

Definition of Employer in Health Care Reform Legislation¹

For purposes of calculating the number of *full-time employees* employed by a single employer:

A single employer is defined by “Common Control” as laid out in Internal Revenue Code Section 414 (b), (c), (m), (o)² and is based on percentage of ownership and control in 2 or more restaurants.

The threshold to be defined as a single employer:

If 2 or more restaurants have the same 5 or fewer owners, collectively owning at least 80% of the shares or interest (either by vote or value), those restaurants shall be considered a single employer.

Examples:

1. If a single restaurateur owns 100% of 3 individual S-Corps, for the purposes of health care the three S-Corps would be treated as a single employer because the same owner controls at least 80% of each. The full-time employees of all three would be added together to determine if the employer is above or below the small business (50 full-time employee) exemption threshold.
2. If restaurateur 1 and 2 own 90% of restaurant A (split 45/45) and 50% of restaurant B (split 25/25), restaurants A and B would not be considered a single employer since restaurateur 1 and 2 only own 50% of restaurant B.
3. If restaurateur 1 and 2 own 90% of restaurant A (split 45/45) and 80% of restaurant B (split 40/40), restaurants A and B would be considered a single employer since restaurateur 1 and 2 own 80% of restaurant B. The full-time employees of restaurants A and B would be added together to determine if the employer is above or below the small business (50 full-time employee) exemption threshold.

¹ Senate bill: Page 353 (Reid Substitute) - Section 1513(d)(2)(C) “Rules for Determining Employer Size: (i) Application of Aggregation Rule for Employers: All persons treated as a single employer under subsection (b), (c), (m), (o) of section 414 of the IRC of 1986 shall be treated as 1 employer.”

House bill: Page 316 - Section 511(a)(3) “Affiliated Groups: In the case of any employer which is part of a group of employers who are treated as a single employer under subsection (b), (c), (m), (o) of section 414, the election under paragraph (2) [ie. to provide health coverage] shall be made by such person as the Secretary may provide. Any such election once made, shall apply to all members of the group.”

² IRC Section 414: http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00000414----000-.html

The rules for determining common control set forth by the regulations under section 414 (Treasury Regulations sections 1.414) are very technical and intricate. This explanation generalizes and restaurateurs should consult a tax professional for interpretation of specific business operations.