

Written Testimony of Andrew F. Puzder,
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On the Forty Hours is Full Time Act
Before the Senate Health, Education, Labor and Pensions Committee

Introduction

I want to thank Chairman Alexander, ranking member Senator Murray and the members of the Health, Education, Labor and Pensions Committee for giving me the opportunity to discuss the Forty Hours is Full Time Act, legislation that is of importance to American workers and businesses alike. My name is Andrew F. Puzder and I have been the CEO of CKE Restaurants Holdings, Inc. (“CKE”) for over 14 years.

I’m hopeful that this hearing will help open a dialogue between legislators, workers and the business community on the unintended adverse impact on the American workforce of the Affordable Care Act’s (“ACA”) definition of full time employment as 30 hours a week. It has encouraged employers to reduce workers hours, particularly in the retail segment, lowering wages and reducing consumer spending.

The Forty Hours is Full Time Act represents a bipartisan solution to this problem. By protecting the best interests of the people the ACA was intended to benefit, Congress can provide immediate relief to employees who need more hours to meet their economic needs.

Company Description and Job Creation Impact

CKE is a quick service restaurant company headquartered in Carpinteria, California with regional headquarters in Anaheim, California, and St. Louis, Missouri. Carl N. Karcher, an Ohio native with an 8th grade education, and his wife Margaret, a California native, started our Company in 1941 with a hot dog cart in South Central Los Angeles.

There are 3,560 Carl's Jr. and Hardee's restaurants in 42 states and 33 foreign countries. Our franchisees are planning on opening restaurants in two additional states (New York and New Jersey) during the first quarter of this fiscal year. Of our 3,560 restaurants, 2,920 (82%) are in the United States. All of our international restaurants are franchised. Our company currently owns and operates approximately 800 of our domestic restaurants and our franchisees own and operate the remaining 2,120 (73% of our domestic restaurants). Our domestic restaurants (company and franchised, Carl's Jr. and Hardee's) average over \$1.2 million in sales per year. Each restaurant employs about 25 people and has one General Manager.

We employ approximately 20,000 people in the United States. Our domestic franchisees employ roughly an additional 55,000 people. As such, along with our franchisees, we account for about 75,000 jobs in the United States.

We provide significant employment opportunities for minorities. About 62% of our Company employees are minorities. We also provide significant employment opportunities for women. About, 62% of our employees are women. We're proud of the Company's diversity.

The average hourly rate for restaurant level employees is \$9.28. Last year, CKE spent \$329 million on restaurant level labor or about 28% of total Company owned restaurant sales.

As CEO, I've watched young men and women enter the labor force in our restaurants for over 14 years. I've seen the pride and determination that leads to success in their careers and lives. Some move on to other jobs and challenges equipped with the experience you can only get from a paying job. Others stay, aspiring to move up to managerial positions. There's nothing more fulfilling than seeing new and unskilled employees work their way up to managing a restaurant.

On average, our General Managers each run a \$1.3 million business with 25 employees and significant contact with the public. They're in charge of a million-dollar facility, a profit-and-loss statement and the success or failure of a business. If that business succeeds, they benefit just as the owner of a small business would.

Our company-owned restaurant General Managers are 62% minorities and 66% women. They are 41 years old on average. However, their ages range from 21 to 65. They earn a management-level salary starting around \$36,000 and going as high as \$65,000—the average is around \$45,000—plus benefits. They additionally have the potential to earn a substantial performance-based bonus.

They can progress through our management ranks as high as their ambition may take them. Our Executive Vice Presidents responsible for Carl's Jr. and Hardee's both started as crew employees who worked their way up to General Managers. Several of our Senior Vice Presidents started as restaurant employees and learned the business as restaurant General Managers.

Our franchisees, who are generally small business owners and entrepreneurs themselves, also often started out as General Managers in our restaurants or our competitors' restaurants. Many run family businesses that have passed from one generation to the next. We have 230 franchisees nationwide. A few of our franchisees own a hundred or more restaurants, but most own 20 or less. Of our 230 franchisees, 44 own one restaurant and 20 own two restaurants

(generally putting them at or near the ACA's 50 employee applicability threshold). All of these franchisees exemplify the American entrepreneurial spirit on which we built our Company and they instill that spirit in their 55,000 employees and managers.

While we and our franchisees directly account for about 75,000 jobs in the United States, our Company's impact on the Nation's employment rate goes well beyond the number of people we directly employ. The hundreds of millions of dollars we and our franchisees spend on capital projects, services and supplies throughout the United States create thousands of additional jobs and generate broader economic growth.

The ACA

How Many Employees Enrolled?

The ACA's employer mandate took effect January 1st for employers with 100 or more full time employees. The last open enrollment date for our company was December 4, 2014. As of the enrollment date, our company had approximately 20,000 employees, 6,900 (34.5%) of whom were managers or worked 30 or more hours per week and were eligible for our employer sponsored ACA compliant health insurance. We elected to offer them coverage rather than paying the employer penalty and sending them to the ACA's health-insurance exchanges where, if the workers qualified, they could obtain federal subsidies to help pay for insurance.

The remaining 13,100 (65.5%) of our employees do not qualify for ACA compliant coverage as they work under 30 hours a week.

Of the 6,900 eligible employees, 1,447 already had ACA compliant insurance through our pre-existing company plans. That left 5,453 employees eligible to enroll for our employer sponsored ACA compliant insurance.

Out of these 5,453 eligible employees, only 420 actually chose to enroll. That's 2% of our total employees or 6% of eligible employees.

The ACA [will impose a penalty](#) on the 5,033 eligible employees who elected not to enroll, unless they have compliant health insurance from another source. Of these 5,033 employees, 2,640 (53%) were single and over 26 years of age. So, assuming that the remaining 2,393 all had insurance coverage through a spouse or a parent (which is clearly not the case as not every parent or every spouse would have insurance), at a bare minimum, 2,640 will pay the penalty. That's over 6 times as many people as enrolled.

For 2015, the penalty will be equal to the higher of \$325 or 2% of their yearly household income above about \$10,000. The 5,033 employees who declined insurance make, on average, \$24,663 a year (\$13.55 an hour assuming a 35 hour work week). As such, the employees

without insurance generally will pay the \$325 penalty as you have to make about \$26,250 before the 2% penalty is higher.

The employee portion of the annual premium available to our full time employees for our least expensive “bronze plan” is \$1,104. As our very low enrollment rate indicates, if you don’t believe you need health insurance, \$325 is better than \$1,104. Unfortunately, the employees the ACA compels to pay this penalty can ill afford it and still won’t have compliant insurance.

Although the ACA does not require us to do so, we also offer our 13,100 part time employees access to inexpensive group health care coverage that, while not compliant under the ACA’s strict guidelines, may adequately meet their particular needs. The policies are called Indemnity Medical Insurance. Insurers are able to offer these policies because they are excepted benefits as defined by [IRS](#), [Labor Department](#) and Public Health Service Act regulations and, as such, are not governed by the ACA. The insurer pays a set amount each time the insured receives a covered service. The insurer pays the same amount regardless of the fees charged by the provider. (I’ve provided the Committee a copy of the benefits description pamphlet which also includes access to dental, life, disability, accident and vision insurance). About 200 part time employees are enrolled.

In addition, when we hire new shift leaders or crew people, we provide them with a letter entitled “2015 GET INSURED” (I’ve provided the Committee with a copy). When these newly hired variable-hour or part-time employees call our Call Center to enroll or find out about coverage, our Benefit Specialists walk them through the ACA’s requirements and the individual mandate. The Benefit Specialists explain that the Medical Indemnity Plan does not help them to meet the individual mandate. They also offer these employees the option to get a quote through the Insurance Exchange. It is our intent to give all our employees easy and informed access to explore their options.

The Employer Mandate

Because the ACA requires that employers either offer health insurance to their employees who work 30 or more hours per week or pay up to a \$3,000 per employee penalty, it has had the unintended consequence of encouraging employers to convert full time jobs to part time jobs (more particularly, jobs where employees work less than 30 hours a week).

The logic for businesses is simple. If you have three employees working 40 hours per week they will produce 120 labor hours. Five employees working 24 hours per week also produce 120 labor hours. Employers must offer the three full-time employees health insurance or pay a penalty. They have no such obligation to the five part-time employees, making part-time employment less costly.

I believe this has resulted in employers reducing hundreds of thousands (if not millions) of jobs to under 30 hours a week. Make something more expensive and employers will use less of it; make something less expensive and they will use more of it. While this is common sense and consistent with comments from the business community, there is some disagreement about the impact of the ACA's 30 hour threshold.

Part of the problem lies in interpreting the Bureau of Labor Statistics ("BLS") employment data. The BLS and the ACA define part time employment differently. The BLS defines "full-time workers" as "[p]ersons who work 35 hours or more per week." ([BLS Glossary of Terms](#)). So, the BLS considers individuals working under 35 but above 30 hours per week part time while the ACA considers them full time. There are a significant number of such individuals. In fact, according to BLS, in December 2014, American workers averaged 34.6 hours a week. ([BLS Economic News Release \("ENR"\) Table B-2](#)).

If employers reduce the hours of employees who work less than 35 hours a week to under 30 a week (say from 34 hours to 24), there is no change in the BLS data on full or part time employment but, under the ACA, such workers transition from full to part time employment. The impact on the workers' earnings is obviously significant. As such, the BLS data on part time and full time jobs understates the ACA's impact.

Another problem with the data is that the BLS "counts persons, not jobs." ([BLS, Industry Hours and Employment, 5/1/14](#)). For example, the BLS would count someone who works two 20-hour-a-week part time jobs as one full-time worker. We have many employees who now work part time in our restaurants and also part time in competitors' restaurants as a means to increase their hours.

According to the BLS, in 2014 (on average per month) there were nearly 2 million (1.955 million) multiple job holders working two part time jobs. This is higher than in any year since 1994 when the BLS began tracking the data. This number has steadily increased over the past five years and is 150,000 people higher than it was in 2010 despite the fact that the number of people the BLS counts as part time has declined. The highest month on record was October 2014 (2.172 million people), the second highest was November 2014 (2.127 million people). Over twice as many women work two part time jobs. By definition, each of these 2 workers actually works two part time jobs (accounting for 4 million part time jobs). But, BLS counts the ones working a combined 35 hours or more as one full time worker. As such, there are more part time jobs than show up in the BLS part time workers data. ([ENR Table A-16, historical data](#)).

There have been a number of articles discussing the ACA's impact on businesses reducing workers hours below 30 a week. I've written two articles on this issue. [ObamaCare](#)

[and the Part-Time Economy, WSJ, 10/10/13](#); [Take It From a Restaurant Executive, ObamaCare is Shifting Workers into Part Time Jobs, Forbes, 9-17-14.](#)

Investors Business Daily (“IBD”) compiled a list of job actions showing “strong proof” that the ACA’s “employer mandate is behind cuts to work hours or staffing levels.” As of September 5th, IBD’s “ObamaCare scorecard included 450 employers that have reduced employees’ hours with more than 100 school districts among them.” [ObamaCare Employer Mandate: A List Of Cuts To Work Hours, Jobs, IBD 9-5-14.](#)

Even the [Urban Institute has acknowledged](#) that completely eliminating the employer mandate “would not reduce insurance coverage significantly, but it would eliminate the labor market distortions that have troubled employer groups and that could have negative effects on some workers.” [Why Not Just Eliminate the Employer Mandate?](#) The Urban Institute, 5-9-14.

Notably, the BLS also reported that in December, 2014, 6.8 million Americans were working part time for economic reasons (*i.e.*, their hours were cut back or they were unable to find full-time jobs) and not by choice. ([ENR Table A-8](#)); ([BLS Labor Force Characteristics](#)).

To address this issue, on January 7th, 2015 the House passed the “[Save American Workers Act](#)” by a bipartisan vote of 252 to 172. This bill would change the definition of “full-time employee” back to the traditional 40 hours a week threshold from the ACA’s full time definition of 30 hours a week. The bill would redefine a full-time employee as one who works 40 hours a week or 174 hours a month based on a 52-week year.

Here on the Senate side, co-sponsors Senators Collins (R-ME), Donnelly (D-IN), Murkowski (R- Alaska) and Manchin (D- WV) have introduced the bipartisan [Forty Hours is Full Time Act](#) which would accomplish the same goal.

This bill is not intended to repeal or replace the ACA nor would it eliminate the employer mandate (as the Urban Institute advocates). It is simply intended as a fix for an unintended consequence that is negatively impacting American workers.

Nonetheless, the White House has expressed concern that this legislation would (i) meaningfully reduce the number of Americans with employer-based health insurance coverage and (ii) encourage employers to reduce the hours of employees currently working 40 hours a week to avoid providing coverage. ([White House Statement 1/7/15](#)). I respectfully submit that, based upon the experience at our company, such concerns are unfounded.

How Many Employees Would Lose

Their Employer Sponsored Health Insurance Coverage?

As noted above, a very small percentage of our Company's eligible employees would lose coverage if the standard were changed to 40 hours a week. Of our 20,000 employees, 6,900 were eligible for our ACA compliant health insurance coverage, 1,447 already had ACA compliant insurance through our pre-existing company plans leaving 5,453 employees eligible to enroll.

Only 420 enrolled.

That's 2% of our labor force and 6% of eligible employees. The other 94% of eligible employees declined the opportunity.

Of the 5,033 who failed to enroll, at a bare minimum 2,640 (53%) elected to pay the penalty for not having insurance. As noted above, the actual number of individuals paying the penalty is certainly much higher. Again, at a bare minimum, that's six times as many people the ACA's 30 hours threshold.

Consistent with [the Urban Institute's findings](#), our experience indicates that a relatively limited percentage of employees would lose their employer sponsored health insurance should Congress move the ACA's definition of full time from 30 hours a week back to the traditional 40 hours. At our company, 420 employees could lose their employer sponsored insurance if the ACA's coverage threshold were 40 hours a week (although, as noted below, not all would lose their coverage). I respectfully submit that the benefit of potentially increasing the hours and incomes of the thousands of our other employees would more than offset this cost.

How Many 40 Hour a Week Employees are Impacted?

With respect to reducing the hours of employees who currently work 40 hours a week, the White House is concerned that moving to a 40 hour standard would "create incentives for employers to shift their employees to part-time work" by reducing 40 hour a week employees to 39 or fewer hours. ([White House Statement 1/7/15](#)). This concern is also unfounded.

Part of the problem again appears to be a misunderstanding with respect to the BLS reporting on full time employment. As stated by the White House, "[a]ccording to data from the Bureau of Labor Statistics, since the Affordable Care Act became law, more than 90 percent of the increase in employment has been in full-time jobs." ([White House Statement 1/7/15](#)). However, as noted above, the BLS defines "full-time workers" as "[p]ersons who work 35 hours or more per week" and in December 2014, Americans workers averaged 34.6 hours a week.

As such, there are a large number of workers that BLS defines as full time that work 35 to 39 hours a week rather than 40 and would not have their hours reduced should the standard change.

In addition, because the BLS counts persons not jobs, it would count an individual working two part time jobs totaling 35 hours a week as a full time worker even though neither job is full time. According to the BLS, there were nearly 2 million multiple job holders working two part time jobs. ([ENR Table A-16, historical data](#)).

Simply stated, because of how the BLS defines full time workers and the fact that it counts workers not jobs, the BLS data is an unreliable indicator of either the percentage of “full time” jobs where people are working 40 hour a week or the impact of the ACA’s 30 hour threshold on full time employment.

With respect to our employees who actually work 40 hours a week, of our 1,867 employees who have enrolled for ACA compliant coverage, 1,447 (78%) already had such coverage through our pre-existing company plans. We offered these employees such insurance pre-ACA without an hourly requirement or any other government compulsion. If the hourly requirement went to 40 hours, we would continue offering these employees employer sponsored group coverage regardless.

Of the 420 additional employees who enrolled for ACA compliant coverage, 197 (less than 1% of our workforce) work 40 hours or more. Reducing these employees’ hours would create problems. We would lose some of them to competitors. For others, we need their expertise in the restaurants (such as experienced cooks or shift leaders) so reducing their hours would make no sense.

However, even if we wanted to marginally reduce the hours of all 197 employees to under 40 hours a week (which we would not), certainly the benefit of potentially increasing the hours and incomes of the thousands of our other employees who work under 30 hours a week would more than offset this cost.

Conclusion

In conclusion, I want to thank you for the opportunity you’ve given me to speak about the Forty Hours is Full Time Act. The bottom line question is whether the ACA’s 30 hour per week eligibility threshold is worth it. Some would argue sincerely that it is, pointing to the previously uninsured who now have employer sponsored health insurance. As I shared with you, in our company, that would be just 2% of total employees and 6% of eligible employees. To achieve those results, I believe the ACA has caused hundreds of thousands (if not millions) of full time jobs to become part time (under 30 hours a week), and has imposed a penalty/tax on lower income workers who can ill afford it.

This is an issue that concerns me not only as the CEO of a company but as an American who began his career in the same kind of jobs that the ACA has put at risk. My first job was scooping ice cream at Baskin and Robbins for minimum wage (I think it was \$1 or \$1.25). To

get through college and law school while supporting my family, I painted other people's houses, cut other peoples' lawns, played in bands, worked in a music store and busted up concrete with a jack hammer, among other things. I appreciated the opportunities each of these jobs gave me to earn a living while I pursued an education. I want to provide those same opportunities to our employees and other like them.

As our company's low enrollment rate and public opinion polls indicate, the ACA remains extremely unpopular. But, this doesn't mean Americans want to return to the pre-ACA status quo. The ultimate solution may well be bipartisan market-based health care legislation that is comprehensible, workable and, most importantly, provides access to affordable coverage for those who want it.

In the meantime, the Forty Hours is Full Time or Save American Workers Act would be a positive and bipartisan step in the right direction, addressing a serious problem for American workers and businesses. It is not an attempt to repeal or replace the ACA nor is it an attempt to eliminate the employer mandate. As stated by Senator Donnelley, who voted for the ACA in the House and continues to support it, the Forty Hours is Full Time Act is an attempt to "make this bill stronger. . . . [C]ommon wisdom is that full-time is a 40-hour work week, and the health care law should reflect that."

Accordingly, I respectfully urge you to consider the negative impacts of the ACA's redefining full time employment as 30 or more hours a week and the benefits of a fix that would return American workers to the traditional 40 hour week.

Thank you.