

ACA Guidance

“New” vs. “Ongoing” Employees

Under ACA regulations, there are important distinctions for “new” employees vs. “ongoing” employees. These terms impact how an employee’s paid/worked time is calculated to determine if an employee is considered “full-time” and must be offered health coverage by the employer.

New Employees

New employees who are reasonably expected to work “full-time” by ACA definition (30 hours or more per week on average) must be offered health care coverage within three months from the date of their hire.

- The Commonwealth’s health plan calls for new full-time (and quasi-full-time) employees to be offered health coverage effective on the first day of the month following their date of hire.
- The plan meets and exceeds the ACA requirements for new employees.
- Employees new to your agency meet the ACA definition of “new” employees. Those who have been employed at your agency previously and are re-hired at your agency may be considered “new” or “ongoing” employees depending upon the length of their separations.

Ongoing Employees

“Ongoing employee” – An employee who has been employed for at least one complete “standard measurement period” and has not had the required separation as defined in ACA regulations.

- Employees who have separated and are rehired in the same agency may be treated as a new employee under ACA only if the employee has no worked/paid hours for a period of at least **13 weeks*** immediately preceding the rehire date.
- Those who resume employment without the prescribed separation are considered “ongoing employees” under the ACA and their hours worked/paid during the preceding measurement period must be counted in determining full-time status when they are rehired. Full-time and quasi-full-time, ongoing employees must be offered health insurance during the “stability period” (July 1 through June 30th).

***Special ACA regulation for employees of HIGHER EDUCATION:** To avoid the treatment of employees of educational organizations as new employees resuming services after a scheduled academic break, the ACA re-hire rules extend the separation period to **26 weeks for higher education**.

- **This applies to “classified” and “university” positions as well as faculty.**

Change in Re-Hire Policy EFFECTIVE IMMEDIATELY

Agencies must not re-hire former full-time or quasi-full-time agency employees into wage positions until the employees have been separated for a minimum of 13 weeks (26 weeks for higher education agencies.)

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Hiring Retirees into Wage Positions in the Same Agency

In the Commonwealth, individual agencies are considered to be individual employers under the ACA.

If an agency hires a retiree into a wage position, what period of separation must the employee have to ensure that (s)he is considered a “new” employee vs. an “ongoing” employee under the ACA?

Such employees must meet (1) the VRS requirements **and**, also, meet (2) the ACA requirements.

1) VRS requirements (*Not related to ACA*):

All retirees must have a minimum of a full calendar month’s “break in service” **as defined by VRS** before resuming employment with an employer covered under the Virginia Retirement System in an hourly/wage position.

There are other caveats related to re-employment of retirees. [Adhere to the related VRS guidance](#). Contact VRS if you have questions.

- This break applies to employment in agencies in the Commonwealth that participate in the VRS retirement plan.
- If a retiree is employed in a wage position at an agency different from the one from which (s)he retired, a separation of one full calendar month is required. Under ACA, the retiree is considered to be a new employee at the new agency.

2) ADDITIONAL ACA requirements for “ongoing” employees:

- In addition to and concurrent with the VRS-mandated “break in service,” the ACA requires lengthier separations of retirees to avoid meeting the definition of “ongoing” employee.
- If a retiree is employed by the **same** agency from which (s)he retired, the separation must be for a **minimum period of 13 weeks**. (*This includes the VRS requirement of one full month of separation.*)
 - If the retiree is not separated for a minimum period of 13 weeks, (s)he is considered an “ongoing” employee and all hours worked during the measurement period are counted when determining full-time status (30 or more hours per week on average).
- **In Higher Education**, if a retiree is employed in a wage position by the **same** agency from which (s)he retired, the separation must be for a **minimum period of 26 weeks**.
 - This applies to all employees (including classified and university) in addition to faculty.

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Re-Hiring State RETIREES

RETIRES from full-time or Q status position:	Rehired as wage employee at:	VRS separation required:	ACA separation required:	TOTAL separation required:
Agency A	Agency A	Full calendar month	13 weeks	13 weeks
Agency A	Agency B	Full calendar month	N/A – New employee at Agency B	Full calendar month
University C	University C	Full calendar month	26 weeks	26 weeks
University C	University D	Full calendar month	N/A– New employee at University D	Full calendar month
Agency A	University C	Full calendar month	N/A– New employee at University C	Full calendar month
University C	Agency A	Full calendar month	N/A– New employee at Agency A	Full calendar month

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Re-Hiring Former Agency Employees

In the Commonwealth, individual agencies are considered to be individual employers under the ACA.

When is a re-hired employee considered to be a “new” vs. “ongoing” employee under the ACA?

- Employees who have separated and are re-hired in the same agency may be treated as a new employee under ACA **only** if the employee has no service for a period of at least **13 weeks** immediately preceding the re-employment date.
- Those who resume employment without the prescribed separation are considered “ongoing employees” under the ACA and their hours worked/paid must be counted for the entire measurement period when determining if they are full-time.
- To avoid the treatment of employees of educational organizations as new employees resuming services after a scheduled academic break, the ACA re-hire rules extend the required separation period to **26 weeks** for higher education. This applies to classified and “university” positions as well as faculty.

Examples:

Resigns/separates from full-time or Q status position:	Rehired as wage employee at:	ACA separation required:
Agency A	Agency A	13 weeks
Agency A	Agency B	N/A – New employee at Agency B
University C	University C	26 weeks
University C	University D	N/A– New employee at University D
Agency A	University C	N/A– New employee at University C
University C	Agency A	N/A– New employee at Agency A

Required Separation Periods

Agencies must require the separation periods designated in the ACA regulations when re-hiring former employees into wage positions in the same agency.

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OTHER EMPLOYEE CHANGES

In the Commonwealth, individual agencies are considered to be individual employers under the ACA.

Employee Transfers from One Agency to a Different Agency

Employees who transfer from one state agency to another state agency are considered to be “new” employees in the new agency.

- The ACA separation requirement does not apply.

Employee Separations Followed by Re-hires Into Different Agencies

Employees who resign from one state agency, have a break in service of any duration, and are later rehired into a different state agency are considered to be “new” employees in the new agency.

- The ACA separation requirement does not apply.