



“The Effects of the Health Law’s Definitions of Full-Time Employee on Small Businesses”

Testimony by
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The Honorable Chris Collins, Chairman
The Honorable Janice Hahn, Ranking Member

Chairman Collins, thank you for hosting this important hearing today to examine the potential effects of the Patient Protection and Affordable Care Act's (ACA or ObamaCare) definition of 30 hours a week as full-time employment, and what this might mean for employment at small businesses. The Small Business & Entrepreneurship Council (SBE Council) is pleased to submit this testimony.

My name is Raymond Keating, and I am the chief economist for SBE Council, as well as serving as an adjunct professor in the Townsend Business School at Dowling College where I teach a variety of courses in the MBA program; a weekly newspaper columnist for *Long Island Business News*; and author of several books, with the latest being *Unleashing Small Business Through IP: Protecting Intellectual Property, Driving Entrepreneurship*.

SBE Council is a nonpartisan, nonprofit advocacy, research and training organization dedicated to protecting small business and promoting entrepreneurship. With nearly 100,000 members and 250,000 small business activists nationwide, SBE Council is engaged at the local, state, federal and international levels where we collaborate with elected officials, policy experts and business leaders on initiatives and policies that enhance competitiveness and improve the environment for business start-up and growth.

Economic and Employment Growth

It is important to consider the impact of the ACA – or ObamaCare – within the context of our poor performance in recent years regarding both economic and employment growth.

Real GDP growth during this recovery has averaged only 2.2 percent. That not only comes in far below the 3.4 percent average since 1950, but also compares miserably to the 4.5 percent average during periods of recovery/expansion. So, in effect, economic growth during this recovery has been running at roughly half of where it should be.

Why does this matter? Well, keep in mind that if the economy grows at an annual average rate of four percent a year, our standard of living doubles every 17.5 years, while if growth averages a mere two percent then it takes 35 years to double the standard of living. The U.S. should not be content with growth of roughly 2 percent a year. It hurts us today, and far into the future.

Meanwhile, on the employment front, the latest data told a story of continued under-performance. Consider several key points.

First, in August, the labor force fell by 312,000 compared to July. Throughout the recession and subsequent recovery, the labor force participation rate has rather steadily declined. The August level of 63.2 percent was the lowest since August 1978. That is, the worst labor force participation rate in 35 years. That speaks mainly to a large number of people simply not even bothering to look for work.

As for what's going on with actual employment, the federal government serves up employment data via two surveys. The establishment (or payroll) survey gets widely quoted in the media, and

in August, nonfarm payrolls rose by 169,000. That's far below the 250,000 or so expected during a solid recovery.

But the other set of data, i.e., the household survey, is where we get the unemployment rate, and it also better captures start up and small business activity. Unfortunately, the reason that the unemployment rate declined in August to 7.3 percent from 7.4 percent in July was because a 115,000-drop in employment was outdistanced by the larger decline of 312,000 in the labor force.

To put this in perspective, if the U.S. had a labor force participation rate more in line with recent historical norms, the unemployment rate would be nearly 12 percent.

And what about the number of long-term unemployed? The number of people unemployed for more than 27 weeks came in at 4.3 million in August. That's down from the high of 6.6 million set in May 2010, but is nearly four times the May 2007 level of 1.1 million.

In summary, as of August, we were still down by about 2.4 million in terms of employment compared to the pre-recession level (November 2007).

Compared to the same point in the economic recovery of the 1980s, after the arguably worse economic period of January 1980 to November 1982, the U.S. had added 11.84 million jobs versus the 4.17 million added so far in the current recovery.

No matter how you measure it, the U.S. is suffering through one of the worst recoveries on record in terms of both economic growth and job creation.

Given the ObamaCare employer mandate and the definition of 30 hours a week as full-time employment, we also need to look at full-time versus part-time employment. It must be noted that as for people who are working part time, but want full-time work, in August, this group working part time for economic reasons registered 7.9 million. That's fortunately down from the peak of 9.2 million set in September 2010. However, it's far above pre-recession levels. In fact, it's more than double the 3.9 million level of April 2006.

(Keep in mind that the Bureau of Labor Statistics defines full-time employment as 35 hours a week, versus the ObamaCare *de facto* definition of full-time employment as being 30 hours per week.)

It is important to recognize that a dramatic shift has been going on in 2013 as to part-time versus full-time jobs being created. During this recovery, a bit more than 90 percent of jobs created have been full time. However, from January 2013 to August 2013, two-thirds of employment gains have come via part-time jobs.

So, job creation thus far in 2013 has been overwhelmingly about part time jobs, which is a striking break from what normally happens, and speaks to the issue of how part-time workers are treated under ObamaCare versus full-time.

Small Business Role in Job Creation

Of course, it needs to be pointed out that small and mid-size businesses – that is, those with less than 500 workers – create the bulk of net new jobs in the economy. As the SBA’s Office of Advocacy sums up: “Small firms accounted for 64 percent of the net new jobs created between 1993 and 2011 (or 11.8 million of the 18.5 million net new jobs). Since the latest recession, from mid-2009 to 2011, small firms, led by the larger ones in the category (20-499 employees), accounted for 67 percent of the net new jobs.”¹

Given the importance of smaller businesses to job creation, we should all be concerned about recent declines in various measures of entrepreneurship.

For example, a good take on early stages of entrepreneurship is the number of self-employed. Unfortunately, the trend after 2006 has been very troubling. In terms of unincorporated self-employed, the recent high of 10.68 million (seasonally adjusted) was set in December 2006, and the numbers have been on a general decline since. In August, the level came in at 9.5 million, which showing no growth compared to a year earlier. The range over the past couple of years has been running at 25-to-27-year lows. Similarly, incorporated self-employed also has trended down, though more unevenly, since 2008.

And not surprisingly then, data on business births revealed a big decline from 2006 to 2009, with some growth in 2010 and 2011, but levels remaining far below just a few years earlier. As for the total number of businesses, unfortunately, the data from the U.S. Census Bureau has a long lag. According to the latest available information, though, the number of firms with employees declined for three straight years, dropping by 5.2 percent from 2007 to 2010.

The unmistakable and troubling trend in recent years has been a decline in the level of entrepreneurship in the U.S. That’s worrisome for many reasons, including on the employment front.

For example, as reported by the September 5 *Wall Street Journal*, small business job creation activity lags: “According to ADP numbers, payrolls at private firms with less than 50 employees have increased 4.7% since the end of the recession through August, medium-size firms (50-499 employees) are up 6.1% and large firms (more than 1,000 workers) have increased payrolls by 7.4%.”

A similar finding was offered by Intuit’s small business employment index, released on September 4. Economist Susan Woodward noted that small business job growth has been flat for two months now. Over the long run, Woodward observed, “Small business employment continues to lag behind total private employment, which has risen 7 percent since the trough in March 2010, while small business employment has only risen by 2 percent.”

¹ Office of Advocacy, Small Business Administration, “Frequently Asked Questions About Small Business,” September 2012.

Small Business Outlook and Incentives Under ObamaCare

A new survey of small business owners by TechnoMetrica Market Intelligence done for the Small Business & Entrepreneurship Council found the following regarding ObamaCare and its impact on hiring decisions by small businesses:

- “Over three-quarters of small businesses (76%) said they were not likely to hire over the next six months.”
- Among those likely to hire in the coming six months, 57% said they would likely hire full-time workers (28% very likely, 29% somewhat likely), and 77% said they would likely hire part-time workers (36% very likely, 41% somewhat likely).
- One third of small business owners said that ObamaCare has had an effect on their hiring decisions, including 21 percent saying it has had a “major” impact. Those businesses that said ObamaCare has had an impact on hiring decisions are largely firms with actual employees, versus sole-proprietorships.
- “Most small businesses (63%) do not believe that ObamaCare will help businesses like them to purchase more affordable health insurance for them and their employees. More than half (52%) strongly disagree with the idea that it would help them obtain affordable health insurance.” 12% of businesses are not yet sure.

Earlier this year, a Gallup poll put a variety of questions to small business owners as to the impact of ObamaCare on their enterprises.² Consider the following results:

- 48% of U.S. small business owners said that the 2010 Affordable Care Act would be bad for their businesses, versus 39% anticipating no impact and only 9% saying it would be good.
- “55% of small-business owners expect the money they pay for healthcare to increase. Five percent expect their healthcare costs to decline, while 37% say the health law will have no impact on what they pay for healthcare.”
- “When asked if they had taken any of five specific actions in response to the ACA, 41% of small-business owners say they have held off on hiring new employees and 38% have pulled back on plans to grow their business. One in five (19%) have reduced their number of employees and essentially the same number (18%) have cut employee hours in response to the healthcare law. One in four

² Dennis Jacobe, “Half of U.S. Small Businesses Think Health Law Bad for Them,” Gallup Economy, May 10, 2013, accessed at <http://www.gallup.com/poll/162386/half-small-businesses-think-health-law-bad.aspx>.

owners (24%) have thought about eliminating healthcare coverage for their employees.”

In August, the International Foundation of Employee Benefits Plans also released a survey on the impact of the ACA.³ Among its findings were the following regarding small businesses:

- 95.1% of businesses with 50 or fewer employees expected costs to increase due to the ACA, with 51.2% expecting cost increases of more than 10 percent.
- Among all businesses, the ACA provision cited most often (by 21.2%) as having the most significant impact in boosting costs was “Offering affordable coverage to all employees working an average of 30 hours or more a week in a month.”
- As for workforce adjustments due to the ACA, among firms with 50 or fewer employees, 19.5% (11.3% already having done so and 8.2% planning to do so in the coming 12 months) said they are reducing “hiring to get/stay under the 50-employee ACA threshold for small employers.”
- Also in terms of workforce adjustment responses, among firms with 50 or fewer employees, again, 19.5% (11.3% already having done so and 8.2% planning to do so in the coming 12 months) said they are “adjusting hours so fewer employees qualify for full-time employee medical insurance requirement.”

Assorted media reports also have highlighted the threat of per-full-time-employee (or FTE) fines under ObamaCare leading to businesses cutting employee hours. A September 11 Fox Business News story noted the following: “The Obama administration announced in July that it would delay the so-called employer mandate until 2015. ObamaCare requires that companies with 50 or more employees provide health insurance benefits to every full-time worker, considered to be anyone who logs an average of 30 or more hours a week. Employers will be hit with a penalty for each full-time employee who isn’t covered and instead purchases insurance through a federally subsidized exchange. Although the administration delayed implementing the rule until 2015, the penalties for that year will be based on staffing levels recorded in the second half of 2014 at the latest. As a result, several large companies and a long list of smaller businesses have changed their policies to cap weekly hours at 29.”⁴

And regarding the high level of part-time jobs, a Reuters report recently highlighted the ObamaCare role on the part-time jobs front: “Faltering economic growth at home and abroad and concern that President Barack Obama's signature health care law will drive up business costs are behind the wariness about taking on full-time staff, executives at staffing and payroll firms say...

³ International Foundation of Employee Benefits Plans, “2013 Employer-Sponsored Health Care: ACA’s Impact,” accessed at <http://www.ifebp.org/pdf/research/2103ACAImpactSurvey.pdf>.

⁴ Matthew Rocco, “With Eye on ObamaCare, Companies Move to Cut Workers’ Hours,” FoxBusiness.com, September 11, 2013, accessed at <http://www.foxbusiness.com/industries/2013/09/11/with-eye-on-obamacare-companies-move-to-cut-workers-hours/>.

Executives at several staffing firms told Reuters that the law, which requires employers with 50 or more full-time workers to provide healthcare coverage or incur penalties, was a frequently cited factor in requests for part-time workers. A decision to delay the mandate until 2015 has not made much of a difference in hiring decisions, they added.” Later, it was noted: “Obamacare appears to be having the most impact on hiring decisions by small- and medium-sized businesses. Although small businesses account for a smaller share of the jobs in the economy, they are an important source of new employment. Some businesses are holding their headcount below 50 and others are cutting back the work week to under 30 hours to avoid providing health insurance for employees, according to the staffing and payroll executives.”⁵

In addition, as health insurance costs continue to rise, including with increased regulations and taxes via ObamaCare, it must be noted that business owners with more than 50 workers have every reason to calculate whether it makes sense to continue offering coverage, or drop it and pay the penalty.

For good measure, firms with less than 50 workers now have an added incentive to drop coverage, perhaps provide a far cheaper lump sum payment to workers, and let employees then seek government subsidies and coverage via the insurance exchanges. All of this means more government subsidies, and an ever-growing tab for taxpayers, including, of course, small business owners.

Conclusion

In a time of slow economic growth, lackluster job creation, and troubling trends on entrepreneurship, policymaking should be focused on how to incentivize private-sector risk taking, that is, starting up, expanding and investing in businesses. That would mean, for example, providing broad and substantive tax and regulatory relief.

Unfortunately, policymaking has been pointed in the exact opposite direction for a number of years now. In fact, an assortment of public policy measures – with ObamaCare’s mandates, regulations and tax increases being prominent – explicitly raise costs and create uncertainty for entrepreneurs, businesses and investors.

So, at a time when we desperately need the entrepreneurial sector of our economy to be focused on investing and creating good-paying jobs, ObamaCare forces businesses to be focused on how to deal with a massive government intrusion on the employee cost front.

And when doing so, ObamaCare provides clear incentives to hire part-time over full-time workers if possible; reduce employee hours (getting them under the 30-hour mark); maintain staff levels at less than or cut back to below 50 full-time or FTE workers to avoid the employer-mandate; and seriously consider dropping coverage altogether given the relative costs of providing, or not providing coverage.

⁵ Lucia Mutikani, “Analysis: Obamacare, tepid U.S. growth fuel part-time hiring,” Reuters, August 21, 2013, accessed at <http://www.reuters.com/article/2013/08/21/us-usa-economy-jobs-analysis-idUSBRE97K05K20130821>.

The recent numbers on hiring and in various surveys confirm that the costs and incentives under ObamaCare push many small and mid-size businesses towards hiring fewer workers, especially fewer full-time workers, and reducing employee hours. In the end, it's clear that ObamaCare serves as a very real drag on economic and employment growth.