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H.R. 22—The Hire More Heroes Act of 2015—Would it Help Unemployed Veterans to Find Jobs?

By Captain Samuel F. Wright, JAGC, USN (Ret.)[2] and
Lt Col Susan E. Lukas, USAFR (Ret.)[3]

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Q: I am a retired Army Reserve Colonel and a life member of the Reserve Officers Association (ROA). I have heard that the "Hire More Heroes Act of 2015" passed the House of Representatives very early in the 114th Congress. What would this bill do? Would it really help unemployed veterans to find civilian jobs?

A: This bill is intended to encourage more small business employers to hire Reserve and Guard members and, if it works as intended, it would help some unemployed veterans. On January 6, 2015 (the first day of the 114th Congress) the House of Representatives passed the first proposed bill, H.R. 22, titled "Hire More Heroes Act of 2015" (HMHA-2015).

On the same day, Senator Blunt introduced the Senate version, S. 12, but it has not been voted on yet. The bill's prospects in the Senate are uncertain because when the Republicans tried to pass the same bill last year it did not get voted on by the Democrat-led Senate because of how it impacted the Affordable Care Act (ACA). Since Republicans now control both houses of Congress, potentially controversial bills that have passed the House are no longer necessarily "dead on arrival" in the Senate.

This bill affects the ACA through a change to Title 26, which is known as the "Internal Revenue Code", and which contains our nation's federal tax laws. Title 26 is the most complicated, dense and difficult set of laws to understand out of the 52 total titles.

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[1] We invite the reader's attention to www.servicemembers-lawcenter.org. You will find more than 1,300 "Law Review" articles about laws that are especially pertinent to those who serve our country in uniform, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997, and we add new articles each week.

[2] Captain Wright is the Director of ROA's Service Members Law Center (SMLC). He can be reached by telephone at (800) 809-9448, ext. 730. His e-mail is SWright@roa.org.

[3] Colonel Lukas is ROA's Legislative Director. She can be reached on extension 713. Her e-mail is SLukas@roa.org.

If enacted, HMHA-2015 would amend section 4980H(c)(2) of title 26 by adding a new subsection. The current Section 4980H requires "large employers" (generally, more than 50 employees) to provide "qualifying" health insurance coverage for their full-time employees.

There are additional requirements for employers in Section 4980H(c)(2) as it contains several "definitions" and "special rules" that apply in determining whether an individual employee counts toward or is excluded from counting toward the 50-employee threshold.

The proposed change to Section 4980H(c)(2) adds subsection (F):

> (F) Exemption for health coverage under TRICARE or the Veterans Administration.--Solely for purposes of determining whether an employer is an applicable large employer under this paragraph for any month, an individual shall not be taken into account as an employee for such month if such individual has medical coverage for such month under--
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> (i) chapter 55 of title 10, United States Code, including coverage under the TRICARE program, or
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> (ii) under a health care program under chapter 17 or 18 of title 38, United States Code, as determined by the Secretary of Veterans Affairs, in coordination with the Secretary of Health and Human Services and the Secretary [of the Treasury].

If the proposed "Hire More Heroes Act of 2015" is enacted without change, this new rule would "…apply to months beginning after December 2013."

The law requiring "large" employers to provide qualifying health insurance coverage for their full-time employees was enacted in 2010, as part of the Patient Protection and Affordable Care Act, also known as "Obamacare."

Here is how HMHA-2015 would work in practice. Let us say that Benjamin Franklin is the founder, owner, and operator of Ben's Optical Shops, where "a penny saved is a penny earned." Mr. Franklin and his 49 employees operate 16 small optical shops in Philadelphia and its suburbs.

Mr. Franklin is considering the opening of a 17th location at a newly renovated mall, and to open the new location he will need to hire two new employees. Mr. Franklin is reluctant to hire two new employees because doing so will put him over the 50-employee threshold and require him to provide qualifying health insurance coverage for his employees.

Mr. Franklin has advertised the two new positions for hire and has received 12 applications from candidates who appear to be well qualified, but he has not yet made the hiring decision because of his concerns about health insurance coverage.

Among the 12 applicants are Betsy Ross, who is a First Class Petty Officer in the Coast Guard Reserve, and Nathan Hale, who served on active duty in the Army for eight years (including service in both Iraq and Afghanistan) before he was honorably discharged in 2014.

As a Coast Guard Reservist, Ross has health care coverage for herself, her husband, and their two young children through TRICARE Reserve Select (T.R.S.). Hale (a childless bachelor) has health care coverage for himself through a program administered by the United States Department of Veterans Affairs (VA), because he is a recently separated veteran with combat service after September 11, 2001.

Let us assume that HMHA-2015 is enacted in its present form. Then, Mr. Franklin hires Betsy Ross and Nathan Hale as new employees of his chain of optical shops. Under the newly enacted subsection (F), Ross and Hale do not count toward the 50-employee threshold, and hiring them does not require Mr. Franklin to provide qualifying health insurance coverage for his 51 employees.

In conclusion, we don't want to overstate the effect of this bill, if it were to be enacted, but we think it would help some Reserve Component members and some recently separated veterans find civilian jobs.

Here is the current text of section 4980H(c)(2):

> (c) Definitions and special rules. For purposes of this section--
> (1) …. [omitted as not relevant to this article]
> (2) Applicable large employer.
> (A) In general. The term "applicable large employer" means, with respect to a calendar year, an employer who employed an average of at least 50 full-time employees on business days during the preceding calendar year.
> (B) Exemption for certain employers.
> (i) In general. An employer shall not be considered to employ more than 50 full-time employees if--
> (I) the employer's workforce exceeds 50 full-time employees for 120 days or fewer during the calendar year, and
> (II) the employees in excess of 50 employed during such 120-day period were seasonal workers.
> (ii) Definition of seasonal workers. The term "seasonal worker" means a worker who performs labor or services on a seasonal basis as defined by the Secretary of Labor, including workers covered by section 500.20(s)(1) of title 29, Code of Federal Regulations and retail workers employed exclusively during holiday seasons.
> (C) Rules for determining employer size. For purposes of this paragraph--
> (i) Application of aggregation rule for employers. All persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 [26 USCS § 414] shall be treated as 1 employer.
> (ii) Employers not in existence in preceding year. In the case of an employer which

was not in existence throughout the preceding calendar year, the determination of whether such employer is an applicable large employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

(iii) Predecessors. Any reference in this subsection to an employer shall include a reference to any predecessor of such employer.

(D) Application of employer size to assessable penalties.

(i) In general. The number of individuals employed by an applicable large employer as full-time employees during any month shall be reduced by 30 solely for purposes of calculating--

(I) the assessable payment under subsection (a), or

(II) the overall limitation under subsection (b)(2).

(ii) Aggregation. In the case of persons treated as 1 employer under subparagraph (C)(i), only 1 reduction under subclause (I) or (II) shall be allowed with respect to such persons and such reduction shall be allocated among such persons ratably on the basis of the number of full-time employees employed by each such person.

(E) Full-time equivalents treated as full-time employees. Solely for purposes of determining whether an employer is an applicable large employer under this paragraph, an employer shall, in addition to the number of full-time employees for any month otherwise determined, include for such month a number of full-time employees determined by dividing the aggregate number of hours of service of employees who are not full-time employees for the month by 120.

26 U.S.C. 4980H(c)(2).

HMHA-2015 would add the new subsection (F) at the bottom of the existing subsection quoted above.