

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

- Are any of your employees Vermont (VT) and/ or Hawaii (HI) residents? Yes No **If yes**, how many VT ____ **If yes**, how many HI ____
- Is group a PEO? Yes No
- How many retirees are covered as part of the group?* _____
- How many former employees are enrolled through COBRA or NYS Continuation of Coverage?* _____
- How many owners in the business are not appearing on the NYS 45? _____
- How many employees are currently enrolled with Empire: _____
- 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

Access of Group Information by Designated Agent/Producer/Broker/Agency/Brokerage/General Agency

We the employer hereby authorize our designated agent, producer, broker, agency, brokerage, general agency and their respective employees currently on file with Empire (Agent) to access our health plan information, including protected health information, on behalf of our health plan through Empire's EmployerAccess system or any other access points Empire may offer. This information may include, but is not limited to, detail about members, plan selections and bills/invoices. Our Agent is also authorized to make changes to our information on our behalf, including but not limited to adding/deleting plans and members and changing member demographic information. We will be responsible for the activities of our Agent. If our Agent on file changes, these authorizations will apply with respect to our successor Agent. Our Agent is required to maintain all original documentation and will make such documentation available to Empire upon request.

Select this box **ONLY** if the employer DOES NOT want to authorize the agent/producer/broker/general agent to access and change the group's information on behalf of the group. **Do not select this 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

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.

Company officer signature X	Print name
Title	Today's Date (MM/DD/YYYY)
Email 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.

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)." This is the same method that determines employer liability under the "Shared Responsibility for Employers" provisions of the ACA and IRC.

To verify group legitimacy and active employee status provide: Current form NYS-45-ATT, a current payroll listing for employees who are not on the NYS-45, or other supporting documentation is required. Show waiver reasons, e.g., Terminated, Spousal, Parental, Veteran, Medicare/caid.

For Owners provide: Schedule C, 1120 or 1065, and the K1's, 1125-E or Schedule G, showing 100% ownership, or Form 990 (Non-Profit).

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 law¹ 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 corporation² 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).

¹ Laws established by court decisions instead of by laws enacted by the legislature.

² 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. 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-subsidiary 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-subsidiary 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.

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).

We're here for you – in many languages

The law requires us to include a message in all of these different languages. Curious what they say? Here's the English version: "You have the right to get help in your language for free. Just call the Member Services number on your ID card." Visually impaired? You can also ask for other formats of this document.

Spanish

Usted tiene derecho a recibir ayuda en su idioma en forma gratuita. Simplemente llame al número de Servicios para Miembros que figura en su tarjeta de identificación.

Chinese

您有權免費獲得透過您使用的語言提供的幫助。請撥打您的 ID 卡片上的會員服務電話號碼。若您是視障人士，還可索取本文件的其他格式版本。

Vietnamese

Quý vị có quyền nhận miễn phí trợ giúp bằng ngôn ngữ của mình. Chỉ cần gọi số Dịch vụ dành cho thành viên trên thẻ ID của quý vị. Bị khiếm thị? Quý vị cũng có thể hỏi xin định dạng khác của tài liệu này."

Korean

귀하는 자국어로 무료 지원을 받을 권리가 있습니다. ID 카드에 있는 멤버 서비스번호로 연락하십시오.

Tagalog

May karapatan ka na makakuha ng tulong sa iyong wika nang libre. Tawagan lamang ang numero ng Member Services sa iyong ID card. May kapansanan ka ba sa paningin? Maaari ka ring humiling ng iba pang format ng dokumentong ito.

Russian

Вы имеете право на получение бесплатной помощи на вашем языке. Просто позвоните по номеру обслуживания клиентов, указанному на вашей идентификационной карте. Пациенты с нарушением зрения могут заказать документ в другом формате.

Armenian

Դուք իրավունք ունեք ստանալ անվճար օգնություն ձեր լեզվով: Պարզապես զանգահարեք Անդամների սպասարկման կենտրոն, որի հեռախոսահամարը նշված է ձեր ID քարտի վրա:

Farsi

"شما این حق را دارید تا به صورت رایگان به زبان مادری تان کمک دریافت کنید. کافی است با شماره خدمات اعضا (Member Services) درج شده روی کارت شناسایی خود تماس بگیرید." دچار اختلال بینایی هستید؟ می توانید این سند را به فرمت های دیگری نیز درخواست دهید.

French

Vous pouvez obtenir gratuitement de l'aide dans votre langue. Il vous suffit d'appeler le numéro réservé aux membres qui figure sur votre carte d'identification. Si vous êtes malvoyant, vous pouvez également demander à obtenir ce document sous d'autres formats.

Arabic

لك الحق في الحصول على مساعدة بلغتك مجاناً. ما عليك سوى الاتصال برقم خدمة الأعضاء الموجود على بطاقة الهوية. هل أنت ضعيف البصر؟ يمكنك طلب أشكال أخرى من هذا المستند.

Japanese

お客様の言語で無償サポートを受けることができます。IDカードに記載されているメンバーサービス番号までご連絡ください。

Haitian

Se dwa ou pou w jwenn èd nan lang ou gratis. Annik rele nimewo Sèvis Manm ki sou kat ID ou a. Èske ou gen pwoblèm pou wè? Ou ka mande dokiman sa a nan lòt fòm tou.

Italian

Ricevere assistenza nella tua lingua è un tuo diritto. Chiama il numero dei Servizi per i membri riportato sul tuo tesserino. Sei ipovedente? È possibile richiedere questo documento anche in formati diversi

Polish

Masz prawo do uzyskania darmowej pomocy udzielonej w Twoim języku. Wystarczy zadzwonić na numer działu pomocy znajdujący się na Twojej karcie identyfikacyjnej.

Punjabi

ਆਪਣੀ ਭਾਸ਼ਾ ਵਿੱਚ ਮੁਫਤ ਸੇਵਾਵਾਂ ਪ੍ਰਾਪਤ ਕਰਨ ਦਾ ਅਧਿਕਾਰ ਹੈ। ਬਸ ਆਪਣੇ ਆਈਡੀ ਕਾਰਡ ਤੇ ਦਿੱਤੇ ਸਿਰਵਸ ਨੰਬਰ ਤੇ ਕਾਲ ਕਰੋ। ਨਜ਼ਰ ਕਮਜ਼ੋਰ ਹੈ? ਤੁਸ ਇਸ ਦਸਤਾਵੇਜ਼ ਦੇ ਹੋਰ ਰੂਪਾਂਤਰ ਮੰਗ ਸਕਦੇ ਹੋ।

TTY/TTD:711

It's important we treat you fairly

We follow federal civil rights laws in our health programs and activities. By calling Member Services, our members can get free in-language support, and free aids and services if you have a disability. We don't discriminate, exclude people, or treat them differently on the basis of race, color, national origin, sex, age or disability. For people whose primary language isn't English, we offer free language assistance services through interpreters and other written languages. Interested in these services? Call the Member Services number on your ID card for help (TTY/TDD: 711). If you think we failed in any of these areas, you can mail a complaint to: Compliance Coordinator, P.O. Box 27401, Mail Drop VA2002-N160, Richmond, VA 23279, or directly to the U.S. Department of Health and Human Services, Office for Civil Rights at 200 Independence Avenue, SW; Room 509F, HHH Building; Washington, D.C. 20201. You can also call 1-800-368-1019 (TDD: 1-800-537-7697) or visit <https://ocrportal.hhs.gov/ocr/portal/lobby.jsf>