

# The Majestic Equality of the Healthcare Law

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*"The Law, in its majestic equality, forbids the rich, as well as the poor, to sleep under bridges, to beg in the streets, and to steal bread." - Anatole France (1894)*

I don't care for Anatole France's fin-de-siècle politics, but his quote is classic. Let me update it:

*"The Healthcare Law, in its majestic equality, requires big business, as well as small business, to file an IRS Form 1099 for every business-to-business purchase of \$600 or more." - Bob Graboyes (2010)*

OK. Anatole wins on lyricism. But the analogy's the thing. The new healthcare law peppers firms of all sizes with new obligations, many of which will mildly inconvenience big business but oppressively burden small business. Some small businesses, unable to bear the burdens, will vanish, along with the jobs they had generated or would have generated later.

The problem is that a small business is not just a miniature big business. (Example: It's tougher to provide wellness activities at a small business. A dry cleaner can't build an in-house gym. A boutique with three thin employees and one obese employee can't offer weight-loss brochures without risking hurt feelings or a lawsuit.) Because of the intrinsic differences between big and small firms, rules applied to both can have radically different effects - more often to the disadvantage of small business. Consider the Form 1099 provision, plus a few other majestic-equality provisions in the new law:

**FORM 1099:** The healthcare law requires vast amounts of revenue and conjures up a feast of new taxes to sate its appetite. Congress feared that compliance would be challenging. So the law commands business to generate vast new paper trails, and thousands of newly hired IRS agents will trek along these trails. Starting in 2012, businesses will have to file a Form 1099 covering every business-to-business transaction (or series of transactions) of \$600 or more. If a firm buys a new laptop, copier, ergonomic chair, or some shipments of stationery, each transaction must be reported on a 1099. For a big firm, this is a minor annoyance. The IT department programs a new line of code into the accounting system; henceforth, the computer spits out a 1099 every time it encounters a \$600+ transaction. No sweat. In contrast, the small firm typically has no IT or accounting departments. The owner may bear 100% of the responsibility of tracking transactions, determining which ones require 1099s, and filling in the forms. Add to this the small firm's lack of big-firm double-checks and, you add compliance fear to the paperwork requirements.

**SMALL BUSINESS HEALTH INSURANCE TAX:** Then there's the tax on health insurance policies that, in the manner of Anatole France, applies equally to big and small firms. The tax applies only to fully insured plans (where the insurer bears the financial risk), and not to self-insured plans (where the employer bears the financial risk), regardless of whether the plan is offered by a big business or a small one. But most big businesses (and big labor unions) self-insure, and most small firms fully insure. So the law is majestically equal, but its impact is not.

**BENEFIT MANDATES:** Big business thought it would be great for the Department of Health and Human Services to mandate hugely generous and expensive benefit packages in every insurance policy. This isn't a problem for Microsoft. It is for the corner grocery.

**EMPLOYER MANDATE MATH:** The employer mandate digs a mathematical minefield that small businesses will have to navigate. A mid-sized restaurant that goes from 50 to 51 employees suddenly crashes into an employer mandate that, at minimum, adds \$42,000 to its annual expenses. An 80-employee firm may suddenly feel the blow of a \$100,000 fine because one employee's SPOUSE loses his or her job at ANOTHER firm. For big firms, these issues are mostly irrelevant; where they're relevant, the big firm has HR specialists to handle the issue. Most small businesses do not.

By weighing small firms down with financial and administrative time obligations and by handing competitive advantages to big business, the new law imperils the job-creating capacity of small business. Frankly, the cumulative effect of all of these majestic-equality provisions will drive some firms to close the doors and shutter their businesses. This a problem in an economy that has lost over 8 million jobs since late 2007 and where small business generates 70% of the new jobs.