

Counting Employees For Federal Employee Benefit Laws

Federal Employee Benefit Laws frequently apply to employers that have a certain number of employees. Unfortunately, since the laws are passed at different times by different Congresses, they use different methods to count employees. This is a brief outline of some of the key Employee Benefit laws, what size employers they apply to, how to count employees, any exceptions, when the law applies as employers change size and any poster/notice requirements. Please note, an employer's size is determined based on the common ownership rules under the Internal Revenue Code and ERISA.

Federal law	Number of employees & how are they counted	Exceptions	When does it apply	Poster/Notices
Health Insurance Portability & Accountability Act - HIPAA	Applies to ALL employers.	None	Immediately	HIPAA Notice in Annual Notices
Uniformed Services Employment & Reemployment Rights Act - USERRA	Applies to ALL employers.	None	Immediately	USERRA poster from US Dept. of Labor
Employee Retirement Income Security Act - ERISA	Applies to private employers with 2 or more employees .	Government entities (Federal, State and Local) and churches are exempt.	Immediately once they start an employer sponsored health plan.	No specific required poster
Qualified Medical Child Support Order - QMCSO	Applies to every group health plan that is subject to ERISA .	Government entities (Federal, State and Local) and churches are exempt.	Immediately once they start an employer sponsored health plan.	Include notice in SPD or Wrap Document
Medicare Part D Requirements	Applies to every group health plan that offers prescription drug coverage .	None	Immediately	Annual notice to Medicare eligible plan participants
Americans with Disabilities Act - ADA	Applies to employers with 15 or more employees during at least 20 calendar weeks in the current or preceding calendar year.	Does not apply to Indian tribes, certain bona fide private membership clubs, or the federal government. No express exclusions, but SCOTUS has that "ministerial	As soon as they have 20 calendar weeks in a calendar year with 15 or more employees.	EEO is the Law poster from US Dept. of Labor
Genetic Information Nondiscrimination Act - GINA	Applies to employers with 15 or more employees during at least 20 calendar weeks in the current or preceding calendar year.	Only small employers	As soon as they have 20 calendar weeks in a calendar year with 15 or more employees.	EEO is the Law poster from US Dept. of Labor
Title VII of the Civil Rights Act	Applies to private sector employers with 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. Applies to Federal, State and Local Governments.	No express exclusion for church plans, but First Amendment may allow for exclusion in some situation.	As soon as they have 20 calendar weeks in a calendar year with 15 or more employees.	EEO is the Law poster from US Dept. of Labor

COUNTING EMPLOYEES FOR FEDERAL EMPLOYEE BENEFIT LAWS

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Consolidated Omnibus Budget Reconciliation Act - COBRA	Applies to private sector employers with 20 or more employees. Exceptions for except for "Small Employers" and Church Plans. Government plans are subject to the PHSA COBRA provisions. Federal Government employees are eligible for continuation via the Federal Employees Health Benefits Amendments Act of 1988. Many states have mini-COBRA rules that require small employers to provide continuation and/or longer continuation periods.	Small employers that average less than 20 employees during 50% of the working days during the previous calendar year. Include all common-law employees. Part-time employees are counted by dividing total hours worked by the number of hours required to be a full-time employee, cannot exceed 40 hours per week. Church plans are exempt from COBRA, though many offer COBRA-like continuation.	January 1 if the employer averaged 20 or more employees on 50% of the workdays during the prior calendar year.	Typically included in Annual Notices or mailed to new plan participants. US Dept. of Labor provides model notices.
Family and Medical Leave Act - FMLA	Applies to private sector employers with 50 or more employees . It also applies to all public government agencies (federal, state and local) regardless of size.	Small employers that average less than 50 employees within a 75-mile radius are subject to the posting requirements but may not have any eligible employees.	As soon as they have 20 calendar weeks in a calendar year with 50 or more employees.	<u>Employee Rights Under FMLA</u> poster and <u>Designation Notice</u> from US Dept. of Labor.
Age Discrimination in Employment Act - ADEA	Applies to all private sector employers with 20 or more employees for each working day in at least 20 calendar weeks in the current or preceding calendar year except for "Small Employers". Applies to State and Local Government employers.	Certain federal government employers, Indian tribes and bona fide private membership clubs are also excluded from the law. No express exclusion for church plans, but First Amendment may allow for exclusion in some situation.	As soon as they have 20 calendar weeks in a calendar year with 15 or more employees.	<u>EEO is the Law</u> poster from US Dept. of Labor
Medicare Secondary Payer Rules - MSP	Applies to employers with 20 or more employees for each working day in at least 20 calendar weeks in the current or preceding calendar year	Certain small employers with less than 20 employees are excepted from some but not all of the requirements	As soon as they have 20 calendar weeks in a calendar year with 20 or more employees.	No specific required poster
Mental Health Parity Act/ Mental Health Parity & Addiction Equity Act - MHPAEA	Applies to most employers with 50 or more employees.	MHPAEA do not apply to: • Small employers that had an average of not more than 50 employees on business days during the preceding calendar year. • Group health plans and health insurance issuers that are exempt from MHPAEA because cost to comply was 2% or more during the first year or 1% or more during subsequent years. • Self-funded non-Federal government employers that opt out of the requirements for MHPAEA. • There is no exception for Church plans.	January 1 if the employer averaged 50 or more employees on business days during the preceding calendar year.	No specific required poster

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Affordable Care Act Employer Shared Responsibility Provisions - Pay or Play Rules.	Applies to Applicable Large Employers (ALE) that employed 50 or more full-time employees during the preceding calendar year. Includes part-time employees who are converted to full-time equivalent employees based on hours worked. Employers must include members of a controlled group or an affiliated service group.	Only non-ALEs, i.e. small employers with fewer than 50 full-time equivalent employees.	January 1 if the employer averaged 50 or more employees on business days during the preceding calendar year.	No specific required poster
Form 5500 Reporting	Applies if a health plan had 100 or more enrollees on the first day of the plan year and Health Plans required to file Form M-1..	Small (fewer than 100 enrollees) unfunded, insured and combination unfunded/insured welfare plans are exempt. Unfunded in this situation refers to plans that pay the cost of the health plan from the organization's general assets, not a separate fund or trust.	On first day of the plan year in which they have 100 or more enrollees or must file Form M-1.	No specific required poster

NOTES:

Unless specified differently, when counting employees include all common law employees on payroll.

When counting employees, employers that are part of a controlled group or an affiliated service group must be treated as one employer, and all employees within the controlled or service group must be included.

Church health plans can have different meanings under the different pieces of legislation. The Supreme Court of the US has ruled that employee benefits established and maintained by church-affiliated organizations are church plans with the ERISA definition.

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