

COBRA SMALL EMPLOYER EXEMPTION

In general, small-employer plans group health plans are exempt from COBRA if:

The employer has less than 20 employees -

A small-employer plan is a group health plan maintained by an employer that normally employed fewer than 20 employees during the preceding calendar year.

On 50 percent of its typical business days -

An employer is considered to have normally employed fewer than 20 employees during a particular calendar year if, and only if, it had fewer than 20 employees on at least 50 percent of its typical business days during that year.

All full-time and part-time common law employees of an employer are taken into account in determining whether an employer had fewer than 20 employees; however, an individual who is not a common law employee of the employer is not taken into account.

Thus, the following individuals generally are not counted as employees for purposes of this determination even though they are referred to as employees for all other purposes of continuation coverage regulations:

- (1) Self-employed individuals (within the meaning of section 401(c)(1));
- (2) Independent contractors (and their employees and independent contractors);
and;
- (3) Directors (in the case of a corporation).

Determining number of employees - daily basis v. pay period basis –

The basis in determining the number of employees must be used for the entire year for which the number of employees is being determined. If an employer determines the number of its employees on a daily basis, it must determine the actual number of fulltime employees on each typical business day and the actual number of part-time employees and the hours worked by each of those part-time employees on each typical business day. Each full-time employee counts as one employee on each typical business day and each part-time employee counts as a fraction, with the numerator of the fraction equal to the number of hours worked by that employee and the denominator equal to the number of hours that must be worked on a typical business day in order to be considered a full-time employee.

If an employer determines the number of its employees on a pay period basis, it must determine the actual number of full-time employees employed during that pay period and the actual number of part-time employees employed and the hours worked by each of those part-time employees during the pay period. For each day of that pay period, each full-time employee counts as one employee and each part-time employee counts as a fraction, with the numerator of the fraction equal to the number of hours worked by that employee during that pay period and the denominator equal to the number of hours that must be worked during that pay period in order to be considered a full-time employee. The determination of the number of hours required to be considered a full-time employee is based upon the employers employment practices, except that in no event may the hours required to be considered a full-time employee exceed eight hours for any day or 40 hours for any week.

If a plan that has been subject to COBRA (that is, was not a small-employer plan) becomes a small-employer plan, the plan remains subject to COBRA for qualifying events that occurred during the period when the plan was subject to COBRA.

For more information on whether or not you are an employer subject to COBRA, visit the Department of Labor's website at: www.dol.gov/ebsa

WPS does not give legal advice. If you are an employer and not sure whether the federal COBRA rules apply to your group, you should contact your benefits attorney.

WISCONSIN CONTINUATION

Wisconsin's continuation law applies to most group health insurance policies that provide hospital or medical coverage to Wisconsin residents. The law applies to group policies issued to employers of any size. The law does not apply to employer self-funded health plans, or policies that cover only specified diseases or accidental injuries.

WPS does not give legal advice. If you are an employer and not sure whether the state continuation laws apply to your group, you should contact the Wisconsin Commissioner of Insurance at:

Office of the Commissioner of Insurance
125 South Webster Street
Madison, Wisconsin 53703-3474
(608) 266-3585, Madison;
(800) 236-8517, statewide;
711 (TDD) (ask for 608-266-3586);
(608) 266-9935, fax
Hours: Monday - Friday 7:45 a.m. - 4:30 p.m.
(except for legal holidays)

Or visit their website at <http://oci.wi.gov/>

For more information on Wisconsin Continuation you can view the OCI's fact sheet at:

http://oci.wi.gov/pub_list/pi-023.pdf