How the Affordable Care Act and the Employer Mandate Impacts Employers: An Overview

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Chairman Roe, Chairman Walberg, Ranking Member Courtney, Ranking Member Andrews and members of the committee, thank you for the opportunity to testify today regarding the labor market impacts of the Affordable Care Act's (ACA's) employer mandate. The American Action Forum tracks closely ACA implementation, and I am pleased to share an overview of how this provision, along with other key legislative and regulatory burdens, impacts the American workforce and the economy.

I hope to convey three main points:

- The ACA will contribute to slower job growth. The employer mandate is a disincentive for hiring; combined with regulatory burdens and new taxes the net effect will be to limit the ability for firms to grow;

- The law will lead to a greater reliance on a part-time workforce, as companies will not be mandated to provide health insurance benefits to part-time workers. These workers will thus have to make do with a reduced income or balance multiple part-time jobs; and

- The law will change how employees are compensated. Both the rising cost of insurance premiums (including the taxes on those insurance plans) and the availability of subsidized coverage will make employers more likely to forgo health benefits and raise monetary compensation.

Let me discuss these in turn.

Introduction

The 2010 Affordable Care Act contains a number of provisions that will greatly impact the labor market, the workforce, and employers of all sizes. In general, the impacts derive from the overall effects on the pace of economic growth, as well as the specific incentives deriving from taxes, subsidies, and regulations. These factors will influence the overall pace of job growth, the mix of full-time and part-time workers, and the form of compensation for workers.

Affordable Care Act Provisions that Impact Jobs and Compensation

At the broadest level, the ACA is anti-growth policy. It creates a new, large mandatory spending programs, exacerbating the projected debt burdens. Along with this, the ACA contains over $1 trillion in new taxes and an array of costly regulations. The overall impact is to impose new drag on economic growth and job creation.

Turning to specific provisions, the employer mandate impacts hiring and employees' hours because it requires employers with 50 or more full-time employees to provide health insurance and carries a specific, per-employee fine for noncompliance. The financial impacts to those that do not provide coverage or for firms that are looking to hire the 50th worker are clear. For example, a 49-employee firm that does not provide coverage and elects to hire their 50th employee now faces a fine of $40,000 per year, which is the $2,000 per employee penalty above the first 30 employees. A small firm can skirt this requirement by switching to part-time workers.

In addition, complex reporting requirements exist that are less obvious, but add paperwork and costs nonetheless. Even for companies that currently provide coverage and will continue to do so, the mandate requires disclosure of their employees' salaries and health insurance coverage; including the names and Social Security numbers of employees and family members who are eligible, what the insurance covers, and the cost to the employee of the different plans offered. While employers are reporting relief that the mandate will begin in 2015 rather than 2014, a one-year delay only temporarily lessens the burden of health reform. It does however, make it more likely that employers who were already contemplating dropping health insurance benefits and shifting employees onto the exchanges will do so, which is, in essence, additional advertising for the exchanges. The Department of Health and Human Services (HHS) does not have the budget they would like to promote the exchanges, and a delay in the mandate has the potential to serve as free marketing.

Despite a mandate to offer coverage, financial incentives are embedded in the ACA that encourage employers to drop health benefits and shift workers onto the health insurance exchanges; as virtually all employers and some low and moderate income employees would be financially better off for doing so. If the exchanges are implemented on time and become a viable market for health insurance, firms may drop benefits, pay the fine, and give employees additional wage compensation in lieu of their health insurance.

Furthermore, the law includes a health insurance tax on all plans, an excise tax beginning in 2018 on plans deemed overly generous (the "Cadillac tax"), and mandates that small group plans cover a comprehensive list of "essential benefits". All of these will result in higher benefit costs for employers. This reduces firms' ability to pay adequate wages, increase their labor force, and invest in their business; adding yet another reason firms may stop providing benefits and instead increase monetary compensation.

It is clear that the law is having a negative impact on employers already and when employers are either reluctant to hire or reducing employee hours, the labor market suffers. This is particularly concerning at a time in our economy when 1 out of 7 Americans are receiving food stamps[1] and unemployment is stagnant at 7.6 percent[2], a time when we need policies that increase the full-time workforce.

The suspension of the employer reporting requirements makes the individual mandate and application process for exchange subsidies dependent upon the honor system in 2014. The Administration is optimistically assuming that the public will understand the complicated exchange application's questions about their income, employer sponsored insurance options and employee portion of such insurance, and then, even more optimistically, assuming applicants will answer every question correctly and honestly. In reality this is likely to result in significantly more federal spending on exchange subsidies, and less individual mandate penalty revenue than previously expected.

While some provisions in the ACA that apply to employers are already in force, such as the requirement to cover employees' dependents up to age 26 and the prohibition of annual or lifetime coverage caps, the major reforms begin in 2014, and now 2015. As a result much of the writing about the ACA's impact is speculation from anecdotal reports of employers' benefit decisions and modeling of the economic impacts of the various policies. However, we also have valuable data from annual employer surveys, several of which will be detailed in this testimony.

The surveys were conducted prior to the July announcement of the employer mandate delay, but the delay is unlikely to change the overarching conclusions. Employers are reacting to the uncertainty by studying their options, limiting hiring and reducing hours in anticipation of the ACA. For those firms leaning toward dropping coverage, having the penalties delayed for one year will only accelerate their doing so; for firms set on continuing coverage for the immediate future, the mandate delay is unlikely to cause a change of course.

An April 2013 Gallup poll of small business owners found that the ACA is impacting their health care costs, hiring decisions, and benefit plans. Key findings include:

- Of those surveyed, 41 percent held off hiring new employees,
- 19 percent of those surveyed reduced employees, and
- 18 percent of firms reduced employee hours to part-time status.

The International Foundation of Employee Benefit Plans conducted a survey in March 2013 of 966 individuals, each representing an employer-sponsored plan from a variety of large and small firms. The survey found that employers are feeling the cost impact of the ACA,

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[1] http://blogs.wsj.com/economics/2013/06/08/number-of-the-week-140-increase-in-food-stamp-use-since-1990/
[2] http://www.bls.gov/news.release/empsit.nr0.htm

and making health insurance and hiring decisions that reflect their concern about the law. Key findings include:

- Of those surveyed only 12 percent responded that costs had stayed the same or decreased; of the 88 percent that reported a cost increase, the respondents were about evenly split between costs directly attributed to the ACA increasing fewer than 5 percent and more than 5 percent,[3]
- 17 percent have begun to change their plans in order to avoid the Cadillac tax in 2018,
- 19 percent of small employers (under 50) are reducing hiring to avoid being subject to the employer mandate, and
- 15 percent plan to adjust hours so fewer employees are covered under the employer mandate.

A survey conducted by Towers Watson found that companies are likely to continue offering coverage in the near term, but only 26 percent of survey respondents were confident that their firm would be offering health benefits in 10 years.[4]

It is clear from the results above that employers are studying their options, watching cost growth, and making small changes to their business practices to reduce their health insurance liability.

Regulatory Burden

It is relatively easy to estimate the amounts in penalties, taxes, and health insurance costs that employers face. While more difficult, it is important to recognize as well the costs imposed by the ACA's massive regulatory burden and the uncertainty inherent in sweeping reforms. Estimates from the American Action Forum indicate that the ACA imposes $30 billion in regulatory compliance costs, as the result of 80 billion paperwork hours, on states and private entities.

In the process of implementing the ACA, the Department of Health and Human Services has violated the Paperwork Reduction Act a massive 154 times since 2009, which represents over 30 percent of the total violations in that time period, and nearly double that of any other administrative agency.[5]

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[3] http://www.ifebp.org/Resources/Research/empsponsoredhcimpact13.htm
[4] http://www.towerswatson.com/en/Insights/IC-Types/Survey-Research-Results/2013/03/Towers-Watson-NBGH-Employer-Survey-on-Value-in-Purchasing-Health-Care
[5] http://americanactionforum.org/topic/regulatory-lawbreakers-agencies-fail-comply-paperwork-reduction-act

When the Congressional Budget Office (CBO) reviewed the ACA under the Unfunded Mandates Reform Act (UMRA), it acknowledged the law "would greatly exceed" statutory cost thresholds ($70 million for local governments and $141 million for the private sector) "in each of the first five years that the mandates would be in effect."[6] After approximately three years of implementation, ACA's regulatory burdens have greatly exceeded UMRA's thresholds. These regulatory costs will place tremendous pressure on doctors, hospitals, health issuers, and particularly small businesses.

For example, ACA's 80 million hours of paperwork is the equivalent of 39,822 employees working an entire year filling out the law's new paperwork (assuming a 2,000-hour work year). We can conceptualize paperwork burdens by examining gross domestic product per hour worked. According to the Bureau of Labor Statistics, that figure was $61.59 in 2011.[7] Thus, ACA's red tape alone costs the U.S. approximately $4.9 billion annually, a figure that will grow as the pace of implementation quickens this year.

Clearly the regulation is damaging enough, but it is also difficult for businesses to comply with and manage their new responsibilities under the ACA when the Administration is not releasing rules in a timely manner in accordance with their own deadlines. We estimate that the Administration has missed half of their self-imposed deadlines for proposed and final rules related to the ACA. Even the latest delay, which employers welcome, is leaving people wondering what else will be delayed prior to 2014. The uncertainty makes it difficult for companies to make business decisions and do cost-benefit studies regarding their health insurance plans and hiring decisions.

Conclusion

The ACA will continue to have a damaging impact on the American economy, as it imposes both a financial and paperwork burden on employers, creates uncertainty about labor costs, and has clear disincentives for hiring full-time workers. The employer mandate is a key failing of the law, as it will not actually compel employers to add coverage, and it depends on a complicated reporting and information system that the Administration was unable to implement in the three years since the law passed. While firms are waiting to understand how this law will impact their business, they are making decisions now to limit their future financial liabilities, and thus hiring less than they would in the absence of the law.

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[6] http://www.cbo.gov/publication/22075
[7] http://www.bls.gov/ilc/intl_gdp_capita_gdp_hour.htm#table03