

November 19, 2014

# Proposals to Change the Affordable Care Act's (ACA's) Definition of "Full Time"

## Background

**Context.** For the purposes of the Affordable Care Act's (ACA; P.L. 111-148, as amended) employer penalty, "large employers" are defined as firms with 50 or more "full-time equivalent" employees (FTEs). Total FTEs are calculated by adding the total number of "full-time" workers (who average 30 hours per week or more) plus the number of part-time, nonseasonal employees converted to FTEs.

If a firm exceeds the 50-FTE threshold, then it could be subject to a penalty if it does not provide health insurance plans that meet minimum standards of "affordability" and "adequacy" set forth in the ACA. The penalty amount is based on the number of full-time workers (not FTEs).

For employers that do not meet the ACA's requirements, the Internal Revenue Service will begin enforcing the penalty for firms with 100 or more FTEs in 2015 and for firms with 50 or more FTEs in 2016 and beyond. The penalty will only be levied on large employers that have at least one full-time worker receiving a health insurance premium credit in the individual insurance exchange markets (part-time workers receiving a credit are not included in the penalty amount calculation).

**Legislative Proposals.** The Save American Workers Act of 2013 (H.R. 2575) is one of several bills that would change the definition of full time from 30 hours to 40 hours per week. The House passed H.R. 2575 on March 3, 2014.

**Why Are the Changes Being Proposed?** Proponents of changing the definition of full time from 30 hours per week to 40 hours per week argue that the current 30-hour per-week definition is unusually low compared with "traditional" standards of full-time work in many industries. A 40-hour work week definition could, arguably, reduce employer's calculations and compliance costs. Proponents of the revision also contend that the 30-hour definition encourages employers to reduce the number of hours allotted to some workers (thereby reducing their pay) to decrease the number of full-time workers and lower employers' compliance costs. In addition, with fewer full-time workers, the size of an employer's penalty would be smaller because the penalty is based on the number of full-time workers.

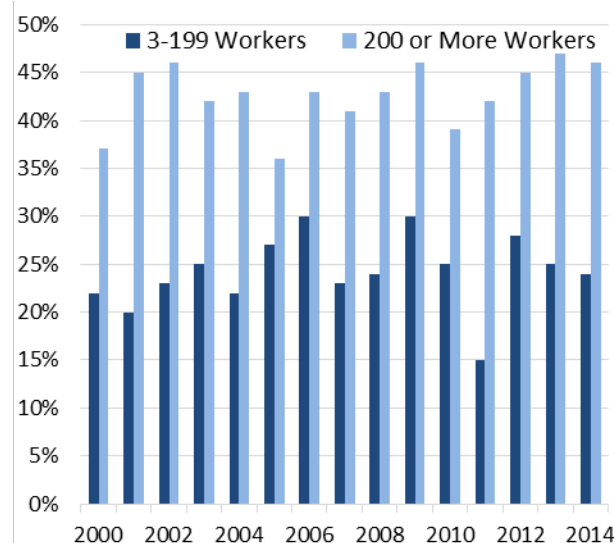
Some firms that have dropped health coverage for their part-time workers claim these employees can purchase more comprehensive or lower-cost policies in the individual health exchanges. Depending on their income, some of these workers may be eligible for an insurance premium tax credit.

## Health Coverage of Part-Time Workers

The Kaiser Family Foundation (KFF) publishes employer health insurance offer rates to part-time workers (defined by their employers) among firms that offer health benefits.

As shown in **Figure 1**, among firms that offer health benefits, the percentage of firms offering health benefits to part-time workers has remained relatively consistent in recent years. There was no large drop in offer rates in 2014, the first year individual insurance exchanges were open and the baseline for measuring average work hours for the employer penalty beginning in 2015. As of 2014, the KFF data indicate that the percentage of firms offering health coverage to their part-time workers is in line with historical trends.

**Figure 1. Among Firms Offering Health Benefits, Percentage Offering Health Benefits to Part-Time Workers, 1999-2014**



**Source:** Kaiser Family Foundation, 2014 Annual Survey of Employer Health Benefits, p. 47.

## Analysis of Changing the Definition to 40 Hours per Week

**Revenue Effects.** The Joint Committee on Taxation (JCT) scored H.R. 2575 as costing \$73.7 billion over 10 years. For context, the Congressional Budget Office (CBO) and JCT estimated in April 2014 that the employer penalty would raise \$139 billion over 10 years.

**Compliance Costs.** Larger firms have two main compliance advantages. First, they typically have more

technologically sophisticated ways of tracking the average hours worked by each of their employees (or they contract out their payroll analysis). Second, any compliance costs are likely to be a smaller share of larger firms' revenue compared with smaller firms. Because employers with fewer than 50 FTEs are exempt from the penalty, firms that are near the 50-FTE threshold and firms that employ more than 50 FTE employees but do not have a simple method to track employees' work schedules (especially if these schedules vary from one week to the next) bear a disproportionate share of the total compliance costs of the FTE provision.

Firms have had several years to plan for the implementation of the employer penalty. According to the ACA, employers were to measure their workers' average payroll as of January 2013 to establish a baseline for compliance with the employer penalty in 2014. On July 2, 2013, the Obama Administration announced a delay in implementation of the employer penalty for all applicable firms until 2015. On February 10, 2014, the Department of the Treasury further delayed the employer penalty for firms with 50 FTEs to 99 FTEs from 2015 to 2016.

**Redefine Full Time as 40 Hours per Week.** Changing the definition of full time from 30 hours per week to 40 hours per week would shift, not eliminate, the incentive for employers to move more workers to part-time status, and it may create greater incentive for firms not to offer health insurance to their employees. More employers could be inclined to shift workers to part-time status (in terms of the ACA) under a 40-hour definition because the disruption to the employers' workforce would be smaller when changing work schedules from 40 hours to 39 hours than from 40 hours to 29 hours.

As shown in **Table 1**, more workers are clustered around the 40-hour-per-week threshold than the 30-hour threshold. If the incentive to retain workers on full-time status is diminished, then the employer penalty could compel fewer firms to offer health care coverage relative to current law.

**Table 1. Persons at Work in All Industries, 2013**

Average Hours of Work per Week	Number of Workers (in thousands)	Percentage Distribution
1 to 14	6,563	4.7%
15 to 29	17,014	12.2%
30 to 34	10,237	7.4%
35 to 39	9,645	6.9%
40	60,891	43.8%
41+	34,577	24.9%
Total	138,926	—

**Source:** U.S. Bureau of Labor Statistics, "Labor Force Statistics from the 2013 Current Population Survey," at <http://www.bls.gov/cps/cpsaat19.htm>.

## Other Policy Options

Policies intended to reduce the severity of the employer penalty could decrease the compliance costs of the ACA, thereby reducing the distortionary effects the penalty might have on payrolls. However, these options could decrease revenue and increase either the share of uninsured or the number of workers enrolling in individual exchanges.

**Change the Definition of Full Time to 35 Hours per Week.** This option could more closely align the ACA to traditional definitions of full-time work but would still require a significant change in work hours (from the typical 40-hour standard) to avoid the employer penalty. Based on the Bureau of Labor Statistics data cited in **Table 1**, employees who worked 35 hours or more per week in 2013 worked an average of 42.6 hours per week. As shown in **Table 1**, fewer workers are clustered around 35-hour than 40-hour average work weeks.

**Increase the Exemption for the Employer Penalty to the First 50 Full-Time Workers.** Currently, the employer penalty is triggered by the hiring of the 50<sup>th</sup> FTE worker, but the first 30 full-time workers are exempt from the penalty amount calculation. In other words, a firm that employed 49 full-time workers and then hired a 50<sup>th</sup> full-time worker would be subject to a penalty based (in part) on 20 full-time workers. This 30-worker exemption could be increased to reduce the cliff that firms could face at the hiring of their 50<sup>th</sup> FTE worker, thereby reducing the marginal disincentive for firms near the 50-FTE threshold to hire.

However, this option would have a limited effect on the decisions of employers that are well above the 50-FTE threshold. For these employers, the penalty paid on the first 20 full-time workers becomes smaller, relative to aggregate health coverage costs, as firm size increases. Additionally, this option would have little to no effect on employer decisions to offer coverage to part-time workers because these workers are not used to calculate the penalty amount.

**Modify the Exemption to the First 30 FTE Employees in Penalty Calculation.** The employer penalty exemption could be revised such that it was based on FTE employees to reduce the incentive for firms to hire more part-time workers or change full-time workers to part-time status. In this case, hiring two part-time workers to substitute for one full-time worker would not change the calculation of the penalty.

This option could be combined with the exemption increase option, described above, to offset some of the revenue loss associated with increasing the exemption. For example, the employer penalty could be revised to exempt the first 50 FTE employees instead of the current exemption of the first 30 full-time employees.

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