



ICHRA Classes Explained

The regulations offer several permitted classes, as follows:

- Full-time employees (defined as employees who are full-time under Code §4980H or who are not part-time under the Code §105 regulations, as elected by the ICHRA sponsor);
- Part-time employees (defined as employees who are not full-time under the Code §4980H regulations or who are part-time under the Code §105 regulations, as elected by the ICHRA sponsor);
- Employees who are paid on a salaried basis;
- Non-salaried employees (e.g., hourly employees);
- Employees whose primary site of employment is in the same rating area (as defined under health care reform's rules for establishing individual market premiums);
- Seasonal employees (as defined under Code §4980H or the Code §105 regulations, as elected by the ICHRA sponsor);
- Employees included in a unit covered by a particular collective bargaining agreement (or an appropriate related participation agreement) in which the ICHRA sponsor participates, as described under Code §105;
- Employees who have not satisfied a waiting period for coverage, if the waiting period complies with health care reform's waiting period requirements;
- Nonresident aliens with no U.S.-based income;
- Employees hired for temporary placement at an unrelated entity; and
- Employees who are in a combination of two or more of the classes (e.g., full-time employees covered by a particular collective bargaining agreement).

If the ICHRA sponsor offers a traditional group health plan to one or more classes of employees and offers an ICHRA to one or more other classes of employees, then a minimum-class-size requirement may apply to classes of employees that are offered an ICHRA. (The requirement does not apply to classes of employees that are offered a traditional health plan or are offered no coverage). The following classes are subject to the minimum-class-size requirement if they are offered an ICHRA:

- full-time employees, if part-time employees are offered a traditional health plan;
- part-time employees, if full-time employees are offered a traditional health plan;
- salaried employees;
- non-salaried employees;

- employees whose primary site of employment is in the same rating area, unless the rating area is a state or a combination of two or more entire states; and
- a class of employees created by combining at least one of the preceding classes with any other class.

However, the requirement does not apply if the class is a combination of one of the preceding classes and a class of employees who have not satisfied a waiting period for coverage. If the special rule for new hires is used, the minimum-class-size requirement will not apply to the new hire subclass unless the subclass is later subdivided, in which case the requirement will apply if it would otherwise be applicable.¹⁹

If a class of employees is subject to the minimum-class-size requirement, then the class must consist of a minimum number of employees in order for the ICHRA sponsor to treat that as a separate class of employees. The minimum number of employees that must be in a class of employees subject to the minimum-class-size requirement is as follows:

- 10, for an employer with fewer than 100 employees;
- A number (rounded down to a whole number) equal to 10% of the total number of employees, for an employer with 100 to 200 employees; and
- 20, for an employer with more than 200 employees.

Important Reminder: Minimum class sizes only apply when at least one class is being offered a traditional group plan. If an employer is offering multiple ICHRAs to different classes, there are no minimum class size restrictions.

What if you're not sure how many employees will be in one class or another? Minimum class size is based on a reasonable estimate at the start of the plan year.

Employers will want to document and demonstrate reasonable assumptions when designing their plan that they will meet minimum class sizes.

If at the end of the year, actual participation in a class dipped below the minimum, the employer will want to make changes to their ICHRA to boost participation.

A few other class size notes:

- **Combo Classes:** Minimum class size applies to any combo-classes that include one of the classes listed above unless it's a combo with the waiting-period class, in which case there is no restriction
- **Rating Area Classes:** Minimum class sizes only apply to rating areas smaller than a state. For example, if you or your client has one employee in a remote state, you could have a class of one without violating the rules. However, if you're using a narrower rating area design (typically at the "county" level) then minimum class sizes apply.