

# Benefit Brief



SUBJECT: Who Has to Comply?

DATE: February 24, 2010

**This Benefit Brief provides information to help employers determine which laws and regulations apply to their group health plans.**

We get many questions in the Compliance Division from employers and producers about the applicability of various laws and regulations to a group health plan. We developed the attached chart to help employers determine if they must comply with a law or regulation. The chart also provides information on the counting method to use when a specific number of employees or participants is required to determine if the employer's health plan is subject to the requirement.

If you have questions about your compliance obligations, please contact Danielle Omans at The Benecon Group at [domans@benecon.com](mailto:domans@benecon.com) or the number below.

This Benefit Brief is provided for informational purposes only and does not constitute legal advice. It contains only a summary of the applicable legal provisions and does not purport to cover every aspect of any particular law, regulation or requirement. Benecon serves employers and producers in Pennsylvania. Information contained in our Benefit Briefs is applicable to federal and Pennsylvania laws. Depending on the specific facts and location of any situation, there may be additional or different requirements. Please use this Benefit Brief as a guide and not as a definitive description of your compliance obligations.

**Who Has to Comply?  
A Guide for Employers**

LAW	REQUIREMENTS	COUNTING METHOD
Americans with Disabilities Act (ADA)	15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year	All employees (full and part-time) are counted Includes state and local governments
Autism Insurance Act	Pennsylvania insured group health plans with 51 or more employees	All employees (full and part-time) are counted
COBRA	20 or more employees on more than 50% of the typical business days during the preceding calendar year	All common law employees are counted, regardless of whether or not the employee is covered under the plan. Part-time and seasonal employees are counted as a fraction of a full-time employee (# hours worked/# hours required to be full-time).
Family and Medical Leave Act (FMLA)	Private sector employers with 50 or more employees for at least 20 workweeks in the current or preceding calendar year All public agencies, regardless of size, including local, state, and federal employers and local education agencies (schools)	All employees (full and part-time) are counted  Not applicable
Form 5500	Insured, funded, and unfunded plans with 100 or more participants at the beginning of the plan year	Only covered participants are counted Participants become <i>covered</i> on the earlier of the date the plan says participation begins; the date the individual becomes eligible to receive benefits; or the date the individual makes plan contributions. <i>Participants</i> are employees or former employees of an employer who are or may become eligible to receive benefits of any type from an employee benefit plan that covers employees of the employer. Covered spouses and dependent children are not counted. Former employees who are COBRA-qualified beneficiaries are counted.

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LAW	REQUIREMENTS	COUNTING METHOD
Genetic Information Nondiscrimination Act (GINA)	15 or more employees for each working day in at least 20 calendar weeks in the current or preceding calendar year Applies to government and church employers	All employees (full and part-time) are counted
HIPAA Portability Rules	2 or more employees	All employees (full and part-time) are counted
HIPAA Privacy and Security Rules	Self-funded plans with 50 or more employees  Insured plans, <u>IF</u> they have access to protected health information	All employees (full and part-time) are counted  Not applicable
Medicare Secondary Payer (MSP)	20 or more employees for each working day in at least 20 weeks in the current or preceding calendar year  100 or more employees on 50% or more of the regular business days during the preceding calendar year for disability-based Medicare  For individuals with end stage renal disease for the first 30 months of Medicare entitlement	All common law employees are counted, regardless of the number of hours worked, including those on disability leave, sick leave, laid off, and seasonal. Employees should be counted at the time an individual receives Medicare-claimed services  Not applicable
Mental Health Parity Act (MHPA)	51 or more employees in the prior calendar year	All employees (full & part-time) are counted
Pennsylvania Mini-COBRA	Pennsylvania insured group health plans with two to 19 employees as of July 10, 2009.	All common law employees are counted, regardless of whether or not the employee is covered under the plan. Part-time and seasonal employees are counted as a fraction of a full-time employee.
TRICARE	20 or more employees	All employees (full and part-time) are counted Incentive prohibition rules apply in the same manner as under MSP rules
USERRA	All employers regardless of size	Not applicable
Workers' Compensation	1 or more employees	Not applicable

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