

COBRA Tips®

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Counting Employees for COBRA Purposes

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The following is an excerpt from [Questions and Answers from the COBRA Help Desk—Part I](#):

Client: Where can I find something in writing (that is in simple, non-attorney language) that explains what groups are required to offer COBRA? Am I correct when I tell groups they must offer COBRA this calendar year if they had 20 or more full-time equivalent employees for more than 50% of the working days of the prior calendar year? Please advise.

OnQue: You are generally correct. However, I agree that it would be wise to provide your clients with a comprehensive answer to the question of how to count employees. Following is an excerpt from OnQue's COBRA Tip of July 15, 2003, "[IRS Issues COBRA Revenue Ruling: When small employers receive stock or acquire assets, how are employees counted for COBRA?](#)":

Employers who had an equivalent of at least twenty full-time employees on fifty percent of the business days in the previous calendar year are subject to COBRA. Here are the basic rules for counting the number of employees when determining if an employer must offer COBRA benefits:

- All full-time and part-time employees are counted when determining if an employer had at least twenty employees in the previous calendar year.
- Part-time employees are counted as fractions of full-time employees based on the number of hours worked by full-time employees in that business. For example, if a full-time employee normally works a 6-hour day, then two part-time employees each working three hours a day equal one full-time employee.
- Employers may use either a daily period or a pay period as the basis on which to count these employees. But whichever period is chosen, it must be used uniformly for the entire year.
- If the number of employees is determined on a daily basis, each full-time employee is counted as one employee. A full-time employee works the number of hours (up to 8 per day, 40 per week) considered normal for that business.
- If the number of employees is determined on the basis of a pay period, the employer must count the number of full-time employees working during that period, plus the number of part-time employees and the hours worked by each during that entire pay period.

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- Only "common-law" employees are counted -- not independent contractors, self-employed persons and members of the board of directors (unless such members are also common-law employees) - even if these individuals receive employee benefits, such as being covered on the group health plan.
- Common law employees who are nonresident aliens must be counted when determining whether an employer is subject to COBRA requirements.

To determine the full-time equivalent employee count, first sum the hours worked by part-time common law employees, then divide the total by the number of hours required to be considered full-time. Then add the result to the total number of full-time employees. For example, 15 employees are full-time (40 hrs.) and 6 work 20 hours per week. The number of full-time equivalent part-time employees is 3 (120 hours/40); the total number of full-time equivalent employees is 15+3.

Do We Count Union Employees?

Client: When a company has 5 non-union and 15 union employees, is the company subject to COBRA? I'm asking because the union employees are enrolled in group health benefits through the union, not the company.

OnQue: If the company employed an equivalent of at least twenty full-time employees on fifty percent of the business days in the previous calendar year, then it is subject to COBRA. That some of those employees are covered under a different plan has no bearing on the company's COBRA obligations.

Related COBRA Tips

- [Are You Sure You Know the Difference Between Independent Contractors and Employees?](#)
- [IRS Issues COBRA Revenue Ruling: When small employers receive stock or acquire assets, how are employees counted for COBRA?](#)

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