

The Patient Protection and Affordable Care Act (PPACA) greatly complicates life for a small-business owner. It adds new costs and red-tape and undermines the ability of the business to gauge its future costs and those of its competitors. Here are five especially troubling provisions:

THE EMPLOYER MANDATE

Costly, confusing, arbitrary penalties on businesses.

The employer mandate imposes costly, confusing, arbitrary penalties on businesses with more than 50 full-time employees or full-time equivalents (FTEs). Adding one new employee or having one more employee qualify for insurance subsidies can result in annual employer penalties of \$2,000, \$3,000 or, in unusual cases, tens of thousands of dollars.

Incentives for downsizing, layoffs, outsourcing.

This structure gives businesses a powerful incentive to downsize, replace full-time employees with part-timers, or outsource.

Time-consuming red-tape.

Employer mandate penalties are triggered when one or more employees receive government subsidies to purchase insurance in the new exchanges. One immediate effect is that employers will face time-consuming, arbitrary administrative burdens associated with employees seeking to qualify for the subsidies.

Threatens employees' families' privacy and exposes employers to liability actions.

In more serious ways, the interactions between the employee subsidies and the employer penalties will stress the employer-employee relationship. An employee may have to choose between a subsidy and their family's privacy. Once an employee qualifies for a subsidy, the government will send their employer monthly reports that inadvertently reveal personal financial data about the employee's spouse and other household members. This raises discomfiting privacy concerns and exposure to liability for employers.

Large employer penalties are triggered by factors irrelevant to the business and unknown to the owner; can generate legal disputes between employer and employee.

Thanks to the subsidy/penalty structure, businesses may be penalized financially because of personal matters occurring in their employees' households – matters over which the employer has no control or knowledge. For example, an employer could be hit with thousands of dollars in annual penalties because of an employee whose spouse's elderly uncle moves into their house. Generally, the employer is not entitled to know what triggered their penalty. The exception is that if an employer suspects that a penalty is unwarranted, they can challenge their employee's honesty before the IRS or insurance exchange. The IRS and health insurance exchanges thus become arbiters of potentially bitter disputes between employers and employees – disputes that only exist because of the PPACA.

Complicates hiring and business structuring.

Because of the employer mandate (and other provisions of the PPACA), it will be more difficult for businesses to estimate the cost of expanding, hiring new employees and deciding on a business structure.

BENEFIT MANDATE STRUCTURE AND PROCESS

HHS can increase the cost of insurance for small business.

The federal government can raise the cost of fully-insured policies by adding new benefit mandates – requirements that insurance policies must cover specific medical procedures. Effectively, this empowers federal officials to continually redefine the cost floor upwards.

Compounds a long-time problem at the state level.

This new federal power to create mandates compounds a problem that has long existed at the state level. States already impose thousands of benefit mandates, each of which raises the cost of fully-insured policies.

The process for adding mandates is unclear.

The PPACA assigns the task of defining "essential benefits" to the Secretary of Health Human Services in concert with, among others, the Institute of Medicine and the Secretary of Labor. However, the specifics of this process are vague, and the potential cost implications for business and individuals are huge.

1099 REQUIREMENT

Impossible-to-administer 1099 provision would overwhelm business.

Until and unless the PPACA's infamous 1099 provision is repealed, businesses will have to determine which vendors (corporate and unincorporated) sold them more than \$600 in services, goods or property over the course of each year. Having done so, a business must then secure taxpayer ID numbers for each such vendor and then mail the vendor and the IRS a Form 1099 – a process even the IRS's Taxpayer Advocate considers impossible to administer. The requirement begins in 2012, so businesses have to prepare their accounting systems in 2011. Below is an example of the problems the 1099 provision creates.

1099 nightmare, part I: Collating receipts.

Suppose a construction business has twenty employees, each of whom purchases supplies and turns in receipts for reimbursement. Somehow, the business owner will have to take hundreds or thousands of receipts from all the employees and collate them by vendor.

1099 nightmare, part II: Analyzing vendors' owners.

Further complicating matters, the construction company will also have to determine whether multiple vendors belong to the same owner.

1099 nightmare, part III: Tax withholding from strangers.

Then the construction company will have to seek a taxpayer ID number or social security number from every vendor where the total receipts over the calendar year exceed \$600. If some vendor fails to provide the taxpayer ID, the business will have to send an amount equivalent to 28% of the purchases to the IRS as withholding. It's not clear where the firm is supposed to get this 28% or how it gets the money back after the vendor's taxes are paid.

1099 nightmare, part IV: More fees for banks.

Credit and debit card transactions will be exempt, but that means an increase in electronic transaction fees and also separate accounting for card-based and non-card-based expenses.

1099 nightmare, part V: Motive to avoid small businesses.

This proliferation of paperwork also gives businesses a strong motive to avoid purchasing goods and services from small businesses. Why buy inputs from 50 small vendors (50 1099s to administer) when you can buy all of the inputs from one big-box store and file a single 1099?

EXCESSIVE ADMINISTRATIVE DISCRETION

Recent "mini-med" waivers put small business at a disadvantage

The Secretary of Health and Human Services recently granted waivers allowing several hundred companies and unions to escape certain expensive requirements of the PPACA. Specifically, the waivers allowed these few employers to offer their employees low-cost "mini-med" policies. Without waivers, the vast majority of small businesses can only purchase more expensive, comprehensive insurance coverage.

Grandfathering restrictions cause businesses to lose insurance policies.

Excessive regulatory restrictions on "grandfathering" will force perhaps 80% of small businesses to drop their current health insurance plans within three years and either replace them with more expensive new plans or go without insurance altogether.

TWO NEW "MEDICARE" TAXES

New taxes on small business.

In 2013, two new "Medicare" taxes will reduce earnings for small-business owners and their families – especially those 75% who report business income on their personal tax returns. Despite their names, these two taxes really have nothing to do with Medicare; they simply fund the PPACA's huge insurance expansion.

Specifics of the taxes.

A new 0.9% payroll surtax hits wage and salary income over \$200,000 for single filers or \$250,000 for joint filers. A new 3.8% tax falls on some or all investment income of taxpayers whose modified adjusted gross income (MAGI) exceeds \$200,000 for single filers or \$250,000 for joint filers. Investment income includes rents, dividends, interest, royalties, and capital gains on property sales (with a partial exclusion for primary residence sales).