

Do temporary employees count?

Q. We're a small company with about 45 employees, but we have another 20 employees who are temporary. Do we have to count the temps when complying with the EEO or other employment laws?

A. The short answer is yes. As a general rule, an employer must count temporary employees when determining whether it is covered under various employment statutes. For example, employers must have at least 50 employees before they are covered under the FMLA.

If your company has 45 full-time and 20 temporary employees, you would have to include the 20 temporary employees in determining whether your company meets the definition of a covered employer. In your case, your company would have to comply with the FMLA, as your total employment (including temps) is more than 50.

Also consider the "1,000-hour rule" in determining if your temp employees are eligible for certain Employee Retirement Income Security Act, or ERISA, benefits, such as your pension plan.