

**Statement of
The National Business Group on HealthSM**

Prepared for the

**Committee on Ways and Means
United States House of Representatives**

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

**January 28, 2014
Washington, DC**

The National Business Group on HealthSM (Business Group) appreciates the opportunity to submit written testimony for the House Ways and Means Committee hearing on the Impact of the Employer Mandate's Definition of Full-time Employee on Jobs and Opportunities. The Business Group strongly urges the U.S. Congress to change the full-time employee definition from 30 hours to the more commonly-used 40 hours for employer shared responsibility (mandate) payments under the Patient Protection and Affordable Care Act (ACA)—with flexibility for employers to define a different standard.

Founded in 1974, the Business Group is a member organization representing 389 members, mostly large employers, who provide coverage to more than 55 million U.S. employees, retirees and their families and is the nation's only non-profit organization devoted exclusively to finding innovative and forward-thinking solutions to large employers' most important health care and related benefits issues. Business Group members are primarily Fortune 500 companies and large public sector employers, with 68 members in the Fortune 100.

Under the ACA, if employers do not offer coverage or if the coverage offered does not meet government-established "minimum value" or "affordability requirements", they (employers with more than 100 full-time employees in 2015, and employers with more than 50 in 2016, under the most recent delay¹) must pay penalties (shared responsibility payments) if they have at least one full-time employee (working 30 hours or more per week) receiving a premium tax credit for exchange coverage. Consequently, if Congress does not change the definition of full-time employee, certain industries with a high proportion of part-time and variable hour non-benefit eligible employees that work 30-40 hours per week could face significant additional costs and potentially reduce hours for current employees and hiring of additional employees.

As we describe more fully below, the Business Group strongly supports the Committee's efforts to change the ACA's full-time employee definition because it:

- **Is not consistent with the most common employment definitions of full-time;**
- **Creates incentives to reduce hours for part-time employees;**
- **Disproportionately affects low-wage industries with vulnerable populations;**
- **Creates a disincentive to hire additional employees with flexible or variable hours;**
- **Reduces scheduling flexibility for part-time and variable hour employees; and**
- **Increases the administrative complexity and costs for employers with part-time and variable hour employees.**

For these reasons, the Business Group strongly supports the passage of the bipartisan bill, H.R. 2988, the Forty Hours is Full Time Act of 2013, introduced by Representatives Patrick Tiberi (R-OH) and Daniel Lipinski (D-IL) and H.R. 2575, the Save American Workers Act, introduced by Representative Todd Young (R-IN), that would change the ACA's definition of a full-time employee from 30 hours or more per week and reinstate the widely-accepted 40 hours or more per week for determining employers' health coverage obligations. We also supported the Senate bill, S.1188, introduced by Senators Susan Collins (R-ME) and Joseph Donnelly (D-IN), that was included in the Senate-passed budget resolution (S.Con.Res.8) and the Bipartisan Budget Act of 2013 (Public Law No: 113-67) that would also use the 40 hour definition for determining employers' health care obligations.

The ACA’s 30 hours per week definition is not consistent with the most common employment definitions of full-time

The ACA marks the first time that full-time employment has been explicitly defined in federal law, and it was set at a level that is incompatible with existing legal provisions that use the 40-hour standard and with normal practices. For example, the Fair Labor Standards Act does not define “full-time” employment, but did codify and mandate the payment of overtime for nonexempt employees who work 40 hours or more per week.ⁱⁱ In addition, the Bureau of Labor Statistics sets the benchmark for full-time employment between 35 and 44 hours a week. Restoring the definition to its historical norm ensures consistency in federal rules and norms governing employment.

The ACA’s 30 hour rule creates incentives to reduce hours for part-time employees

By setting the “full-time employee” definition at 30 hours per week to provide coverage or pay a penalty, the ACA incentivizes employers to either reduce the hours for its part-time employees or provide them with coverage that meets government requirements, which could significantly increase costs—which is particularly hard-hitting for industries with slim profit margins. In addition, for employers with a majority of workers making at or near the minimum wage and in competitive markets where they cannot increase prices for consumers, their only option will be to reduce employees’ work hours to absorb the additional costs to provide coverage or avoid paying the penalties. Moreover, many employees in these industries have been reluctant in the past to take up coverage even if their employer offers it and even if their premium contributions are relatively small. Returning to a definition of 40 hours per week would diminish the impact on employee hours and company costs.

A number of surveys have found that both large and smaller employers have already or plan to reduce hours for part-time employees.

For example, the 18th Annual Towers Watson/National Business Group on Health Employer Survey on Purchasing Value in Health Care of 583 U.S. employers (with 1,000 employees or more) found that among employers who rely on part-time employees for at least 20% of their workforce:

- 15% planned to reduce the number of employees working 30-plus hours per week; and
- 15% planned to increase the number of employees working less than 30 hours per weekⁱⁱⁱ.

Another annual survey of 400 Chief Financial Officers (CFOs) at smaller U.S. companies with 500 employees or less also found that:

- 40% may move some workers to less than 30 hours per week^{iv}.

Similarly, a survey of 208 franchise-owned businesses and 206 non-franchise businesses with 40 to 500 employees found that:

- 31% of the franchise and 12% of the non-franchise businesses had already begun reducing worker hours; and
- Among businesses with 40 to 70 employees, 59% of the franchise and 52% of the non-franchise businesses planned to make personnel changes to stay below the 50 full-time equivalent employee threshold for the employer mandate.^v

The ACA's 30 hour rule disproportionately affects low-wage industries and vulnerable populations

Another unintended consequence of the ACA's 30 hour rule is the effect that it has had on reducing the hours for already low-wage industries that employ a number of vulnerable populations. A recent analysis by the UC Berkeley Labor Center found that restaurants, lodging, building services, nursing homes, and retailers have the highest concentration of employees who are the most at risk for reduced hours under the 30 hour rule (47%)^{vi}. In addition, a separate analysis concluded that it would disproportionately affect the hours of the part-time, low-wage populations in these industries who could least afford it, including: the young, (almost 60% between ages 19-34), women (63%) and those who do not have college degrees (89%).^{vii}

The ACA's 30 hour rule creates a disincentive for employers, particularly those with variable hour employees, to hire additional employees

One of the employee populations most affected by the ACA's 30 hour rule are variable hour employees. New variable hour employees (substitute teachers, construction workers, PRN health care employees, etc.) significantly increase employers' risk under the ACA's shared responsibility requirement. It is often difficult for employers to know whether these employees are reasonably expected to work, on average, at least 30 hours per week over a 12 month measurement period. As a result, many of these employees could become "full-time" employees under the ACA and require their employers to offer them coverage or potentially expose them to penalties under the employer mandate. Using a 40 hour definition for determining employer obligations would help alleviate this risk for employers.

A recent Business Group survey of 32 large employers already found that:

- 34% are planning to better manage employees' work schedules to reduce the number of variable hour employees.^{viii}

Another Business Group survey of 42 large employers found similar results.

- 50% of employers had planned on making staffing or workforce changes in 2014, before the federal government's first delay of the employer mandate, and
- 39% planned on better managing the hours of those variable-hour employees.^{ix}

The ACA's 30 hour rule reduces scheduling flexibility for part-time employees

One reason so many Americans are drawn to part-time jobs is the flexibility for employees to vary their hours to suit their own needs or to accommodate their work flow. For example, home health care workers often have widely varying weekly work hours and often need flexibility in scheduling their work hours in order to meet the constantly changing needs of their home care clients.^x Many others have family, educational, or other commitments that require flexibility in their work schedules. With a full-time employee definition of 30 or hours per week, employers with part-time and variable hour workforces must now be very deliberate about scheduling employees' hours to avoid any penalties. In addition, many employers will likely give any additional hours to their existing full-time employee populations. Employers' more deliberate scheduling will reduce the amount of flexibility for part-time employees to pick up extra hours, trade hours, or reduce hours.

Using a 40 hour full-time employee definition will help maintain the flexibility that many part-time employees value.^{xi}

Setting the number of hours for full-time status at 40 hours or more would reduce administrative costs and complexity for employers with part-time and variable hour employees

Employers with a majority of salaried employees with fixed hours that do not vary—whether full-time or part-time—have relatively easy calculations regarding the ACA’s employer shared responsibility and coverage requirements and may not even need to make calculations at all. As mentioned earlier, employers could also avoid the need to make calculations to determine coverage obligations by setting variable hour employees’ hours permanently below 30 hours or by providing coverage to these populations regardless of their hours. However, employers with part-time and variable hour employees and employees for whom full- and part-time status is not clear face a significant new administrative burden under the ACA. They also face compliance risks because of the difficulty in predicting which part-time staff might work an average of 30 hours a week because employees are often scheduled for more or fewer hours depending on several factors, including customer traffic flows.^{xii}

For employers who need to determine if their employees are “full time”, the ACA provides two safe harbors - one for ongoing and one for new variable hour and seasonal employees. These safe harbors allow an employer to determine full-time status by looking back at a “measurement period” of 3 to 12 months (sometimes referred to as a “look-back period”). Once the employer determines the employee’s part-time or full-time status—based on averaging 30+ hours per week during the measurement period—the employer treats the employee as maintaining that status during the subsequent “stability period” regardless of the employee’s hours of service during the stability period.

When employers spend time on complex, administrative compliance, it takes away valuable resources, staff, effort and money that could otherwise be spent on business requirements, expanding workforces, or wages and benefits. Accordingly, using a 40 hour definition of full time for health coverage obligations will reduce administrative burdens because employers can use their existing work, benefit, and payroll arrangements.

Conclusion

Again, thank you for the opportunity to submit written testimony for the Committee’s hearing on the impact of the employer shared responsibility’s (mandate) definition of full-time employee on jobs and opportunities. In the midst of ongoing economic uncertainty, lingering high long-term unemployment, and complex changes in health benefits and rules brought about by the ACA, the federal government should be looking for substantive ways to lower labor costs to create additional jobs rather than continuing policies that discourage hiring and encourage reductions in employers’ workforces.

ⁱ U.S. Department of the Treasury. Final Regulations Implementing Employer Shared Responsibility Under the Affordable Care Act (ACA) for 2015. Fact Sheet, February 10, 2014, <http://www.washingtonpost.com/blogs/wonkblog/files/2014/02/Fact-Sheet-021014.pdf>

ⁱⁱ U.S. Department of Labor. Handy Reference Guide to the Fair Labor Standards Act. Wage and Hour Division. Revised September 2010, <http://www.dol.gov/whd/regs/compliance/hrg.htm> : 29 U.S.C. § 207.

ⁱⁱⁱ Towers Watson/National Business Group on Health. 18th Annual Employer Survey on Purchasing Value in Health Care. March 2013, <https://www.businessgrouphealth.org/pub/5c995ba6-782b-cb6e-2763-0d721d7e267d>

^{iv} Duke University. Duke/CFO Magazine Global Business Outlook Survey. December 2013 Results. Banner Tables. United States. December 11, 2013, <http://www.cfosurvey.org/>

^v Public Opinion Strategies. Presentation of Findings from National Research Conducted Among Business Decision-Makers. International Franchise Association/U.S. Chamber of Commerce. September 2013-October 2013, <https://www.uschamber.com/presentation-findings-national-research-conducted-among-business-decision?makers>

^{vi} UC Berkeley Labor Center. Which workers are most at risk of reduced work hours under the Affordable Care Act? Data Brief. February 2013, http://laborcenter.berkeley.edu/healthcare/reduced_work_hours13.pdf

^{vii} Chen, Lanhee. Testimony before the U.S. House Ways and Means Committee. Hearing on the Impact of the Affordable Care Act (ACA) Employer Mandate's Definition of Full-Time Employee on Jobs and Opportunities. January 28, 2014, http://waysandmeans.house.gov/uploadedfiles/chen_testimony_012814hl.pdf

^{viii} Lynkens, Craig. Employers' Use of IRS Safe Harbor for Variable Hour and Seasonal Employees . Survey Report. National Business Group on Health, January 2013, <https://www.businessgrouphealth.org/pub/d90f8c5e-782b-cb6e-2763-db3bac9440f5>

^{ix} Lykens, Craig. Employer Mandate Delay, Your Company's Response. Survey Report. National Business Group on Health.SM August 2013, <https://www.businessgrouphealth.org/pub/abcbfd62-782b-cb6e-2763-6b65cf903a85>

^x Legislation Would Modify Definition of "Full Time Employee" from 30 to 40 hours in PPACA. National Association for Homecare and Hospice. April 26, 2013, http://www.nahc.org/NAHCReport/nr130426_1/

^{xi} Willstanley, Ellis. Testimony before the U.S. House Small Business Committee on behalf of The National Restaurant Association. December 4, 2013, http://smallbusiness.house.gov/uploadedfiles/12-4-2013ellis_winstanley.pdf

^{xii} Ibid.