



National **Retail** Federation  
*The Voice of Retail Worldwide*

National Retail Federation Testimony

Hearing on

**“Impact of the Health Care Law on the Economy, Employers and the Workforce”**

Committee on Education and the Workforce

United States House of Representatives

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Mr. Chairman, Ranking Member Miller and honored members of the Committee, I thank you for the opportunity to appear before you today and to share our views regarding the new health care reform law – the Patient Protection and Affordable Care Act (PPACA). My name is Neil Trautwein and I am Vice President and Employee Benefits Policy Counsel of the National Retail Federation (NRF).

As the world's largest retail trade association, the National Retail Federation's global membership includes retailers of all sizes, formats and channels of distribution as well as chain restaurants and industry partners from the U.S. and more than 45 countries abroad. In the U.S., NRF represents the breadth and diversity of an industry with more than 1.6 million American companies that employ nearly 25 million workers and generated 2010 sales of \$2.4 trillion. [www.nrf.com](http://www.nrf.com).

The retail industry has one of the hardest workforces of any to cover with health insurance. We have a fairly young workforce (but also have a growing senior cohort) coupled with a high turnover rate. We employ half of all teenagers in the workforce and a third of all workers under 24 years old. More than a third of our workforce is part-time. Two-thirds of our part-time employees are women. Frequently, qualified retail workers opt-out of the coverage we offer because they already have alternative coverage through another family member or another job. Many are second wage earners, mainstays of family economies. Smaller retailers often experience problems making health insurance plan participation requirements because too many employees opt out.

As a labor-intensive industry, retailers are strong advocates of high quality and affordable health coverage in order to help keep our employees healthy and productive. In fact, a retailer (Montgomery Ward) was one of the first businesses to offer medical coverage in the U.S. As an industry that frequently endures wafer-thin profit margins or worse, we are also well acquainted with the need to manage the collective cost of labor (including benefits) in as cost-effective a manner as is possible. Maintaining balance between these two imperatives is not always easy. Even in the best of times, it can border on the impossible – and these are still far from being the best of times.

The previous Congress' health care reform debate was highly and, in our view, unnecessarily divisive. The retail industry proposed in 2008 and strongly supported comprehensive health care reform (see NRF's Vision for Health Care Reform, [www.nrf.com/healthcare](http://www.nrf.com/healthcare)) that would reduce health care costs and extend coverage to the uninsured. We proposed building from the voluntary base of coverage by lowering the cost of medical care and coverage in order to extend coverage to those without. I testified before this Committee's Subcommittee on Health, Employment, Labor and Pensions in March 2009 to share our reform platform.

Instead, Congress enacted – over our strong objections – a reform law that fails to quickly reduce health care and coverage costs. It will also impose unwarranted penalty mandates on employers in 2014 that are already deterring job growth today. NRF strongly opposed both the House and Senate-passed reform bills and the modified Senate bill that became law.

We continue to oppose this law today. NRF supported the successful passage of H.R. 2 in the House on January 19, 2011. NRF also supported the unsuccessful repeal vote in the Senate on February 2, 2011. We took these actions not because we oppose reform, but because we absolutely must have it. Unfortunately, rather than moving us forward, passage of PPACA has made providing coverage more difficult for today's retailer.

Nevertheless, PPACA remains the law of the land. NRF has worked hard to alert our members to the staged implementation of PPACA and increasing employer obligations under the law. We have also worked to identify and suggest improvements. We have worked closely and cooperatively with the Obama Administration wherever possible to help smooth implementation of the law. We continue to work with the Administration to flesh out missing or contradictory provisions of PPACA, especially as regards the penalty mandate provisions effective in 2014.

We strongly support what we needed to start with in the first place: more job-friendly health care reform that will concentrate first on reducing the cost of medical care. Toward that end, we also support efforts like H.R. 4, which that would repeal the expanded Form 1099 reporting requirements under PPACA.

Requiring reporting for all non-credit card transactions over \$600 in a year will create a blizzard of reports that will needlessly bog down commerce while also swamping the IRS. This provision has no relevance to our health care system and should be promptly repealed. This necessary change to PPACA rightly enjoys broad bipartisan support – and received an overwhelming Senate vote of 81-17 February 2, 2011 on a dispositive procedural motion. We look forward to its prompt approval in the House as well.

### **Employer Penalty Mandate**

The PPACA penalty mandates effective in 2014 differ from more traditional employer mandates by not directly mandating the provision of coverage. Instead, it penalizes the failure to do so for full time employees, defined as working 30 or more hours per week. Employees with fewer than 30 hours per week are not counted for penalty purposes, though their hours are aggregated to determine whether an employer meets the 50 full-time equivalent employee threshold for coverage. Employers with fewer than 50 full-time equivalent employees are exempt.

PPACA also penalizes an employer who provides coverage to full-time employees if the cost to an employee exceeds 9.5 percent of his or her family income. The penalty for failure to provide coverage to full-time workers is \$2,000 per uncovered full-time employee minus the first 30 full-time employees. The penalty for providing “unaffordable coverage” to a full-time employee is \$3,000 for each full-time employee with unaffordable coverage, up to a cap of \$2,000 times every full-time employee, minus the first 30.

Ironically, it may prove less expensive for many employers (including some public employers) to pay the penalty than to pay for coverage and any possible penalties for “unaffordable care.” For example, an employer with 52 full-time employees would pay an average of \$520,000 to \$780,000 for coverage (based on Kaiser Family Foundation estimates). The employer could also owe penalty amounts as noted above for the failure to provide affordable coverage even though he or she is providing the same coverage to all employees. That same employer would owe a penalty for failure to provide any coverage to full time employees of \$44,000 (52 employees minus the first 30 times \$2,000).

While the substantial difference between coverage cost and penalty amounts is not dispositive in itself – other considerations will factor into each employer’s determination – it certainly is significant by any measure. PPACA may thus ultimately succeed in dismantling employer-based health coverage. We strongly urge repeal of the employer penalty mandate provisions.

Many retailers have been astounded by the prospect of being penalized for providing coverage that exceeds a factor largely beyond their knowledge or control: an employee’s family income. They have also been shocked by the “free-choice” vouchers in which certain low-income employees can opt out of the employer plan taking their employer’s contribution with them in the form of a voucher. Employer costs could greatly increase as younger, healthier entry level employees opt out. Finally, retailers of all sizes oppose shifting our health care system from voluntary to mandatory through penalty mandates.

NRF has created a special web-based Health Mandate Cost Calculator to help illustrate the penalty mandates to various sized employers. The NRF Calculator is intended to be an open modeling tool and no data is collected from it. I attach several screen prints of the calculator in action at the end of this statement. I also encourage the members of this Committee, their staff and the general public to see it in action for themselves at [www.nrf.com/healthcare](http://www.nrf.com/healthcare). No password is required.

### **Effect on the Retail Community**

The penalty mandate provisions are already affecting hiring decisions in advance of their effective date in 2014. We have heard reports from across the retail community (including our restaurant members) that the penalty mandates are affecting expansion, franchising and hiring decisions today. We respectfully urge Congress to reassess and repeal the penalty mandate to help encourage needed growth in jobs and our economy.

We collected a number of examples from our chain restaurant division (National Council of Chain Restaurants) in late 2010. Please note the four examples below:

#### **Example 1**

One of the nation’s largest quick service restaurant (QSR) chains has estimated the incremental cost to comply with the new health care law to be \$10,000 to \$15,000

annually *per restaurant*. Across this chain's entire franchised system, that would equate to \$50 to \$75 million in incremental costs, annually. These costs would wipe out up to one-third of this system's profits per year, potentially causing hundreds of restaurants in the system to go out of business, eliminating up to 12,500 jobs.

Most of the restaurants in this chain's system are locally-owned and operated by small business franchisees. These franchisees typically own just a handful of restaurants, and these new costs could cause them to lose some or all of their stores. The reasons are two-fold.

First, there are limited options for restaurants in this chain to try and offset these dramatic new costs. In this economy and competitive environment, raising prices has not been an option (although higher prices may ultimately result economy-wide given the game-changing nature of this law). Second, laying off employees to reduce costs is also not an option because these stores already keep a minimum number of hourly team members on the clock as required to best serve customers. Some of the restaurant owners in this system may consider dramatically lowering each full-time team member's weekly hours to less than 30 hours in order to avoid full-time classification.

The only option left for many restaurants in this system will be to close their doors. In fact, this chain projects that 10 percent of its small business franchisee owners will not be able to absorb the new costs of the health care law and will shut down restaurants. Each restaurant employs between 12 and 25 team members. In a system with 5,000 restaurants, the loss of 500 restaurants translates into a loss of between 6,000 and 12,500 jobs.

## **Example 2**

A second chain – a large franchised system with multiple casual/family dining restaurant concepts – projects that the average cost per restaurant in their system would be \$237,000. That equates to a system-wide cost of providing health insurance benefits to full time employees of almost \$806 million per year. If all of the chain's small business franchisee owners elected to pay the employer penalty instead of providing insurance, the cost would be reduced to just over \$84,000 per restaurant, or a savings of \$286 million system-wide.

As each restaurant in this system is owned and operated by an individual small business person, it is impossible to predict how each would react to such dramatic cost increases. To cope with these cost increases, these owners could reduce the number of employees per restaurant, reduce the number of hours worked, or reduce the number of full time employees and rely on more part time labor.

If every franchisee reduces the number of full time employees to the bare minimum required, over 100,000 employees who are currently full time would be shifted to part time. If the franchisees elected to provide health insurance benefits to the remaining full time employees, the cost per restaurant would be \$69,000 (versus \$237,000 per restaurant with the existing number of full time workers). The cost savings under this

scenario would be \$571 million system-wide. However, if the franchisees elected instead to just pay the employer penalty for the remaining full time employees under the skeleton crew scenario, the cost per restaurant would be \$24,470, or just over \$83 million system-wide.

### **Example 3**

Another casual dining chain, also franchised, currently offers all its employees, regardless of hours worked, limited benefits health insurance plans that cost employees as little as \$1 a day. The chain spends almost \$9 million a year on this plan. Under the new health care law, this company anticipates it will reduce the number of jobs it offers by 15 to 23 percent, or 5,000 to 8,000 jobs.

The choices, as this chain sees it, are three-fold. It could choose not to provide insurance to full time employees and simply pay the penalty, which would cost \$56 million per year. This figure exceeds this company's profit last year by almost \$11 million. Or, it could keep its current number of full time and part time employees and provide insurance, which would cost the system over \$27 million annually. This cost would consume 42 percent of last year's profits.

Finally, the company could reduce the number of full time employees and eliminate the benefits that are currently offered to part time employees, which is an unattractive option because it could result in higher turnover and higher training costs. This company believes all three options are unattractive, and that the most rational choice for them is to maintain its reliance on a workforce that is primarily full time, but to reduce the number of jobs overall by between 5,000 and 8,000.

### **Example 4**

A mid-sized quick service restaurant chain that employs nearly 60,000 workers does not believe that the health care law is economically feasible. This chain owns and operates approximately 1,100 restaurants, and their independent franchise owners operate an additional 1,100. They currently offer health insurance to all employees, including restaurant crew members who are offered a range of coverage options including a limited benefit "mini-med" plan.

This chain has carefully reviewed the requirements placed upon employers in the new healthcare law, and has worked with their insurance brokers and actuaries to determine what the potential cost of compliance might be. They are disappointed that more cost control measures were not included in the law, and that no consideration was given to the possibility that some employers might continue to offer limited benefit plans to hourly workers.

They believe the cost associated with offering the full benefit health insurance plans that the law requires is excessive, and they do not believe that they will be able to offer such coverage to all workers. They are analyzing many options as they prepare to comply with the law, including the possibility that many of their restaurant employees that would

currently qualify as full-time workers might see a reduction in their hours of work such that they would be considered part-time workers.

### **Priority Workforce Changes to PPACA**

I have previously noted the harmful workforce effects of PPACA compliance. Central to these concerns is the lack of flexibility that will constrain retail's ability to manage our high turnover rate. I note that many states have expressed similar concerns over the lack of flexibility under PPACA, most recently expressed in a February 7, 2011 letter to Secretary Sebelius from 21 Governors.

Our preference would be for an outright repeal of PPACA to be replaced by legislation that places top priority on reducing the cost of medical care and coverage. Short of that, we advocate the following initial nonpartisan steps to help expand employer flexibility and to help lower the cost of providing coverage:

1. Repeal employer mandate penalties, including the penalties for providing "unaffordable" coverage and the "free-choice" vouchers.
2. Define a full-time employee as working 40 hours per week, determined on at least a 120-day basis.
3. Expand waiting periods to at least 120 days.
4. Repeal auto-enrollment or delay onset of auto-enrollment for at least 120 days, consistent with maximum waiting periods.

### **ERISA**

Given this Committee's jurisdiction, we would be greatly remiss in not mentioning our continued strong support for ERISA. ERISA allows employers to offer common coverage across state boundaries – an ability crucial to multi-state employers. We strongly oppose any effort to weaken ERISA's preemption of inconsistent state laws for health plans (also known as welfare plans under ERISA).

We urge Congress to resist any entreaties by the states to waive ERISA preemption in favor of a competing state reform scheme. We cannot afford to dismantle the backbone ERISA provides to employer-based coverage. ERISA has worked well and continues to work well to help provide coverage to millions of working Americans. NRF continues to believe in addition that smaller employers could also benefit from ERISA preemption through small business health plans or association health plans.

### **Conclusion**

Again, NRF greatly appreciates the opportunity to appear before you today. In sum, we urge you to work to create a value-oriented health care system that promotes lower cost and higher quality care and coverage for employers of all sizes and individuals from all

walks of life. That will require stepping away from PPACA – either through repeal, as the House has done, or through wholesale change to PPACA, especially as regards the penalty mandates. We look forward to working with you to help promote the enactment of positive health care reform.

Attachment (A)

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## Health Mandate Cost Calculator

Health Care Reform (Patient Protection and Affordable Care Act of 2010 – PPACA) is now the law of the land. One key issue affecting all employers – but especially the retail and restaurant industries – is the employer mandate, seen here as employer mandate penalties for failure to offer or an offer of unaffordable coverage.

These financial penalties apply to employers with more than 50 full-time or full-time-equivalent employees who either do not offer coverage to full time employees (and one full-time employee receives a tax subsidy) or offers coverage to full-time employees and the cost exceeds a threshold of a full-time employee's income and the employee receives a tax subsidy. The employer mandate penalties begin in 2014.

**Sounds complicated?**  
The National Retail Federation has created a special **Health Mandate Cost Calculator** to help you better understand your potential mandate penalty exposure. Your actual status could change in a given month in response to a surge in part-time hours or as your business grows. You should review your health plans and changing obligations under the law with competent benefit advisers. NRF provides this **Health Mandate Cost Calculator** as a service to its members and the public to provide general information and it is not nor is it intended to provide legal advice.

Follow the "Let's Start" link to review your potential mandate penalty liabilities.

[Let's Start](#)

In order to determine potential penalties your company may be liable for we need to determine how many full time employees you currently employ.

Please enter the number of full-time employees<sup>2</sup> you employ.  [submit](#)

How many total hours do your part-time employees work in a month?  [submit](#)

Enter the total number of hours worked by all of your part-time workers for one month. The calculator determines the number of full time equivalents [total part-time hours/month divided by 120] which in turn is added to the number of full-time employees to determine whether you meet the 50-employee penalty threshold.

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<sup>1</sup>From the Patient Protection and Affordable Care Act of 2010 (PPACA).  
<sup>2</sup>Full-time employees work 30 hours or more per week on monthly average.  
<sup>3</sup>No penalty is paid on part-time employees or full-time employee equivalents.  
<sup>4</sup>If total employee cost exceeds 9.5% of employee's family income, then the employee is eligible for subsidized coverage in the new state-based Exchange purchasing group.  
<sup>5</sup>The first 30 full-time employees are exempt from the mandate penalty.  
<sup>6</sup>The penalty amount is the lesser of the actual penalty or \$2,000 times all full-time employees minus the first 30.

Example: 35 full-time and 25 part-time employees [ @ 25 hours/week ] = 2500 PT hours

Please enter the number of full-time employees<sup>2</sup> you employ.

How many total hours do your part-time employees work in a month?

Enter the total number of hours worked by all of your part-time workers for one month. The calculator determines the number of full time equivalents [total part-time hours/month divided by 120] which in turn is added to the number of full-time employees to determine whether you meet the 50-employee penalty threshold.

**Results**

Your total number of full-time employee equivalents<sup>2</sup> is **56**.

**Results**

If you **do not** provide coverage to full-time employees, and **at least one** receives an Exchange Subsidy<sup>4</sup>, then your total annual penalty owed to the Federal Government will be **\$10,000<sup>5</sup>**.

If you **do** offer qualified coverage to full-time employees, but one or more receives an Exchange Subsidy<sup>4</sup>, then your penalty for each subsidy-recipient employee will be **\$3,000<sup>6</sup>**.

Listed below are possible penalties based on the information you have provided.

Subsidy Recipients	1	3	8	17	26
% of full time Workforce	3%	9%	23%	49%	74%
Penalty	\$3,000	\$9,000	\$10,000	\$10,000	\$10,000

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Example: penalty for not providing coverage: 35 full-time EEs minus 30 = 5 full-time x \$2,000 = \$10,000

“Unaffordable” penalty is the lesser of \$3,000 times actual FT recipients or \$2,000 times every full time employee minus the first 30.

## Health Mandate Cost Calculator<sup>1</sup>

In order to determine potential penalties your company may be liable for we need to determine how many full time employees you currently employ.

Please enter the number of full-time employees<sup>2</sup> you employ.

How many total hours do your part-time employees work in a month?

Enter the total number of hours worked by all of your part-time workers for one month. The calculator determines the number of full time equivalents [total part-time hours/month divided by 120] which in turn is added to the number of full-time employees to determine whether you meet the 50-employee penalty threshold.

**Results**

Your total number of full-time employee equivalents<sup>2</sup> is **23**.

**Exempt**

You do not have enough (50 required) full-time or full-time equivalent employees to be subject to the penalty mandates. Please note that the penalty calculation is made on a month-to-month basis. Your actual status could change in a given month in response to a surge in part-time hours or as your business grows. You should review your health plans and changing obligations under the law with competent benefit advisers. The NRF provides this Health Mandate Calculator as a service to its members and the public to provide general information and it is not nor is it intended to provide legal advice.

New coverage options are scheduled to be available as of 2014. NRF believes that PPACA did not do enough to reduce the cost of medical care and coverage and that insurance premiums will continue to increase. A majority (57.1%) of respondents to NRF's [May 2010 health care survey](#) predict premium rate increases between 6 to 10% in 2011.

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10 part-time employees at 25 hours / week = 1000 PT hours

## Health Mandate Cost Calculator<sup>1</sup>

In order to determine potential penalties your company may be liable for we need to determine how many full time employees you currently employ.

Please enter the number of full-time employees<sup>2</sup> you employ.

How many total hours do your part-time employees work in a month?

Enter the total number of hours worked by all of your part-time workers for one month. The calculator determines the number of full time equivalents (total part-time hours/month divided by 120) which in turn is added to the number of full-time employees to determine whether you meet the \$0-employee penalty threshold.

### Results

Your total number of full-time employee equivalents<sup>3</sup> is **50**.

### Results

If you **do not** provide coverage to full-time employees, and **at least one** receives an Exchange Subsidy<sup>4</sup>, then your total annual penalty owed to the Federal Government will be **\$30,000<sup>5</sup>**.

If you **do** offer qualified coverage to full-time employees, but one or more receives an Exchange Subsidy<sup>4</sup>, then your penalty for each subsidy-recipient employee will be **\$3,000<sup>5</sup>**.

Listed below are possible penalties based on the information you have provided.

Subsidy Recipients	2	4	11	22	33
% of full time Workforce	4%	8%	24%	49%	72%
Penalty	\$6,000	\$12,000	\$30,000	\$50,000	\$50,000

6 part-time employees @25 hours per week = 600 PT hours



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many full time employees you currently employ.

Please enter the number of full-time employees<sup>2</sup> you employ.

### Results

If you **do not** provide coverage to full-time employees, and **at least one** receives an Exchange Subsidy<sup>4</sup>, then your total annual penalty owed to the Federal Government will be **\$9,940,000<sup>5</sup>**.

If you **do** offer qualified coverage to full-time employees, but one or more receives an Exchange Subsidy<sup>4</sup>, then your penalty for each subsidy-recipient employee will be **\$3,000<sup>5</sup>**.

Listed below are possible penalties based on the information you have provided.

Subsidy Recipients	250	500	1250	2500	3750
% of full time Workforce	5%	10%	25%	50%	75%
Penalty	\$750,000	\$1,500,000	\$3,750,000	\$7,500,000	\$9,940,000

The cost for single coverage [\$10K - \$15K] would run to \$50-75 million.

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