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ACA Advisor

What you need to know about the Affordable Care Act



State Guide to Small Employer Definition

On October 7, 2015, the Protecting Affordable Coverage for Employees (PACE) Act amended the Patient Protection and Affordable Care Act (ACA) and the Public Health Service Act (PHSA) to revise the definition of small employer for purposes of the market reforms under the ACA and PHSA. The PACE Act generally defines a small employer as an employer who employed an average of 1 to 50 employees on business days during the preceding calendar year. However, states have the option of extending the definition of small employer to include employers with up to 100 employees.

Following is a summary of the small employer definitions by state. Employers should consult with their broker or attorney on applicable state laws.



State	2015 Definition	Definition beginning Jan. 1, 2016	Notes	Count Methodology
Alabama	2 to 50 employees on at least 50% of its working days during the preceding calendar quarter, with a normal work week of 30 or more hours.	2 to 50 employees on at least 50% of its working days during the preceding calendar quarter, with a normal work week of 30 or more hours.	See AL Code § 27-52-21 (2018) .	Eligible employee – An employee who works on a full-time basis with a normal work week of 30 or more hours, except that at the employer's sole discretion, the term shall also include an employee who works on a full-time basis with a normal work week of anywhere between at least 17.5 and 30 hours, so long as this eligibility criterion is applied uniformly among all of the employer's employees. Alabama Small Employer Allocation Program Regulation § 482-1-116-.04(7) .
Alaska	2 to 50 employees on average on the business days during the preceding calendar year and that employs at least 2 employees on the first day of a health benefit plan year.	2 to 50 employees on average on the business days during the preceding calendar year and that employs at least 2 employees on the first day of a health benefit plan year.	See AK Stat § 21.54.500 (27) (2018) .	Average Total Number of Employees (ATNE)
Arizona	2 to 50 eligible employees on a typical business day during any one calendar year.	2 to 50 eligible employees on a typical business day during any one calendar year.	See A.R.S. 20-2301 A.21. (2018) .	Eligible. See A.R.S. 20-2307 A. (2018) .
Arkansas	2 to 50 employees on during the preceding year and who employs at least 2 employees on the first day of the plan year.	2 to 50 employees on during the preceding year and who employs at least 2 employees on the first day of the plan year.	See A.C.A. § 23-86-303 (34) (2018) . Up to 50, but allowed groups to use up to 100 (only during transition year) for calculating 2015 Medical Loss Ratio (MLR) in small group. See Arkansas Insurance Department Bulletin 15A-2015 .	Average Total Number of Employees (ATNE). "Employee" has the meaning given the term under section 3(6) of the Employee Retirement Income Security Act of 1974.



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California	1 to 50 employees on at least 50% of its working days during the preceding calendar quarter or preceding calendar year, the majority of whom were employed within this state.	1 to 100 employees on at least 50% of its working days during the preceding calendar quarter or preceding calendar year, the majority of whom were employed within this state.	See CA Health & Safety Code § 1357.500 (k) (2018).	Full Time Equivalent (FTE) and see CA Health & Safety Code § 1357.500 (c) (2018).
Colorado	1 to 50 employees on average on business days during the immediately preceding calendar year.	1 to 100 employees on average on business days during the immediately preceding calendar year.	See C.R.S. 10-16-102 (61) (2018). See Colorado Department of Regulatory Agencies 2016 Health Insurance Plans & Premiums FAQs . See CMS State Specific Rating Variations .	Full Time Equivalent (FTE)
Connecticut	1 to 50 employees on average on business days during the preceding calendar year and employs at least 1 employee on the first day of the group health insurance plan year.	1 to 100 employees on average on business days during the preceding calendar year and employs at least 1 employee on the first day of the group health insurance plan year, except the commissioner may postpone this definition (of 1 to 100 employees) beyond January 1, 2016, to be consistent with any postponement made by HHS under the ACA, as amended from time to time.	See Conn. Gen. Stat. Ch. 700c § 38a-564 (4) (2018). See the State of Connecticut Insurance Department Bulletin No. HC-106 .	Full Time Equivalent (FTE)



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Delaware	1 to 50 eligible employees on at least 50% of its working days during the preceding calendar quarter, the majority of whom were employed within this state.	1 to 50 eligible employees on at least 50% of its working days during the preceding calendar quarter, the majority of whom were employed within this state.	See 18 Del.C. § 7202 (33) (2018) . See Delaware Department of Insurance Domestic/Foreign Insurers Bulletin No. 79 .	Eligible employee – An employee who works on a full-time basis and has a normal work week of 30 or more hours.
Florida	<p>For grandfathered plans, 1 to 50 eligible employees on average on business days during the preceding calendar year, the majority of whom were employed in this state, and employs at least 1 employee on the first day of the plan year, and has its principal place of business in the state.</p> <p>For non-grandfathered plans, 1 to 50 employees on business days during the preceding calendar year and employs at least 1 employee on the first day of the plan year.</p>	<p>For grandfathered plans, 1 to 50 eligible employees on average on business days during the preceding calendar year, the majority of whom were employed in this state.</p> <p>For non-grandfathered plans, 1 to 50 employees on average on business days during the preceding calendar year, and employs at least 1 employee on the first day of the plan year, and has its principal place of business in this state.</p>	See FL Stat § 627.6699 (3)(v) (2018) .	Eligible employee – An employee who works full time, having a normal work week of 25 or more hours, and who has met any applicable waiting-period requirements or other requirements of the Florida Employee Health Care Access Act.
Georgia	2 to 50 employees on average on business days during the preceding calendar year and that employs at least 2 employees on the first day of the rating period.	1 to 50 employees on average on business days during the preceding calendar year and that employs at least 1 employee on the first day of the rating period.	See GA R&R 120-2-10-.12(1)(l) (2019) . See State of Georgia Office of Insurance and Safety Fire Commissioner Bulletin 15-EX-3	Full Time Equivalent (FTE)



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Hawaii	50 or fewer full-time employees	50 or fewer full-time employees	See Hawaii Department of Commerce and Consumer Affairs Insurance, Hawaii Small Employer/Small Business FAQs.	Full-time employees (20 or more hours a week for four consecutive weeks)
Idaho	2 to 50 eligible employees on average on business days during the preceding calendar year and employs 2 to 50 eligible employees on the first day of the plan year, the majority of whom were and are employed within the state.	2 to 50 eligible employees on average on business days during the preceding calendar year and employs 2 to 50 eligible employees on the first day of the plan year, the majority of whom were and are employed within the state.	See ID Code § 41-4703(28) (2018) .	Eligible employee – Works on a full-time basis and has a normal work week of 30 or more hours per week or by agreement with the employer and carrier, an employee who works between 20 and 30 hours a week.
Illinois	2 to 50 employees on average on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.	2 to 50 employees on average on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.	See 215 ILCS 97/5 (2018) .	Average Total Number of Employees (ATNE). "Employee" has the meaning given that term under Section 3(6) of the Employee Retirement Income Security Act of 1974.
Indiana	2 to 50 eligible employees on at least 50% of the working days during the preceding calendar year, the majority of whom work in Indiana.	For grandfathered plans, 2 to 50 eligible employees on at least 50% of the working days during the preceding calendar year, the majority of whom work in Indiana. For non-grandfathered plans, 1 to 50 employees on at least 50% of the working days during the preceding calendar year.	See IC § 27-8-15-14 (2019) . See Indiana Small Employer Definition Nov. 30, 2015 Bulletin 221 .	Eligible employee – An individual who is employed to work at least 30 hours each week; and who meets an applicable waiting period required by the employer.



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Iowa	1 to 50 full-time equivalent eligible employees on at least 50% of the employer's working days during the preceding year.	1 to 50 full-time equivalent eligible employees on at least 50% of the employer's working days during the preceding year.	See Iowa Code Chapter 513B.2, 18 (2019) .	Eligible employee – An employee who works on a full-time basis and has a normal work week of 30 hours or more.
Kansas	2 to 50 eligible employees on at least 50% of the employer's working days during the preceding year, the majority of whom were employed within the state.	2 to 50 eligible employees on at least 50% of the employer's working days during the preceding year, the majority of whom were employed within the state.	See KS Stat § 40-2209d(w) (2018) . See Kansas Insurance Department, Insurance Information for the Small Business Owner Document .	Eligible employee – An employee who works on a full-time basis and has a normal work week of 30 or more hours.
Kentucky	2 to 50 employees on average on business day during the preceding calendar year and employs at least 2 employees on the first day of the plan year.	2 to 50 employees on average on business day during the preceding calendar year and employs at least 2 employees on the first day of the plan year.	See KY Rev Stat § 304.17A-005(41) (2019) .	Average Total Number of Employees (ATNE)
Louisiana	1 to 50 employees on average on business days during the preceding calendar year and employs at least 1 employee on the first day of the plan year.	1 to 50 employees on average on business days during the preceding calendar year and employs at least 1 employee on the first day of the plan year. (Transition relief available)	See LA Rev Stat § 22:1061(5)(e)(iii) (2018) . Transition relief available for rating purposes for plans renewed, issued, or issued for delivery on or before Dec. 31, 2016. See Louisiana Department of Insurance Bulletin 2015-07 .	Average Total Number of Employees (ATNE)



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Maine	50 or fewer eligible employees during the preceding calendar year.	50 or fewer eligible employees during the preceding calendar year.	24-A ME Rev Stat § 2808-B (2018) . See Maine Bureau of Insurance Bulletin 409 .	Eligible employee – An employee who works on a full-time basis, with a normal work week of 30 hours or more. An employer may elect to treat part-time employees who work a normal work week of 10 hours or more as eligible employees, as long as at least one employee works a normal work week of 30 hours or more. An employer may elect to treat employees who retire from the employer's employment as eligible employees.
Maryland	50 or fewer employees on average during the preceding calendar year.	50 or fewer employees on average during the preceding calendar year.	MD Ins Code § 31-101(z) (2019) . See Maryland Insurance Administration Bulletin 15-27 .	Full Time Equivalent (FTE)
Massachusetts	1 to 50 eligible employees on at least 50% of its working days during the preceding year, the majority of whom worked in the state.	1 to 50 eligible employees on at least 50% of its working days during the preceding year, the majority of whom worked in the state.	See MA Gen Laws Ch 176J § 1 (2017) .	Eligible employee – An employee who works on a full-time basis and has a normal work week of 30 or more hours and is hired to work for a period of not less than 5 months.



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Michigan	2 to 50 eligible employees on at least 50% of its working days during the preceding and current calendar years.	Beginning Jan. 1, 2018: 1 to 50 full-time employees on average during the preceding calendar year and employs at least 1 employee on the first day of the plan year. Prior to Jan. 1, 2018: Same definition as 2015 definition.	MI Comp L § 500.3701(q) (2019) . No anticipated changes. See State of Michigan Department of Insurance and Financial Services Order No. 15-044-M	"Eligible employee" means an employee who works on a full-time basis with a normal workweek of 30 or more hours. Eligible employee includes an employee who works on a full-time basis with a normal workweek of 17.5 to 30 hours, if an employer so chooses and if this eligibility term is applied uniformly among all of the employer's employees and without regard to health status-related factors. "Full-time employee" reflects the ACA definition of full-time employee or full-time equivalent.
Minnesota	1 to 50 current employees on average on business days during the preceding calendar year and employs at least 1 current employee on the first day of the plan year.	1 to 50 current employees on average on business days during the preceding calendar year and employs at least 1 current employee on the first day of the plan year.	See MN Stat § 62L.02 Subd. 26 (2018) . See Minnesota Department of Commerce and Department of Health October 22, 2015 Letter .	Current employee – An individual employed for at least 20 hours per week.
Mississippi	No more than 50 eligible employees employed on at least 50% of its working days during the preceding year.	No more than 50 eligible employees employed on at least 50% of its working days during the preceding year.	See MS Code § 83-63-3 (m) (2018) . See Mississippi Insurance Department Oct. 8, 2015, Press Release .	Eligible employee – An employee who works on a full-time basis and has a work week of 32 or more hours.



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Missouri	2 to 50 eligible employees on average on business days during the preceding calendar year and employs at least 2 employees on the first day of the plan year	2 to 50 eligible employees on average on business days during the preceding calendar year and employs at least 2 employees on the first day of the plan year.	See MO Rev Stat § 379.930 (34) (2018) .	Eligible employee – An employee who works on a full-time basis and has a work week of 30 or more hours.
Montana	2 to 50 eligible employees during the preceding calendar year and employed at least 2 employees on the first day of the plan year.	2 to 50 eligible employees during the preceding calendar year and employed at least 2 employees on the first day of the plan year.	See MT Code § 33-22-1803 (20) (2017) .	Eligible employee – An employee who works on a full-time basis with a normal work week of 30 hours or more, except that at the sole discretion of the employer, the term may include an employee who works on a full-time basis with a normal workweek of between 20 and 40 hours as long as this eligibility criteria is applied uniformly among all of the employer's employees.
Nebraska	2 to 50 eligible employees on at least 50% of its working days during the preceding calendar quarter, a majority of whom were employed within the state.	2 to 50 eligible employees on at least 50% of its working days during the preceding calendar quarter, a majority of whom were employed within the state.	See NE Code § 44-5253 (2018) .	Eligible employee – An employee who works on a full-time basis and has a normal work week of 30 or more hours.
Nevada	2 to 50 employees on average on business days during the preceding calendar year and at least 2 employees on the first day of the plan year.	1 to 50 employees on average on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year.	See NRS 689C.095 (2018) . See State of Nevada Division of Insurance Bulletin 15-007 .	Full Time Equivalent (FTE)



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New Hampshire	1 to 50 employees on average on business days during the previous calendar year.	1 to 50 employees on average on business days during the previous calendar year.	See NH Rev Stat § 420-G:2 XVI (2017). See State of New Hampshire Insurance Department Bulletin regarding Docket No. INS-15-061-AB.	Full Time Equivalent (FTE)
New Jersey	1 to 50 eligible employees on average on business days during the preceding calendar year and employs at least 2 employees on the first day of the plan year, and the majority of the employees are employed in New Jersey.	Beginning January 1, 2017, 1 to 50 eligible employees on average on business days during the preceding calendar year and employs at least 1 employee on the first day of the plan year, and the majority of the employees are employed in New Jersey.	See NJ Admin Code §11:21-1.2 (2019). See State of New Jersey Department of Banking & Insurance Small Employer Health Benefits Program Buyer's Guide.	Eligible employee - Full-time employee who works a normal work week of 25 or more hours. As used in the definition of small employer, full-time means an employee works 30 or more hours per week.
New Mexico	2 to 50 employees on average on business days during the preceding calendar year and employs at least 2 employees on the first day of the plan year.	2 to 50 employees on at least 50% of its working days during either of the two preceding calendar years	See NM Stat § 59A-23C-3(N) (2019).	Average Total Number of Employees (ATNE). Employee means that term as defined in Section 3(6) of ERISA.
New York	1 to 50 employees	1 to 100 employees on average on business days during the preceding calendar year.	See NY Ins L § 3231(a) (2019). New York will not adopt the Department of Health and Human Services transitional policy permitting groups with 51 to 100 employees to retain their existing large group coverage. See NY Department of Financial Services FAQ.	Full Time Equivalent (FTE)



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North Carolina	In connection with a non-grandfathered non-transitional group health plan with respect to a calendar year and a plan year, an employer who meets the definition of small employer under 42 U.S.C. 18024(b).	In connection with a non-grandfathered non-transitional group health plan with respect to a calendar year and a plan year, an employer who meets the definition of small employer under 42 U.S.C. 18024(b).	See NC Gen Stat § 58-50-110(22b) (2018) .	Full Time Equivalent (FTE)
North Dakota	2 to 50 employees on average on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.	1 to 50 employees on average on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year.	See ND Century Code 26.1-36.3-01 (2019) . See North Dakota Insurance Department Bulletin 2015-3	Full Time Equivalent (FTE)
Ohio	2 to 50 eligible employees on average on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.	2 to 50 eligible employees on average on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.	See Ohio Rev Code § 3924.01 (N)(1) (2018) . See Ohio Department of Insurance Bulletin 2015-04 .	Eligible employee – An employee who works a normal work week of 30 or more hours.
Oklahoma	No more than 50 eligible employees on at least 50% of its working days during the preceding calendar quarter, the majority of whom were employed within the state.	No more than 50 eligible employees on at least 50% of its working days during the preceding calendar quarter, the majority of whom were employed within the state.	See 36 OK Stat § 36-6512, 26 (2018) . Effective November 1, 2019, see 36 OK Stat § 36-6512, 25 (2019) . See Oklahoma Insurance Department Bulletin No. LH 2015-02 .	Eligible employee – An employee who works on a full-time basis, or at the option of the employer, an employee who works on a part-time basis with a normal work week of 24 or more hours.



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Oregon	Small employer has the meaning given that term in 42 U.S.C. 18024 unless otherwise prescribed by the department by rule in accordance with guidance issued by HHS, DOL, or the Department of Treasury.	1 to 50 full-time equivalent employees on average on business days during the preceding calendar year and who employs at least 1 full-time equivalent employee on the first day of the plan year.	See OR Rev Stat §743B.005(25)(2017) .	Full Time Equivalent (FTE). See Oregon Department of Consumer and Business Services, April 6, 2016, Exhibit A to OAR 836-053-0015 .
Pennsylvania	Small employer has the meaning given that term in section 2791(e)(5) of the Public Health Services Act.	2 to 50 employees. Small employer has the meaning given that term in section 2791(e)(5) of the Public Health Services Act.	See PA Act 134 of 2011 .	Full Time Equivalent (FTE).
Rhode Island	No more than 50 eligible employees on at least 50% of its working days during the preceding calendar quarter, the majority of whom were employed within this state.	No more than 50 eligible employees on at least 50% of its working days during the preceding calendar quarter, the majority of whom were employed within this state.	See RI Gen L § 27-50-3 (kk) (2018) .	Eligible employee – An employee who works on a full-time basis with a normal work week of 30 or more hours, except that at the employer's sole discretion, the term shall also include an employee who works on a full-time basis with a normal work week of anywhere between at least 17.5 and 30 hours, so long as this eligibility criteria is applied uniformly among all of the employer's employees and without regard to any health status-related factor.



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South Carolina	On 50% of its working days during the preceding calendar year, employed no more than 50 eligible employees or employed an average of not more than 50 employees on days business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year.	On 50% of its working days during the preceding calendar year, employed no more than 50 eligible employees or employed an average of not more than 50 employees on days business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year.	See SC Code § 38-71-1330 (18) (2018) . See South Carolina Department of Insurance Information for Small Businesses and Bulletin Number 2015-08	Eligible employee – An employee who works on a full-time basis and has a normal work week of 30 or more hours; or who is a licensed real estate person engaged in the sale, leasing, or rental of real estate for a licensed real estate broker on a straight commission basis, who has signed a valid independent contractor agreement with the broker who works on a full-time basis and has a normal workweek of thirty or more hours.
South Dakota	2 to 50 employees on average on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year.	1 to 50 employees on average on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year.	See SD Codified L § 58-18B-1 (11) (2019) and ARSD 20:06:40:75(4) . See South Dakota Division of Insurance Fall 2015 newsletter .	Eligible employee – An employee who works on a permanent basis and has a normal work week of 30 or more hours.
Tennessee	2 to 50	1 to 50 employees on average on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year.	See TN Code § 56-7-2203 (2018) . See Tennessee Department of Commerce and Insurance Bulletin No. 15-01 .	Eligible employee – An employee who works for a small employer on a full-time basis, with a normal work week of 30 or more hours.
Texas	2 to 50 employees on average on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.	2 to 50 employees on average on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.	See TX Insurance Code Title 8, Subtitle B, Chapter 1501.002(14) (2017) See Texas Department of Insurance FAQs for Health Carriers .	Average Total Number of Employees (ATNE). Eligible employee – Employee who works on a full-time basis and who usually works at least 30 hours a week.



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Utah	1 to 50 eligible employees on average on business days during the preceding calendar year and employs at least 1 employee on the first day of the plan year.	1 to 50 eligible employees on average on business days during the preceding calendar year and employs at least 1 employee on the first day of the plan year.	See UT Code § 31A-1-301 (174) (2018) . See State of Utah Insurance Department Bulletin 2015-9 .	Eligible employee – An employee or owner who works on a full-time basis and has a normal work week of 30 or more hours; and if the individual is included under a health plan of a small employer: a sole proprietor, a partner in a partnership, or an independent contractor.
Vermont	Not more than 50 employees on average on working days during the preceding calendar year	Not more than 100 employees on average on working days during the preceding calendar year.	See 33 V.S.A. § 1811 (3)(A)-(B) (2018) .	Full Time Equivalent (FTE)
Virginia	1 to 50 eligible individuals on average on business days during the preceding calendar year and who employs at least 1 eligible individual on the date the policy becomes effective.	1 to 50 employees on average on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year.	See VA Code § 38.2-3431 (2018) .	Average Total Number of Employees (ATNE). "Employee" has the meaning given such term under section 3(6) of the Employee Retirement Income Security Act of 1974.
Washington	1 to 50 employees on average during the previous calendar year and employed at least 1 employee on the first day of the plan year.	1 to 50 employees on average during the previous calendar year and employed at least 1 employee on the first day of the plan year.	See Wash. Rev. Code § 48.43.005(33) (2018) .	Average Total Number of Employees (ATNE). "Employee" has the same meaning given under section 3(6) of the Employee Retirement Income Security Act of 1974. as of Jan. 1, 2008.



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West Virginia	2 to 50 eligible employees on average during the preceding calendar year and employs at least 2 employees on the first day of its group health plan year.	1 to 50 eligible employees on average during the preceding calendar year and employs at least 2 employees on the first day of its group health plan year.	See WV Code § 33-16D-2(r) (2018) . See State of West Virginia Offices of the Insurance Commissioner Informational Letter No. 196	Eligible employee - An employee, including an individual who either works or resides in this state, who meets all requirements for enrollment in a health benefit plan.
Wisconsin	2 to 50 employees on average on business days during the preceding calendar year and that employs at least 2 employees on the first day of the plan year.	2 to 50 employees on average on business days during the preceding calendar year and that employs at least 2 employees on the first day of the plan year.	WI Stat § 635.02(7)(a) (2019) . See Wisconsin Office of the Commissioner of Insurance bulletin regarding H.R. 1624 and the Small Group Size Definition .	Average Total Number of Employees (ATNE)
Wyoming	2 to 50 eligible employees on at least 50% of its working days during the preceding calendar quarter, the majority of whom were employed within this state or were residents of Wyoming.	2 to 50 eligible employees on at least 50% of its working days during the preceding calendar quarter, the majority of whom were employed within this state or were residents of Wyoming.	WY Stat § 26-19-302 (2019)	Eligible employee – An employee who works on a full-time basis, with a normal work week of 30 or more hours and has met any applicable waiting period requirements.
Washington, D.C.	Not more than 50 employees on average during the preceding calendar year.	Not more than 50 employees on average during the preceding calendar year.	DC Code § 31-3301.01(42) (2019) . For plan years beginning on or after Jan. 1, 2016, the District will apply the amended definition of “small employer” under PACE. See Government of the District of Columbia Department of Insurance Bulletin 15-1B-07-10/20	Average Total Number of Employees (ATNE).

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