Determining group size

For plan years commencing on or after January 1, 2016 (new and renewing), a small employer is defined as an employer employing an average of at least 1, but no more than 100 full-time, including full-time equivalent, employees during the preceding calendar year and who employs at least 1 employee on the first day of the plan year. For purposes of determining employer eligibility in the small employer market, California recently adopted the federal method for counting full-time employees and full-time equivalent employees.[1]

The information reflected in this document is intended only as general guidance to assist you in determining your group's size under the Affordable Care Act and California Senate Bill 125, starting in 2016. It is not intended as legal or financial advice or opinion. For specific guidance concerning the Affordable Care Act, the Internal Revenue Code or California State laws or regulations, you should consult with your attorney, Certified Public Accountant or other authorized consultant or advisor. The contents of this document should not be construed as or relied upon for legal or tax advice.

Who is an employee?

The term "employee" means an individual who is an employee under the common law standard[2], which largely rests on the amount of control the employer has over the employee.

- The following do not qualify as an employee for purposes of group eligibility: (1) an individual that wholly owns the company on his or her own or with his/her Spouse/Domestic Partner; (2) the spouses of a sole proprietors; (3) partner in a partnership and their spouses, (4) a 2-percent S corporation shareholder; (5) a worker described in section 3508 of Title 26, Internal Revenue Service Code; or (6) a leased employee (as defined in 26 U.S.C . § 414(n)(2)).

Full-Time and Full-Time Equivalent (FTE) Employees

Full-time employee: A full-time employee means, with respect to a calendar month, an employee who is employed an average of at least 30 hours of service per week (or 130 hours of service in a calendar month) with an employer.

Full-time equivalent employee: A full-time equivalent employee is a combination of employees, each of whom individually is not a full-time employee because they are not employed on average at least 30 hours of service per week with an employer, but who in combination, are counted as the equivalent of a full-time employee.

The number of FTEs for each calendar month in the preceding calendar year is determined by calculating the aggregate number of hours of service for that calendar month for employees who were not full-time employees (but not more than 120 hours of service for any employee) and dividing that number by 120. The resulting number is the number of FTEs on a monthly basis.

1 California Senate Bill 125 (2015).
2 26 C.F.R. § 31.3401(c)-1(b).
3 As defined in 26 U.S.C. § 414(n)(2).
4 Described in 26 U.S.C. § 3508.

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Additional information

- All paid time off must be counted as hours of service in determining the number of hours worked.
- Employers must use one of three methods to calculate hours of service for non-hourly employees:
  - Actual hours of service.
  - Days-worked equivalency method: an employee is credited with 8 hours of service for each day for which the employee would be required to be credited with at least one hour of service; or
  - Weeks-worked equivalency method: an employee is credited with 40 hours of service for each week for which the employee would be required to be credited with at least one hour of service.
- In general, seasonal employees are not treated any differently than other employees. They are counted as full-time or part-time, depending on the number of hours they work.
- However, if the sum of an employer's full-time and FTE employees exceeds 100 for 120 days or less during the preceding calendar year, and the employees in excess of 100 who were employed during that period of no more than 120 days are seasonal workers, then the employer is not an applicable large employer for the current calendar year.

Aggregation rules

All employers treated as a single employer under section 414(b), (c), (m), or (o) of the Internal Revenue Code are treated as a single employer for purposes of determining group size. Therefore, all employees of a controlled group of entities under section 414(b) or (c), an affiliated service group under section 414(m), or an entity in an arrangement described under section 414(o), are taken into account in determining whether the members of the controlled group or affiliated service group together are an applicable large employer.

Determining appropriate aggregation is a very fact-specific analysis. You should consult your own attorney, Certified Public Accountant or other authorized consultant or advisor in determining whether and how the aggregation rules apply to you.

Please return this form within 10 days of receipt to SGUWCA@anthem.com. ***Failure to return this form may result in incorrect market segmentation.***

Note: *The information provided is to help you determine your group's size using the same calculation to determine employer liability under the "Shared Responsibility for Employer" provisions of the ACA and the Internal Revenue Code. Pursuant to the ACA, California has adopted the federal definition of who is an employee for purposes of determining your group's correct market segment (e.g. large group or small group).*

1 California Senate Bill 125 (2015).
2 26 C.F.R. § 31.3401(c)-1(b).
3 As defined in 26 U.S.C. § 414(n)(2).
4 Described in 26 U.S.C. § 3508.