

The New Definition of a
**Full-time Employee Under
the Affordable Care Act and
What It Means to Your Business**

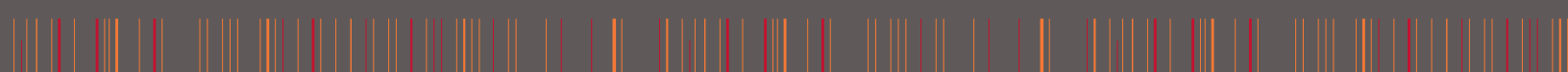




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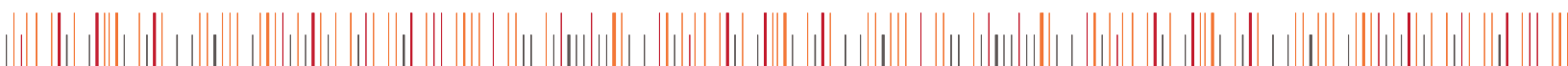
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FROM THE PRESIDENT



To Our Valued Clients and Customers,

As business owners, we have a responsibility to be prudent of the changes in government policies that will ultimately affect our employees and overall growth of the company. We believe this value is shared among many business owners and feel obligated to inform you of all the changes the ACA will bring.

Whether you have an opinion on the legislation or not, company policies will inevitably change over the upcoming years as the ACA is fully-implemented. It is difficult to predict these changes but understanding policy details and preparing internal procedures are the first two steps to successfully navigating the ACA.

Kavaliro is founded on the principles meant to empower our workforce to better serve your organization. We strive to live by these values and are committed to preparing the proper procedures for handling future changes in government policies. This approach assures our customers that they are working with one of the most agile companies in our industry today.

As part of our commitment to you, we have compiled the following white paper for the coming year. It provides insight on the changes the ACA will bring to your company and recommendations on how to shape your company's strategy in preparation of the new legislation.

We believe you will find the information useful in understanding how the ACA impacts your business.

Sincerely,
Bill Pepler
Managing Partner
Kavaliro



EXECUTIVE SUMMARY



With the much discussed and debated Affordable Care Act (ACA) passing, many businesses still remain in the dark about how it may affect them. As it initially rolls out, it's essential to ask questions and seek answers surrounding the changes that will impact the employees and business as a whole. The hiring landscape will now look different as employers begin to strategically look at their full-time, part-time and contractor hires.

As of 2015, it is required that all employers with 50 or more full-time equivalent (FTE) employees be offered medical coverage. A FTE employee is defined as someone who works an average of 30 hours per week or 130 hours in a month. This new established requirement is causing employers to ask many questions: Why is this of such concern for many business owners? Why are many businesses considering reducing part-time employees' hours to less than 30? How can your business begin preparing for the changes associated with the ACA in 2015?

Employers and employees alike will be affected and it's essential to know how this will restructure the business and how to prepare for implementation. In order to shed light on the ACA, the following white paper looks to illuminate answers for the queries many business owners are having.



BACKGROUND



The Affordable Care Act (ACA) imposes a penalty on large employers that do not offer minimum essential coverage to substantially all full-time employees and their dependents. Large employers that offer coverage may still be liable for a penalty if the coverage is unaffordable or does not provide minimum value. This employer mandate provision is often referred to as “employer shared responsibility” or “pay or play” rules.

The employer mandate provisions were set to take effect on Jan. 1, 2014. However, on July 2, 2013, the Treasury announced that the employer mandate penalties and related reporting requirements will be **delayed for one year, until 2015**. Therefore, these payments will not apply for 2014. On July 9, 2013, the Internal Revenue Service (IRS) issued [Notice 2013-45](#)¹ to provide more formal guidance on the delay.

¹<http://benefitslink.com/src/irs/notice2013-45.pdf>



WHO QUALIFIES?



Who Qualifies as a Large Employer?

To qualify as a large employer, an employer must employ on average at least **50 full-time employees, including full-time equivalents (FTEs)**, on business days during the preceding calendar year. All employers that employ at least 50 full-time employees, including FTEs, are subject to ACA's pay or play rules, including for-profit, nonprofit and government employers.

Employers will determine each year, based on their current number of employees, whether they will be considered a large employer for the next year. For example, if an employer has at least 50 full-time employees (including FTEs) for 2014, it will be considered a large employer for 2015.

Who Qualifies as a Full-time Employee?

A full-time employee is an individual that works, on average, **30 or more hours of service each week**. Hours worked by employees with fewer than 30 hours per week must be counted—and then divided by 120 per month—to determine the number of FTEs. The number of FTEs is then added to the actual full-time employee count.

FULL-TIME EMPLOYEES: HOW TO IDENTIFY THEM

Full-time Equivalents (FTEs)

An employer must calculate the number of FTEs it employed during the preceding calendar year and count each FTE as one full-time employee for that year. The proposed regulations provide a calculation method for FTEs. Under this method, all employees who were not full-time employees for any month in the preceding calendar year are included in calculating the employer's FTEs for that month by:

- Calculating the aggregate number of hours of service (but not more than 120 for any employee) for all employees who were not employed on average at least 30 hours of service per week for that month; and
- Dividing the total hours of service determined above by 120.

The result is the number of FTEs for a calendar month.

Fractions are taken into account in determining the number of FTEs for each calendar month. However, after adding the 12 monthly full-time employee and FTE totals and dividing by 12, all fractions would be disregarded. For example, 49.9 full-time employees (including FTEs) would be rounded down to 49 full-time employees and FTES and the employer would not meet the large employer threshold.

How to Identify a Full-time Employee?

ACA suggests that the determination of full-time employee status, and application of the pay or play penalty, involves a month-to-month analysis. However, the IRS recognizes that applying these rules on a monthly basis could cause practical difficulties for employers, particularly with respect to employees with varying hours or employment schedules, and could result in employees moving in and out of employer coverage on a monthly basis.

To address these concerns, and to give employers flexible and workable options and greater predictability, the IRS proposed an optional look-back measurement method as an alternative to the month-to-month method for determining full-time employee status. This safe harbor method was described in previous IRS guidance, such as [IRS Notice 2012-58](#)². The proposed regulations incorporate this guidance, with some modifications.

This safe harbor method involves a measurement period for counting hours of service, a stability period when coverage may need to be provided depending on an employee's full-time status and an administrative period that allows time for enrollment and disenrollment. An employer has discretion in deciding how long these periods will last, subject to specified IRS parameters.



The details of the safe harbor vary based on whether the employees are ongoing or new, and whether new employees are expected to work full-time or are variable or seasonal employees. There are also special rules for employees who take unpaid leave from work or who are rehired after a termination of employment.

- Ongoing Employees

For ongoing employees, an employer determines each employee's full-time status by looking back at a measurement period lasting between 3 to 12 consecutive calendar months, as chosen by the employer, to determine whether the employee averaged at least 30 hours of service per week during this period. The measurement period selected by the employer is referred to as the standard measurement period. Employers may make certain adjustments to the beginning and end of the standard measurement period to accommodate weekly, bi-weekly or semi-monthly payroll periods.

If the employee was employed for at least 30 hours of service per week during the standard measurement period, he or she is considered a full-time employee for a set period into the future, known as the stability period. The stability period must be at least six calendar months following the measurement period and must be at least as long as the standard

² <http://www.irs.gov/pub/irs-drop/n-12-58.pdf>



measurement period. The employee would be treated as a full-time employee during the stability period, regardless of the hours worked during that period, as long as he or she remained employed.

If an employer determines that an employee did not work full-time during the standard measurement period, the employer may treat the employee as not a full-time employee

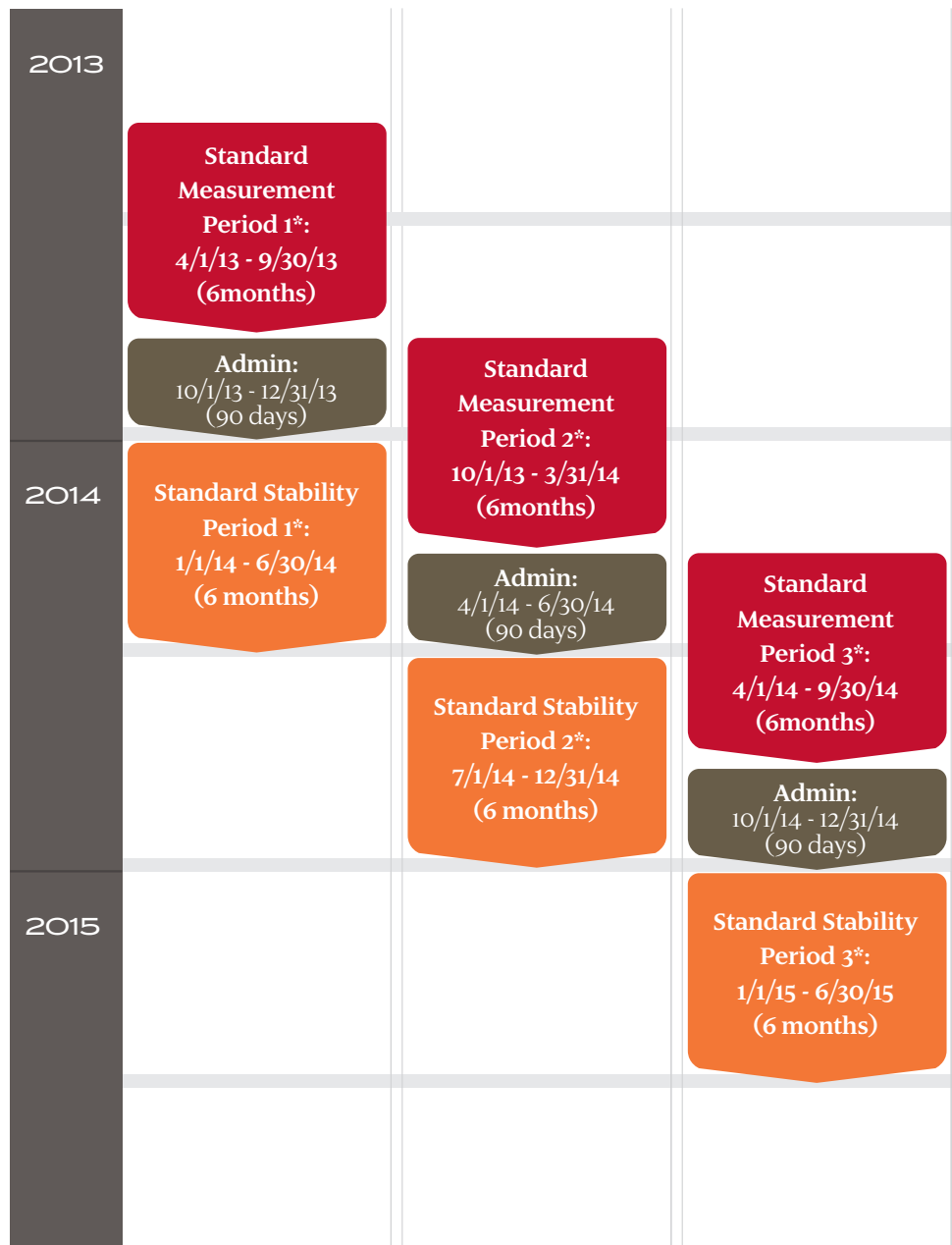
during the stability period that follows (but is not longer than) the standard measurement period.

Because employers may need time between the measurement and stability periods to determine which ongoing employees are eligible for coverage and to notify and enroll employees, employers may use an administrative period between the standard measurement and stability periods. The administrative period following a standard measurement period can last up to 90 days. The administrative period must overlap with the prior stability period to prevent any gaps in coverage for employees enrolled in coverage because of their full-time status during a prior measurement period.

As a general rule, the standard measurement period and stability period selected by the employer must be uniform for all employees. However, employers may apply different measurement periods, stability periods and administrative periods for the following categories of employees:

- Each group of collectively bargained employees covered by a separate collective bargaining agreement;
- Collectively bargained and non-collectively bargained employees;
- Salaried employees and hourly employees; and
- Employees whose primary places of employment are in different states.

Below is a graph that will walk you through an example of the standard measuring period, administrative period, and the standard stability period for an ongoing employee.



– **New Variable Hour or Seasonal Employees**

If an employer uses a look-back measurement period for its ongoing employees, the employer may also use a similar method for new variable hour or seasonal employees.

– **Definitions of Variable Hour and Seasonal Employees**

A new employee is a variable hour employee if, based on the facts and circumstances at the start date, it cannot be determined that the employee is reasonably expected to work on average at least 30 hours per week.

For 2014, a new employee who is expected to be employed initially at least 30 hours per week may be a variable hour employee if the employee's period of employment at 30 or more hours per week is reasonably expected to be of limited duration and it cannot be determined whether it will last for the initial measurement period. Effective as of Jan. 1, 2015, employers must assume that employees will be employed for the entire initial measurement period.

Through at least 2014, employers are permitted to use a reasonable, good faith interpretation of the term "seasonal employee."

– **Initial Measurement, Stability and Administrative Periods**

If an employer maintains a group health plan that would offer coverage to an employee only if he or she is determined to have full-time status, the employer may use an "initial measurement period" lasting between 3 and 12 months (the same as allowed for ongoing employees) to determine whether new variable hour or seasonal employees are full-time employees. The employer measures the hours of service completed by the new employee during the initial measurement period and determines whether the employee completed an average of 30 hours of service per week or more during this period. During this measurement period, the employer would not be subject to a shared responsibility penalty under ACA with respect to these employees.

The employer may also use an administrative period of up to 90 days. However, the initial measurement period and the administrative period combined cannot extend beyond the last day of the first calendar month beginning on or after the one-year anniversary of the employee's start date (totaling, at most, 13 months and a fraction of a month).

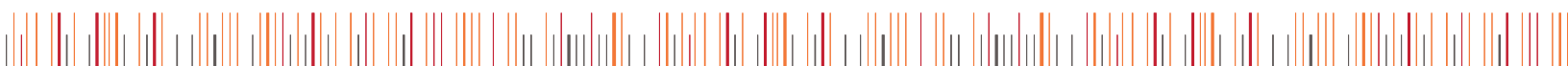
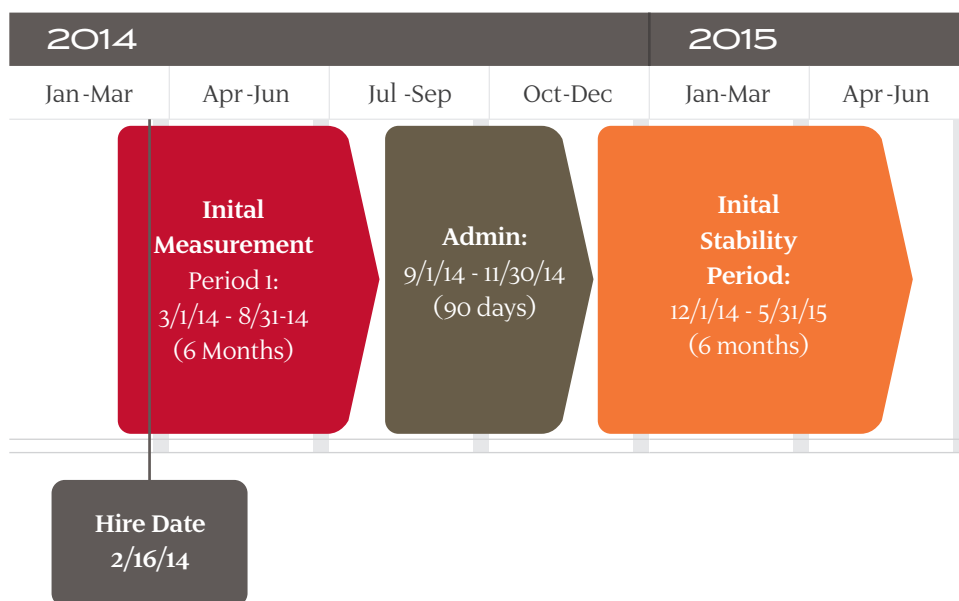


As in the case of a standard measurement period for ongoing employees, if an employee is determined to be a full-time employee during the initial measurement period, the stability period must be a period of at least six consecutive calendar months that is no shorter in duration than the initial measurement period and that begins after the initial measurement period (and any associated administrative period).

If a new variable hour or seasonal employee is determined not to be a full-time employee during the initial measurement period, the employer may treat the employee as not a full-time employee during the stability period that follows the initial measurement period. This stability period must not be more than one month longer than the initial measurement period and must not exceed the remainder of the standard measurement period (plus any associated administrative period) in which the initial measurement period ends.

Once a new variable hour or seasonal employee has been employed for an entire standard measurement period, the employee must be tested for full-time status, beginning with that standard measurement period, at the same time and under the same conditions as other ongoing employees.

Below is a graph that will walk you through an example of the initial measurement period, administrative period, and the initial stability period for a new variable hour employee.





ASSESSING HUMAN & CAPITAL NEEDS



As of 2015, an employer will be penalized for not offering coverage that is affordable, as well as meet minimum actuarial value, to all full time equivalent employees. An important mandate already in effect requires an employer to have a waiting period no longer than 90 days. These must be analyzed when looking at one's work force being that many employers will now be required to offer benefits to more employees than they have in the past. Employers should evaluate their human and financial needs to determine if workforce restructuring is necessary/beneficial to help offset increases as a result of the ACA.

Are Businesses Reducing Part-time Employees' Hours in Preparation for 2015?

Just as important in identifying and strategizing your plan for full-time employees, is your understanding of how the ACA will impact part-time workers. One of the main questions people are asking now that the ACA is in full swing: Are businesses starting to drop their part-time employees' hours to 30 or less in preparation for the employer mandate in 2015? As it begins to take shape, it doesn't appear that is the case, for now.

Ben Casselman, writer at the Wall Street Journal, [says the expected reduction in part-timers' hours and the subsequent rise in hiring part-timers to fill those lost hours hasn't happened just yet.](#)³

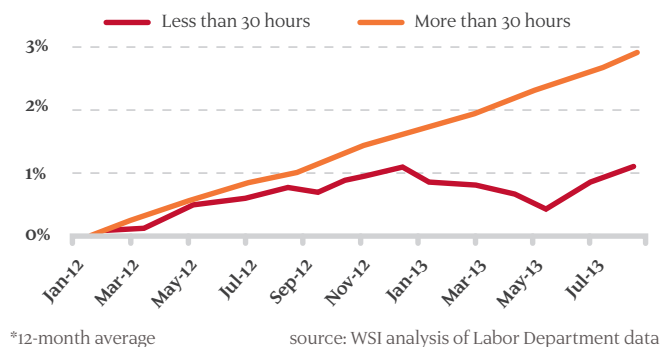
“A closer look at the data provides little evidence for the notion that the health law is driving a shift to part-time work, although it could as the mandate deadline approaches” Casselman said in his article dated October 22, 2013. He analyzed the Labor Department statistics (January 2012 – August 2013) which revealed no noticeable increase in part-time workers due to the Affordable Care Act.

³ <http://blogs.wsj.com/economics/2013/10/22/dont-blame-health-law-for-high-part-time-employment/>

“If the health law were driving employers to cut employees’ hours, the most vulnerable workers would likely be those working just above the 30-hour cutoff. That means the data would show a decline in those working 30 to 34 hours and an increase in those working less than 30 hours.”

Working Long Hours

Employment* by weekly hours worked in main job, change since January 2012, through August.



“The share of part-timers who say they usually work between 30 and 34 hours at their main job has been roughly flat over the past three years, at about 28%. (September data wasn’t available.) If anything, it’s actually risen in the past year, though the change has been minor. The share working just under 30 hours has indeed risen somewhat, but the share working under 25 hours has fallen—suggesting that employers are giving part-timers more hours, rather than cutting full-timers’ hours back. Put another way: **If the Labor Department used the same definition of “part-time” as the health law, its data would show no increase in part-time work over the past year.**”

Casselmann finishes by saying “**None of this, of course, means that employers won’t cut workers’ hours in the future. The employer mandate doesn’t take effect until 2015, meaning companies have plenty of time to adjust their hiring practices.**”

- Keeping a Running Tally

Jed Graham, writer for Investors.com, [is keeping a running tally of the businesses that have reportedly cut hours due to the ACA.](http://news.investors.com/politics-obamacare/110513-669013-obamacare-employer-mandate-a-list-of-cuts-to-work-hours-jobs.htm)⁴

“Report after report has rolled in about employers restricting work hours to fewer than 30 per week – the point where the mandate kicks in” Graham says on his column which is updated any time an employer cuts hours due to the ACA mandate. “In the interest of an informed debate, we’ve compiled a list of job actions with strong proof that ObamaCare’s employer mandate is behind cuts to work hours or staffing levels.” Supporting evidence that the decrease in hours is related to the ACA mandate must be provided by those contributing to the list.

The list currently has 363 entries, with both private and public companies represented and is dominated by school districts, colleges, local government bodies and restaurants – all of which were expected to be hardest hit by the employer mandate. The first organization added in January 2011 is the West Perry School District in Pennsylvania, when they reportedly began limiting new instructional aides to 27.5 hours per week.

- A Negative Impact on their Business

The International Franchise Association and the U.S. Chamber of Commerce conducted surveys in September through October 2013 of **208 decision-makers in franchise-owned businesses** and **206 decision-makers in non-franchise businesses** with 40 to 500 employees about the impact of the ACA on their business.⁵

“64% of business decision-makers in franchisee-owned businesses and 53% in non-franchisee owned businesses believe the ACA will have a negative impact on their

⁴<http://news.investors.com/politics-obamacare/110513-669013-obamacare-employer-mandate-a-list-of-cuts-to-work-hours-jobs.htm>

business.” Among those surveyed “31% of franchise and 12% of non-franchise businesses have **already reduced worker hours, a full year before the employer mandate goes into effect.**”

In a summary of responses among those business owners surveyed: “Decision-makers from both audiences, franchise and non-franchise, told us they are most concerned with the costs of health coverage and compliance. They feel the law will prove to be a disincentive for their companies to grow and will do quite the opposite—**force them to cut staff and hours, get more out of fewer full-time workers, and cause undue strain on their operations.**”

Conclusion

Each entity is unique and will have to devise a strategy that best fits their needs. The Affordable Care Act has been extremely fluid since its inception and we are advising companies to create a plan now to prepare for 2015. Here are some examples of what we are seeing.

- **Clearly Define Part Time vs. Full Time**

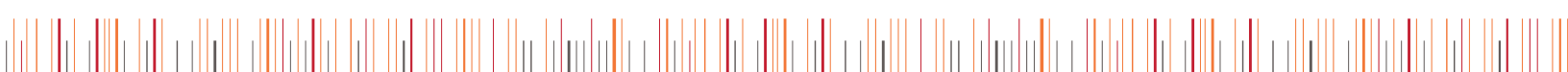
By clearly defining an employee as part time or full time you are avoiding the tracking of their hours entirely. An example is a school who employs substitute teachers. When these substitutes are hired, they are classified right away so there is no discrepancy with their hours. If part time, they are kept under the 30 hour threshold and, therefore, are not required to be offered benefits. If hired as full time, their hours can fluctuate but the administrator does not have to worry about keeping track of their hours because they were hired with the expectation of being offered benefits.

- **Integrate a Tracking System**

If you are an employer who hires many employees with variable hours, it is advised that you put a tracking system in place. You can do this through either your payroll company or an outside vendor. The importance of having a system in place is simple; if you have a variable hour employee, you must track their hours over the course of a certain period of time to determine if they work 30 hours or more a week. If they so happen to average 30 hours or more a week during that period, you must offer them benefits during the following stability period. You are ultimately allowed to choose your measurement period which can be anywhere between 3 and 12 months. It is recommended that, if you haven't already, you start tracking them January 1, 2014. If you have already tracked it or can look back, you have an idea if they average over 30 hours or not. An example would be a lifeguard. They primarily work during the Summer. For this example, you would pick 12 months as your measurement period. The reason being is that they may work 30 hours or more a week during those Summer months, but by choosing 12 months as your measurement period, the average over those 12 months would not exceed 29 hours a week.



The Affordable Care Act is continually evolving and nobody knows what to expect for 2015. The only thing employers can do at this point is prepare for it to come to fruition. By implementing the proper procedure for handling new and ongoing employees, employers will be a step ahead for when the final regulations are released.



CONTACT

Kavaliro, an award-winning national professional services and staffing company, places personnel across the United States in the fields of information technology, engineering, finance, utilities, accounting and administration. By using best practices and optimal employee recruiting strategies, Kavaliro provides employers with integrated staffing solutions, providing only the most qualified professionals who can fill both project and permanent positions in order to ensure the ongoing success of all types of businesses.

Please experience our commitment first hand by reaching out to one of our team members via email at contactus@kavaliro.com. More information about Kavaliro is available at www.kavaliro.com. We also invite you to join us on LinkedIn, Facebook (<http://www.facebook.com/Kavaliro>), or Twitter (@Kavaliro).

The New Definition of a Full-time Employee Under the Affordable Care Act and What It Means to Your Business is a guide for businesses to navigate the ACA and was co-created by The Bailey Group and Kavaliro. If you are interested in receiving more information or advisement on how the ACA will affect your company, feel free to reach out to the contact information listed below.

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