Effective January 1, 2017

(This guide applies to coverage issued or renewed prior to January 1, 2018. Please visit the broker support library or contact your Empire Sales representative for a current online version of this guide.)

Enroll groups 1-100* in three steps:

1. Determining small group size
2. Documentation requirements
3. Submit the paperwork

*A small group must have at least 1 active, "full-time equivalent" (FTE) employee (working at least 20 hours per week), but no more than 100 FTE employees, applying the FTE counting method under federal law (26 U.S.C. 4980H(c)(2). 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.

Plans covered in this guide:

- PPO plans
- EPO plans
- HMO plans

Step 1: Determining small group size

Your group must meet the following requirements:

Group size

Small groups are defined as businesses and other organizations that have between 1-100 active "full-time equivalent" or "FTE" employees/members. 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 FTE employees of the employer. Common law employees who are "employees" as defined in 42 U.S.C. 300gg-91(d)(5) are eligible.

In 2016, new rules changed how we determine group size and who is eligible. All employees working at least an average of 30 hours per week are included when determining group size using the "full-time equivalent" (FTE) counting method under the federal law.* This requires that both full time employees

working at least 30 hours per week or 130 hours in a given month be counted. Hours worked by part-time employees are also counted to determine the number of FTEs.

* This is the same method used to determine employer liability under the "Shared Responsibility for Employers" rules under the Affordable Care Act and the Internal Revenue Code. See 26 U.S.C. 4980H(c)(2).

To determine who constitutes an employee, employers are required to use the common law definition of employee, which largely depends on the amount of control the employer has over the employee. **Note:** Retiree-only and COBRA-only groups are not eligible for coverage.

Employee status

Eligible employees:

Determining the group's size is different from determining who is an eligible employee. The FTE (full-time equivalent) counting method is used to determine group size (see Appendix A "Determining Group Size").

The following are eligible employees:

- Active FTE employees working at least 20 hours per week.
- Elected public officials of a county, municipality or school district for municipal group.
- Owners and bona-fide partners, officers and directors, if engaged in the operation of the business at least 20 hours per week and receiving compensation, paid board members, COBRA employees and retirees* (must be in addition to at least 1 enrolled active full-time FTE employee).

  * Retirees must maintain continuous enrollment with Empire through a group sponsored by their former employer with whom the retiree was covered as an active employee with no interruption. A retiree cannot be the sole eligible employee.

- Temporary employees, consultants, independent contractors, if they meet the definition of "employee" under NY Insurance Law § 4235(d), as amended to have the meaning of "employee" in federal law 42 U.S.C. 300gg-91(d)(5).

Notes:

- Employees who do not elect coverage are counted as eligible.
- Dependents don't count toward group size.
- COBRA employees are not counted toward group size, but may elect to continue coverage through the group plan, if eligible.

Ineligible employees:

- Employees with valid waivers are not counted as eligible. Valid waivers include coverage through Medicare, Medicaid, Veterans Administration, Spousal and/or Parental coverage.
- Part-time (under 20 hours) workers are not eligible, even though part-time workers are factored into FTE calculation to determine group size. (See Appendix A).
- Consultants and independent contractors (1099 employees), temporary workers, directors and officers who are not owners, partners or employees, union members covered by a union-sponsored health plan, are not eligible unless they meet the definition of "employee" under NY Insurance Law § 4235(d), as amended to have the same meaning of "employee" set forth in federal law 42 U.S.C. 300gg-91(d)(5).

- Foster children and grandchildren are not eligible for coverage.

Eligible Dependents:

- Dependents, including spouses and domestic partners, are eligible under husband and wife or family policies. Natural children, legally adopted children, unmarried disabled children, stepchildren, newborn children, and proposed adoptive children are eligible without regard to financial dependence, residency with the member, student status or employment.
- Coverage includes children chiefly dependent upon the member for support if the member has been appointed the legal guardian by a court order.
- An unmarried dependent child incapable of self-sustaining employment due to mental illness, developmental disability, mental retardation (as defined by NY Mental Hygiene Law), or physical handicap and who became so before the age at which the child's coverage would otherwise terminate and who is chiefly dependent upon the member for support and maintenance, will remain covered while the coverage remains in force and the child is in such condition regardless of age. See benefit plan for details.
- Covered children are covered until age 26 regardless of financial dependence, residency, student status, employment, marital status, or eligibility for other coverage.
- Covered dependents who are not married may be covered from age 26 through age 29 through two different options (1) Young Adult Option (COBRA-like coverage elected by dependents) or (2) Make-Available Rider (purchased at the option of the employer).
- Dependents, including legal spouses, under family policies are subject to eligibility criteria in Evidence of Coverage. Special rules apply to adoptive newborns and domestic partners.
- Age, sex, health status or occupations are not considered in determining eligibility.
- Empire may request proof needed to confirm eligibility status.

Special note: Empire cannot issue a Small Group policy to a group with more than 25 VT residents. Restrictions also apply to contracts issued to HI residents.

Participation Requirements:

Minimum participation requirements apply to non-HMO plans, except as prohibited by law, subject to annual waiver period pursuant to 45 C.F.R. 147.104.

EPO and PPO Minimum Participation:

60% of total eligible employees after valid waivers except during annual waiver period when not permitted by applicable law.

HMO Minimum Participation:

No participation guidelines. (All small groups must have at least one active FTE employee; an "employee" does not include the sole owner of a business or a spouse of the business owner).

Employer location

A small group must be located in our 28-county service area, consistent with restrictions under our license issued by the Blue Cross and Blue Shield Association*, and must have employees who live, work or reside in our service area.

Rates are based on employer location. Empire's service area is divided into five regions for all medical products, which consists of the following New York counties:

Region 1: Albany, Columbia, Fulton, Green, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Warren and Washington

Region 3: Delaware, Dutchess, Orange, Putnam, Sullivan and Ulster

Region 4: Bronx, Kings, New York, Queens, Richmond, Rockland and Westchester

Region 7: Clinton and Essex

Region 8: Nassau and Suffolk

* The Blue Cross and Blue Shield Association is a national federation of 36 independent, community-based and locally operated Blue Cross® and Blue Shield® companies. The Association owns and manages the Blue Cross and Blue Shield trademarks and names in more than 170 countries and territories around the world. The Association grants licenses to independent companies to use the trademarks and names in exclusive geographic areas. www.bcbs.com/about-the-association

Rating guidelines

For all medical products:

- Rates are based on employer location.
- Only four-tier pricing is available.

Out-of-Area Care

When seeking care outside Empire's 28 county service area, Empire's Small Group EPO and PPO member are supported by the national BlueCard® network, offered through the Blue Cross and Blue Shield Association.

HMO members utilizing the Pathway network have access to Away from Home Care guest membership, offered through the Blue Cross and Blue Shield Association.

Step 2: Documentation Requirements

This section outlines documentation Empire needs to verify group legitimacy and active employees. We reserve the right to ask for additional or alternate documentation.

Business verification requirements

- The latest submitted NYS-45 -ATT (NYS Quarterly Combined Withholding and Wage Report), which should show status of all employees (terminated, part time, union, owner, etc.).
- When the NYS-45-ATT is not available, for certain classes of other individuals and to verify exclusion status, a current payroll listing or other supporting documentation.

- When a group has employees working outside of Empire's service area, the Quarterly Wage Report or equivalent state tax filing forms, with the address of the out-of-area site, which shows status of all employees (terminated, part time, union, owner, etc.).
- For nonprofit businesses, the IRS tax exemption notification is required (Form 990 or equivalent).
- For stand-alone HMO enrollments, the Form 941 and a copy of the most recent payroll are required.
- A small group may enroll a new member via the employer e-business website with online certification of employee eligibility and enrollment. Upon review, subsequent paper submission of proof of employment may be requested. Newly eligible employees have an enrollment period of at least 30 days.

Newly formed businesses

If you are a new business, we require the following:

- SS-4 or filing receipt.
- A complete and current payroll listing containing company name, employee name and SSN or other ID number.
- If payroll is not available, a letter from an authorized CPA, attorney or authorized officer of the company, stating relationship to the company and explaining why the NYS-45 is not available, listing the group's federal tax ID number, all current owner's and/or employee's names, SSN or other official ID number, and indication of eligibility status.
- For nonprofit businesses, the IRS tax exemption notification (Form 990 or equivalent).

Labor union groups

- The union must have been in existence for at least two years.
- Employee eligibility is based on active union membership.
- The labor union must be the policy contract holder.
- The union must be the exclusive representative for collective bargaining purposes.

New employees not listed on NYS-45

Payroll stub or canceled payroll check (including company name, employee name and Social Security number), and letter indicating hours worked (as applicable.)

Owners, partners, elected officials

If not listed on payroll or NYS-45, acceptable forms include completed Schedule C.

Schedule K-1, Form 851, Form 990, Form 1120 including Schedule E, other tax documentation that substantiates proof of eligibility.

Group Coverage termination

- Coverage will be terminated for failure to pay premiums by the end of the grace period; coverage will be terminated as of the paid-to date.
- Coverage may be terminated if a non-HMO group fails to meet minimum participation requirements, where permitted. This will be assessed periodically as permitted by governing law and regulation.
- Coverage will be terminated upon renewal if a group falls below the minimum eligibility requirement of 1 or exceeds the maximum eligible requirement of 100. Conversion privileges to direct payment may apply.
- Coverage will be terminated if the organization ceases to exist.
- Coverage will be terminated if the group transfers to another carrier.
- Coverage will be terminated if the group fails to respond to requests for re-credentialing information.

Coverage will be renewed in accordance with the terms of the governing group contract entered into by the employer and the carrier, which shall reflect current state and federal law or regulation relating to guaranteed renewability of health insurance coverage.

Coverage Renewal

A group will be renewed unless terminated because of the following:

- Fraud or misrepresentation of material facts.
- If no employee lives, works or resides in the service area.
- Lapsed membership by a participating group in the association if association group coverage
- Inability to meet the definition of permissible group under applicable state and federal requirements.
- Empire discontinues a class of contract or withdraws from the market.

Fluctuation in the size of the group mid-year does not affect eligibility.

Special Enrollments

Employees and dependents can enroll within 31 days of the loss of coverage in another group plan if terminated because the member or dependent is no longer eligible for coverage under the other group health plan due to:

- Termination of employment;
- Termination of the other group health plan;
- Death of the spouse;
- Legal separation, divorce or annulment;
- Reduction of hours of employment;
- Employer contributions toward the group health plan were terminated; or
- A child no longer qualifies for coverage as a child under the other group health plan.

An employee or dependent can also enroll 31 days from exhaustion of the member's COBRA or continuation coverage.

We must receive notice and premium payment within 31 days of the loss of coverage.

A member or dependent can also enroll within 31 days of any of the following events:

- Loss of eligibility for Medicaid or a state child health plan; or
- Becoming eligible for Medicaid or a state child health plan.

The effective date depends on when we receive the application:

- If received between the 1st and 15th day of the month, coverage begins on the 1st day of the following month.
- If received between the 16th and the last day of the month, coverage begins on the 1st day of the 2nd month.
- If we receive notice of a marriage within 31 days, coverage for the spouse starts on the date of marriage. Otherwise, the member must wait until the group's next open enrollment period to add the spouse.
- If we receive notice of a newborn or adopted newborn child within 60 days thereafter, coverage starts at the moment of birth; otherwise the member must wait until the next open enrollment period to add the child. See benefit contract for details regarding adopted newborn children. The member must switch to parent and child/children or family coverage, if not already in place, and pay any additional premium within 60 days of the birth/adoption for coverage to start at the moment of birth

Step 3: Submit paperwork

***Online submissions*:** Online submissions may be completed in entirety through the online portal (including the Online employer and employee enrollment functions.) New business will have an effective date of either the 1st or 15th of the month.

***Paper submissions*:** New business will have an effective date of the 1st of the month only (mid-month effective dates for new business are not allowed for paper submissions).

Sales package requirements:

Package requirements for new business

- Be sure to fully and accurately complete the application for timely group setup.
- Provide all requested information, including a quote signed by the group representative indicating the plan design with any selected optional riders.
- Include copies of all documentation (as described in Step 2) with the Employer and Employee applications.
- All new groups must submit first premium on a company check or through Electronic Funds Transfer (separate form required).

Package requirements for renewing business:

- Be sure to fully and accurately complete the application for timely member setup.
- Include copies of all credentialing documentation (as described in Step 2) with the Employer and Employee applications.
- When requesting changes within the same plan, the following documentation is required: a letter (on group letterhead with GBA signature) indicating the change or the Small Group Employer Benefit Plan Change Form and signed quote.
- When requesting a product change (e.g., HMO to EPO) or adding a new plan or product, the following documentation is required: Small Group Employer Benefit Plan Change Form, quote signed by the group representative and supporting documentation.

Other helpful information:

- Changes in purchased riders, rate structure, employee waiting periods, employer premium contributions or benefits may be made only on the group's renewal date. Employers may set a waiting period for new employees from 0 to 90 days.
- The group is required to promptly notify Empire if it ceases to qualify as a small group of between 1-100 active FTE employees.
- Changes in group location, if impacting rate region, will have rate changes reflected upon renewal.

Other important information:

New Business Paper Submissions:

Please send your completed new business sales packages to:

Empire BlueCross BlueShield
3 Huntington Quadrangle
Melville, NY 11747
Attn: Enrollment & Billing, 3rd floor
Or, email to: smallnewbusinesslocal@empireblue.com

Empire Support

Small Group Contact Center:

We're dedicated to helping brokers write new business for Small Groups. Broker Relations is available Monday through Friday from 8:30 a.m. to 5 p.m. at 1-866-422-2583.

Submit renewals to:

Fax: 1-800-780-1224

Email: Maintenancelocal@empireblue.com

Broker Website

For the online eligibility guides, plan information, quoting tools, online renewals and forms, please visit **empireblue.com** and select Producers.

Appendix A – Determining Group Size

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.

For policies issued or renewed on or after January 1, 2016, 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.

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.

To determine what constitutes an employee, employers are required to use the common law[1] 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[2] 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.

Step 2: Full-Time Equivalent Calculation

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.