

Legislative Brief

Definition of “Large Employer” and “Small Employer”

The Affordable Care Act (ACA) imposes different requirements on employers based on whether they qualify as a "large employer" or a "small employer." However, the Health Care Reform law doesn't use a consistent definition for these terms. As a result, an employer may be considered a small employer for one rule but a large employer for another.

This Legislative Brief outlines the definitions of “large employer” and “small employer” that apply to key provisions in the ACA affecting employers.

ACA PROVISION	APPLICABLE DEFINITIONS	
<p>Health Care Tax Credit</p> <p>Effective for tax years beginning in 2010, the ACA provides a tax credit to certain small employers that provide health care coverage to their employees.</p>	<p>Large employers with 25 or more full-time employees are ineligible for the health care tax credit.</p>	<p>Eligible Small Employer:</p> <ul style="list-style-type: none"> • Must have fewer than 25 full-time employees or a combination of full-time and part-time staff (for example, two half-time employees equal one employee for purposes of the credit); • The average annual wages of employees must be less than \$50,000; and • The employer must pay at least half of the insurance premiums.
<p>Form W-2 Reporting</p> <p>Beginning in the 2012 tax year, large employers are required to report the aggregate cost of employer-sponsored group health plan coverage on their employees' Forms W-2.</p> <p>Small employers may be subject to this reporting in the future. The IRS has delayed the reporting requirement for small employers by making it optional for these employers until further guidance is issued.</p>	<p>Large Employer:</p> <p>Must have had to file 250 or more Forms W-2 in the prior calendar year.</p>	<p>Small Employer:</p> <p>Must have had to file fewer than 250 Forms W-2 for the prior calendar year.</p>

Definition of “Large Employer” and “Small Employer” (continued)

ACA PROVISION	APPLICABLE DEFINITIONS	
<p>Employer Shared Responsibility Requirements</p> <p>Beginning in 2014, large employers may be subject to penalties if they do not offer health coverage to their employees, or if their health coverage does not meet certain standards.</p>	<p>Applicable Large Employer:</p> <p>Must employ at least 50 full-time employees, or a combination of full-time and part-time employees that equals at least 50 (for example, 40 full-time employees employed 30 or more hours per week on average plus 20 half-time employees employed 15 hours per week on average are equivalent to 50 full-time employees).</p>	<p>Small employers with fewer than 50 full-time employees (or full-time equivalent employees) will be exempt from the employer shared responsibility provisions.</p>
<p>Health Insurance Exchanges</p> <p>Effective Jan. 1, 2014, each state must have a health insurance exchange (Exchange) to provide a competitive marketplace where individuals and small businesses will be able to purchase affordable private health insurance coverage.</p> <p>Beginning in 2014, small employers can offer coverage to their employees through an Exchange.</p> <p>Beginning in 2017, states may allow large employers to obtain coverage through an Exchange.</p>	<p>Large Employer:</p> <ul style="list-style-type: none"> • Must employ an average of at least 101 employees on business days during the preceding calendar year; and • Must employ at least one employee on the first day of the plan year. 	<p>Small Employer:</p> <ul style="list-style-type: none"> • Must employ an average of one to 100 employees on business days during the preceding calendar year; and • Must employ at least one employee on the first day of the plan year. <p>However, states have the option to limit small employers’ participation in the Exchanges to businesses with up to 50 employees until 2016.</p>
<p>Special Rule for SHOP Exchanges</p> <p>By 2014, each state Exchange must establish insurance options for small businesses through a Small Business Health Options Program (SHOP).</p>	<p>Large employers with at least 101 employees are ineligible to participate in the SHOP.</p>	<p>Eligible Small Employer for SHOP Participation:</p> <ul style="list-style-type: none"> • Must qualify as a “small employer” for purposes of Exchange participation (see above); • Must elect to offer, at a minimum, all full-time employees coverage in a qualified health plan through a SHOP; and • Must either have its primary office in the Exchange service area and offer all its employees coverage through that SHOP, or offer coverage to each eligible employee through the SHOP servicing the employee’s primary worksite.

Definition of “Large Employer” and “Small Employer” (continued)

ACA PROVISION	APPLICABLE DEFINITIONS	
<p>Automatic Enrollment</p> <p>Large employers that are subject to the FLSA will be required to automatically enroll new full-time employees in one of the employer’s health benefits plans (subject to any waiting period authorized by law), and to continue the enrollment of current employees in a health benefits plan offered through the employer.</p> <p>Before this requirement can take effect, the DOL must issue implementing regulations. The DOL has stated that the automatic enrollment guidance will not be ready to take effect by 2014 and employers are not required to comply with the rule until final regulations are issued and become applicable.</p>	<p>Large Employer:</p> <p>Must have more than 200 full-time employees.</p>	<p>Small employers with 200 or fewer employees will be exempt from the automatic enrollment requirements.</p>

This Legislative Brief is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

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