Employers: You Can Manage the Affordable Care Act Without Cutting Employees’ Hours

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Posted by David Mckinney in Health Care Reform Act

The Affordable Care Act (“ACA”) gives many Americans the opportunity to buy health insurance without facing limitations on preexisting conditions or lifetime benefits. It also requires large employers — which employ fifty full time equivalent workers — to offer a health plan to employees who work an average of thirty hours or more. This is called the “Employer Mandate.”

The Employer Mandate has had a significant consequence: Some employers are cutting employees’ hours to avoid the mandate. Large employers are not required to offer healthcare to employees who work less than an average of thirty hours. Some employers are aggressively cutting hours, which deprives workers of a significant part of their income and forces them to buy insurance out of their own pocket.

A client’s son held a steady job for many years. To avoid the Employer Mandate, his employer cut his work schedule to 28 hours a week. The son still did not have health insurance and lost a quarter of his income. He was forced to quit his long-time job, move in with his mother, and take another job.

The transition to part-time workers is a significant problem for the American economy — and should not happen. The little-known reality is that it does not *need* to happen.

Large employers, which can afford to offer reasonably-priced healthcare to their employees, should offer it. Some employers, however, simply cannot — or will not — offer healthcare to all workers. Retail stores, convenience stores, restaurants, etc., would go broke if they offered healthcare to their employees. Other employers face significant dilemmas because they are being forced to offer healthcare services that are repugnant to the owners.

There is another way — a way that protects employers and employees from the ACA’s penalty taxes without extending coverage to workers. Here is an outline of the way to comply with the law without covering additional workers:

1. **Bare Minimum Plan.** Establish an employer-funded, “Bare Minimum,” health plan. The Bare Minimum plan does not need to include all the bells and whistles that a health insurance policy must include. It does not need to offer coverage to the employee’s entire family; it can exclude spouses and children over the age of 26. It does need to provide coverage for fundamental benefits such as hospitalizations, physician services, lab work, diagnostic tests, and drugs.

A Bare Minimum Plan should not be attractive or easy to use. One approach would be to use one benefit schedule for in-network providers, and less-generous schedule for providers that are out of network. The plan should include reasonable providers in the network but does not need to include the most popular or most-accessible providers.

2. **Provide the lowest permitted value.** The Administration has done a good job helping employers know whether their plans provide the “minimum value” required by law. The plan could provide the minimum value that passes the Administration’s test. In general, this would permit about a $6,000 annual deductible.

3. **Charge the highest premium permitted by law.** The law requires employers to make their plan's "affordable." To satisfy this requirement, a plan can charge a premium of 9.5% of *total family income* — and this is *just for the employee's coverage*.

To be on the safe side, you could tell employees that the premium will be 9% of the husband's and wife's total income — and require the employee to prove what the income is.

You could charge an additional "COBRA" premium for each child who is covered by the plan.

No sane person would pay 9% of family income for a Bare Minimum Plan.

4. **Offer the Plan.** You should make a written offer of the plan to each employee who works close to thirty hours per week or more. If you do not want to go through the painful recordkeeping required to determine who works an average of thirty hours, you may want to err on the safe side by offering everyone who works, say, twenty hours per week or more, the opportunity to have coverage — and to determine later whether he/she actually works thirty hours per week.

5. **How does the program work?** If you really offer the plan to your over-thirty hour employees, you should have complied with the law — and should not owe the employer's penalty tax.

Since you charge the employee a premium of more than 8% of the family's income, the employee should be exempt from the obligation to buy coverage on the Exchange or to pay a penalty tax.

Employees, who are not currently covered by your health plan, should be in the same situation as they are today: they should have a job that pays a living wage but they do not have health insurance or a legal obligation to buy it. Employees could buy insurance on the Exchange, but might not be eligible for some of the ACA premium subsidies.

6. **Educate your employees.** In all likelihood, they will be able to get better and cheaper coverage on the Exchange. However, since you are charging more than 8% of family income, even if the employee does not get coverage, the employee should be exempt from the "penalty tax." Remember: only an idiot would take your lousy and costly coverage.

7. **Consider alternatives.** You could offer an "indemnity" insurance plan that is exempt from many of the ACA's rules and covers some of your employees. A *self-funded* indemnity plan would need to cover most employees who work over 35 hours per week (and probably 30 hours per week after new regulations are issued). An indemnity plan comes with a whole set of legal and tax issues, so you should get professional advice before you adopt such a plan.

8. **Watch out for discrimination.** The ACA prohibits employers from offering a nice insurance package to highly-compensated workers and a bad insurance package to other workers. If you have a nice policy for some employees, you should consult with a specialist to determine whether the other workers must be covered by your nice policy — or whether the law exempts the other workers from coverage.

The "discrimination rule" currently applies to self-funded plans, but it will apply to insured plans later. The new discrimination regulations have not been written, so stay tuned for future developments.
If you cannot afford to insure all of your workers — or if, for some reason, you simply will not do so — at least you should consider the law's alternatives that would let your workers continue to receive a living wage.