

Targeting Small Construction Companies (Merkley Amendment)

Background

IN THE DAYS LEADING UP TO the Christmas Eve passage of the first round of health care legislation in the Senate, Senator Jeff Merkley (D-OR) inserted a provision into the final Manager's Amendment to the bill that would have singled out the construction industry from the broader small business exemption in the legislation. While every other U.S. small business would have had a 50-employee threshold exemption from the employer mandates in the bill, the Merkley Amendment would have changed that threshold to a mere 5-employee threshold only for "any employer the substantial annual gross receipts of which are attributable to the construction industry."

THIS NARROWLY FOCUSED PROVISION WAS AN UNPRECEDENTED ASSAULT ON THE CONSTRUCTION INDUSTRY. EMPLOYER BENEFIT PACKAGES REFLECT THE REALITY OF THEIR BUSINESS MODELS, AND CONSTRUCTION INDUSTRY EMPLOYERS PROUDLY OFFER THEIR EMPLOYEES THE BEST HEALTH INSURANCE COVERAGE THAT THEY CAN ACCESS AND AFFORD.

It is unreasonable to presume that some small business owners can bear the increased cost of these new benefits simply because Congress mandates that they do so.

Additionally, the lack of a clear definition of the term "construction employer" in statute or regulation could have meant that this provision would impact any small supplier, distributor or manufacturer whose business is dependent on the construction industry.

The labor union proponents of this provision used the faulty logic that a mandate to provide health insurance would somehow "level the playing field" between non-union and union contractors. Unfortunately, this ignored the fact that the residential construction industry is largely non-unionized, and that open shop contractors, who employ 84% of the entire construction workforce according to the Bureau of Labor Statistics (BLS), are unable to enter into the same type of multi-employer health plans that are available to union contractors.

These plans exempt union contractors from the cumbersome web of state mandates that directly contribute to the skyrocketing costs of health insurance. NAHB has long advocated for the creation of insurance reforms and pooling arrangements that would allow small employers the same flexibility and choice that is currently enjoyed only by labor unions and large corporations.

Similarly, labor unions argued that the construction industry should be narrowly targeted because of a high rate of work-



place illnesses and injuries, ignoring the fact that construction employers already provide workers compensation insurance that covers all workplace injuries and illnesses, with no deductibles, co-pays or limits. The labor unions also ignored both the significant decline in workplace injuries over the past decade, and the BLS data showing the construction industry reporting fewer injuries and illnesses than the manufacturing, retail and health care sectors. Further, the same BLS data showed that employers with fewer than 50 employees have a lower rate of injury and illness than larger employers.

Solutions

NAHB successfully stripped the Merkley amendment from the underlying health care legislation/law through the use of a provision in the Reconciliation bill. However, as the health care debate wound down, the labor union community—upset at the loss of a key issue for them regarding the taxation of “Cadillac” plans, as well as the impending loss of the Merkley amendment due to NAHB’s efforts—made it clear to the White House that they would seek to re-insert the Merkley provision into the health care law using another, perhaps unrelated, piece of legislation moving through Congress. Because the labor unions will vigorously renew their effort to unfairly burden the construction industry with the Merkley provision, NAHB must remain vigilant to ensure that the construction industry is not targeted again.

Recommendations

- ▶ **Lawmakers in the House and Senate must continue to oppose any effort to insert any provision into any legislation that would single out the construction industry for a different small business exemption than that which is enjoyed by every other small business under the new health care law.**

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