

AFFORDABLE CARE ACT TRAINING SESSION ONE

Waiting Periods/Eligibility for
Coverage & Determining Applicable
Large Employer Status

Presenters

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DISCLAIMER

This ACA Training Session is for informational purposes only, and is not legal advice or a substitute for legal advice. It is designed only for employers that offer the Health Plan administered by the Georgia Municipal Association on behalf of the Georgia Municipal Employees Benefit System, and contains information that is not applicable to other employers. This ACA Training Session reflects the presenters' understanding of certain requirements of the Affordable Care Act as they existed on January 8, 2019.

While this ACA Training Session describes certain eligibility provisions of the Health Plan, it is not an official document of the Health Plan. Only the official Health Plan documents establish the terms of the Health Plan.

GMA Affordable Care Act Training

- Session One: Waiting Period Rules, How to Determine Applicable Large Employer (“ALE”) Status (all Employers)
- Session Three: Minimum Essential Coverage Reporting (6055 Reporting on the 1094 and 1095-B Forms) (Small Employers)
- Session Two: Pay or Play Penalty Rules (ALEs only)
- Session Four: Pay or Play Penalty and Minimum Essential Coverage Reporting Requirements (6056 Reporting on the 1094 and 1095-C Forms)(ALEs only)

All training sessions are posted on www.gmanet.com under Life & Health/More Info

Affordable Care Act – Big Picture

- Decrease government spending on healthcare
- Set minimum standards for health coverage (e.g., no pre-existing conditions, no waiting periods longer than 90 days, no annual or lifetime limits, cover certain preventive care at 100%)
- Expand coverage for uninsured
 - Medicaid Expansion (*now for states that elect*)
 - Individual Mandate (*tax penalty reduced to zero starting 2019*)
 - Employer Coverage: Applicable Large Employers must offer certain minimum health coverage to substantially all full-time employees or face penalties if even one full-time employee gets federally subsidized coverage through the Exchange.

PART A: WAITING PERIODS/ELIGIBILITY FOR COVERAGE

Following the GMEBS Health Plan Eligibility Rules and Waiting Periods in your GMEBS Declaration Page

Waiting Periods/Eligibility for Coverage

Overview

- Waiting period part of ACA says:
 - waiting period no longer than 90 days
 - substantive eligibility requirements that aren't based just on the passage of time don't violate the waiting period rule
 - E.g. no coverage for short-term workers, no coverage for variable hour workers, no coverage for part-time workers, no coverage for seasonal workers
- Compliant waiting periods and substantive eligibility requirements are stated in the Declaration Page, and employer affirms it will follow them
- Penalty on employer of \$100 per day, per person affected if employer violates waiting period rule (self report to IRS by employer)

Eligibility for GMEBS Coverage

Participating Employers that are “Applicable Large Employers” . . . may or may not offer coverage to workers who are not otherwise eligible, but whom the . . . Employer has identified as a[n ACA] “Full-Time Employee”

Employer is solely responsible for determining whether to offer coverage to such individuals.

Eligibility as Active Employee

- GMEBS Regular Employees (must offer)
- Elected or Appointed Members of Governing Authority (may offer, if selected in Declaration Page)
- Chief Legal Officers/Judges, (may offer, if selected in Declaration Page)
- ACA “Full-Time Employees,” if Applicable Large Employer desires

A “GMEBS Regular Employee” is one who . . .

- Resides in the United States
- Is employed by the employer in a salaried or hourly position
 - That requires 30 Hours of Service* per week or more AND
 - is expected to last at least 48 weeks

*“Hour of Service” is an hour for which employee is paid or is entitled to payment



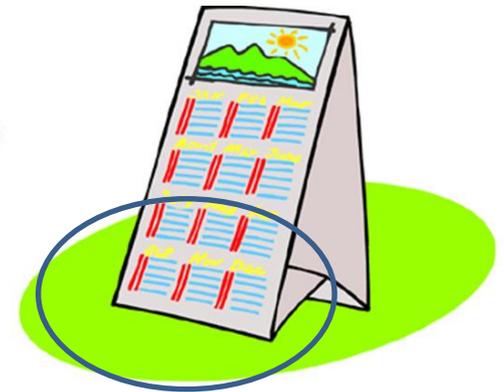
GMEBS Regular Employee

- Eligibility as a GMEBS Regular Employee depends on the expected requirements of the position at the time of hire
- Is the employee expected to work 30 or more hours per week in a position that will last at least 48 weeks?
- Consider stating work hour requirements in job descriptions or other documents.



Examples – Not “GMEBS Regular Employees”

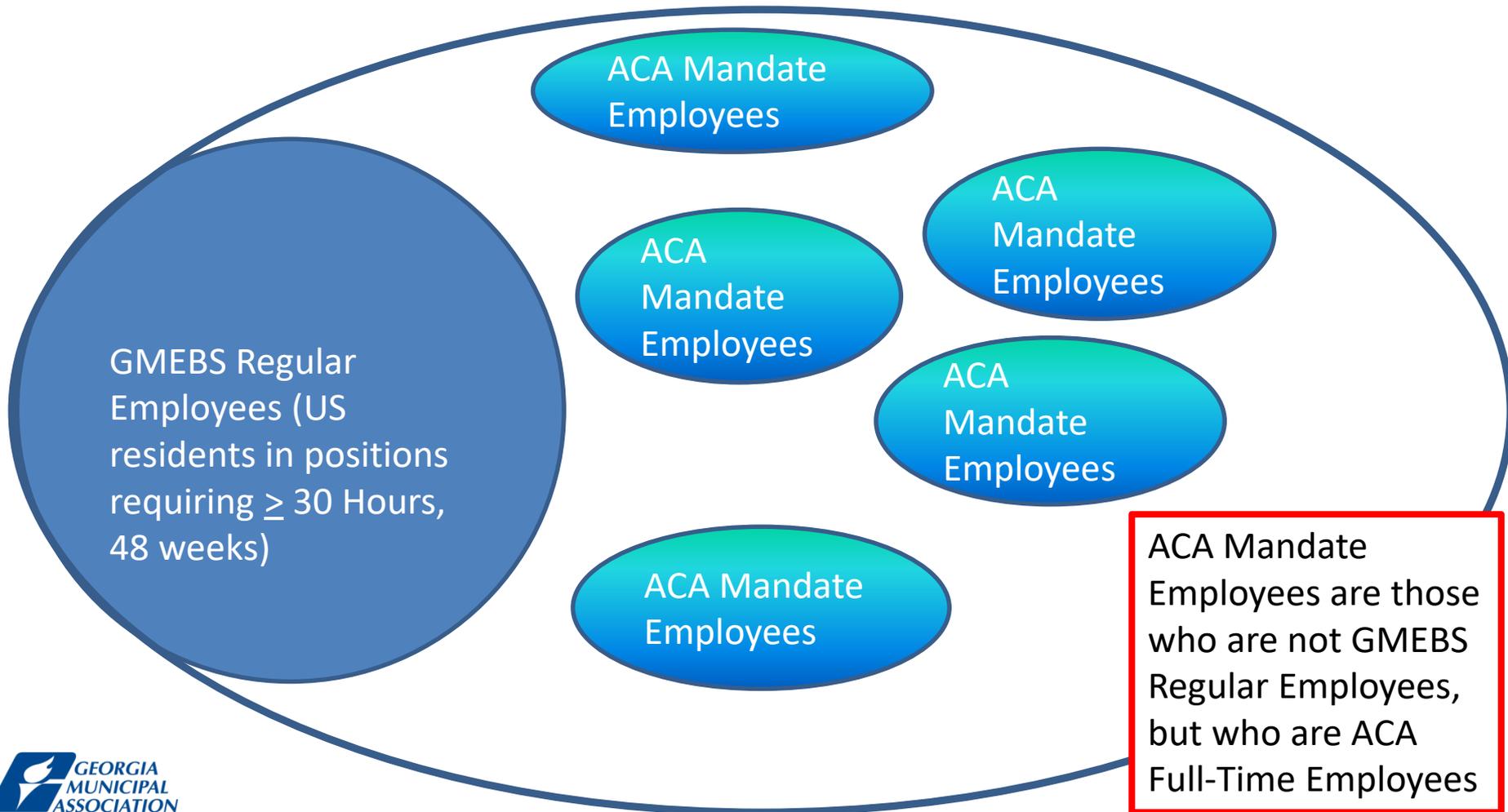
- Position requires less than 30 hours of service per week.
- One-time, short-term position.
- Annual, short-term position.
- Position requires hours that vary above and below 30 hours of service per week.
- **Employers who are not “Applicable Large Employers”** must continue to deny these employees coverage.



For Large Employers Only – There is a New Category of ACA Mandate Employee

- Starting 1/1/15, “Applicable Large Employers” may enroll individuals who are not GMEBS Regular Employees, but who meet the ACA Full-Time Employee definition (ACA Mandate Employees)
- As described in ACA Training Session Two, an Applicable Large Employer must offer coverage to ACA Mandate Employees in order to avoid exposure to Pay or Play Penalties

ALE – Eligible Employees (GMEBS Regular + ACA Mandate Employees)



Waiting Periods



- Waiting period is in the Declaration Page – either 0, 30 or 60 days of continuous, active service in an Eligible Position.
- Waiting period starts from the date the individual is hired into the Eligible Position or takes office (if a member of the Governing Authority)
- If enrolled, coverage starts the first day of the month coinciding with or following the last day of the waiting period.
- Rehires don't complete a second waiting period unless there is a 13 week break in service
- Special rules for ALEs – See ACA Training Session Two

Watch Out!



- Watch out for these pitfalls:
 - Positions that require the employee to complete a probationary period – waiting period must start with the date of hire in an eligible position (even if probationary)
 - Delays in providing enrollment information
 - Lack of clarity about whether a position requires 30 or more hours of service per week, or whether it is intended to last for 48 weeks
- Employers that offer GMA Property and Liability Insurance (GIRMA) may wish to contact the free GIRMA Helpline for legal advice

Fixing Problems



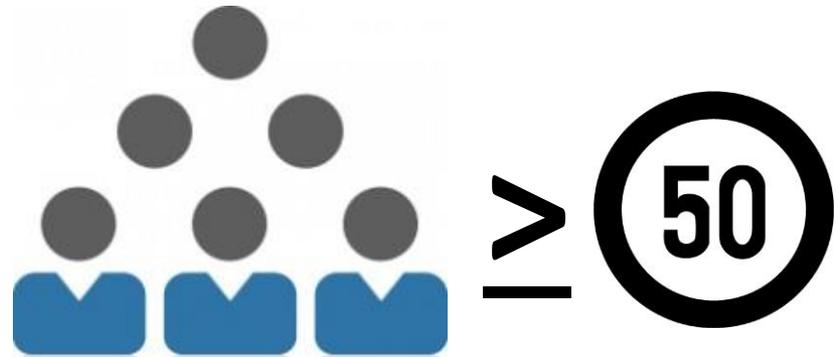
- Employers may not deny coverage to someone who is eligible based on the eligibility rules in the Declaration Page
- Employers may not impose waiting periods that are longer than those on the Declaration Page
- If you find a mistake or a problem regarding enrollment – contact GMA right away!

PART B: APPLICABLE LARGE EMPLOYER DETERMINATION

How to Count to 50 Full-Time Employees Using
ACA Definitions and ACA Math

Who is an ALE?

- Any employer who averaged 50 or more Full-Time Employees plus Full-Time Equivalents during the preceding calendar year
- Special counting rules!



Full-Time Employees + Full-Time Equivalents

Why does ALE status matter?

Penalties related to health coverage ("Pay or Play Penalties")

- Only ALEs are subject to Pay or Play Penalties
- Penalties can be large



Reporting Obligations

- ALEs file ("C") reports with the IRS and provide them to all full-time employees.
- Small employers file ("B") reports with the IRS and provide them to all enrollees.



6056 Reporting Preview

- ALEs must file information reports with the IRS that identifies each ACA Full-Time Employee and states whether and when health care coverage was offered
- ALEs must give report statements to employees (needed so employees who bought Exchange coverage can get federal subsidy, if eligible)



Head's Up!

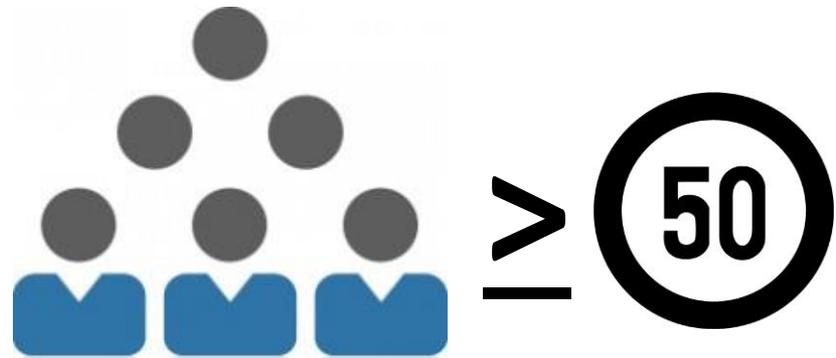
- To avoid confusion, our only focus today is on how to determine whether a city is an **Applicable Large Employer**
- There are different rules for determining whether an ALE owes penalties
- See ACA Training Session Two for information about how Pay or Play Penalties apply if you are an Applicable Large Employer



Who is an ALE?

- Any employer who averaged 50 or more Full-Time Employees plus Full-Time Equivalents during the entire preceding calendar year

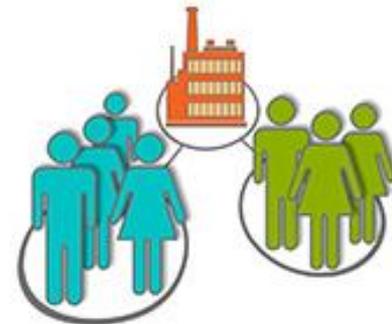
1. Identify All Employees Using ACA Definition
2. Identify Employees Whose Hours can be Excluded
3. Determine Time Frame for Counting Hours
4. Count Hours for All Employees
5. Count Full-Time Employees
6. Count Full-Time Equivalents Using ACA Math
7. If Sum of 5 and 6 is 50 or More, Apply Seasonal Worker Rule



Full-Time Employees + Full-Time Equivalents

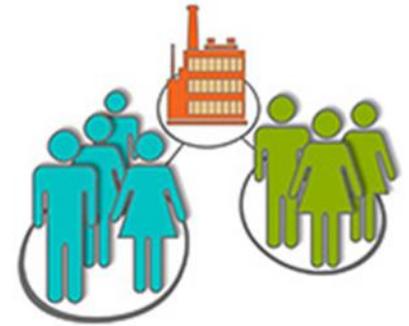
1. Identify All Employees . . . Controlled Group

- ALE status determined on controlled group basis
- Two employers are part of a controlled group if
 - at least 80 percent of their interests are held by one or more common owners or
 - a significant percentage of one entity's business is to perform management services for another entity
- Governmental entities may apply a reasonable, good faith interpretation



1. Identify All Employees . . . Controlled Group

- Does your city control an authority?
Consult with city attorney or GIRMA Helpline (free) to determine whether you and the authority should each count each other's employees when determining ALE status.
- Factors to consider when making the “reasonable determination” – Separate board? Separate tax ID? Consistent treatment as separate entities for employee benefits purposes?



1. Identify All Employees . . . Common Law Employees

- Identify all workers who receive pay directly from the city and, for those not treated as W-2 employees, determine which ones might be “common law employees”
- Common law employees – employer has the right to control the manner and means of the individual’s work. See Social Security Website for test.



1. Identify All Employees . . . Common Law Employees

- Common law employees can include
 - Elected and appointed officials*, municipal judges
 - Short term employees (election workers, interns, seasonal employees)
 - Employees who also work for another employer
 - Staffing agency workers

*IRS rules for tax withholding for government workers define them as employees of city



1. Identify All Employees . . . Common Law Employees

- Staffing agency workers may be your common law employees – check the contract, review the facts and circumstances.
- Limited ACA guidance.
- If unsure, consult city attorney or GIRMA Helpline (if available).



2. Identify Employees Whose Hours Can Be Excluded

- When determining whether an Employee is an ACA Full-Time Employee, you don't have to count Hours of Service worked as a Bona Fide Volunteer

- Bona Fide Volunteer – any volunteer who is an employee of a government entity . . .

Whose only compensation is in the form of:

- Expense reimbursement or allowance
- Reasonable benefits (including length of service awards)
- Nominal fees customarily paid by similar entities



Volunteer Firefighters, EMTs



EMT



Volunteer Coaches

2. Identify Employees Whose Hours Can Be Excluded

- When determining whether an Employee is a Full-Time Employee, you do not have to count Hours of Service for student employees who are paid or entitled to payment through the federal work study program or a State or local government's equivalent.
- Otherwise, their Hours of Service must be counted.



4. Count the Hours of Service for All Employees Not Excluded

- Hour of Service: any hour for which an employee is paid, or entitled to payment.
- For hourly employees, employers must calculate actual hours worked or paid (e.g., PTO)
 - If you use a payroll service, ask the service for help!
- For non-hourly employees, employers may count:
 - Actual hours
 - Days-worked equivalency (8 hours per day)*
 - Weeks worked equivalency (40 hours per week)
- *May not use the days-worked equivalency if it would substantially understate an individual's Hours of Service

4. Count the Hours . . .

- Mary is a salaried employee who is expected to work 10 hours per day, 3 days per week (M, W, F).
 - Actual hours method: 32
 - Weeks worked equivalency: 40
 - Days worked equivalency: 24
- The Days worked method is NOT available because it would substantially understate her Hours of Service and cause her to be treated as not a Full-Time Employee



5. Count Full-Time Employees

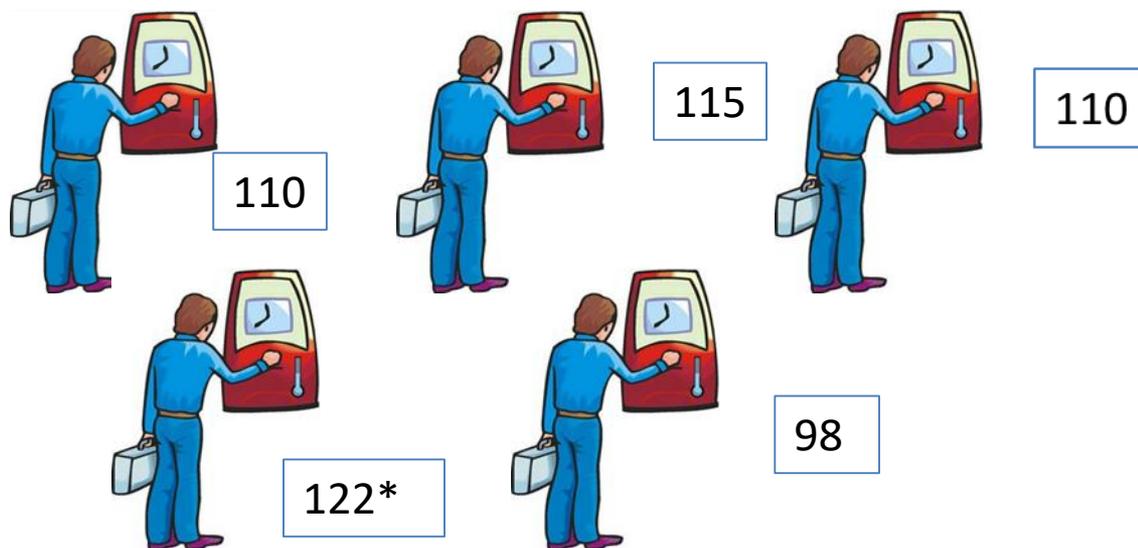
- For ALE Determination, a Full-Time Employee is a common law employee who is credited, on average, with 30 or more Hours of Service during a week or 130 Hours of Service per month

≥ 30



6. Count Full-Time Equivalents

Divide the total Hours of Service in the month for employees who are not Full-Time Employees (not to exceed 120 Hours of Service per employee*) by 120 to get the Full-Time Equivalents for that month



July Hours of
Service: $110 + 115$
 $+ 110 + 120^* + 98 =$
553

$553/120 = 4.6$ FTEs

7. If Total (Full Time + FTEs) is 50 or More, Try the Special Rule for Seasonal Workers

- If Full-Time Employees + Full-Time Equivalent Employees is 50 or more for no more than four calendar months or 120 days (not necessarily consecutive) AND
- If all employees in excess of 50 are Seasonal Workers, THEN
- Employer is not an ALE.

Who is a Seasonal Worker?

- A Seasonal Worker:
 - Works in a position that customarily lasts 6 months or less
 - Works in a position that begins each year at approximately the same part of the year
- ACA guidance is clear that lifeguards, summer parks and recreation staff can be seasonal employees.



Special Rule for Seasonal Workers



	Full Time Employees + Full Time Equivalents	Seasonal Workers
January - April	48	none
May - August	82	34 full-time lifeguards, pool workers, park maintenance workers hired for summer season ending August 31
September - December	48	none

Employer is 50 or more May – August only because of seasonal workers. Since this occurs for no more than four months, employer is NOT an ALE.

ALE Determination & Decisions

- Change personnel practices or keep them stable?
 - Trying to get below 50? May consider reducing required hours below 30 hours per week, classifying positions as seasonal or variable, revising agreements with staffing companies to make sure their employees aren't included in the count.



If Unsure, Consult your City Attorney

- Review decisions and employment issues
- Consider clarifying hour requirements in job descriptions or other documents
- If you are close to Applicable Large Employer status, attend ACA Training Sessions Two and Three.
- GMA cannot provide legal advice, but can answer general questions
- GIRMA Helpline provides free legal advice for GIRMA Members – review employment issues with Elarbee, Thompson



Certification of Status to GMA and Request for Assistance with Reporting

- As described in Training Sessions Three (for Non-ALEs) and Four (for ALEs), GMA provides ACA reporting assistance
- Each employer must complete the correct Certification and Request for Assistance
 - One for ALEs
 - One for Non-ALEs
- It is the Employer's responsibility to notify GMA if status changes and complete a new Certification and Request for Assistance



For more information...

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