
Revised Definition of "Small Employer" Impacts Some Employer Sponsored Health Plans

By Nancy L. Farnam / Oct 14, 2015

The Patient Protection and Affordable Care Act ("PPACA") treats a "small employer" differently than a large employer for many purposes. No single definition applies in determining when an employer is considered a small employer.

For purposes of health insurance coverage offered by an insurer in the small group market, the PPACA initially defined a small employer to include all employers with up to 50 employees through December 31, 2015, and then increased the threshold to 100 employees beginning January 1, 2016. Last week, the Protecting Affordable Coverage for Employees ("PACE") Act was enacted to retain the small employer definition of up to 50 employees, although states maintain the flexibility to define a small employer as up to 100 employees. The PACE Act impacts employer sponsored health plans as follows:

- Health insurance offered in the small group market is subject to strict rating standards and must cover all essential health benefits. Under the PACE Act, employers with 51 to 100 employees will retain benefit design flexibility and will hopefully experience lower premium increases. Employers falling in the 51 to 100 employee range that have already secured coverage for 2016 should check with their insurers to see if the rates for 2016 will decrease with the enactment of the PACE Act.
- Small employers may make qualified health plans available to employees through the Exchange (this is called the Small Business Health Options Program or "SHOP"). Under the PACE Act, employers with 51 to 100 employees will not be able to offer health plans through the SHOP.
- A small employer may offer employees the opportunity to enroll in an Exchange-participating qualified health plan through the employer's cafeteria plan. Under the PACE Act, employers with 51 to 100 employees will not be able to offer Exchange plans through the employer's cafeteria plan.

Notably, the definition of large employer has not changed for purposes of the employer shared responsibility rules (the requirement to offer health coverage to employees or face a penalty). Therefore, employers with 50 or more full-time employees are still required to offer health coverage to full-time employees effective with the first day of the plan year beginning on or after January 1, 2015 (however, transition relief is available for certain employers with between 51 and 99 full-time employees delaying the effective date of the employer mandate until 2016).

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