

Primer: Employer Mandate

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Introduction

The Affordable Care Act's (ACA) Employer Shared Responsibility provision, commonly referred to as the Employer Mandate, requires all employers with more than 50 employees, or 50 Full Time Equivalents (FTEs), to provide health insurance coverage beginning in 2014. Similar to the law's individual mandate to carry health insurance, noncompliance carries a fine, levied to help offset the cost of providing insurance coverage in the ACA's state based insurance exchanges. The fine is computed differently based on whether coverage is simply not offered or the coverage offered is either unaffordable or insufficient, as well as whether or not the employees receive subsidized coverage through an exchange.

In a surprising move the Administration announced July 2, 2013, that they would delay enforcement of the mandate's reporting requirements and fines until 2015.

Overview and Mandate Scenarios:

Employer-sponsored insurance is the largest source of insurance for Americans under 65. Three key reasons explain the widespread benefit. For one, providing insurance is a tax-free form of compensation. Secondly, offering benefits helps companies compete for employees. And lastly, it is for some people the only avenue for obtaining health insurance, as the individual market in some states is prohibitively expensive for those who are older or have pre-existing health conditions, or they can be

Key Takeaways

The Employer Mandate

- The Employer Mandate applies to employers with more than 50 employees and fines firms that do not offer sufficient health coverage.
- Employer mandates have been included in past health reform attempts and the Massachusetts health reform law included a weak (\$295 per person per year) fine along with their mandate.
- A \$2,000 per person fine (minus the first 30 employees) is levied on firms that do not offer any health benefits.
- A fine is levied on employers that offer coverage if any employees choose to receive subsidized coverage on the state exchanges, in the amount of \$3,000 per exchange participant.
- While the ACA legislation sets the start date of the mandate as 2014, the Administration announced in July, 2013 that they will delay enforcement of the reporting requirements and mandate fines until 2015.

Employer Scenarios

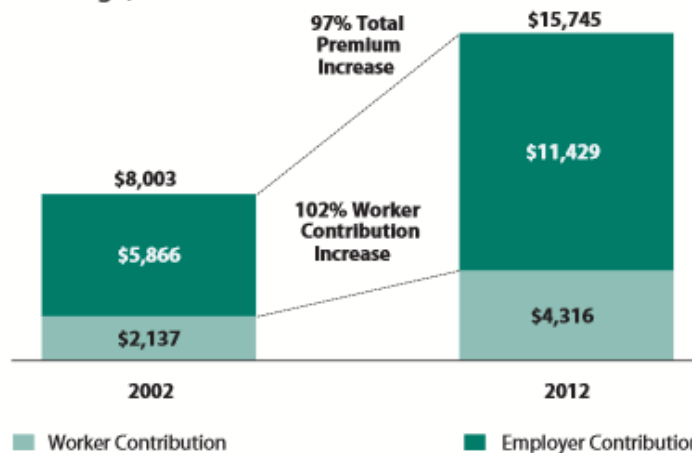
- As a result of the ACA, employers will be incentivized to shift employees onto the exchanges, reduce employee hours from full time to part time (defined as less than 30 hours per week), and limit growth as not to exceed 50 employees.
- Polling data shows that employers, particularly small firms, as of 2013, are reducing hiring, reducing employee hours, and considering whether to continue offering coverage in advance of the Affordable Care Act reforms.

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denied coverage altogether. However, with the cost of insurance increasing, as shown below in Figure 1, employers are less likely to offer benefits than in past decades. Employer sponsored insurance coverage declined from 70 percent of non-elderly adults in 2000 to 59.5 percent by 2011.¹ Furthermore, with employees changing jobs regularly, it may no longer make sense to invest in employee health when a future employer will benefit from their continued productivity.

Figure 1: Growth in the Cost of Employer Sponsored Health Insurance²

Average Annual Health Insurance Premiums and Worker Contributions for Family Coverage, 2002–2012



Source: Kaiser/HRET Survey of Employer-Sponsored Health Benefits, 2002–2012.

The ACA included an employer mandate to reverse this trend, but many have noted that the incentives within the law actually do the opposite, and will encourage employers to drop coverage and shift employees onto the state-based exchanges. Because the penalty of \$2,000–\$3,000 is very low when compared to the cost of offering insurance, and because those employees will, come 2014, have access to insurance plans on the exchanges that offer a fairly high standard of coverage along with federal subsidies for low and moderate income families, it may well make financial sense for many employers to stop offering health benefits.

The Employer Mandate is largely being implemented by the IRS, as that agency is tasked with determining which employers fall under the mandate and the amount of penalties, if any, that apply. A proposed rule

¹ Robert Wood Johnson Foundation Report. “Number of Americans Obtaining Health Insurance Through an Employer Declines Steadily Since 2000.” April, 2013. Available: <http://www.rwjf.org/en/about-rwjf/newsroom/newsroom-content/2013/04/number-of-americans-obtaining-health-insurance-through-an-employ.html>

² Kaiser Family Foundation. “Employer Health Benefits 2012 Annual Survey.” <http://kaiserfamilyfoundation.files.wordpress.com/2013/03/8345-employer-health-benefits-annual-survey-full-report-0912.pdf>

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released in January 2013 specified that there are two applicable penalties; \$2,000 per employee per year excluding the first 30 employees for not offering minimum essential coverage, and \$3,000 per employee *that receives a premium subsidy on the exchange*³ for offering coverage that is unaffordable or does not meet minimum essential coverage. For the former, the penalty only applies to firms with more than 50 employees and then only to full time employees – giving companies that do not offer coverage an incentive to reduce employee hours to meet the ACA’s definition of part time (under 30 hours).

Interestingly, the ACA did not detail specifics of the affordability requirement. However, the IRS issued regulation explains that it will be calculated based on the employees’ portion of the cost of individual coverage, even if the employee needs coverage for a family. Therefore, a loophole exists in which employers can require a large employee contribution for their family policies, but make the single coverage affordable. In that situation, the employee would not qualify for subsidized coverage on the exchange, as he or she is technically offered affordable coverage, and therefore the employer would not be liable for the \$3,000 penalty. Many health advocates are understandably concerned that this regulation will leave lower and moderate income families uninsured, but lobbying to fix this loophole has been unsuccessful.

An additional incentive exists within the mandate for small firms to stay under 50 employees, as adding that 50th employee carries a cost of \$40,000 (equated by exempting the first 30 employees, and calculating a fine of \$2,000 per person for the remaining 20 employees). It seems as though these financial consequences are already impacting company decisions. Table 1 below presents results from several 2013 surveys regarding firms’ benefit decisions in advance of the upcoming mandate.

Table 1: 2013 Employer Survey Results

2013 Gallup Poll of Small Businesses	2013 International Foundation of Employee Benefit Plans Survey	Towers Watson/National Business Group on Health Employer Survey
<ul style="list-style-type: none"> • 41 percent held off hiring new employees • 19 percent of those surveyed reduced employees • 18 percent of firms reduced employee hours to part time status. 	<ul style="list-style-type: none"> • 19 percent of small employers (under 50) are reducing hiring to avoid being subject to the employer mandate • 15 percent plan to adjust hours so fewer employees are covered under the employer mandate 	<ul style="list-style-type: none"> • Only 26 percent of survey respondents were confident that their company would be offering health benefits in 10 years.

³ Federal Register, Proposed Rule. “Shared Responsibility for Employers Regarding Health Coverage.” January 2013. Available: <https://www.federalregister.gov/articles/2013/01/02/2012-31269/shared-responsibility-for-employers-regarding-health-coverage>

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The surveys in the above table were conducted when employers believed that their coverage mandate would be implemented in 2014, and the companies polled will likely reevaluate their benefit decisions now that the Administration is delaying implementation. In particular, they will not need to shift to a part time workforce just yet, and those employers that have been considering dropping coverage altogether may find the lack of a penalty in 2014 highly motivating.

Political History:

Neither the employer mandate nor the individual mandate is a novel concept. Both have been key features in health reform proposals over the last two decades. President Clinton's failed health reform bill in 1993 included an employer mandate,⁴ and the Massachusetts health reform law includes an employer mandate—although it is relatively weak at \$295 per employee per year.⁵

Versions of the employer mandate were included in both the Senate and House drafts of health care reform. However, in the House bill, which did not ultimately become law, the mandates and associated penalties were structured very differently. The House version included a “pay or play” provision that applied a payroll tax to employers that spent less than 8 percent of their payroll on health benefits.⁶ This would certainly have resulted in its own set of unintended consequences, but was unlikely to cause employers to favor part time over full time workers.

In order to make the ACA decrease the deficit, the law's authors needed an avenue to both increase revenue, and ensure that the exchanges didn't offer subsidized coverage to those that would otherwise have employer sponsored insurance. The Congressional Budget Office's (CBO) February 2013 projections for the mandate revenue, which includes the impact of changing taxable compensation (i.e. workers will no longer be paying for health insurance with pre-tax dollars) are shown in Table 2. While the CBO estimates that very few employers will shift employees onto the exchanges, other studies and polls demonstrate that this is likely to occur, especially for employers with lower-wage employees.

⁴Klein, Ezra “Unpopular Mandate: Why do politicians reverse their positions?” The New Yorker. June 25, 2012. Available: http://www.newyorker.com/reporting/2012/06/25/120625fa_fact_klein

⁵ Klein, Ezra “Everything you know about employers and Obamacare is wrong” Washington Post Wonk Blog. May 24, 2013. Available: <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/05/24/everything-you-know-about-employers-and-obamacare-is-wrong/>

⁶McDonough, John “Obama delays employer “mandate.” Does it matter?” Boston.com, July 2, 2013 Available:http://www.boston.com/lifestyle/health/health_stew/2013/07/obama_delays_employer_mandate_does_it_matter.html [http](http://www.boston.com/lifestyle/health/health_stew/2013/07/obama_delays_employer_mandate_does_it_matter.html)

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Table 2: CBO Projections of Employer Mandate Revenue⁷

Year	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2013-2023
Penalty Revenue	0	5	10	12	14	16	17	18	19	20	21	-150

Conclusion

The Employer Mandate is an attempt to coerce companies to continue offering coverage, despite rising premium costs and increasing labor force mobility. However, the mandate in and of itself is unlikely to be sufficient, given all of the other incentives embedded in the law. It will be necessary to monitor changes in the labor market that occur as the rollout of the ACA progresses; including whether lower wage workers have trouble getting full time work, or a significant number of individuals are priced out of both employer sponsored family coverage and the exchanges due to the affordability regulation.

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⁷ Congressional Budget Office. "CBO's February 2013 Estimate of the Effects of the Affordable Care Act on Health Insurance Coverage." Available: http://www.cbo.gov/sites/default/files/cbofiles/attachments/43900_ACAInsuranceCoverageEffects.pdf