

## Medicare Secondary Payer – Small Employer Exception

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### Are you a Small Employer?

The Centers for Medicare & Medicaid Services (CMS) has specific guidelines that define Small Employers and who to consider as an employee.

### Small Employer

#### Determining Small Employer Status

An employer will be considered a “**Small Employer**” if they employ 19 or fewer full and/or part time employees each working day in each of the 20 or more calendar weeks in the current and previous calendar year. This may be determined by the number of employees **on the payroll** on any given workweek plus any self-employed clergy paid during the same payroll period.

For the purposes of the Medicare Secondary Payer (MSP) Small Employer Exception each local church or other salary-paying unit may be a separate employer. A local church or salary-paying unit will be considered to be a separate employer, provided that the local church or salary-paying unit:

- 1) Is separately incorporated, and
- 2) Has its own Employer Identification Number (EIN)

CMS does not aggregate religious organizations for MSP purposes. Incorporated parishes and churches that are part of a church-wide organization, such as a diocese, are considered to be individual employers for purposes of the MSP Small Employer Exception.

#### Employee Definition

For purposes of the MSP provisions, an employee is an individual who works for an employer, whether on a full or part-time basis, and receives remuneration for their work. The employees are individuals for whom a Form W-2 was filed under your employer identification number or self-employed clergy who receive remuneration.

All employees should be counted, regardless of whether they:

- Are full-time, part-time, temporary, or seasonal employees
- Actually worked during a particular workweek (i.e., if they are paid for the week, e.g., vacation or sick leave, they should be counted)
- Are expected to report for work during a particular workweek
- Are eligible or actually enrolled in coverage through the Medical Trust, or
- Are receiving a Form W-2 with FICA taxes withheld

Volunteers are not counted as employees.

**Special Rule for Clergy:** Medicare's Secondary Payer rules contain a special rule for clergy. Clergy, including self-employed ministers, are considered to have "current employment status" if they receive cash remuneration from a church or religious organization for services rendered, even if they do not receive a Form W-2.

**Special Rule for Members of Religious Orders:** Members of religious orders who have not taken vows of poverty are considered to have "current employment status" if members receive cash remuneration for services from the order or the order pays FICA taxes on their behalf.

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## Small Employer Test

The following test should be used to determine whether an employer is a Small Employer.

**Did the employer employ 20 or more full and/or part time employees for each working day in each of 20 or more calendar weeks in the current or the previous calendar year?**

**If YES - the Employer is not a Small Employer** for the current calendar year or previous year (even if the employee count is or falls below 20 during the current calendar year).

**If NO - the Employer is a Small Employer.** However, if the employer subsequently employs more than 20 employees for each working week for 20 or more calendar weeks during the current calendar year, the employer will not be a small employer for the current, previous *or* following calendar year.

## Examples Using the Small Employer Test

### Eligible Employer Example

Throughout the previous calendar year, Employer X had no more than 18 lay employees and two volunteers. As of May 31, Employer X had, for each working day in each of 20 or more calendar weeks during the current calendar year, no more than 19 lay employees and two volunteers working for Employer X.

**Question:** As of June 1st, is Employer X a small employer?

**Answer:** Yes. Employer X did not employ more than 19 employees for each working day in each of 20 or more weeks during the previous or current calendar year. For purposes of determining whether an Employer is a Small Employer, only

employees and self-employed clergy are counted. Therefore, volunteers are not counted. If Employer X subsequently has more than 19 lay employees, for each working day in each of 20 or more calendar weeks during the current calendar year, Employer X will no longer be a Small Employer for the current, the previous or subsequent calendar year.

### **Ineligible Employer Example #1**

During the previous calendar year, Employer Y had, for each working day in each of 20 or more calendar weeks, 20 lay employees and two (2) volunteers. As of May 31, Employer Y had, for each working day in each of 20 or more calendar weeks during the current calendar year, no more than 18 lay employees and two (2) volunteers working for Employer Y.

**Question:** As of June 1, is Employer Y a Small Employer?

**Answer:** No. Employer Y employed more than 19 employees for each working day in each of 20 or more calendar weeks during the previous calendar year. Therefore, Employer Y is not a Small Employer for the previous or current calendar year (even if the employee count remains below 20).

### **Ineligible Employer Example #2**

Throughout the 2012 calendar year, Employer Z had no more than 18 lay employees and two (2) volunteers. As of May 31, Employer Z had, for each working day in each of 20 or more calendar weeks during the 2013 calendar year, 20 lay employees and two (2) volunteers.

**Question:** As of June 1st, is Employer Z a Small Employer?

**Answer:** No. Employer Z employed more than 19 Employees for each working day in each of 20 or more calendar weeks during the current calendar year. Therefore, Employer Z is not a Small Employer for the current, previous or subsequent calendar years, even if the Employee count subsequently falls below 20 during either year.

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