

The cover of the white paper features a vibrant, abstract background with a gradient of yellow, orange, and green, overlaid with glowing, wavy lines. The title "CHANGING DYNAMICS:" is prominently displayed in large, bold, yellow, 3D-style letters. Below the title, the subtitle "Is the Affordable Care Act a Game Changer for How Companies Operate?" is written in a smaller, yellow, serif font. At the bottom, the text "An Express Employment Professionals White Paper" and "The Patient Protection and Affordable Care Act" is written in a white, sans-serif font.

**CHANGING
DYNAMICS:**

**Is the Affordable Care Act a Game
Changer for How Companies Operate?**

An Express Employment Professionals White Paper
The Patient Protection and Affordable Care Act

“The ACA is great for the staffing industry, but it’s not very good for American job creation, small business, or for workers.”

— Bob Funk, CEO and Chairman of the Board of Express Employment Professionals
and a former chairman of the Federal Reserve of Kansas City

Is the ACA a Game Changer for How Companies Operate?

Few topics are more divisive in American politics than health care reform. More specifically, the Patient Protection and Affordable Care Act (ACA) signed into law by President Obama in 2010.

The transition during the past few years since the act was put in place has been precarious. A recent poll by USA TODAY and the Pew Research Center shows public opinion about the ACA is mixed. Of those who participated in the poll, 42 percent approve the ACA and 53 percent disapprove. When asked what effect the ACA has had on the country as a whole, 38 percent said “mostly negative” and 24 percent said “mostly positive.” And with predictions on how the ACA will impact the country as a whole in the next few years, the outlook is even dimmer with 47 percent of participants saying it will have a “mostly negative” effect.¹

Implementation of the ACA has been taking place during the past several years with a majority of the act’s provisions set to officially take effect Jan. 1, 2014. The slow rollout, while intended to allow American individuals and businesses time to take the necessary steps to be prepared, has proven to be much easier in theory than in practice. In fact, due in large part to concerns from business leaders across the country about their ability to shoulder the full impact of the ACA, some provisions of the act have been delayed until 2015, which many see as merely delaying the inevitable disruptions that will ensue. Adding to the maze of uncertainty is the fact that as of August 2013, 81 bills in 32 states, territories and the District of Columbia have been introduced to challenge and oppose the ACA.⁴

What will health care reform actually mean for the American economy once all the provisions have taken effect? In many ways, the ACA is already upending the way businesses across many industries operate. From understanding, interpreting and implementing the litany of regulations and mandates of the act to driving new trends in hiring, business management and organization, the ACA is a significant force to be reckoned with.

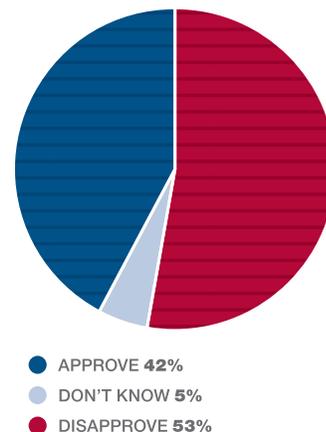
“The ACA may already be redefining what it means to be gainfully employed in America.”

— Bob Funk

Implementing the ACA represents a massive organizational shift for American business. In response to the new burdens placed upon businesses to comply with the various provisions of the act, a number of trends are emerging that will likely prove to be game changers for how some companies operate, and ultimately test the tenuous economy’s stability.

PUBLIC OPINION OF HEALTH CARE LAW MIXED

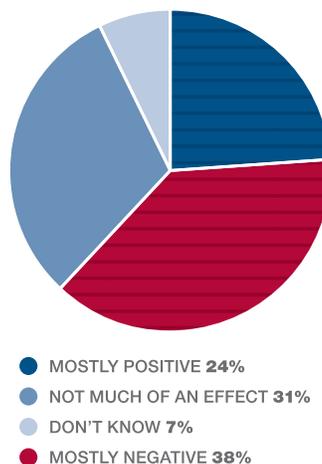
View of 2010 health care law



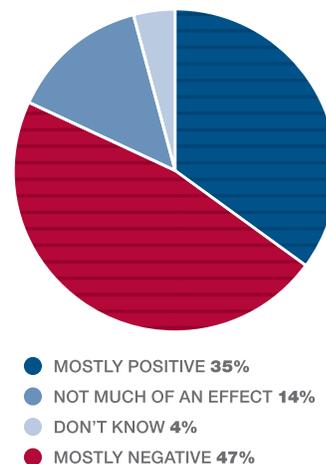
Source: USA Today/Pew Research Center Poll Sept. 4-8, USA TODAY²

HEALTH CARE LAW: IMPACT ON COUNTRY

So far, what effect has the health care law had on the country as a whole?



What overall effect will it have on the country as a whole in coming years?



Source: USA Today/Pew Research Center Poll of 1,506 adults taken Sept. 4-8. Janet Loehrke, USA TODAY³

Whether or not one agrees that the ACA is good for American job creation and small business, three emerging trends are evident:

1. The traditional 40-hour work week is threatened.
2. “Small” businesses are trying not to become “big” businesses.
3. Increased use of staffing companies.

1. The traditional 40-hour work week is threatened.

The ACA is fueling a fundamental shift in the composition of the American workforce. It is incentivizing both employers and employees to work fewer hours by placing penalties on full-time work, causing many to rethink the traditional 40-hour work week.

A Case Study: Company Changes Entire Employment Practice for ACA Compliance

“As a registered employee benefits consultant I have assisted several employers with decisions on how to prepare for the implementation of the employer mandates associated with the Affordable Care Act.

One employer with stores throughout several states has had to change its entire employment practice in order to remain in compliance. Middle- and upper-management positions have job descriptions that now require they work 50 hours per week. All other positions have job descriptions of 25 hours per week and allow for up to three additional hours weekly as needed. All non-management employees with more than two years’ seniority who currently average more than 30 hours are granted a grandfathered status, freezing their current scheduled hours. These employees will become eligible for employer-sponsored health care at open enrollment in 2014.

As a result of these changes, a typical company store has reduced employee hours by nearly 20 percent. They cannot operate efficiently without these hours being staffed and now must hire more employees. It will attempt to use full-time seasonal employees for fewer than 120 days during the busiest time of year. More people in part-time positions also means increased turnover volume and the related expenses.

The early reaction has been that the part-time employees need more income to offset the reduced hours. It appears that many of them have pursued a second job for this reason. The store managers find themselves competing for time with the other employers’ schedules when attempting to staff their shifts. More stress has been created for everyone involved.”

— Jim Gilbert, Employee Benefits Executive, Grand Rapids, Mich.

The ACA requires large employers to offer health insurance to full-time employees, or risk penalties. Generally, an employee who is expected to work at least 30 hours per week on a regular or indefinite basis, or 1,560 hours in a year, is considered full time. Because employers are not required to provide health insurance benefits to part-time workers, many employees are already seeing their hours cut and pay reduced as businesses transition to more of a part-time model for their workforces in order to avoid the ACA's employer mandate.

“The erosion of the 40-hour work week will have a lasting impact on the American workforce, including lost wages, lower incomes and stunted career progression.”

— Bob Funk

In most cases, businesses aren't actively trying to ignore their employees' needs by cutting hours;

they simply can't afford to provide health care benefits. So, maintaining a part-time workforce becomes a necessity for success.

Health care reform supporters are quick to dismiss allegations that businesses are actively cutting employees' hours, however, reports from industry insiders and workers' unions paint a different picture. According to Joseph Hansen, president of the United Food and Commercial Workers Union, which represents nearly 1.3 million workers in the grocery and retail stores industry and the food processing and meat packing industry, there will be a tremendous impact as workers have their hours reduced and consequently their incomes reduced.⁵

Legislation titled Forty Hours is Full Time Act of 2013 was introduced in June challenging the definition of “full time” in the ACA as 30 and seeking to make it 40 hours a week.

According to an April 2013 Gallup poll of more than 600 small business owners, 41 percent of those surveyed say they have frozen hiring in response to the ACA. Nineteen percent said they had reduced their employee numbers as a result of the ACA.⁶

2. “Small” businesses are trying not to become “big” businesses.

Small business drives the American economy. According to numbers from the U.S. Small Business Administration, small businesses comprise more than 99 percent of U.S. employer firms. And since 1993, small businesses have accounted for 64 percent of the net new jobs created.⁷ But if businesses continue to cut employee hours and even reduce hiring in order to keep their small business status as defined in terms of the ACA, it will have a major impact on our already unpredictable economic environment.

A poll of small-business executives conducted by the U.S. Chamber of Commerce and Harris Interactive showed that 71 percent of those who responded said the health care law “would make them less likely to hire employees” in order to keep from crossing the 50-employee threshold that would activate the employer mandate to provide health insurance coverage.⁸ And, a similar study by the International Foundation of Employee Benefit Plans found that one in five small businesses said they were already reducing hiring to maintain their small employer status.⁹

A Story From the Front Lines

“There are a lot of unanswered questions. Our business is growing, and we may near the 50-employee count someday. That would greatly impact our decision to add additional full-time staff. We have been unable to find affordable health insurance that we could provide for our employees. We had hoped something would become available with the ACA; however, the opposite seems to be happening. From what we are hearing, all the rates are going to be going up even more than they have already.”

— Vicki Warren, Regal Machine Mfg., Tyler, Texas

A separate report by the Small Business Administration shows 38 percent of small business owners say they have pulled back on plans to grow their business in response to the ACA.¹⁰ Conversations concerning the pros and cons of reducing hours for full-time employees, as well as making sure employers stay under the 50 count, are happening daily in business owners' offices. In most cases, these are companies that are successful, but they are nervous about increased costs. In almost every case, employers will suffer because of increased costs, administrative hassles and potential loss of employees. Employees will be hurt by working fewer hours, making less money or not getting hired in the first place. Many business owners don't have time to mess with additional headaches that are keeping them from growing. It has created an additional administrative burden and is limiting the growth of companies approaching the 50-employee count.¹¹ Simply put, the ACA is hurting job creation by small businesses.

If companies retool their workforce to avoid increased costs associated with the ACA, this will create more demand for part-time workers which exacerbates an already alarming lack of skilled workers in America.

In a recent survey of Express Employment Professionals franchises, owners cited an increasing need for workers in skilled trades such as CNC programming, welding, machinists, accounting and information technology. The

survey further states that a top concern of employers is finding skilled workers.¹²

This disproportionate increase in the need for part-time labor created by the act will mean increased costs for those workers and will in turn increase the price of goods and services sold by companies. Higher prices on goods and services will force American companies to seek cheaper labor costs in foreign countries just as they have for the past half-century¹³ in order to remain competitive or face closing the doors.

Further, the Bureau of Labor Statistics reported that the American labor participation rate has reached a 35-year low at 63.2 percent, its lowest level since August 1978.¹⁴ An unprecedented number of Americans — not just Baby Boomers — have simply started giving up, leaving the workforce despite their desire to work. At the same time, an increasing number of Americans are becoming stuck in the taxpayer-funded social safety net. The declining labor participation rate further compounds the problem of filling part-time jobs being created in response to the ACA.

“Any time the number of people leaving the workforce goes up, it doesn't really matter if the unemployment rate goes down — we as a nation are facing a significant problem.”

— Bob Funk

Ask the Express Employment Professionals Experts

“We are not having many conversations about people dropping insurance — the conversations are more about the administrative burden and the potential increase in insurance costs that we are all hearing about. Many employers are saying they may move to dropping coverage and off-setting the cost with salary moves and allowing the employees to make the decision to buy insurance on the open market and get the subsidies offered by the government. The biggest talk is about the increased cost or the unknown cost — no one has seen the rates on the health insurance exchanges yet.”

— Mike Heffner, Express Employment Professionals Franchise Owner, Greenwood, Ind.

3. Increased use of staffing companies.

The number of temporary workers in America has increased by more than 50 percent since the recession ended.¹⁵ In 2012 alone, 35 percent of U.S. companies used a staffing agency.¹⁶ A 2012 McKinsey Global Institute jobs survey reports that employers intend to hire more part-time, temporary or contract workers through 2017.¹⁷

According to the American Staffing Association, 2.91 million people are employed by staffing companies every business day.¹⁸ With the implementation of the ACA, that number is expected to increase as businesses develop strategies to mitigate the expenses of health care reform and keep their workforce under the 50-employee mark.

Staffing companies are an attractive option for many businesses because temporary/contract workers are typically classified as employees of the staffing firm that placed them and are not factored in to the client company's total employee count. So theoretically, a company could hire 49 regular, full-time employees, supplement the remainder of their personnel needs through a staffing company, and still be classified as a small employer under the ACA.

Even large companies that are well over the 50-employee mark will likely turn to staffing companies more often to supplement their workforce. They can easily increase and decrease their staff levels in response to business demands, while the responsibility for providing health care coverage to those temporary/contract workers lies with the staffing company because the temporary/contract workers are not officially on the client company's payroll.

The proper use of temporary and flexible staffing helps companies remain nimble — flexing to add workers when demand for their goods and services is high and pulling back to use only core staff when the demand is lower. This is a cost-efficient way to manage a workforce. Businesses also find temporary staffing an effective way to grow.

“Staffing agencies move people from part-time work to full-time work. This law is moving people from full-time work to part-time work.”

— Bob Funk

Ask the Express Employment Professionals Experts

“Approximately two percent of U.S. workers are on the payroll of staffing firms. In the United Kingdom, where there is a legally mandated health system like the ACA, approximately four percent of the workforce is on the payroll of staffing firms. The ACA has certainly created a healthy staffing industry.”

— David Lewis,
Express Employment Professionals
Vice President of Franchising,
Oklahoma City

Conclusion

The impact of the ACA goes significantly beyond the issue of how to provide health care to those who lack insurance. Decades-long work patterns are being disrupted in ways that were not intended by proponents of the legislation. Based on what we see, sweeping changes in how Americans work, how much they work and how much money they make are on the horizon, particularly for unskilled workers who are paid by the hour.

As a staffing company, our interest is helping people so they can work more and make more. Our interest is helping businesses so they can grow and become successful. Any incentive that causes people to work less and make less is alarming.

The labor-related changes being brought about by this new law are serious, long-term and harmful. They may be good for the staffing industry today, but they are not very good for job creation, small businesses or workers.

Staffing Industry Views of the ACA

Although the staffing industry stands to benefit in many ways from the ACA in response to trends such as those mentioned above, there will still be many significant hurdles with which to contend.

The American Staffing Association, the governing body of the staffing industry in the U.S., has recognized both the benefits and drawbacks of the ACA on the staffing industry, and has issued a statement of principles to serve as guidelines for its member organizations:

While implementing the ACA presents challenges to staffing firms due to the unique characteristics of their workforces, the staffing industry is deeply committed to compliance with the law. To that end, ASA members commit to the following principles:

- 1. We will comply with the law, both in letter and in spirit, and are committed to the legal and ethical management of our workforces pursuant to its provisions.*
- 2. We will use our expertise and experience to help clients address the new demands of the law and understand the nature and extent of the additional staffing costs they will incur.*
- 3. We will work diligently to help our clients implement legitimate workforce strategies and will not participate in practices that violate the law's intent.*
- 4. We will communicate to our employees both their new opportunities and their new obligations before the employer and individual mandates become effective.*
- 5. We will continue to work with the government and other stakeholders as a proactive, constructive partner as the regulatory process moves forward.¹⁹*

Health Care Reform Timeline²⁰

2013

- Annual fee on medical device sales begins
- Deduction for expenses allocable to the Part D subsidy for “qualified prescription drug plans” eliminated
- Employees notified of access to health insurance exchanges by Oct. 1
- FSA contributions limited to \$2,500
- High-earner tax begins (applies to individuals)
- PCORI fee increases to \$2 per member/year
- W-2 reporting of the value of employer-sponsored health benefits continues

2014

- Deductible caps cannot exceed \$2,000 for individual and \$4,000 for family*
- Essential health benefits required for small employers*
- Guaranteed issue and renewability requirements commence*
- Health insurance exchanges open
- Individual mandate begins
- \$8 billion in excise taxes on insurance industry begin
- Mandatory coverage begins for routine expenses incurred during clinical trials*
- No annual dollar limits on essential health benefits begins
- No pre-existing condition exclusions
- Out-of-pocket limits must comply with such limits for HSA-qualified plans*
- Rating restrictions*/Adjusted community rating
- Tax credits and subsidies for individuals become available in insurance exchanges
- Small-business tax credit continues for small employers offering coverage
- Transitional reinsurance fee begins (\$63 per covered life for 2014)
- Waiting periods limited to 90 days
- Wellness programs may impose larger incentives

2015 & BEYOND

- Employer mandate begins (2015)
- High-value plan excise tax begins (2018)
- Medicare Part D “donut hole” closed by 2020

*Grandfather provision



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