



National Retail Federation Testimony

Hearing on the

Impact of the Employer Mandate's Definition of Full-time Employee on Jobs and Opportunities

Committee on Ways and Means

United States House of Representatives

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Chairman Camp, Ranking Member Levin and honored members of the Committee, good morning. I appreciate the opportunity to appear before you today to discuss our continuing concerns regarding implementation of the Patient Protection and Affordable Care Act (also known as the ACA) and more specifically, the potential job effect of the ACA provision that defines full-time employment for health benefit eligibility at 30 hours. My name is Neil Trautwein and I am a vice president and the Employee Benefits Policy Counsel with the National Retail Federation (NRF). NRF strongly supports legislation that would address this issue, such as H.R. 2575, the Save American Workers Act of 2013.

NRF is the world's largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants and Internet retailers from the United States and more than 45 countries. Retail is the nation's largest private sector employer, supporting one in four U.S. jobs – 42 million working Americans. Contributing \$2.5 trillion to annual GDP, retail is a daily barometer for the nation's economy. NRF's This is Retail campaign highlights the industry's opportunities for life-long careers, how retailers strengthen communities, and the critical role that retail plays in driving innovation. www.nrf.com

NRF believes that it is critically important – whether or not a given member of Congress supports or does not support the health care law in its entirety – to address specific shortcomings in the law and its implementation. We have little patience for those who argue that either full implementation of the ACA or full repeal of the law are the only alternative options. NRF will work with anyone seeking changes to the ACA that will benefit the retail and chain restaurant industries and their employees.

NRF and ACA Implementation

NRF has been closely engaged in the regulatory process ever since the ACA was signed into law. We have met numerous times with regulators and have submitted written comments on key concerns. We have assisted in submitting joint coalition comments as well. As I have previously noted, we have not participated in the litigation surrounding the ACA and its provisions.

We credit the regulatory agencies¹ for working hard and cooperatively to implement the complex ACA, a difficult task by any measure. The Administration early on focused on our industries because of the frequently variable nature of retail and chain restaurant employment. Many retail and restaurant employees do not fit neatly into full and part-time categories and compliance with the unprecedented levels of change under the ACA will be particularly challenging.

Part-time and variable hour employees are a particular challenge. This segment of the retail and chain restaurant workforce tends to be more mobile and these workers may work for multiple establishments. Some may become full-time and move on to long-term careers in retail; others value the greater flexibility of part-time work. Some of our most productive employees are part-time and would not have it any other way.

¹ Departments of Health and Human Services, Labor and Treasury.

Retail and restaurant jobs are not just found behind cash registers; our industries present a wide array of career opportunities. Rewarding professional careers can be found in retail in such areas as design, loss prevention, finance, information technology, real estate and human resources, among many others. Retail and chain restaurant human resources officials are quite understandably busy with ACA implementation these days, but they are far from alone in their focus. I have also spoken to different member groups of chief financial officers and corporate general counsel. The myriad challenges of ACA implementation are foremost in their minds.

Many of the regulatory approaches developed in response to the challenges of the retail and chain restaurant workforce – such as the “look-back/stability period²” – have in turn bred additional complexity. One truly significant challenge is ACA’s definition of “full-time” for coverage eligibility at 30 hours per week on average.

NRF strongly supports the bipartisan efforts seen in NRF-endorsed bills like H.R. 2575 to redefine full-time coverage eligibility at 40 hours per week, hopefully with some additional flexibility for employers to define a lower standard, if they so desire. We respectfully urge that this and other steps to help soften the impact on employers be taken before the ACA is fully implemented. Later may be too late.

Changes to the ACA Full-Time Definition

NRF greatly appreciates the bipartisan attention to the ACA’s full-time definition and support for changes to this provision. It is, after all, a common sense approach: if asked, most Americans would identify full-time work to be 40 hours per week.

Most employers have also long assumed the full-time mark to be 40 hours, consistent with federal overtime rules. A 30-hour definition forces retail employers to manage to a new standard: whether or not an employee is above or below the 30-hour level on average during the look-back period. The look-back/stability period discussed above is helpful, but not without ongoing cost.

Retail and chain restaurants will be forced to fine tune the balance between full and part-time, focusing on employee status on a real-time basis. This is time, effort and money spent focusing on compliance rather than concentrating on the business goal of increasing retail or chain restaurant sales. For variable hour employees who do not meet the new full-time standard, this will mean less income in their pockets and consequently less likelihood of obtaining coverage on their own.

There is a growing industry developing to help employers manage these new constraints, but their assistance does not come without cost. I sought out vendors in this space at NRF’s annual convention in New York earlier this month. I was easily able to locate three companies with sophisticated approaches to managing workforce hours.

It is one thing for a large retailer or chain restaurant to adopt these sophisticated and expensive strategies. Would a smaller retailer or franchisee with more than 50 full-time equivalent

² Developed by the Department of the Treasury

employees³ be able to take on this same cost? The law that reforms health care coverage should not advantage larger employers to the detriment of smaller ones.

Jobs, Income and the 30-Hour Definition

NRF argued long and hard against the employer mandate provisions of the ACA. We saw this issue in simple economic terms: increase the cost of employment (wages and benefits are the biggest components) and retailers and chain restaurants (largely unable to increase prices due to fierce competition) would be able to employ fewer employees. If there is one thing our economy does not need, it is fewer jobs.

The Administration's one-year delay in the employer mandate penalties has slowed this effect to the temporary benefit of the economy. However, the news media is full of recent stories about companies that have taken steps – or even contemplated steps – to come into compliance with the ACA mandate penalty structure in 2015. More stories and attendant controversy are sure to come.

Ultimately it will be the existing part-time workforce – of great importance to the retail and chain restaurant industries – that will feel the greatest effect of the 30-hour definition. It becomes that much harder for part-time employees to cobble together their income under these circumstances.

The Commonwealth Fund Blog Argument

A recent blog⁴ from the Commonwealth Fund argues that changing the definition of full-time work will both “put more workers at risk” and “increase federal spending.” With respect, we believe the authors of this blog are wrong on both counts.

Much of the author's argument is based on the potential loss of full-time employment, coverage and hence, increased subsidy cost in the exchange marketplaces. This argument ignores the ACA's prohibition against changes in job status on the basis of health coverage. An applicable-sized employer might be able to reduce its future ACA exposure by redefining some full time jobs as part-time jobs for future hires. The added expense of offering the ACA's broader coverage to newly full-time employees provides incentive to do so. Applicable-sized employers are not mandated to provide part-time employees coverage. But, there are employee and public relations concerns to consider. This is not an easy question for retailers who are considering their options under the ACA.

Arguably more full-time employees (particularly younger employees) will take up coverage they are offered through the workplace as the individual mandate becomes effective. This could help mitigate the expected cost increases for the more generous ACA health coverage. But, it may take the steeper individual mandate penalties in later years to help drive this behavior. Many of us will watch the March 31 deadline for exchange enrollment to see how younger, healthier

³ The ACA's definition of a “large” or applicable employer. NRF also supports efforts to change this definition.

⁴ Why Changing the Definition of Full-Time Work Under the ACA Will Put More Workers at Risk and Increase Federal Spending, Sherry Glied, Ph.D. and Claudia Solis-Roman, January 24, 2014.

enrollees react. This factor – the mix of ages and health status participating in coverage offered to full-time employees – also could have a bearing on future workforce plans for the retail and chain restaurant industries.

Part-time coverage is less frequently offered in the industries we represent and tends to be undersubscribed. This potentially riskier population adds to employer concerns and likely will help encourage part-time hours below 30.

For part-time employees – who will work 30 or fewer hours per week under the new ACA regime – it will be a question of income lost from working more than 30 hours per week. That additional income would help make exchange coverage more affordable for that part-time employee. Arguably too, this additional income should have reduced federal subsidy costs to support coverage for part-time employees.

NRF, Allied Coalitions and the Affordable Care Act

NRF has actively encouraged the fair and effective implementation of the ACA (as it is current law) despite our continued opposition to the law itself. We see no inconsistency between the two positions; we owe it to our members to help make the law as workable as possible. We stand ready to assist any effort to improve upon implementation of the ACA.

We are engaged in a number of allied coalition efforts on ACA implementation. For example, NRF chairs the Affordable Health Benefits Coalition⁵ (AHBC) and participates in the leadership of Employers for Flexibility in Health Care (EFHC). The number of coalitions addressing aspects of ACA implementation has grown so much as to require a degree of coordination between them. NRF established and chairs a coalition of health care coalitions of sorts, the Employers' Health Care Clearinghouse, which meets on a monthly basis to do just that.

These coalitions are deeply substantive and deal with specific ACA implementation concerns. They also have served a useful role in developing and coordinating views and comments among allied employer interests.

Conclusion

Again, NRF greatly appreciates the opportunity to appear before you today. Given the complexity of requirements under the ACA, we strongly urge this Committee and Congress to consider specific changes to the ACA, including the definition of full-time employment.

Retailers and other employers can and should be powerful advocates for positive change. But, in most cases, health care and health benefits are not our stock in trade or business. It is in our best interest to keep our employees healthy and at work, but not at any cost. The ACA will – at a minimum – pressure our ability to continue to provide coverage and help drive positive change.

⁵ www.ahbcoalition.org

We hope to work with you to help mitigate these effects. NRF stands ready to help the Administration and Congress make the ACA more workable, so long as it remains the law of this land.