

Oregon Insurance Division Guidance on Definition of Small Employer

Issue background

On October 7, 2015 President Obama signed House Resolution 1624, also known as the Protecting Affordable Coverage for Employees Act (PACE Act). The bill had bipartisan support in both the House and the Senate. The PACE Act revised the definition of small employer for purposes of the Patient Protection and Affordable Care Act (PPACA), changing the number of employees that equate to a small employer back to 1-50 employees rather than 1-100. The PACE Act retains the smaller group size indefinitely, but does give states the option to extend the definition of small employer to 1-100.

In the 2015 Legislative Session, Oregon House Bill 2466 amended the definition of small employer to match the federal definition but also granted rulemaking authority for the Oregon Insurance Division (OID) to adopt rules defining small employer differently in the event the United States Department of Health and Human Services, the United States Department of Labor, or the United States Department of the Treasury issued guidance on the subject.¹ At the time HB 2466 passed, federal law still defined a small employer as an employer with 1-100 employees.

Due to regulatory time constraints and inaction by federal agencies, in August 2015 the OID and the Healthcare Reform Rulemaking Advisory Committee decided to move ahead with defining small employer as 1-100 employees.

Division position

Because President Obama signed the PACE Act, the OID and the Healthcare Reform Rulemaking Advisory Committee decided to reconsider the definition of small employer. After extensive discussion with the committee and in response to nearly unanimous public comments asking the OID to define small employer as an employer with 1-50 employees for at least the next two years, the OID has decided to adopt rules to change the definition set forth in HB 2466 to return to the 1-50 employees definition. The OID will adopt a temporary rule to that effect not later than October 16, 2015. The temporary rule will take effect upon adoption and remain in force until replaced by a permanent rule. Because the definition of small employer will remain as 1-50 after January 1, 2016, there will be no need for expanded transitional health benefit plans as authorized by HB 2466 and the OID will include a repeal of rules related to those expanded transitional plans in the October 16, 2015 temporary rule. The OID will also provide guidance as needed to insurers who began the process of implementing transitional plans.

Next steps

On Friday, October 16, the Insurance Division will adopt temporary rules defining a “small employer” as an employer with 1-50 employees, repealing the expanded transitional plan rule and adopting as rule the previously issued counting methodology guidance. Permanent rules will follow after consideration by the Healthcare Reform Rulemaking Advisory Committee.

¹ Additionally, House Bill 2466 required the Oregon Insurance Division to adopt an employee counting methodology consistent with the methodology used by the marketplace. The employee counting methodology adopted utilizes a full time equivalent (FTE) count. An explanation of the counting methodology can be found at <http://www.oregon.gov/DCBS/Insurance/legal/committees-workgroups/Documents/healthcare-reform/groupsizes-determining-methodology.pdf>.