

**New York  
Small Group Annual Attestation Form  
For Groups of 1-100\* Full-time Equivalent  
Employees**



Employer Information	
Group name	Group no.
Employer tax ID no.	Renewal date

Thank you for your attention to this important form. Your action is required - please complete and return this form within 15 days of receipt. Failure to return a completed form will result in loss of coverage on midnight of the last day of the month prior to your renewal date.

**Section 1: Determining group size**

Small groups are defined as businesses and other organizations that have between 1-100 full-time equivalent employees (FTEE) over the prior calendar year. A small group must have at least one active FTEE, but not more than 100. A small group can consist of one non-spouse employee plus the business owner; a group of 100 would consist of the business owner plus 99 employees. An "employee" does not include the sole owner of a business or a spouse of the business owner. Group size is determined by the total number of FTEE in all classes for coverage over the prior calendar year, including those outside the U.S. Refer to federal regulation 42 U.S.C. 300gg-91(d)(5). A large group has 101 or more FTEE's" applying the counting method in 26 U.S.C. 4980H9c)(2).

Using the instructions on the following pages, add Step 1 and Step 2 to determine how many FTEE's: \_\_\_\_\_

**Please indicate your group's size based on the above definitions:** My company:

meets the definition of a "small group"     meets the definition of a "large group"

Does not have at least one non-spouse employee plus the business owner.

**Section 2: Eligibility**

1) Are any of your employees Vermont (VT) and/ or Hawaii (HI) residents?  Yes  No **If yes**, how many VT \_\_\_\_ If yes, how many HI \_\_\_\_

2) Is group a PEO?  Yes  No

3) How many retirees are covered as part of the group?\* \_\_\_\_\_

4) How many former employees are enrolled through COBRA or NYS Continuation of Coverage?\* \_\_\_\_\_

5) How many owners in the business are not appearing on the NYS 45? \_\_\_\_\_

6) How many employees are currently enrolled with Empire: \_\_\_\_\_

7) How many employees are eligible for health coverage through your company's benefit program: \_\_\_\_\_

\*Retirees and individuals enrolled in COBRA or state continuation of coverage are generally not counted in group size.

**Certification**

**INSURANCE FRAUD STATEMENT: Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.**

**Employer Access Acknowledgement:**

We, the employer, hereby authorize our group's appointed agent/producer/broker/general agent, if any, to use the Employer Access system of Empire to access the group's information, such as but not limited to enrollees, plan selections, and bills/invoices. Such agent/producer/broker/general agent is also hereby authorized to use the Employer Access system of Empire to make changes to the group's information on behalf of the group, such as but not limited to adding/deleting plans, adding/deleting employees, and or changing employee demographic information. These authorizations shall terminate if the group's designated agent/producer/broker/general agent changes. Check this box  ONLY if the group elects to opt-out of authorizing the agent/producer/broker/general agent to access and change the group's information on behalf of the group. Do not check the box if you consent.

By signing below I attest that my group:

- Has the number of FTEE's documented on this form, meets the definition of a Small Group and has enrolled only eligible employees as defined under federal regulation 42. U.S.C. 300gg-91(d)(5)
- Meets applicable product participation as stated in Empire's guidelines

Company officer signature <b>X</b>	Print name
Title	Date (mm/dd/yyyy)
E-mail address	Phone number

\*A small group must have at least one active full-time equivalent employee that meets the definition of employee in 42 U.S.C. 300gg-91(d)(5) but no more than 100 employees. A small group can consist of one non-spouse employee plus the business owner; a group of 100 would consist of the business owner plus 99 employees.

## 2019 NY Small Group Instructions to determine group size

A small group is defined as an employer employing an average of between 1 and 100 employees over the prior calendar year. This is determined based on what is called the federal "full-time equivalent" (FTE) employee counting method and employs the counting method in 26 U.S.C. 4980H(c)(2).<sup>1</sup> This is the same method that determines employer liability under the "Shared Responsibility for Employers" provisions of the ACA and IRC.

### Who is an employee?

**Step 1:** Calculate the number of employees who work at least 30 hours per week or 130 hours in a given month.

**How many employees based on the below criteria:** \_\_\_\_\_

To determine what constitutes an employee, employers are required to use the common law<sup>1</sup> definition of employee, which largely rests on the amount of control the employer has over the employee.

**Group size is based on the average number of full-time equivalent employees employed by the employer on business days in the prior calendar year.**

For purposes of determining a group's size, a full-time employee works at least an average of 30 hours per week (which equals at least 130 hours per month). Hours worked by part-time workers are also counted when determining FTE count.

- In determining the number of hours worked, all paid time off is counted as hours worked.
- For non-hourly employees, employers may use one of three methods to calculate hours of service:
  - Actual hours of service (a full workday for days they worked a minimum of one hour of service).
  - Days worked equivalency method in which an employee is credited with eight hours of service for each day on which the employee would be required to be paid for at least one hour of service.
  - Weeks worked equivalency method wherein an employee is credited with 40 hours of service per week for each week.

In general, if a seasonal employee works more than 120 hours per year, she/he is treated the same way as other employees. They are counted as full time or part time, depending on the number of hours they work.

Partners in partnerships and two percent S corporation<sup>2</sup> shareholders are not counted as employees (despite the fact that these individuals may be considered employees for purposes of obtaining coverage).

Every individual who is a common law employee is included (e.g., foreign nationals, union members, employees covered under other health insurance, employees of other commonly owned business entities; employees in another state).

Individuals who may be covered under the policy, but who are not common law employees are not included (for example, retirees, COBRA enrollees).

<sup>1</sup> Laws established by court decisions instead of by laws enacted by the legislature.

<sup>2</sup> Form of corporation that meets the IRS requirements to be taxed under Subchapter S of the Internal Revenue Code.

The information reflected in this document is intended only as general information to assist you in determining your group's size under the Affordable Care Act and the definition of small employer under NYS Insurance Law starting in 2016. It is not intended as legal or financial advice or opinions. Persons seeking specific guidance concerning the Affordable Care Act, the Internal Revenue Code, or New York State laws or regulations should consult with their attorney, Certified Public Accountant or other authorized consultant or advisor. These contents should not be construed as, and should not be relied upon for, legal or tax advice in any particular circumstance or fact situation.

### Step 2: Full-Time Equivalent Calculation

**How many over the prior calendar year:** \_\_\_\_\_

For employees who work fewer than 130 hours per month, the hours of service performed by all such employees in a given month are added together and divided by 120. The resulting number is the number of FTEs on a monthly basis.

- For example, if the hours of all part-time employees in a month equal 1,260 hours, that number is divided by 120 to arrive at a full-time equivalent number of 10.5 FTEs for the month.
- This calculation is done for each month, and then the average number of FTEs for the year is calculated.

### Aggregation Rules

All employers treated as a single employer under IRC section 414(b), (c), (m), or (o) are treated as one employer for purposes of determining group size. Note: employers may be familiar with these rules in connection with pension, profit sharing and retirement plans.

**Determining appropriate aggregation is a very fact-specific analysis, but generally employees are aggregated under the following circumstances**

**1. Employees of a Controlled Group of Corporations**

Within the definition of a “controlled group of corporations” are a number of potential scenarios. A parent-subsidy controlled group is one or more chains or corporations connected through stock ownership with a common parent corporation. Generally speaking, such a group is considered a parent-subsidy controlled group if 80% of the voting power or total value of shares of all classes of stock is owned by one or more of the corporations in the chain.

A brother-sister controlled group exists among two or more corporations if five or fewer persons who are individuals, estates, or trusts own stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock for each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

Finally, a combined group exists among three or more corporations each of which is a member of a parent-subsidiary group or a brother-sister group, and one of which is a common parent corporation included in a parent-subsidiary group and also is included in a brother-sister group.

The determination as to how voting power is calculated, what entities must be considered, how relationships are defined, etc. requires an intensive fact-based analysis.

**2. Employees of Partnerships, Proprietorships, Etc. Which are Under Common Control**

The principles described above which would lead to aggregation are also applicable to partnerships, proprietorships, and other non-corporate structures. The preamble states that future guidance will be issued with respect to how these principles are applied to governmental entities.

**3. Employees of an Affiliated Service Group**

The employees of various service organizations will be aggregated and considered as employees of a single employer (an “affiliated service group”) under certain circumstances. A service organization is defined as “an organization of which the principal business is the performance of services.” An affiliated service group is defined as a service organization (“first organization”) and one or more of the following groups:

- Any service organization which is a shareholder or partner in the first organization and regularly performs services for the first organization or partners with the first organization to provide services for a third party; or
- Any other organization if a significant portion of the business of such organization is in the performance of services for the first organization, other services organizations as described in (a) above, or both, and at least 10 percent of the interest in such organization is held by persons who are highly compensated individuals in the other service organizations.

**Examples in Determining Group Size**

Using prior calendar years data, ABC Company had 75 full time employees. It also had 40 part-time employees. The part-time employees each worked 80 hours per month.

Thus, for each month, ABC Company had 26 full-time equivalent employees (“FTEs”). (80 hours x 40 employees = 3,200 hours. 3,200 hours divided by 120 = 26 FTEs).

ABC Company is a large employer because it employed the equivalent of 101 employees.

Using prior calendar years data, DEF Company had 80 full-time employees. The owner of DEF company also owned 80% of GHI Company, which employed 10 full-time employees and 15 part-time employees who worked a total of 1,500 hours per month (1,500 hours divided by 120 = 12 FTEs).

Both DEF Company and GHI Company are large employers because in the aggregate, they employed 102 employees (90 full-time employees and 12 FTEs).

Using prior calendar years data, JKL Company employed 85 full-time employees. It also offered health insurance coverage to 25 retirees. JKL Company is a small group because its retirees were not counted in determining group size.

Today, MNO Company had a small group health insurance policy that covered its 20 management employees. It also had a large group health insurance policy that covered its 90 unionized employees. In 2016, MNO Company intended to continue to offer different coverage to its management and union employees.

Beginning in January, using prior calendar years data, both policies would be large group policies (even though the policy for management employees would only cover 20 employees).