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Regulatory and Statutory Barriers to Employment

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Barriers to Job Creation

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Mr. Chairman, Mr. Vice-Chairman, members of the Committee, I am honored to be invited to testify before your Committee today on the subject of regulatory and statutory barriers to job creation. I have followed and written about this and related issues for many years. Currently I am a senior fellow at the Hudson Institute. From February 2003 until April 2005 I was chief economist at the U.S. Department of Labor. From 2001 until 2003 I served at the Council of Economic Advisers as chief of staff and special adviser. Previously, I was a resident fellow at the American Enterprise Institute. I have served as Deputy Executive Secretary of the Domestic Policy Council under President George H.W. Bush.

Introduction

The Great Recession ended in June 2009, but, two years later, something is still terribly wrong. The annualized growth of gross domestic product is below two percent. June's unemployment rate stood at 9.2 percent, and 44 percent of the unemployed have been out of work for six months or more.

Some believe that there is a mismatch between jobs available for Americans and skills of those looking for work. According to this view, if training were only better, then workers would be better matched with jobs, and unemployment would decline. There are certainly some workers who could be usefully trained for existing jobs. But the majority of unemployment is caused by lack of available jobs. Labor Department data from the Job Openings and Labor Turnover Survey, released this morning, show that employer job openings and hiring rates are still at low levels.

It is most troubling that whereas jobs are the first priority for most Americans, the Administration's regulatory and legislative agenda has had the effect of reducing jobs rather than creating them. Energy and environmental regulation, new financial legislation, the new health care law, and proposed tax increases all serve to drive jobs abroad rather than foster domestic growth. As well as looking at training, it is vital to see why more employers are not creating jobs here in America.

This testimony is divided into three sections. The first section reviews America's current employment situation. The second describes how the administration's regulatory priorities—decisions controlled solely by presidential appointees--

result in fewer jobs. The third shows how new laws in place, such as Dodd-Frank and the Patient Protection and Affordable Care Act, reduce hiring.

The Employment Situation

The economy created only 18,000 jobs in June, following a revised 25,000 jobs in May. The unemployment rate remains unacceptably high at 9.2 percent. The number of unemployed rose in June to over 14 million, and the percentage of the unemployed out of work for 27 weeks or longer stands at 44 percent. The civilian labor force participation rate declined to 64.1 percent, down from 64.7 percent a year ago, the same level as in March 1984. The Labor Department's broadest measure of unemployment, including discouraged workers and those at work part-time for economic reasons, rose to 16.2 percent from 15.8 percent in May.

The 9.2 percent overall unemployment rate masks other groups within the economy that are doing far worse. The African American unemployment rate is 16.2 percent. Teens' unemployment rates are even higher, at 25 percent, and the African American teen unemployment rate is 40 percent.

Increasing Job Growth through Regulatory Reform

The bad news is that our employment picture is so dire. But the good news is that it is not hard, or expensive, to make it easier for businesses to create jobs. By executive action alone, President Obama could create more jobs without spending another dollar of taxpayer money, generating billions of additional dollars in income tax revenues for Treasury coffers.

Regulations are controlled by presidential appointees at agencies such as the Environmental Protection Agency and the Labor Department, which are part of the executive branch, and at "independent" agencies, such as the National Labor Relations Board, which has quasi-judicial functions.

Tougher regulations lead to numerous economic woes, not least incentivizing employers to locate elsewhere. Friendlier regulations draw them back home.

Mr. Obama acknowledged this when, on January 18, 2011, he issued Executive Order 13563, entitled Improving Regulation and Regulatory Review.

Each agency is supposed to make a plan to "periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives."

While Mr. Obama knows that burdensome regulations crimp job creation, his agencies continue to interfere with private sector job creation. Here are just a few examples.

The acting general counsel of the National Labor Relations Board, Lafe Solomon, wants to stop the Boeing Company, which has a backlog of over 800 Dreamliner aircraft on order, from using its new aircraft manufacturing plant in South Carolina to build Dreamliners.

Mr. Solomon has charged that Boeing's decision to build a new plant at North Charleston, South Carolina, to expand production of its Dreamliner 787, was made in retaliation for strikes at its Everett, Washington plant in 2005 and 2008, even though Boeing has added workers in Washington state since the strikes.

Mr. Solomon's charge was brought in response to a complaint from the International Association of Machinists and Aerospace Workers, which represents Boeing employees in Washington State.

The NLRB's action is sending a job-chilling signal to foreign and domestic companies which might want to locate plants in America, especially in states with a strong union presence, such as Pennsylvania, Michigan, Illinois, and New York. Companies will know that if they build plants in unionized states, and then seek to move elsewhere, they could face two years of litigation, costing millions of dollars, as is the case with Boeing. If Boeing had built its new plant in China, the NLRB would lack any authority over it.

Mr. Obama has not distanced himself from Mr. Solomon's actions, nor criticized them. He has not moved to withdraw Mr. Solomon's nomination for general counsel. Yet it is within his power, at no cost, to do any of these.

The same job-killing executive power can be seen in regulations affecting coal, which accounts for 45 percent of American electricity production. The Environmental Protection Agency is developing regulations to restrict coal ash emitted into the atmosphere. It wants to impose tighter standards for nitrogen dioxide, sulfur dioxide, and other particulates, and new standards for water and carbon. EPA asserts that these more restrictive limits are necessary to protect public health.

These regulations will raise the price of energy, discouraging energy-intensive manufacturing from locating in America. Again, the timing of these regulations appears unnecessarily harsh, especially because EPA states on its Web site that U.S. air quality has been steadily improving since 1980.

"Since 1980, nationwide air quality, measured at more than a thousand locations across the country, has improved significantly for all six principal pollutants. These common pollutants are ground-level ozone, particle pollution, nitrogen dioxide, carbon monoxide, sulfur dioxide, and lead."

For President Obama, through EPA Administrator Lisa Jackson, to deprive Americans of jobs at this time for the sake of yet cleaner air seems unconscionable. Cannot further air improvements wait until the unemployment rate has declined two to four percentage points?

Furthermore, the links between improved air quality and health are unclear. At the same time as air quality has been improving, the incidence of asthma, a disease commonly associated with polluted air, has been increasing. Between 1980 and 2001, as measured air quality was improving, the prevalence of asthma tripled, according to the Centers for Disease Control.

Administrator Jackson's regulations will discourage coal from being burned in power plants, but it can still be mined and exported. Coal exports are significant, being 76 million tons in 2010, which is 23 percent higher than in 2009.

But, by coincidence or design, Secretary Hilda Solis at the Labor Department has been ratcheting up safety standards for coal miners. Proposed Labor Department regulations, if made final, would discourage coal from being produced at all. Over 30 new regulations for coal are on the Labor Department's regulatory agenda.

These regulations discourage coal production, causing unemployment of miners and others in mining communities. Moreover, by making the use of coal more expensive, the government discourages energy-intensive industries, such as manufacturing, from locating in the United States, which, in effect, encourages them to flee abroad.

Another proposed Labor Department regulation is affirmative action for women on construction sites. Discrimination is already illegal in the construction industry. In practice, this rule would require construction companies to employ less-qualified women.

With the construction industry still sick from the recession, and women's unemployment rates more than a full percentage point lower than men's, this is not the time to force construction companies to employ women.

Then, consider drilling in the Gulf of Mexico. The BP oil spill occurred 15 months ago, and deepwater drilling has yet to resume in the Gulf, although some shallow-water activity has started. Secretary Ken Salazar at the Department of the Interior could approve permits tomorrow and bring back some of the jobs and oil rigs lost to the Gulf states.

The Administration is using its regulatory power over firms that do business with the federal government to push additional regulations on federal contractors. The Davis-Bacon and Service Contract Acts and their associated regulations have always required contractors to pay "prevailing wage rates." Now, in addition, "project labor agreements" ensure that workers in the construction sector are being paid rates even higher than Davis-Bacon rates, and the administration is discussing giving preference to "high road" contractors.

These regulations worsen unemployment by raising the price of labor, causing fewer workers to be hired.

Under project labor agreements, all employees have to receive union-approved wages and benefits, even if they do not belong to unions. This drives out small businesses from competing for these projects; raises their cost to the taxpayers; and funnels a larger stream of union dues from taxpayers' pockets to union treasuries.

On April 13, 2010, the administration issued final regulations for an executive order issued by Mr. Obama on project labor agreements.[1] The executive order favors union labor over nonunion shops on large federal construction projects—those worth over $25 million each.

According to the new rule, "every contractor and subcontractor engaged in construction on a construction project agrees, for that project, to negotiate or become a party to a project labor agreement with one or more labor organizations."

This executive order makes job growth in the private sector harder to achieve. Taxpayer dollars do not go as far because projects are more expensive, and small businesses hire fewer workers.

The Effects of Existing Statutes on Employment

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[1] "FAR Case 2009–005, Use of Project Labor Agreements for Federal Construction Projects (Rules and Regulations)." Federal Register 75 :70 (2010, April 13) pp. 19168-19179. http://edocket.access.gpo.gov/2010/pdf/2010-8118.pdf

Regulatory reform can proceed relatively quickly and at low cost. Changes in laws requiring congressional action take longer. But they are not impossible, as can be seen by the repeal of the Affordable Care Act's 1099 paperwork requirement.

The health care law would have required that businesses, large and small, file a Form 1099 with the Internal Revenue Service when they purchase more than $600 worth of goods or services in a year from any one supplier, whether at an office supply store, gas station, or utility. The volume of paperwork would have been ruinous for businesses, and even the Internal Revenue Service announced that it did not have the personnel to implement the new provision. Last April, President Obama signed H.R. 4, which repealed the requirement.

The health reform bill, which dominated Congress and the White House until its passage in March, will hurt rather than help employment. Beginning January 1, 2014, companies that do not provide the right kind of health insurance will pay $2,000 per worker per year, if they have more than 50 workers. Moving from 50 to 52 workers will cost a firm $44,000 per year (the first 30 workers being exempt from the penalty).

Firms are already getting prepared for the new penalties. Firms that have 48 workers are likely calculating the costs of hiring more than 2 more workers. Firms with 55 or 60 workers are thinking of how to shed 5 or 10 workers so they won't have to pay the penalty. The structure of the penalty discourages employment.

This requirement will cover employers with at least $500,000 in annual payroll costs, and it will add to employment costs for workplaces that do not now have the prescribed set of health benefits. Workers who are not laid off will receive lower wages to compensate for the higher benefits.

The law also prescribes what constitutes a qualified benefit plan. Such coverage will be expensive, because the law prohibits copayments for routine visits, such as annual check-ups and mammograms, and requires coverage for mental health and substance abuse, and dental care for children. Insurance companies will be required to cover everyone, regardless of preexisting conditions, with relatively low penalties for those who do not participate, which will lead many to purchase health insurance only when they get sick.

Income taxes on the most productive small businesses will increase, making them less willing to expand productions and employment. The top tax rate on business owners who pay taxes as individuals, not corporations, now is 35%. Under the new health care bill it will rise even higher, with the inclusion of an

additional 0.9% Medicare tax on wage and salary income and a new 3.8% Medicare tax on investment income for singles and couples earning over $200,000 and $250,000 respectively. With state taxes, some combined rates will exceed 55%. That will discourage hiring and encourage retrenchment and use of contractors.

The proposed taxes on expensive policies, scheduled to take effect in 2018, are meant to discourage employers from providing a large tax-free benefit to workers. While that is a worthy purpose, the law prevents individuals from switching to lower-cost plans by forbidding high-deductible low cost plans. Since the mandated qualified plans are overly-generous, middle-class Americans will be sitting ducks for the tax collector, just as they are now paying an increasing share of the alternative minimum tax.

The increases in premiums would gradually raise the amount everyone would have to pay for health insurance, leaving less disposable income to buy other goods and services. Rather than bending down the health cost curve, the economy would be stifled by rising health insurance premiums.

In addition to health care reform, Congress could modify provisions of the Dodd-Frank and Sarbanes Oxley laws to reduce the accounting burden on companies. As can be seen with the implementation of Sarbanes Oxley, regulations have unintended consequences. Mergers have declined, and buyers are concerned about the potential liability of the companies that they acquire. Auditing costs have increased. The number of private companies launching Initial Public Offerings has declined. Dodd-Frank will have similar consequences on businesses.

Congress could enact fundamental tax reform to help jump start the economy. America has the highest corporate tax rate in the world. Congress could reduce it, together with the tax on repatriated earnings, which would bring back billions of dollars from abroad.

The Administration's legislative and regulatory agenda dampens overall job creation. President Obama's priorities discourage employers from hiring. With this agenda, the economy will not produce the jobs needed to reduce unemployment, including long-term unemployment.

With over 14 million Americans unemployed, 44 percent for six months or more, Congress and the Administration need to move on multiple fronts to remove obstacles to job creation. Then, workers can get training for the new jobs. The time to start is now.