

IF THE EMPLOYER MANDATE ONLY AFFECTS 5% OF 4% OF BUSINESSES, WHAT'S THE BIG DEAL?

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As anyone who made it through grade school knows, rumors that are repeated frequently start to take on the air of truth, regardless of their veracity. The same could be said of statistics. According to this White House report, 5.8 million of the 6 million businesses in the US (or about 96%) employ fewer than 50 workers and thus would be exempt from the employer "play or pay" mandate. Of the remaining 4% affected most (some say 95%) already provide insurance, meaning the mandate only impacts 5% of 4% of businesses or a mere 0.2%. These statistics (or some version of them) have been repeated by senators and others so many times that they have started to take on an air of truth, yet we have not seen a study that anyone has cited showing this is actually the case.

In fairness, 2012 data collected by the Agency for Healthcare Research and Quality does show that 95.9% of firms with more than 50 employees offer insurance. However, it also shows that the number of firms with more than 50 employees is actually closer to 1.7 million out of a little more than 6.7 million, bringing the estimate of business with more than 50 employees to north of 24.5% of companies with 50 or more employees. That's a far cry from 4%, which raises the possibility that those citing these statistics are (perhaps unintentionally) mixing and matching numbers; that's a statistical no-no.

Additionally, the data from the AHRQ may be unreliable for purposes of determining who is impacted by the employer mandate. A 2011 questionnaire for the same survey asks questions about the location to which the questionnaire is delivered and the organization of which that location is a part. It does not ask whether the organization is part of a controlled group.

Recall from prior posts that the shared responsibility penalties apply on a controlled group basis, so multiple organizations with a common owner or owners could be aggregated for purposes of the penalty. However, based on our experience from talking with business owners, most of them treat entities that are in separate LLCs or corporations as separate businesses. In fact, many are surprised to learn that the penalties apply on a controlled group basis. Therefore, while we don't know for sure, it seems there is at least a decent likelihood that many of those small businesses receiving the survey answered these questions only with respect to the business to which the questionnaire was addressed, and not on a controlled group basis. If our supposition (and it is only

that, admittedly) is correct, then potentially many more businesses are subject to the penalties than even the AHRQ statistics indicate.

Of course, cutting in the other direction is the fact that, while the questionnaire does ask about part-time employees, it doesn't get into the details of calculating full-time equivalents, as required by the employer mandate. Therefore, some of those with more than 50 employees still may not be subject to the penalties, depending on the composition of their part-time workforce.

Furthermore, the AHRQ report does not address whether the insurance provided by employers provides minimum value (which is also necessary to avoid the penalties). In fairness, that's not data that AHRQ could have collected from employers. Nevertheless, what it means is that even of the 95.9% providing insurance, some of those plans (such as mini-med plans that are operating under waivers) may not provide minimum value, thus the cost impact on those employers could be significant.

And what none of these statistics actually show is that any employer who is subject to the mandate and has part-time employees still has to figure out how to comply with the mandate to avoid the penalties, regardless of size or whether they already offer insurance. Additionally, employers hovering around the 50 FTE threshold have to monitor their hiring practices to avoid inadvertently tripping the mandate. So to say that the mandate doesn't "affect" these business is to misstate their compliance costs. So why is it a big deal? Because it affects more than 5% of 4% of businesses.

MEET THE TEAM



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