

## Key Employee

### Definition:

An employee is a key employee if he/she meets any one of three tests below, *at any time during the plan year*:

1. The employee is an OFFICER who makes more than \$185,000 (see limitations for history of cost of living increases).
2. Any greater than 5 percent owner of the employer.
3. Any greater than 1 percent owner who has compensation over \$150,000 for the plan year.

Note: the determination of whether a plan is top-heavy for a plan year is made as of the last day of the preceding plan year.

Controlled group and affiliated service group rules do NOT apply in determining ownership for the determination of key employee status.

An individual is considered as owning any stock owned directly or indirectly by or for his spouse, children, grandchildren, and parents (code Section 318 rules, same as HCE). Technically, a "5-percent owner" or a "one-percent owner" is a person who owns "more than 5%" or "more than 1%" - Code §416(i)(1)(B). *The spouse of a family member of a key employee (in-law) where the family member does not directly own any stock is not considered to be a key employee.*

### Company Officers:

Company officers are generally administrative executives who are employed in regular and continued service. The authority of the employee and not the employee's title is determinative of whether the employee is an officer. In addition, officer status is based upon the responsibilities of the individual to the employer for whom he or she is directly employed, and is not affected by whether the employer is a member of a controlled group or an affiliated service group.

### Limit on the Number Of Key Employee Officers:

The number of officers who may be considered key employees is limited to the greater of 3 employees or 10 percent of all employees, but in no event will more than 50 employees be considered key. Specifically, if the employer has less than 30 employees (including part-time employees), no more than 3 officers may be treated as key employees. If the employer has more than 30, but less than 500 employees, no more than 10 percent of the employees may be treated as key employee officers. Finally, if the employer has over 500 employees, the maximum number of officers who may be key employees is 50.

The officers who will be treated as key employees are those who earned compensation in the plan year in excess of the applicable dollar amount (currently \$150,000) and who had the largest annual amount of compensation during the plan year. Owners who are also officers are still counted as officers for this purpose.

In general, an employee who is not an owner or officer (or a family member of an owner) is not a "Key Employee".

"Compensation" is 415 compensation which is defined as all compensation from the Employer for the year ADDING BACK IN cafeteria plan reductions, 401(k), SARSEP, and 403(b) salary deferrals; in other words, gross compensation is used to determine Key Employee Status (HCE status, also). This is basically Box 3 on form W-2 plus deferrals.

**Note:** 415 Compensation is used to determine the amount of top-heavy minimum allocation or accrual for each employee who is supposed to receive such minimum. This is compensation for the entire Plan Year (even if the Participant enters mid-year).

For non-calendar year plans, the compensation thresholds are those in effect at the *beginning of the Plan Year*.

Type of Limitation	2020	2019	2018	2017	2016	2015	2014	2013	2012
Highly Compensated (Lookback year Calculation)	130,000	125,000	120,000	120,000	120,000	120,000	115,000	115,000	115,000
Top-Heavy Plan Key Employee Comp	185,000	180,000	175,000	175,000	170,000	170,000	170,000	165,000	160,000