months* associated with that *New Employee's Probationary Tracking Period* if he or she averaged 30 or more *Hours of Service per Week* from his or her *Probationary Tracking Period*.

If the re-classified *New Employee* averaged 30 or more *Hours of Service per Week* from his or her *Probationary Tracking Period*, he or she must yet be treated as a *Full-time Employee* for each of the 12 *Application Months* associated with his or her *Probationary Tracking Period*.

VI. Overlapping *Application Months*

For a calendar month that is an *Application Month* both associated with the *Probationary Tracking Period* of a *New Seasonal Employee*, *New Part-time Employee*, *New Variable Hours Employee* or *New Temporary Employee* and associated with a *Recurring Tracking Period* that applied to that *Employee* (i.e., that *Employee* was employed by *Fremont County* on the first day of the pay period that includes September 1 that is the first day of that *Recurring Tracking Period*), that *Employee* shall be treated and counted as a *Full-time Employee* for each overlapping *Application Month* if that *Employee* averaged 30 or more *Hours of Service per Week* during either his or her *Probationary Tracking Period* or the *Recurring Tracking Period* associated with such *Application Month*. This is so despite that *Employee* perhaps having averaged less than 30 *Hours of Service per Week* during the other, overlapping tracking period. For overlapping *Application Months*, a determination of *Full-time Employee* prevails.

VII. Counting *Hours of Service*

For each hourly/wage *Employee*, that *Employee's Hours of Service* for a *Week* will be calculated from records of actual time worked and any other time for which payment is made or due.

For each salaried *Employee* as to whom actual time worked is recorded, that salaried *Employee's Hours of Service* for a *Week* will be calculated from those records and for any other time for which payment is made or due.

For each salaried *Employee* as to whom actual time worked is not recorded, that salaried *Employee* will be credited, for purposes of this Policy only, with the greater of

- (a) 8 *Hours of Service* or
- (b) the typical *Hours of Service* that salaried *Employee* has per day for any day during which the salaried *Employee* performs **any** services for *Fremont County*.

In determining the *Hours of Service per Week* for either type of *Tracking Period*, *Fremont County* must first determine a preliminary average weekly rate, disregarding each *Week* in the *Tracking Period* in which the *Employee* used any of these types of *special unpaid leave* for any otherwise scheduled work time during the *Week*:

- a. unpaid FMLA leave.
- b. unpaid USERRA leave.
- c. unpaid jury duty.

Once a preliminary average weekly rate is determined from a *Tracking Period* disregarding such *Weeks*, the *Employee* will be credited with *Hours of Service* during such excluded *Weeks* at the preliminary average. For example, if employee Jane Doe took 3 hours of unpaid FMLA leave in each of *Weeks 5-18* of a *Tracking Period* of 52 *Weeks* to take her son to physical therapy, her preliminary average would be determined by averaging her *Hours of Service* in just *Weeks 1-4* and *19-52*. If her preliminary average is 30.1 per *Week*, she is credited with 30.1 *Hours of Service per Week* for *Weeks 5-18* during which she had taken unpaid FMLA leave, even if she in fact had only 27 *Hours of Service per Week* during *Weeks 5-18*. In determining her final rate of *Hours of Service per Week* for the *Tracking Period*, she would be treated as having 1565.2 *Hours of Service*, or a final average of 30.1 *Hours of Service per Week*. As that is at least 30, she would be a *Full-time Employee* for the associated 12 consecutive *Application Months*, despite her **actual** *Hours of Service* in the *Tracking Period* totaling just 1521.8 (or just 29.27 per *Week*).