



LOUISIANA DEPARTMENT OF INSURANCE

JAMES J. DONELON
COMMISSIONER

DIRECTIVE 213

TO: ALL HEALTH INSURANCE ISSUERS AND HEALTH MAINTENANCE ORGANIZATIONS

FROM: JAMES J. DONELON, COMMISSIONER OF INSURANCE

RE: ISSUER PRACTICES REGARDING SMALL & LARGE EMPLOYER ENROLLMENT

DATE: AUGUST 30, 2018

It has come to my attention that health insurance issuers and health maintenance organizations may have widely different practices regarding the enrollment of employer groups into fully-insured coverage. Specifically, issuers have various methods by which they determine whether an employer group is properly classified as either a small employer or large employer in the commercial market for health insurance. Both La. R.S. 22:1091 and 42 U.S.C. 18024 define a large employer as:

"Large group" or "large employer" means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least fifty-one employees 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 be in compliance with the plain text of both state and federal law, issuers must utilize a standardized method or process to determine whether a prospective employer group is either a small employer or a large employer. Furthermore, that method or process must result in a determination that relies upon data that demonstrates the number of employees that an employer employed on business days during the preceding calendar year. Issuers who accept an employer group's assertion that it is either a small or large


¹ Louisiana's statutory definitions for "large employer" require that there be at least "two" employees employed by the employer on the first day of the plan year. See La. R.S. 22:1061 and 1091. Federal law requires only one employee be employed by the employer on the first day of the plan year. As such, the federal minimum of one employee is enforced by the Louisiana Department of Insurance due to federal preemption under Art. VI, Clause 2 of the U.S. Constitution.

employer without determining the number of employees that were employed on business days during the preceding calendar year will not be regarded as being compliant with state or federal law. Although the Department of Insurance will not require a specific method or process to be utilized by issuers, issuers should utilize some method or process whereby the employer demonstrates that it employed on average at least 51 employees on business days during the preceding calendar year in order to be considered a large employer group.

All issuers are directed to bring their practices into compliance with the provisions of La. R.S. 22:1091, as modified by footnote 1, and 42 U.S.C. 18024.

Please be governed accordingly.

Baton Rouge, Louisiana, this 30th day of August 2018.



JAMES J. DONELON
COMMISSIONER OF INSURANCE