

Indiana Group Counting FAQ

- 1. How are employees counted in determining group size for purposes of quoting coverage?**
 - A. The number of employees for determining group size is pursuant to PHSA section 2791(d)(5), which states that the term “employee” has the meaning given such term under section 3(6) of Title I of the Employee Retirement Income Security Act (“ERISA”). As defined by this section of ERISA, the term “employee” means any individual employed by an employer.
- 2. Is an owner counted in determining group size?**
 - A. 29 CFR 2510.3-3(c) provides, “An individual and his or her spouse shall not be deemed to be employees with respect to a trade or business, whether incorporated or unincorporated, which is wholly owned by the individual or by the individual and his or her spouse.”
- 3. How are part time, transitional or seasonal employees counted in determining group size?**
 - A. ERISA dictates that the term “employee” means any individual employed by an employer. As such, part time, transitional or seasonal employees must be counted towards the overall group size of an employer.
- 4. When you count part-time and seasonal employees, are each part-time and seasonal counted as one (1) employee regardless of how many days or weeks that the employee works?**
 - A. Each employee in Indiana is counted for each day that they work. The average number of employees in the prior calendar year is used to determine group size. For example, an employee who works three hours every Wednesday during the summer would be counted as one employee on Wednesdays and would be factored into the average number of employees in order to determine group size.
- 5. Will an employer group that has forty (40) full-time employees and eleven (11) part-time and seasonal employees that previously was considered an under 50 group, now be considered a 50+ group and be subject to IRS 4980H (Pay or Play)?**
 - A. The IRS has its own definition and counting method for employer shared responsibility. The Indiana Department of Insurance follows ERISA guidelines which determines the average number of employees on each work day counting all employees, full time or part time, on each day and if the average in the prior calendar year is greater than 50, it is a large group for insurance purposes.
- 6. If our group is currently under 50 and requires no underwriting, as a 50+ group, would full medical underwriting be required?**
 - A. Yes, full medical underwriting is required for groups larger than 50; this may be an issue for former small employer groups. The example provided above will now be underwritten and premiums determined based on the underwriting for a large group.
- 7. If I currently have an employer group medical plan that insures only two (2) lives, the owner and their spouse, they will no longer be considered as employees (29 CFR 2510.3-3(c)). Is this correct?**
 - A. Yes.

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- 8. If a group medical plan insures the lives of the owner and spouse, as referenced above, can they remain insured in this manner until December 31, 2017?**
- A. Yes, under transitional rules and if the carrier continues their transitional plans.
- 9. As of January 1, 2018, will the owner and spouse need to be insured by individual plans?**
- A. Yes
- 10. Who is going to police group medical plans to ensure compliance?**
- A. The Indiana Department of Insurance will enforce based on complaints received.
- 11. How will medical loss ratio ("MLR") be calculated for small group?**
- A. For small group (1-50 employees) the MLR will remain 80%.
- B. For large groups (51+ employees) the MLR will be 85% starting January 1, 2016.
- 12. Is there a difference in counting the number of employees for SHOP participation as opposed to determining group size?**
- A. Eligibility for participation in the SHOP uses a different method: a full-time equivalent calculator without inclusion of seasonal employees. For additional information on the calculation of full time equivalents, please visit: <https://www.healthcare.gov/shop-calculators-fte/>
- 13. Can an insurance company write or renew a historical small group non-grandfathered policy to a newly redefined 51+ group employer?**
- A. Employers who employ 51+ employees will need to be issued a large group policy, except that such groups that were covered under the previous small group definition in 2015 may renew on a small group policy for coverage through December 31, 2017.
- 14. Can a group with 51-100 employees that has been offered a grandfathered or transitional policy continue on that grandfathered or transitional policy?**
- A. Except as allowed in FAQ #13, policies renewed after October 1, 2016, must be renewed as a fully compliant ACA large group policy. Following enactment of the Protecting Affordable Coverage for Employees Act (Pub. L. 114-60), the transitional policy in the March 5, 2014 CMS guidance for certain eligible large employers no longer applies.

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15. Where do I put information for groups in the range of 51-100 in the Supplemental Health Care exhibit for the 2015 and 2016 plan year?

- A. For 2015, groups 51-100 should be shown in the small group column.
- B. For 2016, groups 51-100 should be shown in the large group column.

16. Is Bulletin 215 being withdrawn?

- A. To avoid disruptions that may have occurred with a change in the definition of a small employer, the Department issued Bulletin 215, which allowed for transitional policies of employers with 51-100 employees to continue through October 1, 2016. Because of the PACE act, those policies will now continue to be ACA-compliant policies and will not be considered transitional, except as set out in FAQ #14. For that reason, Bulletin 215 is withdrawn.

17. Is Bulletin 185 being withdrawn?

- A. No. The MLR for small group policies 1-100 remains in effect through December 31, 2015.

18. If I have employees in two different states, how do I determine my group size?

- A. Group size should be based on the total size of the employer entity filing taxes for federal tax purposes and based on the law of the state of the company's headquarters, regardless of the employees' location.

19. Does the enactment of the PACE Act affect the counting methodologies to be used by the SHOPS in accordance with Internal Revenue Code section 4980H(c)(2), and for purposes of the medical loss ratio (MLR), risk adjustment, and risk corridors programs?

- A. No. The requirements regarding the employee counting methodologies for the FF-SHOPS and State-based SHOPS, and for the MLR, risk adjustment, and risk corridors programs remain the same, and are not changed by the PACE Act.