



## Attention franchisors and multi-unit franchisees

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Since the Affordable Care Act (ACA) was signed into law in March 2010, small business owners, particularly franchisors and multi-unit franchisees, have been wary of the effects of its implementation on their businesses. One major concern has been the economic effect of the so-called "Employer Mandate," otherwise known as the "Pay or Play Mandate," which requires all employers with 50 or more full-time employees to either offer a certain level of health care benefit coverage or pay non-deductible penalties. Typically, small business owners have less bargaining power than large companies and generally pay higher prices for insurance. Therefore, small business owners often decline to provide their employees with health benefit coverage. As of January 1, 2014, these companies may be subject to penalties under the ACA if they do not offer health coverage. In defense of the legislation, proponents of the ACA argued that small businesses would not be placed at a competitive disadvantage because they would have the option to purchase coverage through Small Business Health Options Program exchanges (SHOP exchanges). Unfortunately, on April 1, 2013, the Obama administration announced that due to "operational challenges," the SHOP exchanges will not be fully operational in 2014, but may open in 2015.

### WHAT ARE THE SHOP EXCHANGES?

The SHOP exchanges are designed so each state will have a "market" where small businesses can select numerous types of health insurance plans, with different employer/employee contribution ratios, and thus provide their employees with a choice on what type of insurance plan is best. The theory is that by providing small business employers with multiple options, insurance companies will be forced to lower their premiums to handle the competition and increased plan participants. As an added benefit, the SHOP exchanges would consolidate the costs of the various policies into one monthly premium, saving the employer time and paperwork. If operated as intended, the SHOP exchanges will allow the insurance costs of small businesses to fall, while also decreasing the administration needed to maintain them. In essence, the SHOP exchanges were billed as the cheapest option for small businesses to fulfill the Employer Mandate and as a way to encourage non-mandated employers to provide insurance. The choice option under the SHOP exchanges was scheduled to become available to small employers in January 2014. This is now delayed until at least 2015, and rather than having the option to provide employees with a choice of health insurance plans, employers will instead be limited to a single health insurance plan.

### WHAT CHALLENGES DOES THE DELAY CREATE?

The delay produces challenges for employers that are subject to the Employer Mandate as well as employers that are not subject to the Employer Mandate.

For employers with between 50 and 100 employees, the costs of buying insurance through an exchange or the open market will probably increase. Without multiple insurance providers offering different types of plans, there will be no downward pressure on insurance coverage. In order to avoid the "shared responsibility" penalties, these employers will be forced to offer health benefits under the Employer Mandate without the relief the SHOP exchanges promised.

As for employers with less than 50 employees, while they are not subject to the Employer Mandate, their employees are still subject to the individual mandate. If they do not provide any type of insurance, the companies will risk their employees leaving for an employer who is able to provide coverage. If they do provide insurance, the costs without the SHOP exchanges will be significantly more than what the proponents of the ACA promised when it was enacted.

The delay could also provide another incentive for employers to cap their employee levels at less than 50, or reduce employee hours to below 30 per week.

### WHAT NOW?

The SHOP exchanges will open in 2014. In the 33 states for which the Federal Government runs the exchange, there will only be one health insurance plan choice. In states that are running their own exchanges, full implementation of a SHOP exchange may also be delayed until 2015. If you are a small employer planning to offer health insurance coverage to your employees through a SHOP exchange, you will need to determine whether you will offer coverage through an exchange in 2014.

While the challenges you may face are significant, there are solutions and strategies to mitigate the costs and provide employees with the health care the government requires. Our attorneys are available to help you evaluate your options, and develop strategies for complying with these requirements.



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