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.)
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.)*

     o 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.
## ACA Guidance

### “New” vs. “Ongoing” Employees

#### Re-Hiring State RETIREES

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

<table>
<thead>
<tr>
<th>Resigns/separates from full-time or Q status position:</th>
<th>Rehired as wage employee at:</th>
<th>ACA separation required:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agency A</td>
<td>Agency A</td>
<td>13 weeks</td>
</tr>
<tr>
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<td>University C</td>
<td>N/A – New employee at University C</td>
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<td>University C</td>
<td>Agency A</td>
<td>N/A – New employee at Agency A</td>
</tr>
</tbody>
</table>

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.
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.