January 7, 2015

The Honorable John Boehner  
Speaker of the House of Representatives  
Washington, DC 20515

The Honorable Nancy Pelosi  
Democratic Leader  
Washington, DC 20515

Dear Mr. Speaker and Madam Leader,

I write on behalf of the American Benefits Council (“Council”) in support of the Save American Workers Act of 2015 (H.R. 30), legislation regarding the definition of a full-time work week for purposes of the Patient Protection and Affordable Care Act (PPACA).

The Council is a public policy advocacy organization representing principally major companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council’s members sponsor directly or provide services to health and retirement plans covering more than 100 million Americans.

The Council is a longtime supporter of reforming the nation’s health care system to ensure all Americans have access to affordable health care coverage. Employers play a critical role in achieving this goal, although global competitiveness, increasing health care costs, and implementation of PPACA has the potential to fundamentally change the value proposition of sponsoring benefits. To keep employers in the system, and thereby help workers meet current and future needs, will require more flexibility, choice, transparency, simplicity, portability and predictability than presently exists.

As you know, PPACA’s employer shared responsibility provision under Internal Revenue Code Section 4980H (“4980H”) requires employers with 50 or more full-time equivalent employees to offer substantially all “full-time employees” (defined in the law as those employed, on average, at least 30 hours per week) and their dependents the opportunity to enroll in minimum essential coverage. The coverage must meet certain affordability and minimum value standards or subject the employer to a penalty if even one full-time employee is certified to receive a tax credit or cost-sharing subsidy for coverage purchased on an insurance exchange.
Final regulations implementing 4980H include many complex standards for determining whether an individual is a “full-time employee.” These include rules for measuring and crediting hours of service, breaks in service, and changes in employment status. These requirements are effective in 2015 (for employers with at least 100 full-time employees). Many employers are concerned that, despite their best efforts to comply, 4980H liability could be triggered, given the complexity of administering coverage to comply with the law, particularly with respect to employees who work a variable schedule, short-term employees (for example, 4-6 months), temporary, seasonal or similar contingent workers.

One helpful step Congress can take to alleviate these employer concerns is to pass legislation increasing the hours of service threshold for determining full-time employee status. The Council also supports modifying the employer shared responsibility provisions in other ways to minimize administrative burdens on employers that might create disincentives for employing “full-time employees” as defined by the law.

The final 4980H regulations stipulate that for 2015, an applicable large employer that offers coverage to at least 70 percent of its full-time employees (and applicable dependents) will not be subject to a penalty. In 2016 and beyond, however, the regulations prescribe that the coverage offer must be made to 95 percent of full-time employees. Given the enormous complexity of the rules, and to help achieve the flexibility required to permit employers to continue serving as health plan sponsors, policymakers should extend the transition relief standard of 70 percent beyond 2015, and/or implement a glide path that gradually phases the percentage from 70 to 95 over several years.

We look forward to working with Congress to enact these and other changes that will strengthen, rather than erode, employer-sponsored health coverage.

Sincerely,

James A. Klein
President

cc:   All offices, U.S. House of Representatives