

NDUS ACA Eligibility Criteria, Draft 10/28/14

1. Applicable Large Employer

- a. State of ND has determined that it is an applicable large employer
- b. Notified by OMB and PERS on 7/2/14 that the State of ND is the large applicable employer (ALE), and there will be two ALE “members”—state government and the NDUS.
- c. As a result of this implementation structure, hours worked will be aggregated across all State of ND agencies and NDUS institutions to determine ACA eligibility.

2. Minimum Essential Coverage, Minimum Value and Affordability

- a. PERS single or family coverage will be offered to ACA eligible NDUS employees, which is an “eligible employer sponsored plan.”
- b. Per PERS the plan’s share of the total allowed costs of benefits provided is more than 60 percent of those costs, and therefore, meets the minimum value requirement.
- c. Employee will be required to pay single coverage cost at a rate of 9.5% of federal poverty level; employer pays the balance of the premium cost. Employee picks up the full differential in cost between the single plan and the family plan, if dependent coverage is chosen.

3. Standard Measurement, Administrative and Stability Period

	Ongoing variable hour/seasonal-employed for at least one complete standard measurement period	New variable hour/seasonal
Standard measurement period:	Nov. 1-Oct. 31	12 months from employee date of hire
Initial	Nov. 1, 2013-Oct. 31, 2014	New hires anytime within Nov. 1, 2013-Oct. 31, 2014
Administrative period	Nov. 1 – Dec. 31	One month following employee on year anniversary date
Initial	Nov. 1, 2014 – Dec. 31, 2014	Varies by employee
Stability Period:	January - December	12 months following one month administrative period
Initial	Jan. 1, 2015-Dec. 31, 2015	Varies by employee

- ✓ **Standard measurement period:** November 1 to October 31;
 - initial standard measurement **look back** period, Nov. 1 2013 to Oct. 31, 2014
- ✓ **Administrative period:** November 1 to December 31;
 - initial **administrative** period Nov. 1 to Dec.31, 2014
- ✓ **Stability Period:** January – December
 - initial **stability** period Jan. 1 to Dec. 31, 2015;
- ✓ PERS Special enrollment window November 24, 2014 to December 5, 2014

4. Waiting Period

- a. Ongoing variable hour and seasonal employees: Variable hour and seasonal ongoing employees will be subject to the standard measurement period (Nov 1-Oct 31), and if deemed eligible for ACA coverage during the November-December administrative period, they will be offered covered effective January 1, the beginning of the stability period. NDUS will track hours by month and measure after first full standard measurement period.
- b. New variable or seasonal employees combined length of initial measurement period and administrative period, deemed to be full-time, will not exceed the first of the month following the new employee's one-year anniversary from hire date as follows:
 - i. who at the time of hire are reasonably expected to work 30 hours a month will be offered coverage first of month following hire date. At beginning of following year's measurement period they become on-going employees and subject to standard measurement period.
 - ii. cannot determine at the time of hire whether they will reasonably be expected to work 30 hours a month will be subject to an initial 12 month measurement period, from date of hire, to determine ACA eligibility. If during initial measurement period,
 - a. the employee actually worked more than 30 hours a month, following a one month administrative period, employee will be eligible for coverage the first day of the month of the employee's unique stability period.
 - b. the employee actually did not work more than 30 hours a month during the measurement period, no offer of coverage will be made.

5. Eligible Employees and Dependents

- a. Employee is defined as common law employees, regardless of age-- people performing services for pay over which the institution has a sufficient degree of control, as defined by the IRS
- b. Dependents are defined as a child (does not include step or foster children) of an employee who has not attained age 26.
- c. Child is considered dependent for the entire calendar month during which s/he attains age 26.
- d. Excludes a child who is not a US citizen or national from the definition of dependent, unless the child is a resident of a county contiguous to the US or is within the exception for adopted children described in section 152(b)(3)(B).

6. Effective Date

- a. The NDUS will begin offering ACA insurance coverage effective Jan 1, 2015 to qualified employees per ACA requirements and these eligibility criteria.

7. Monthly Equivalency

- a. For the purposes of determining full-time employee status, the NDUS will use the following to determine full-time status, based on hours of service and hours for which payment is made or due.
 - i. For new hires, only facts and circumstances at the employee's start date be considered. Therefore, only hours of work anticipated for the period under contract will be considered, since employment in future terms is based on enrollment and other operational needs and, as a result, is uncertain.
 - ii. For new hires, 30 hours per week or 130 hours per month will be used.
 - iii. For the look back period, 1,560 hours per year will be used, except if an employee is trending at 130 hours per month.

8. Seasonal Employees

- a. The NDUS will utilize the federal ACA definition for seasonal employees which means an employee in a position for which the customary annual employment is six months or less; subject to rules of change in employment status before the end of the initial measurement period.
- b. Customary means that by the nature of the position an employee in this position typically works for a period of six months or less, and that period should begin each calendar year in approximately the same part of the year, such as summer or winter.
- c. For employees that may have two or more “seasonal” periods within a single measurement period, appropriate break in service rules will be applied to determine status.
- d. A look-back measurement period, including the use of an initial measurement period will be used for seasonal employees, in the same manner as variable hour employees.

9. Hours of Service

- a. New position descriptions will clearly reflect expected work hours, with limited exceptions
- b. Job advertisements will clearly reflect expected work hours, with limited exceptions
- c. Employment contracts will document expected work hours, with limited exceptions
- d. Consider whether the employee is replacing an employee who was previously full-time, and is the position comparable.
- e. For variable hour and seasonal employees, hours of work will be documented at time of hire and used for determination of ACA eligibility; except for limited positions as noted in eligibility criteria, where other equivalency methods will be used to determine ACA eligibility

10. Application of Hours of Service to Certain Employees

- a. ***Part-Time Academic Staff and Graduate Teaching Assistants, with assigned credit hour production***
 - i. In order to properly recognize the various institutional missions across the NDUS; varying teaching expectations within a campus; and also analysis of part-time faculty workload, the NDUS adopts a reasonable method for crediting hours of service that is consistent with section 4980H. The NDUS equivalency methodology will be as follows:
 - ii. The following NDUS institutions, BSC, LRSC, WSC, NDSCS, DSU, MiSU, and DCB, will consistently credit a teaching employee with 2.5 hours of service for each hour of teaching or classroom time, with hours adjusted for compressed course schedules. The 2.5 hours credits the employee with related tasks such as class preparation and grading for each hour of teaching/class time, plus any outside of the classroom time the faculty member spends performing duties s/he is required to perform (such as required office hours or required attendance at faculty meetings).
 - iii. The following NDUS institutions, UND, NDSU, MaSU, and VCSU, will consistently credit a teaching employee with 2.67 hours of service for each hour of teaching or classroom time, with hours adjusted for compressed course schedules. The 2.67 hours credits the employee with related tasks such as class preparation and grading for each hour of teaching/class time, plus outside of the classroom time the faculty member spends performing duties s/he is required to perform (such as required office hours or required attendance at faculty meetings).
 - iv. For the initial look back period campuses will internally document and maintain calculations of hours worked per the methodology above. Hence forth, including for the Fall 2014 academic term, hours worked will be documented in initial employment contracts and tracked based on the employment contract FTE percentage.

- b. ***Part-Time Academic Staff and Graduate Teaching Assistants, without assigned credit hour production (e.g. clinical faculty, advisors, etc.)***
 - i. Actual hours worked on an hour-for-hour basis will be used in determining eligibility.
- c. ***Student Employees***
 - i. NDUS offer of option to participate in the student health insurance (currently United Health Care) plan does not substitute for an offer of PERS health insurance plan under ACA rules, since the student health insurance plan is not considered “employer sponsored coverage”
 - ii. UND only: Medical residents and Coop Flight Instructors at UND are temporary employees covered by an ACA compliant employer sponsored health insurance plans. Therefore, these employees will be offered health insurance upon employment.
 - iii. Work study hours (fed'l or similar state funded programs) will not be counted in 30 hour test and hours will not be tracked
 - iv. Internship hours paid by NDUS campus will be counted in 30 hour test, unpaid internships (working for class credit only) will not count in 30 hour test.
 - v. Actual work hours will be tracked for ACA testing.
 - vi.
- d. ***Graduate Research and Service Assistants***
 - i. NDUS institutions contracts for these employees will specifically:
 - a. state the number of hours required to perform the position duties. For educational purposes, NDUS campuses limit hours worked to no more than 20 hours per week. The supervisor will carefully determine the hours required to perform work functions, and where possible, disaggregate from these work hours, the hours spent serving educational purposes;
 - ✓ recognize that the contract hours do not include educational pursuits;
 - ✓ state that the employee will be personally responsible for ensuring they do not exceed contract hours in any week, without prior supervisor approval; and, should they fail to adhere to contact hours, it could lead to workplace discipline, including possible termination;
 - ✓ require employee and supervisor approval.
 - ii. Supervisor is responsible for maintaining agreed-upon work schedule and must carefully consider the impact of authorizing additional work hours.
- e. ***Resident Assistants (RA)***

NDUS eligibility criteria regarding RA's is intended to recognize that RA's are required to be on-call at their primary academic year home and is also consistent with Department of Labor Fair Labor Standards Act regarding hours worked.

The North Dakota University System will calculate the ACA eligibility of Resident Assistants by including the following hours:

- i. All on-call hours, when the Resident Assistants activities or physical location are restricted.
 - ✓ Shifts less than 24 continuous hours will be counted hour for hour, including sleep hours
 - ✓ Shifts 24 continuous hours or greater will be counted hour for hour, less 8 hours sleep time for every 24-hour period, provided the Resident Assistant is able to get a minimum of five hours of uninterrupted sleep anytime during a 24-hour period.

- ii. Hour-for-hour time for any other required mandatory meetings and service hours outside of on-call time computed above
- iii. Value of stipends, housing, and other forms of compensation will be considered pay for purposes of calculating minimum wage.

f. **Part-Time Athletic Coaches**

The NDUS will:

- i. For campus recognized sports (e.g. football, basketball, hockey, volleyball, etc.) position
 - ✓ if determined to be seasonal (works 6 months or less during a recognized designated season), no ACA offer of insurance will be made; subject to break in service rules
 - ✓ if not deemed seasonal and paid a stipend, in lieu of salary or hourly pay, NDUS will automatically assume employee is ACA eligible and an offer of ACA coverage will be made at time of hire.
- ii. If sport specific (e.g. athletic conditioning, cheerleading, etc.) position, hours worked and related hourly pay will be identified at time of hire and used for the basis of determining ACA eligibility.

Breaks in service during a sport season (e.g. recruit in June, off in July, regular sports season August – October) do not necessarily constitute a break in service, unless break is over 26 weeks, at which point can treat as a new employee.

11. Volunteers

- a. Hours worked by a volunteer who does not receive (and is not entitled to receive) compensation in exchange for the performance of services are not treated as hours of service
- b. Volunteers can be considered “bona fide” volunteers, and therefore are not treated as hours of service if only compensation is:
 - i. reimbursement for reasonable expenses incurred in the performance of services by volunteers, or
 - ii. reasonable benefits (including length of service awards), and nominal fees, customarily paid by similar entities in connection with the performance of services by volunteers

12. Rehire Rules

The NDUS adopts both the mandatory and optional parity re-hire rules as set forth in the federal regulations as follows:

- a. Employees are considered on-going if they have completed a full standard measurement period.
- b. An employee who resumes providing service to an applicable large employer (includes service both to state agencies and within the NDUS) after a period during which the employee was not credited with any hours of service may be treated as having terminated employment and having been rehired, and therefore may be treated as a new employee upon the resumption of services, only if the employee did not have an hour of service for the applicable large employer for a period of at least 26 consecutive weeks immediately preceding the resumption of services.
- c. An employee may also be treated as a re-hire after a shorter period of at least four consecutive weeks during which no hours of service were credited if that period exceeded the number of weeks of that employee’s period of employment with the applicable large employer immediately preceding the period during which the employee was not credited with any hours of service (e.g. rehired employee’s break in service is between 4-26 weeks for Educational), you may treat as new employee if break exceeds the length of prior service.
- d. The NDUS will restart measurement periods for new employees.

13. Break In Service Rules for Continuing Employees

- a. For purposes of applying the look-back measurement method to a returning employee not treated as a new employee, the NDUS will use the averaging method for special unpaid leave for the look back measurement period.
- b. Special unpaid leave is unpaid leave subject to FMLA, USERRA, or jury duty.
- c. The NDUS will employ the averaging method that provides an employment break period is a period of at least four consecutive weeks (disregarding special unpaid leave), measured in weeks, during which an employee is not credited with hours of service.
- d. In no case, will the NDUS exclude (or credit) more than 501 hours of service during employment break periods in a calendar year. No limit applies to special unpaid leave.
- e. See appendix 1.

14. Dual Coverage

- a. Per PERS guidelines, 100% employer paid dual coverage will not be offered to both married spousal state employees.
- b. Insurance will be offered to the first spouse employed by the state and their respective employing agency or institution will pay for coverage. The subsequently employed spouse will be asked to sign a "decline of health insurance coverage", which will acknowledge that other spouse already has 100% employer paid family coverage, and thereby satisfies ACA coverage requirements for the second employing spouse. This "decline of health insurance coverage" form will need to be obtained each Administrative period (SFN60711).
- c. Should the first spousal employee terminate employment, the second spousal employee will have the option for coverage at that time.

15. Decline of Offer of Coverage

- a. Decline of offer coverage form (SFN 60711) should be obtained during each administrative period after offer is made to employee.
- b. Forms should be maintained according to payroll records retention schedule.
- c. The employee waiver of insurance remains in effect for an entire stability period. Therefore, if an employee transfers from a state agency to a university during the stability period in which the employee waived coverage, the university may rely on the employee's waiver for the duration of the stability period applicable to the employee's position at the state agency. Once the stability period ends, the university must determine the employee's status and offer the employee coverage accordingly.

16. Employee Anniversary Date for Measurement Period

- a. For new variable hour employees, their initial twelve month measurement period begins on date of hire. Each individual employee anniversary date will need to be monitored separately.

17. Who Pays When Employee Crosses Agencies/Institutions

- a. If employed in consecutive positions with more than one agency/institution (e.g. student works for Parks and Rec in summer, terminates employment there, and works for NDUS during school year). If at the time of hire it cannot be reasonably determined they will work 30 hours a week or 130 hours a month, they would fall into the look back period. If based on the look back period they meet the ACA definition, they would be offered insurance by the agency/institution they are employed with at the time, and that agency/institution would be responsible for the cost of coverage.

- b. Consistent with State of ND guidance, if employee is simultaneously employed by two agencies/institutions, the agency/institution that first hired the employee would be responsible for the cost of insurance.
- c. If an employee transfers from a state agency to a university during a stability period in which the state agency has determined the employee is full-time, the university must treat the employee as a full-time employee and offer the employee coverage for the duration of the stability period, regardless of whether the employee will be full-time at the university. Must treat the employee as full-time for the duration of the stability period applicable to her/his position at the state agency. Once that stability period ends, the university may apply to determine the employee's status. However, the university must include the employee's hours of service at the state agency when applying its measurement period.

18. Penalties

- a. Unaffordable coverage (9.5% or plan covers less than 60% of health care expenses). \$3,000 (adj. annually) per FTE employee who opts out of employer insurance and obtains insurance through the exchange and qualifies for federal subsidy
 - i. Individuals only eligible for subsidized coverage in state health exchange if their household income is between 100% to 400% of the federal poverty level (for 2014: single \$11,670-\$46,680; family of four \$23,850-\$95,400)
 - ii. Penalty calculated and assessed at institutional level
- b. Offer minimum essential coverage to substantially all of its full-time employees: Offer of coverage to all FT employees that meet federal definition (70% coverage in year 1; 95% coverage in year 2) **AND individual qualifies for tax subsidy**. If not meet coverage % penalty is \$2,000 (adj. annually) x each full-time State employee
 - i. Penalty calculated and assessed at NDUS level

19. Reporting Requirements

- a. PERS Plan is considered a "Fully Insured" plan for reporting purposes, therefore beginning in January 2016, the NDUS, along with BCBS will report as follows:
 - i. BCBS reports 6055 (1095B and 1094-B)
 - ii. NDUS reports 6056 (1095C provided to each enrollee; 1094C file to IRS along with all Forms 1095C)

20. Payroll Deduction/Direct Deposit

- a. The NDUS will submit payment (both employer and employee shares) for ACA eligible participants to PERS each month on the last day of each month.
- b. The employee portion of the premium will be set up as a payroll deduction. If employee pay is not adequate to cover the premium, the employee will be notified of amount due. The employee will have a 30-day grace period following the due date of the premium payment (typically the first day of each month) in which he or she may make payment. If the individual does not make payment within the 30-day grace period, coverage may be cancelled.

21. Marketplace Notice

- a. Notice of Coverage options will be provided to all new employees within 14 days of hire as part of the hiring process. In the short-term, the form will be manually distributed.

APPENDIX 1

The Affordable Care Act (ACA) has very strict guidelines that must be used to determine average hours during the initial and standard measurement periods for all academic personnel, staff members and student employees.

TYPE OF UNPAID BREAK	IMPACT ON ACA MEASUREMENT PERIOD
<p>Less than 4 consecutive weeks</p>	<p>0 hours will be used to determine average hours for up to 3 weeks maximum</p>
<p>4 - 26 consecutive weeks and Break does not exceed length of pre-break employment, includes:</p> <ul style="list-style-type: none"> • rehired employees • unpaid non-FMLA leaves • unpaid non-USERRA (military) leaves 	<p>Measurement period average will be used for each week during the break to determine average hours.</p> <ul style="list-style-type: none"> • NOT treated as a period during which 0 hours are credited • NOT eligible for new measurement period
<p>4 - 26 consecutive weeks and Break EXCEEDS length of pre-break employment, includes:</p> <ul style="list-style-type: none"> • rehired employees • unpaid non-FMLA leaves • unpaid non-USERRA (military) leaves 	<p>New measurement period starts the first of the month following the return to work or rehire date.</p>
<p>More than 26 consecutive weeks</p>	<p>New measurement period starts the first of the month following the return to work or rehire date.</p>
<p>Special unpaid FMLA and USERRA (military) leave Provided employee returns to work after the leave of absence</p>	<p>Measurement period average (excluding unpaid FMLA and USERRA leave) will be used for the period on unpaid FMLA or USERRA leave to determine average hours.</p>

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