

COUNTING METHODS

FOR SPONSORS OF GROUP HEALTH PLANS

When counting, keep in mind that the term “employee” generally means a common law employee. Partners, shareholders, and sole proprietors are not normally considered employees. Of course there are exceptions, noted below.

| TO DETERMINE | WHEN APPLIED | WHAT TO COUNT | HOW TO COUNT: • FULL-TIME (FT) • FULL-TIME EQUIVALENT (FTE) • PART-TIME (PT) EMPLOYEES | GUIDELINES |
|---|--|------------------------------|---|--|
| Whether a health plan is subject to ERISA | Health plans with 1 or more covered employees | Covered and former employees | Count FT and PT as 1 | <ul style="list-style-type: none"> ERISA applies to virtually all group health plans sponsored by private sector employers Certain church and governmental plans are exempt from ERISA |
| Whether HIPAA portability rules (including the ACA) apply | Health plans with 2 or more covered employees | Current employees | Count FT, PT, and Partners as 1 | <ul style="list-style-type: none"> Excludes excepted benefits. Excludes retiree-only plans. |
| Whether HIPAA privacy and security rules apply | Health plans that have 50 or more participants or are administered by an entity other than the employer | Participants | Employees and former employees who are or may become eligible for coverage | <ul style="list-style-type: none"> Includes excepted benefits and retiree-only plans |
| Whether an employer is subject to Title VII of the Civil Rights Act, as amended by the Pregnancy Discrimination Act (PDA) | Employers with at least 15 employees ¹ | Employees | Count FT and PT as 1 | <ul style="list-style-type: none"> Number of employees working 20 or more calendar weeks in the current or preceding calendar year |
| Whether an employer is subject to the Americans with Disabilities Act (ADA) | Employers with at least 15 employees ¹ | Employees | Count FT and PT as 1 | <ul style="list-style-type: none"> Number of employees working 20 or more calendar weeks in the current or preceding calendar year |
| Whether an employer is subject to the Genetic Information Nondiscrimination Act (GINA) | GINA Title I: Applies to the health plans of all employers GINA Title II: Applies to employers with at least 15 employees | Employees | Count FT and PT as 1 | <ul style="list-style-type: none"> Number of employees working 20 or more calendar weeks in the current or preceding calendar year |
| Whether a health plan is subject to Age Discrimination in Employment act (ADEA) | Employers with at least 20 employees ¹ | Employees | Count FT and PT as 1 | <ul style="list-style-type: none"> Number of employees working 20 or more calendar weeks in the current or preceding calendar year |

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| Whether a health plan is subject to COBRA | Employers with at least 20 employees | Employees | <ul style="list-style-type: none"> Count FT and FTE as 1 Each PT counts as a fraction, with the numerator equal to the number of hours worked by that employee and the denominator equal to the number of hours that must be worked on a typical business day in order to be considered FTⁱⁱ | <ul style="list-style-type: none"> Number of employees (in all commonly-owned businesses) on more than 50 percent of its typical business days in the previous calendar yearⁱⁱⁱ |
| Whether a health plan is subject to Medicare Secondary Payer Rules Based on Age | Health plans of employers with 20 or more employees | Employees | Count FT and PT as 1 | <ul style="list-style-type: none"> Number of employees in each working day in at least 20 weeks in either the current or the preceding calendar year. The 20-or-more employees requirement must be met at the time the individual receives the services for which Medicare benefits are claimed^{iv} |
| Whether a health plan is subject to Medicare Secondary Payer Rules Based on Disability | Health plans of employers with 100 or more employees | Employees | Count FT and PT as 1 | <ul style="list-style-type: none"> Number of employees on 50 percent of more of business days during the previous calendar year^{iv} |
| Whether an employer is subject to FMLA | <ul style="list-style-type: none"> All Employers with at least 50 employeesⁱ Public agencies and public and private schools are covered regardless of the number of employees. | Employees | Count FT and PT as 1 | <ul style="list-style-type: none"> Number of employees working 20 or more calendar weeks in the current or preceding calendar year. |
| Whether an employer is an Applicable Large Employer (ALE) under the ACA | Employees with at least 50 employees ^v | Employees | Count each person who works at least 120 hours in a month as a full-time employee for that month. | <ul style="list-style-type: none"> Total the number of full-time and full-time equivalent employees in each month of the preceding year and divide by 12. If the result is 50 or greater, the employer is an ALE for the current year. |

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| Whether an employer must file a Form 5500 | <ul style="list-style-type: none"> Welfare plans that cover at least 100 employees Welfare plans that cover fewer than 100 employees unless the plan is unfunded or fully insured or a combination thereof. | Covered (Employee) Lives | Count FT and PT as 1 | <ul style="list-style-type: none"> Count the number of employees covered under the plan at the beginning of the plan year Applies to ERISA plans only |
| Whether a health plan is subject to Mental Health Parity and Addiction Equity Act (MHPAEA) | <ul style="list-style-type: none"> Private sector employers with at least 51 employees^{vii} Nonfederal governmental employer with at least 101 employees | Employees | Count FT and PT as 1 | <ul style="list-style-type: none"> Count average number of employees on business days during the preceding calendar year Note that MHPAEA applies to group health plans providing either mental health or substance use disorder benefits |
| Whether an employer must list the cost of health benefits on the Form W-2 | Employers that file 250 or more W-2's | W-2's filed with the IRS | N/A | <ul style="list-style-type: none"> Count the number of W-2's filed in the preceding calendar year |
| Fees due under PCORI Fee Program | <ul style="list-style-type: none"> All self-insured medical plans regardless of employee count Fee based on the number of covered lives | Covered (Employee + Dependents) Lives | N/A | <p>Fee is calculated based on average number of covered lives^{ix}</p> <ul style="list-style-type: none"> Actual Count Method Snapshot Method Form 5500 Method |

This information is intended only as an overview. Other requirements, exceptions or special rules may apply. It is not legal advice and should not be construed as legal advice. Employers should seek the services of a competent legal or tax professional to determine their obligations under these laws and requirements.

- i** Two or more related employers may be considered a single employer for counting purposes. Courts consider the following factors: (1) interrelation of operations, (2) centralized control of labor or employment decisions, (3) common management, and (4) common ownership or financial control. Partners may be considered employees depending on their relationship with the organization.
- ii** Employers that want to apply the fractional rule to salaried, commissioned or other employees not paid by the hour should maintain records to establish actual hours worked. In the case of the FMLA, separate businesses may be considered a single employer if they are "integrated". Factors to be considered in determining if separate businesses are an integrated employer include: common management, interrelation between operations, centralized control of labor relations, and degree of common ownership or financial control.
- iii** Two or more related employers may be considered a single employer for counting purposes if they are part of a controlled group under the Internal Revenue Code. In the case of a multiemployer (collectively-bargained union) plan, a small-employer plan is a group health plan under which each of the employers contributing to the plan for a calendar year normally employed fewer than 20 employees during the preceding calendar year. Employers providing benefits through a MEWA should consult with the MEWA administrator.
- iv** Small employers in a multi-employer group plan (such as a MEWA) that includes more than 20 employees will be subject to the rule, unless an exemption has been claimed. Consult the MEWA administrator for applicability of this rule.
- v** All employers that are part of controlled group under IRC Section 52 are counted as a single employer. For age-based Medicare, employers in a multi-employer or multiple employer group plan (such as a collectively bargained plan or MEWA) that includes more than 20 employees will be subject to the rule, unless an exemption has been claimed. For disability based Medicare, all employers will be subject to the MSP rules if any employer in the group has 100 or more employees. Consult the plan administrator for applicability of this rule.
- vi** Special counting rules apply with respect to various situations, including teachers on summer break, adjunct faculty, seasonal workers, on-call employees, employees on paid leave, airline employees, members of religious orders and others. Partners, sole proprietors and 2% S-corp shareholders are not counted as employees. Consult with counsel on the status of leased employees. Consult IRS guidance (<https://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act>) or a legal advisor for more information.
- vii** Two or more related employers may be considered a single employer for counting purposes if they are part of a controlled group under the Internal Revenue Code.
- viii** Small employers in a multi-employer group plan (such as a MEWA) will be subject to the rule if any employer in the group has more than 100 employees.
- ix** **Actual Count:** Add the total number of lives covered for each day of the first nine months of the calendar year and divide that total by the number of days in the first nine months.
Snapshot Count: Add the total number of lives covered on any date during the same corresponding month in each of the first three quarters of the calendar year, and divide that total by the number of dates on which a count was made.
Snapshot Factor: Use the same method as in Snapshot Count, except that the number of lives covered on a given date is calculated by adding the number of participants with self-only coverage to the product of the number of participants with coverage other than self-only coverage and a factor of 2.35. This method can be used to estimate the number of total lives included in coverage that is not self-only coverage.
Form 5500 Method: The number of participants as of the beginning and end of the plan year as reported on Form 5500 for the last applicable time period.