



CITY OF SAN PABLO ADMINISTRATIVE POLICY

ADMINISTRATIVE POLICY IMPLEMENTING SAFE HARBORS UNDER PATIENT PROTECTION AND AFFORDABLE CARE ACT

Effective __/__/26

I. Purpose

The City of San Pablo (“City”) is considered a “large employer” for the purposes of the Shared Responsibility Provisions (Section 4980H to Title 26 of the United States Code, the Internal Revenue Code) of the Patient Protection and Affordable Care Act (“ACA”). The City is also considered a “large employer” for the purposes of Section 6056 to Title 26 of the United States Code and, therefore, is subject to the reporting requirements referenced therein.

The Internal Revenue Service will assess a penalty on the City if (1) it fails to offer “substantially all” of its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage or offers coverage to “substantially all” of its full-time employees (and their dependents), but that coverage is either “unaffordable” or does not provide “minimum value” and (2) any full-time employee receives a subsidy for coverage through the exchange (“Employer Mandate”).

The IRS requires the City to report the identity of, number of, and coverage offered to, full-time employees, subject to certain potential alternative reporting.

LOOK BACK MEASUREMENT METHOD SAFE HARBOR

The City adopts the Look Back Safe Harbor in order to determine the Hours of Service of unrepresented employees. Hours of Service are measured during the specified measurement period. If the employee averages 30 or more Hours of Service per week over the course of the specified measurement period, the City will report to the IRS the employee’s status as full-time under the ACA for months during the stability period associated with that measurement period, subject to the following rules. If an employee averages 30 or more Hours of Service per week over the course of the specified measurement period, the City will provide an offer of coverage to the employee. If the City reports an employee to the IRS as full-time for

purposes of the Employer Mandate, the employee does not become full-time for any other purpose.

II. Policy Statement

This Administrative Policy (“Policy”) establishes the “Look Back Measurement Method Safe Harbor” (“Look Back Safe Harbor”) under the ACA. The City establishes this Look Back Safe Harbor for the purposes of identifying “full-time” employees for reporting to the Internal Revenue Service (“IRS”) regarding the Employer Mandate and for determining eligibility of health coverage only for unrepresented employees not employed through an employment agreement.

Qualification for health coverage for represented employees shall continue to be governed by the terms of any applicable memorandum of understanding, written employer designation for Public Employees’ Medical and Hospital Care Act (“PEMHCA”) health benefits, or other applicable contract or policy. Qualification for health coverage for unrepresented employees employed through an employment agreement shall continue to be governed by the terms of the applicable employment contract or other policy.

This Policy also establishes the Affordability Safe Harbors to determine affordability of coverage offered, if any, to full-time employees for the Employer Mandate and reporting requirements.

III. Scope

1. New Employees: For a new employee hired by the City, the City will determine which of the following applies:

- a. **New Seasonal Employees:** An employee who is hired into a position for which the customary annual employment is six months or less is a seasonal employee. The City will measure a new seasonal employee’s Hours of Service using the initial measurement period indicated in Section IV.3.
- b. **New Non-Seasonal Employees:** On the start date of a new non-seasonal employee, the City will determine (based on the facts and circumstances at the employee’s start date) whether the employee is reasonably expected to be a full-time employee. The City will look at the following factors to determine whether an employee is reasonably expected to be a full-time employee:
 - Whether the employee is replacing a full-time employee;
 - Extent to which Hours of Service of ongoing employees in the same or comparable positions have varied above and below

an average of 30 Hours of Service per week during recent measurement periods;

- Whether the job was advertised or communicated to the employee as requiring an average of 30 or more Hours of Service per week;
- Whether the job was documented (through a contract or job description) as requiring an average of 30 or more Hours of Service per week.

No single factor is determinative.

- c. New Full-Time Employees: If the City determines (pursuant to Section III.1.b.) that the employee is reasonably expected to average at least 30 Hours of Service per week, then the employee will be a full-time employee. The City will measure a new full-time employee's Hours of Service on a monthly basis pursuant to Section III.2 until the employee becomes an ongoing employee.
- d. New Part-Time Employee: If the City determines (pursuant to Section III.1.b.) that the employee is reasonably expected to average less than 30 Hours of Service per week during the initial measurement period, then the employee will be a part-time employee. The City will measure a new part-time employee's Hours of Service using the initial measurement period indicated in Section IV.3.
- e. New Variable Hour Employees: If the City cannot determine (pursuant to Section III.1.b.) whether the employee is reasonably expected to be employed on average at least 30 Hours of Service per week during the initial measurement period because the employee's hours are variable or uncertain, then the employee will be a variable hour employee. The City may not take into account the likelihood that the employee may terminate employment before the end of the initial measurement period. The City will measure a new variable hour employee's Hours of Service using the initial measurement period indicated in Section IV.3.

2. New Full-Time Employees: New full-time employees are measured under a monthly measurement period until they become ongoing employees. The City must calculate actual Hours of Service for each calendar day of the month. If the employee averages at least 130 Hours of Service in a month, the employee will be considered full-time for that month. The City will offer coverage to full-time employees by the first day of the fourth full calendar month following hire.

IV. Definitions

1) Hours of Service Calculation: “Hours of Service” means each hour for which an employee is paid, or entitled to payment for the performance of duties for the City and each hour for which an employee is paid or entitled to payment for a period of time during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence.

For Hourly Employees: The City will calculate actual Hours of Service from records of hours worked and hours for which payment is made or due.

For Non-Hourly or Salary Employees: The City will apply one of the following three methods on a reasonable and consistent basis:

- a. calculate actual Hours of Service from records of hours worked and hours for which payment is made or due;
- b. calculate Hours of Service using a days-worked equivalency (e.g., 8 hours per day for each day employee is credited with an Hour of Service); or
- c. calculate Hours of Service using a weeks-worked equivalency (40 hours per week for each week employee is credited with an Hour of Service).

Bona fide Volunteer: The City is not required to determine Hours of Service for a bona fide volunteer. A bona fide volunteer is an individual whose only compensation from the City is in the form of (a) reimbursement (or reasonable allowance) for reasonable expenses incurred in the performance of volunteer service; or (b) reasonable benefits and nominal fees, customarily paid by similar entities in connection with the performance of services by volunteers.

2) Ongoing Employees: An ongoing employee is an employee who has been employed for at least one complete measurement period. The City establishes the Look Back Safe Harbor with regard to ongoing employees as follows:

Standard Measurement Period: November 1 to October 31 of the following year

Standard Administrative Period: November 1 to December 31

Standard Stability period: January 1 to December 31

The City will use these periods for reporting purposes or, if necessary, determining potential penalties for employees. The City will also use these periods to determine whether an employee qualifies for an offer of coverage.

During the Administrative Period, the City will offer coverage to an employee who averaged 30 or more Hours of Service per week over the course of the Standard Measurement Period, to become effective during the Standard Stability Period.

If an ongoing employee's employment status changes (from full-time to less than full-time or vice versa) before the end of a Standard Stability Period, the change in status will not affect the classification of that employee's status for the remaining portion of the Standard Stability Period.

3) New Seasonal, New Part-Time, and New Variable Hour Employees: The City establishes the following periods for new seasonal, new part-time, and new variable hour employees:

Initial Measurement Period: Twelve (12) months (beginning on the first of the month after hire)

Initial Administrative Period: One (1) month following the end of the Initial Measurement Period

Initial Stability Period: Twelve (12) months following the end of the Initial Administrative Period, unless the new seasonal, new part-time, or new variable employee does not measure as a full-time employee during the Initial Measurement Period, then the Initial Stability Period must not exceed the remainder of the Standard Measurement Period.

4) New Seasonal, New Part-Time, or New Variable Hour Employee's Change in Status During Initial Measurement Period: If a new seasonal, new part-time, or new variable hour employee's position changes during the Initial Measurement Period, and had the employee started their employment in that new position, the City would have reasonably expected that new employee to average at least 30 Hours of Service per week, then for purposes of identifying a full-time employee under this Policy, the employee will be considered a full-time employee on the earlier of (1) the first day of the fourth full calendar month following the change in employment status, or (2) the first day of the first month following the end of that employee's Initial Measurement Period if the employee averaged 30 or more Hours of Service per week during the Initial Measurement Period, or earlier if required by law or other policy.

5) Transitioning from New to Ongoing Employee: The City will measure the hours of a new seasonal, new part-time, or new variable hour employee during the first complete Standard Measurement Period for which they are employed. This means that a new seasonal, new part-time, or new variable hour employee's Hours of Service will be measured both under an Initial Measurement Period and, at the same time, be measured under the overlapping Standard Measurement Period.

- a. If an employee's Hours of Service measure as full-time during the Initial Measurement Period, he or she will retain full-time status for the entire Initial Stability Period (even if the employee does not qualify as full-time during the Standard Measurement Period).
- b. If an employee's Hours of Service do not measure as full-time during the Initial Measurement Period, but do measure as full-time during the Standard Measurement Period, the employee must be treated as full-time during the Standard Stability Period (even if that Standard Stability Period starts before the end of the Initial Stability Period).

6) Calculating Hours of Service Based On Payroll Periods Under the Look Back Safe Harbor: The City may calculate Hours of Service based on payroll periods when calculating Hours of Service over any measurement period. It has two options for doing so. The City may exclude the entire payroll period that contains January 1 (the first day of the Standard Measurement Period), as long as it includes the entire payroll period that contains December 31 (the last day of the Standard Measurement Period). Alternatively, the City may include the entire payroll period that contains January 1 (the first day of the Standard Measurement Period), as long as it excludes the entire payroll period that contains December 31 (the last day of the Standard Measurement Period).

7) Breaks In Service: When an employee experiences a break in service without providing at least one Hour of Service, the employee will retain the status the employee had previously with respect to any Stability Period, except that an employee will be treated as a new employee if:

- a. the employee resumes employment after a period of at least 13 consecutive weeks with less than an Hour of Service; or
- b. the employee's period of no service (measured in weeks) is at least four consecutive weeks long and exceeds the number of

weeks of that employee's period of employment immediately preceding the period of no service (after application of averaging Special Unpaid Leave as set forth in Section IV.8).

8) Special Unpaid Leave: Special Unpaid Leave is defined only as unpaid leave under the Family and Medical Leave Act of 1993, unpaid leave under the Uniformed Services Employment and Reemployment Rights Act of 1994, or unpaid leave on account of jury duty. When an employee takes Special Unpaid Leave, the City will determine the weekly average of Hours of Service by the employee for that portion of the measurement period that is not part of the Special Unpaid Leave ("Average Weekly Hours of Service"). The City will then determine, on a consistent basis, the average Hours of Service for the entire measurement period using one of the following two methods:

- a. exclude the period of Special Unpaid Leave and apply the Average Weekly Hours of Service over the entire measurement period; or
- b. credit the Average Weekly Hours of Service to the period of Special Unpaid Leave.

V. Roles and Responsibilities

AFFORDABILITY SAFE HARBORS

The City in its sole discretion may apply the Rate of Pay Safe Harbor, the Form W-2 Safe Harbor, or the Federal Poverty Line Safe Harbor to determine the affordability of the minimum essential coverage that it offers its full-time employees. These affordability safe harbors will be applied on a uniform and consistent basis for all employees in a reasonable category.

1. Rate of Pay Safe Harbor

- a. The City measures whether the employee's required premium contribution for the calendar month to the lowest cost self-only coverage that provides minimum value exceeds the applicable IRS percentage rate for the applicable year (initially set at 9.5% in 2014, and adjusted to 9.96% in 2026) ("Applicable Percentage Rate") of the monthly wage.
- b. For hourly employees, the monthly wage is equal to 130 hours multiplied by the employee's hourly rate of pay as of the first day of the coverage period or the employee's lowest hourly rate of pay during the calendar month, whichever is lower.

- c. For salaried employees, the monthly wage is the monthly salary as of the first day of the coverage period. However, if the monthly salary is reduced, including due to a reduction in work hours, the safe harbor is not available.
- d. The coverage offered by the City will be deemed affordable if the employee's monthly premium contribution is equal to or less than 9.96% (as adjusted annually by the IRS) of the monthly wage.

2. Form W-2 Safe Harbor

- a. The City measures whether the employee's required premium contribution for the full calendar year for the lowest cost self-only coverage that provides minimum value exceeds the Applicable Percentage Rate of the Form W-2 wages (as reported in Box 1) for the employee for the calendar year in which coverage is offered.
- b. For an employee who is not offered coverage for an entire calendar year, the City must adjust that employee's Form W-2 wages to reflect the period for which coverage was offered. To adjust wages, the Form W-2 wages are multiplied by a fraction equal to the number of calendar months the City offered coverage over the number of calendar months in the period of employment during the calendar year.
- c. The coverage offered by the City will be deemed affordable if the employee's annual premium contribution is equal to or less than the Applicable Percentage Rate of the employee's Form W-2 wages as reported in Box 1 (or as adjusted, for an employee who is not offered coverage for an entire calendar year).

3. Federal Poverty Line Safe Harbor

- a. The City measures whether the employee's required premium contribution for the calendar month for the lowest cost self-only coverage that provides minimum value exceeds the Applicable Percentage Rate of an amount determined by dividing the Federal Poverty Line ("FPL") for a single individual for the applicable calendar year by twelve.
- b. The City will use the FPL in effect within six months before the first day of the plan year.

- c. The coverage offered by the City will be deemed affordable if the employee's monthly premium contribution is equal to or less than the Applicable Percentage Rate of the monthly FPL for a single individual for the applicable calendar year.

REVISIONS/UPDATES TO POLICY

This Policy is subject to change as regulations and guidance are issued relating to the ACA.

Legal Authority

Title 26 United States Code section 4980H, (Internal Revenue Code); *Shared Responsibility for Employers Regarding Health Coverage*, 26 CFR Parts 1, 54 and 301, 79 Fed. Reg. 8544 (Feb. 12, 2014); Title 26 United States Code section 6056, (Internal Revenue Code); Title 26 United States Code section 36B(c)(2)(C)(i); *Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered Under Employer Sponsored Plans*, 26 CFR Parts 301 and 602, 79 Fed. Reg. 13231 (March 10, 2014)

AS AUTHORIZED:

_____ Date: _____

Matt Rodriguez, City Manager