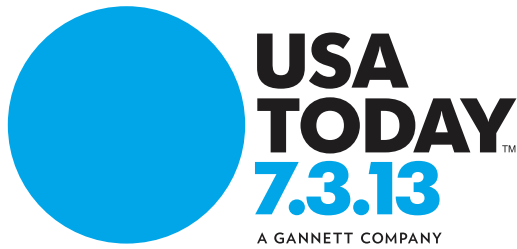


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SPECIAL REPRINT

Delay of employer penalties could have unintended effects

Kelly Kennedy
USA TODAY

WASHINGTON — Business owners with more than 50 employees may be breathing a “collective sigh of relief” over a delay in health care coverage, but experts say those businesses should continue moving forward as if they still had to meet the 2014 deadline.

On Tuesday, the Obama administration announced it would delay until 2015 a requirement that businesses with more than 50 employees provide health insurance to their employees or pay a penalty. It comes after businesses complained the tax and insurance requirements were too complicated and difficult to implement in time for the January deadline.

Starting in 2015, an employer with more than 50 full-time employees without affordable insurance may be required a \$2,000 fee per full-time employee after the first 30 employees. The delay means employers now have more time to determine if they must provide insurance to their employees for various reasons or if it's better to pay the fee and send employees to the government's health care exchanges.

The exchanges are still on track to open Oct. 1.

The delay could also cost the government billions of dollars. The Congressional Budget Office estimated the government would collect \$4 billion in penalties in 2014.

“The savvy employers realize this is a

complex law and they're going to keep working at it,” said Alden Bianchi, an employee benefits attorney for the firm Mintz Levin and former legal counsel for former governor Mitt Romney's Massachusetts health care reform act.

Although business groups applauded the move, it will have unintended consequences, said Don Susswein, a healthcare tax expert for McGladrey, LLP.

“For the first year, there will also be a reduction in money coming into the Treasury,” he said, because the businesses will not pay penalties. “And, if the businesses don't offer health care, there will be more people qualifying for subsidies.”

About 96% of U.S. companies employ fewer than 50 people, and therefore won't be affected, according to the White House. And of those that employ more than 50 people, 96% already provide coverage.

Those who make less than 400% of the federal poverty level qualify for automatic subsidies when they buy insurance through the exchanges.

The delay may be worth it for the Obama administration if it reduces voter frustration among small businesses. But Republicans called the delay proof the entire 2010 health care law is unworkable.

Wednesday, the House Energy and Commerce Committee leaders asked the Treasury and Health and Human Services departments to submit documents about the decision, saying the move proves the administration is not ready to implement the law.

Susswein said he didn't think the

delay would affect the election at all, but calls from some Republicans and Democrats to change the threshold for full-time employment to 40 hours would have a greater impact. That “could create a huge number of people eligible for subsidies,” he said.

There may be enough political pressure to change the full-time requirement, Bianchi said.

Most employers, he said, can adjust to the insurance requirement and avoid the fines. Some will hit “a speed bump,” while for others, “something will fundamentally change in their business models. But in the grand scheme, the group is fairly small.”

Employers should assume the provision will take effect as planned, said Sharon Stiller, head of employment law at the firm Abrams, Fensterman. “They can modify their policies to comply with new rules, but I think the bigger deal is not being prepared.”

Tuesday's announcement, Stiller said, is significant because it was unexpected and has caused confusion.

“A week ago, a client asked me if it would be delayed,” she said. “I said, ‘Absolutely not!’ I think it took everybody by surprise. This is a biggie.”

Businesses now may decide if they should cut back their work forces to fewer than 50 employees, as long as they do it more than a year from when the provision begins, Siller said. But they can also use the time to change internal policies, as well as their definitions of “full-time employee.” Under the Affordable Care Act, 30 or more hours a week qualifies as full-time.

Some businesses, Stiller said, will use this delay to seek another one next year. Others, said Susswein, have procrastinated on dealing with the law.

They waited for the Supreme Court to rule on its constitutionality and then waited again to see if President Obama would be defeated last November, he said. "So there's more time now," Susswein said, "but there may also be more procrastination."

While the delay may help some businesses, Stiller said, they still need to work quickly to make sure they're ready next year.

"I think there's a lot to be said for certainty, even if we don't like it," she said. "I think it's not going to be a long-lived sigh of relief because they'll still need to work hard to comply."

The change "just temporarily delays the shared responsibility" of the law, said Brian Poger, CEO of Benefitter, a software company that's working with employers to implement the changes.

Workers may benefit if they skip their employer's insurance and buy coverage from an exchange, Poger said. They may pay less for better coverage — especially if they are eligible for federal subsidies.

For example, businesses with more transient employees, such as restaurants or construction companies, may do employees a disservice by providing them with low-cost insurance that isn't as robust or cost-effective as what they could get through the exchanges.

Ultimately, he said about 96% of businesses already offer coverage to at least some of their employees, but they will still have to determine if it meets the requirements of the law.

"Twelve years from now, 40, 50 years, this will be the law," Bianchi said. "We'll be over the hysteria."