

## **Definition of Employer in Health Care Reform Legislation<sup>1</sup>**

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)<sup>2</sup> 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.

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<sup>1</sup> 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.”

<sup>2</sup> IRC Section 414: [http://www.law.cornell.edu/uscode/html/uscode26/usc\\_sec\\_26\\_00000414----000-.html](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.