



IRS Demands Businesses Show “Bonafide Reasons” for Layoffs

The IRS will require employers who terminate employees to show that they did so for “bona fide business reasons” in order to be eligible for delaying the ObamaCare health insurance employer mandate.

Under new guidelines announced on February 10, the IRS will delay the mandate until 2016 for medium-sized businesses employing between 50 and 99 people. Businesses with 49 employees or fewer are not required to provide their employees with health insurance coverage under ObamaCare, as the Affordable Care Act is generally called.

The phasing-in of the employer mandate is designed to make “the compliance process simpler and easier to navigate,” said Assistant Secretary for Tax Policy Mark Mazur.

The Treasury Department/IRS document outlining the regulations first states:

An applicable large employer [more than 100 employees] that, for a calendar month, fails to offer to its full-time employees health coverage that is affordable and provides minimum value may be subject to an assessable payment if a full-time employee enrolls for that month in a qualified health plan for which the employee receives a premium tax credit.

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As might be expected, some employers who are slightly above the 100-employee limit might trim their staffs a bit to qualify for the delayed mandate. Obviously, since a company cannot function with an inadequate workforce, it will cut staff only if it makes good business sense to do so — regardless of the ObamaCare regulations. Some companies may very well have been considering making cuts anyway, and the government regulations would merely provide more incentive to do what was needed. But the IRS does not see things this way.

In a show of bureaucratic magnanimity, “to assist these employers in transitioning into compliance,” the IRS has provided “transition relief” for employers who have an average of at least 50 but fewer than 100 full-time employees during 2014.

To qualify for this “relief,” however, the company must “not reduce the size of its workforce or the overall hours of service of its employees in order to satisfy the workforce size condition set forth in paragraph (1) of this section XV.D.6.”

(One can just imagine an IRS bureaucrat visiting a company and writing them up because they are in violation of “section XV.D.6.”)

The IRS regulation further states: “A reduction in workforce size or overall hours of service for *bona fide business reasons* will not be considered to have been made in order to satisfy the workforce size





Written by [Warren Mass](#) on February 12, 2014

condition.” (Emphasis added.)

Examples of “bona fide business reasons” acceptable to the IRS include “business activity such as the sale of a division, changes in the economic marketplace in which the employer operates, terminations of employment for poor performance, or other similar changes unrelated to eligibility for the transition relief provided in this section XV.D.6.” If the layoffs were made for these reasons, the IRS assures us, they will “not affect eligibility for that transition relief.”

As business executives have found in the past, however, government regulations enforced (or not) at the sole arbitrary discretion of agency bureaucrats is the stuff of which political pressure is made. It becomes an excellent tool to punish or reward companies according to the degree that they support the regime in power. This becomes even more likely if the regulatory process is made through executive dictates, rather than the legislative process.

An opinion piece in the *Wall Street Journal* for February 10 (“Obama Rewrites ObamaCare”) noted the impact of ObamaCare on businesses and employers’ warnings that “the new labor costs — and the onerous reporting and tax-enforcement rules — would damage job creation and the economy.”

The writer pointed out the obvious contradiction between the common assertion made by liberals that the healthcare law is not harmful to our economy and the administration’s concession, by providing its “transition relief” (people do not need “relief” from something that is beneficial), that ObamaCare is burdensome.

Observing that the Treasury Department stated, “As these limited transition rules take effect, we will consider whether it is necessary to further extend any of them beyond 2015,” the *Journal* writer noted that the law may be suspended indefinitely if the White House so decides.

And that, notes the article, is the real danger, insofar as maintaining the separation of powers is concerned:

Changing an unambiguous statutory mandate requires the approval of Congress, but then this President has often decided the law is whatever he says it is. His Administration’s cavalier notions about law enforcement are especially notable here for their bias for corporations over people. The White House has refused to suspend the individual insurance mandate, despite the harm caused to millions who are losing their previous coverage.

Megyn Kelly, on her February 10 Fox New program *The Kelly Files*, pointed out the obvious power grab that the latest IRS “relief” amounts to:

That is the government telling you, employers, “you will not fire a single person, you will not lay off a single person if you want to take advantage of our gift, and you have to certify under penalty of perjury to the IRS that you didn’t do that, that no layoff was due to Obamacare.”

As for how the government will determine an employer’s motivation for firing some employees, the rules apparently call for an employer to certify to the IRS — under penalty of perjury — that it had not reduced its workforce merely to qualify for the medium-employer exemption.

While this appears to place compliance under an honor system, it gives the government agents an open-ended enforcement tool to utilize whenever they decide to apply a little pressure. They may let an employer slide for years, then come back for an audit and rule that the management lied — and assess penalties against them.

As conservative blogger Bryan Preston (former communications director of the Republican Party of



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Texas) wrote recently:

Company officials will be trapped in a catch-22. They can lay off as many people as they want because of Obamacare. But because they'll have to swear to the IRS that their decisions had nothing to do with Obamacare, they can't speak publicly about what's happening. What a great way to silence the people who are on the front lines of dealing with Obamacare's horrific effects.



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