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“WHERE DO I START?” ACA COMPLIANCE IN RAPID GROWTH ENVIRONMENTS

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“WHERE DO I START?” ACA COMPLIANCE IN RAPID GROWTH ENVIRONMENTS

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I. INTRODUCTION

Where do I start? These words begin this article, but are also the words quietly uttered by many organizations as they begin to contemplate the impact of the Patient Protection and Affordable Care Act (ACA) on their business.¹

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Although compliance workshops, newsletters, and websites inform many decision makers, the ACA has been a continually changing event horizon. As ACA mandates have impacted how employers navigate the medical coverage portion of employee benefits and best practices have evolved, businesses continue to open, grow, and expand. While the future impact of the ACA remains unclear, so are the answers to many questions. How can businesses gather the information needed to make the best decisions? How do businesses maintain and support health care access, attract and retain top talent, and maintain compliance? And how do small, rapid growth employers with finite time and limited resources respond to these new challenges?

For the past decade, I have worked for smaller organizations experiencing rapid growth. Surly Brewing Company is the most recent.² Surly's main focus over its nine year existence has been growth: opening of a new facility, developing additional business concepts, increasing barrel output, expanding distribution, and remaining competitive in a rapidly growing industry. As human resources director, I have focused on acquiring and retaining top talent to support these initiatives, to build systems that will scale and add efficiencies as the organization grows, and to ensure compliance with all requirements, including those of the ACA. This article aims to illustrate some of the practical considerations for smaller, rapid growth companies with regard to the ACA, from the perspective of management.

II. RAPID GROWTH ENVIRONMENT: SURLY BREWING COMPANY

Surly has experienced rapid growth since it began brewing in Brooklyn Center Minnesota in late 2005. In its first year of operations, Surly produced 800 barrels of beer, and demand continued to grow. However, physical constraints of its original facility, and legal constraints tied to a prohibition era law complicated Surly's growth.³ In 2011, with the assistance of grassroots efforts and supportive legislators such as the late Linda Sheid,

¹ The Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148 (codified as amended in scattered sections of 42 U.S.C., 29 U.S.C., 26 U.S.C., 25, U.S.C., 21 U.S.C.).

² Surly Brewing Company is a Minnesota brewery founded in 2005 that brews award-winning crafts beers. SURLY BREWING CO., <http://surlybrewing.com/about/our-story/> (last visited Apr. 4, 2015).

³ Minnesota's former "three-tier" liquor regulation statute separated the functions of (1) manufacturers, (2) wholesalers, and (3) retailers. MINN. STAT. ANN. § 340A.301 (West 2011). The Minnesota legislature amended this law to include subdivision 6b, which permits brew pubs to sell their beer directly to consumers on the premises or adjacent to the premises. MINN. STAT. ANN. § 340A.301, subd. 6b (West 2013).

the "Surly Bill" became law.⁴ Codified as Minnesota Statute 340A.301 subd. 6(b), this legislation dramatically altered the three-tier distribution system in the state, lifting Minnesota's prohibition on Surly, and other small breweries, from serving their product directly to the public.⁵ Surly wasted little time, and shortly after broke ground on a larger facility that included a tap room designed to serve directly to the public. By 2013, Surly was producing nearly 30,000 barrels and bursting at the seams, and the new facility provided much needed relief.

The new Surly Destination Brewery opened in December 2014.⁶ It combines an expanded brewery with beer hall, restaurant, event center, and expanded retail store.⁷ The 50,000-square-foot facility has a predicted barrel output 100,000 barrels per year, tripling the original Brooklyn Center location output.⁸ It has also created jobs: Surly's employee count grew from approximately 40 in early 2014 to over 250 by early 2015.

In Minnesota, the "Surly Bill" allowed smaller breweries to sell their product directly to the public, igniting a craft beer boom.⁹ The resulting growth of craft brewing in Minnesota was dramatic. Minnesota is now a top ten beer producer nationally and home to over 100 breweries.¹⁰ The influx of breweries has resulted in a favorable \$742 million impact on Minnesota's economy.¹¹

Minnesota's craft beer boom is representative of the larger craft beer movement that has swept the country. According to the Brewers Association, an organization of over 2,300 U.S. breweries, craft breweries are defined as those that are: (1) *Small* – less than 6 million barrels per year; (2) *Independent* – less than 25% owned or controlled by an alcoholic beverage industry member that is not itself a craft brewer; and (3) *Traditional* – using traditional ingredients and methods to produce beer.¹² According to the

⁴ MINN. STAT. § 340A.301, subd. 6b; Paul Demko, 'Surly' Bill Headed To Senate Floor, *POLITICS IN MINN.* (Apr. 6, 2011), <http://politicsinminnesota.com/2011/04/surly-bill-headed-to-senate-floor/> (relating the passage of the Surly Bill from committee onto the floor for a vote).

⁵ MINN. STAT. § 340A.301, subd. 6b.

⁶ Erin Golden, *Fans Fill New Brewery at Furious Pace*, *STAR TRIBUNE* (Dec. 20, 2014), available at <http://www.startribune.com/lifestyle/286433091.html>.

⁷ *Id.*

⁸ *Id.*

⁹ MINN. STAT. § 340A.301, subd. 6(b).

¹⁰ Jon Collins, *Minnesota's Breweries on Tap to Top 110 This Year*, *MPRNEWS* (Apr. 7, 2015), <http://www.mprnews.org/story/2015/04/07/minnesota-breweries>.

¹¹ Stephen Montemayor, *Minnesota Trying to Cash in on Craft Beer Tourism*, *TWIN CITIES BUS.* (Oct. 13, 2014), available at <http://tcbmag.com/News/Recent-News/2014/October/Minnesota-Trying-To-Cash-In-On-Craft-Beer-Tourism>.

¹² *Craft Brewer Defined*, *BREWERS ASS'N.*, <http://www.brewersassociation.org/statistics/craft-brewer-defined> (last visited Apr. 4, 2015).

Brewer Association's definition, craft brewery barrel output grew from almost 6 million in 2004 to over 15 million in 2013.¹³

According to Jack Curtin in the *New Brewer's 2014 Annual Industry Review*:

Craft microbrewery production grew slightly more than twenty-five percent in 2013 . . . In all, 304 new breweries opened and only twenty existing ones closed. Twenty-two micros passed the 15,000-barrel mark to become regional breweries, and Bart Watson, staff economist for the Brewers Association, notes that when you remove those 22 from the 2012–2013 stats, the growth rate for the breweries that remain in the category was nearly 42 percent. That is probably a more accurate representation of just how strong and important the micro segment really is in terms of ongoing growth.¹⁴

Poised amid this explosive industry growth, Surly opened the doors of its new facility to the public in December, 2014.¹⁵ On January 1, 2015, the employer mandate took effect.¹⁶

III. CHALLENGES: RAPID GROWTH AND THE AFFORDABLE CARE ACT

Facing uncertainties under the newly effective ACA while continuing to grow, Surly aimed to attract and retain talented employees in a competitive labor market by simply providing employees and their families with quality, yet affordable health coverage and care. At the same time, from a business perspective it had to control the impact of health care costs on its bottom line.

Creating access to care and providing coverage, however, entails more than merely complying with the ACA. For Surly, like many organizations, providing robust benefits is and has been part of a larger overall vision. Surly offered medical coverage before the ACA, and continues to plan strategically to maintain and even expand its benefit offerings. To create a plan that provided more access for its employees, Surly needed to make it a priority, and understand at a high level the business impact of offering greater coverage. In many ways, the challenge was finding

¹³ *U.S. Domestic Craft Brewing Index*, THE NEW BREWER—BREWERS ASS'N, Vol.31 No.3, May 1, 2014, at 99.

¹⁴ Jack Curtin, *Bigger, Stronger, and Booming*, THE NEW BREWER—BREWERS ASS'N, Vol.31 No.3, May 1, 2014, at 73.

¹⁵ See Golden, *supra* note 6.

¹⁶ See 26 U.S.C. § 4980H(a) (2010) (imposing a monetary penalty on “applicable large employers” that do not offer health coverage to their employees).

a way to create a reasonable benefits strategy amid changing and unknown variables.

The situation Surly arrived in was akin to the perfect storm. The ACA's employer mandate became effective on January 1, 2015.¹⁷ Meanwhile, between November 2014 to early January 2015, Surly hired a number of new employees and was re-classified as a "large" employer, as defined by the ACA.¹⁸ To complicate matters further, Surly still had a smaller company infrastructure with regard to staffing, technology, policy, and practice, but now faced mid-sized company issues. The infrastructure that allowed a small business of 30–40 staff members to thrive would not necessarily scale to a mid-sized company of over 200 employees. From a human resources perspective, managing an organization in a changing legal context is challenging in its own right. The rapid growth of the organization coupled with the unease around the ACA, unpredictable market reaction, and unclear best practices was a unique and extremely difficult challenge to manage.

A. Growth Itself

To remain relevant in such a rapidly growing industry, growth and innovation as an organization is of utmost importance. Surly did not have a primary benefits administrator or compliance officer when it was 40 employees strong, nor does it today. Rather, Surly's benefits administration and compliance responsibilities are shared by employees wearing many hats. Like many smaller organizations, Surly has one team responsible for compliance, strategic labor planning, recruiting, benefits administration, payroll, Human Resources Information System (HRIS) administration, compensation analysis, performance management, training, and safety. Unique to Surly was the apex of activity of hiring and training 200 new employees, completing construction of a new facility, and simultaneously firing up both a new brewery and the stoves in a new kitchen. As the kitchen became operational and staff flooded in for training, the analysis, planning, and testing around the ACA was often put on the back burner.

B. Small vs. Large

At the time of its medical plan renewal, health insurance carriers classified Surly's employee population as "small", while under the ACA its employee population was considered "large."¹⁹ The confusion of facing

¹⁷ *Id.*

¹⁸ See 26 U.S.C. § 4980H(c)(2)(A) (defining an "applicable large employer" as "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").

¹⁹ See 42 U.S.C. § 18024(b) (2010) (defining large group market/employer and small group market/employer).

differing group definitions from health insurance carriers and the ACA is something that rapidly growing, or downsizing, organizations may face in the future. In many ways, Surly's situation was unique, as explained by Rey Velasco, Client Executive at Ahmann-Martin Benefits Consulting:

I don't see too many groups in Surly's situation. Growth like that doesn't happen very often. We see a lot more with companies going the other direction, going from large to small group. You are often in a better position than those going from large to small. They are not in growth mode, which is also not favorable. Going large to small—some are happy and some are sad when they see those rates. It really depends on the nature of the group.²⁰

Because Surly renewed as a small group, its rates were driven by the Adjusted Community Rating (ACR).²¹ The ACR pools data of the residents of the larger metro area, as opposed to the health care usage and experience rating of its own employee population.²² Despite the benefits of guaranteed issue and fixed fees, Surly experienced a 36% rate increase for the 2014–15 plan year, driven primarily by the impact of the ACR.

The carrier's small group classification also resulted in a large administrative burden due to its complex rate structure. Prior to the ACA, small group age banded rates were typically less complex, and based on rate classifications.²³ Under the ACA, small group age bands are now in one year increments.²⁴ The same small group logic applies, but now there are 43 age bands and rates.²⁵ With these types of age bands under a small group plan, there are hundreds of rate combination possibilities. After Surly added two

²⁰ Telephone interview with Rey Velasco, Client Executive, Ahmann-Martin Benefits Consulting (Jan. 4, 2015).

²¹ See 42 U.S.C. § 300gg(a)(2) (2010) (authorizing rate variation based on "area" for individual and small group markets); 45 C.F.R. § 147.102(b) (2014) (providing rate variation based on "rating area[s]").

²² *Minnesota Geographic Rating Areas: Including State Specific Geographic Divisions*, CMS.GOV, <http://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/mn-gra.html> (providing Minnesota's specific geographic rating areas); *Health Care Reform Series: Adjusted Community Rating*, HEALTH PARTNERS, https://www.healthpartners.com/ucm/groups/public/@hp/@public/documents/documents/cntrb_039379.pdf (last visited Apr. 4, 2015) (noting that prior to the ACA, small group premiums were calculated based on a variety of factors specific to the employer's historical claim experience).

²³ Prior to the ACA, small group rate classifications were determined by federal and state law, and the carriers. For example, Surly's age banded rates were broken down into five year spreads.

²⁴ 42 U.S.C. § 300gg (authorizing rate variation based on age); 45 C.F.R. § 147.102(d)(2) (providing for one year age bands for individuals age 21 through 63).

²⁵ See *supra* note 24 and accompanying text (noting that rates were determined based on age bands, except in five year increments, as opposed to one year increments for adults under the ACA).

plan design options with varying price points for a total of three plans, there were more than 15,000 possible rate combinations.

Large group administration is eased through the use of three to four simplified carrier rates. Large group plans are tiered based on average rates at each level for the group as a whole: employee only, employee plus one dependent, employee plus child or children,²⁶ and family.²⁷

At an organization like Surly, with over 200 employees on a small group structure, administration is complex. While Surly was a small group in 2014, by January 1 2015, it was too big to take advantage of small employer provisions under the ACA.²⁸ Because Surly will have over 100 insurance eligible employees at renewal in December 2015, the situation will become slightly less complex as Surly will be moved to the large group composite rates.

Surly eased its unique burden with the implementation of an online benefits enrollment and carrier feed. These programs allow Surly's employees to select a plan, similar to the government's MNsure website,²⁹ which feeds directly into Surly's payroll system and the selected health insurance carrier. Leveraging this type of technology, however, is highly dependent on organization size, because most carriers do not offer the carrier feed to organizations with fewer than 100 eligible employees.

C. Cost Increases

Maintaining employee benefits is contingent on affordability, both for the employee and the organization. Many aspects of the ACA impact the total cost of employer and employee health care, including the ACR and eligibility changes.³⁰

As noted above, Surly's small group renewal in 2014 left it subject to an ACR.³¹ Historically Surly's group rates were kept low as a result of the few claims and low health care costs of its relatively young and healthy

²⁶ Rate for children is 1.5 times the age banded rate for a child, but the same rate applies no matter how many children are on the plan.

²⁷ Family is typically married couple and/or legal domestic partners and 1.5 children.

²⁸ See, e.g., 26 U.S.C 45R (2010) (outlining tax credits for small employers).

²⁹ See generally, MNSURE, <https://www.mnsure.org/>.

³⁰ See, e.g., *supra* text accompanying notes 21–22 (noting Surly's increased rates as a small group subject to the ACR); *infra* text accompanying note 34 (outlining the impact of ACA's change in employee benefits eligibility on Surly).

³¹ See *supra* text accompanying note 21 (noting that health insurance carriers classified Surly's employee population as "small" and left it subject to Minnesota's ACR scheme).

workforce.³² When subjected to the ACR of Minnesota's greater metro area, however, Surly faced a 36% rate increase in the 2014–15 plan year.³³

Moreover, to remain compliant with the ACA's mandate, Surly changed its health care benefits eligibility, resulting in quicker access and additional insureds.³⁴ For example, Surly's previous waiting period for employee benefits was first day of the month following 90 days of full-time employment. To remain compliant with the new 90 day coverage rule under the ACA, Surly changed its waiting period to the first day of the month following 60 days of full employment.³⁵ When quantified, one extra month of coverage spread across 200 new employees, without counting dependents, results in an additional \$30,000 annually in costs for Surly.

Moreover, prior to the ACA, Surly considered only those employees working 40 hours per week on average "full-time" for benefits eligibility purposes. For the first time under federal law, however, the ACA defined "full-time" status and mandated that benefits eligibility, with regard to medical coverage, occurs when an employee works 30 or more hours per week on average.³⁶ In Surly's case the new definition increased the number of eligible employees.³⁷ Adding to the complexity in Surly's case, the majority of its new employees were wait- and kitchen-staff accustomed to a certain amount of flexibility with shift scheduling. Thus, it was not only important, but necessary, given the ACA's "mandatory look-backs", to closely monitor the 30 hour threshold in order to predict eligibility, cost, and also to ensure newly eligible employees crossing the 30 hour threshold are promptly informed of their benefits eligibility.³⁸

D. Reporting and Compliance Testing

With a small human resources department, ensuring adequate reporting and compliance testing required under the ACA left Surly's

³² See *supra* note 22 and accompanying text (noting that prior to the ACA, small group premiums were calculated based on a variety of factors specific to the employer's historical claim experience).

³³ See *supra* note 22 (outlining the geographical area included in Surly's rating, which includes the following Minnesota counties: Anoka, Benton, Carver, Dakota, Hennepin, Ramsey, Scott, Sherburne, Stearns, Washington, and Wright).

³⁴ 42 U.S.C. § 300gg-7 (providing a prohibition on excessive waiting).

³⁵ *Id.* ("A group health plan and a health insurance issuer offering group health insurance coverage shall not apply any waiting period . . . that exceeds 90 days.")

³⁶ See generally, Fair Labor Standards Act of 1938, 29 U.S.C. § 201 (1938) *et seq.*; *Work Hours*, U.S. DEP'T OF LABOR, <http://www.dol.gov/dol/topic/workhours/full-time.htm> (last visited Apr. 4, 2015) (noting that the Fair Labor Standards Act (FLSA) does not define full-time or part-time employment); 26 U.S.C. § 4980H(c)(4)(A) (defining a "full-time employee" as "an employee who is employed on average at least 30 hours of service per week").

³⁷ Specifically, for those employees working anywhere from 30 up to 40 hours per week on average.

³⁸ 26 C.F.R. § 54.4980H-3(d) (2014) (outlining the mandatory "look-back" measurement method to determine eligibility).

employees wondering again: Where do I start? The ACA required that plans meet affordability tests and that companies perform look-backs to monitor whether employees crossed the 30-hour threshold.³⁹ Surly's human capital reporting was non-existent at the beginning of 2014. Thus, taking a critical look at all infrastructure related to employee status was paramount for Surly to maintain efficient and accurate reporting and compliance testing.

E. Moving Target

Strategically, from a Human Resources perspective, employee benefits are planned at least on an annual basis, as most health insurance carriers require a one-year contract for both small and large group plans. However, a multi-year strategy is essential in order to control costs, build upon benefits packages, and remain competitive when it comes to recruiting and retaining talent:

Health insurance for small business employees is currently stuck in the middle of a brutal game of tug-of-war. Over the next two years, the Affordable Care Act is going to come under attack while President Obama meets any changes with vetoes. In June, the Supreme Court will hear a case on whether insurance premium subsidies should be available at the federal level. As you're being pulled in both directions by the law, it's up to you and your company to determine what these changes mean for your employee benefits strategy.⁴⁰

With the ACA, the target keeps moving. While delaying the employer mandate and other requirements under the ACA allowed employers more time to adjust, it simultaneously created a fog of uncertainty that has yet to clear.

F. Benchmarks: Other Breweries, Other Employers

Because best practices around ACA compliance are still in their infancy, benchmarking against other employers presents unique a challenge. Additionally, calibrating against industry norms is difficult when data is limited. The Brewers Association's publication, the *New Brewer*, is a fantastic, developing source of information for craft breweries, and while

³⁹ See 26 C.F.R. § 54.4980H-5(e) (2014) (providing that employees offered coverage by large employers may be eligible for an applicable premium tax credit or cost-sharing reduction if the coverage is not "affordable"); 26 C.F.R. § 54.4980H-3(d) (2014) (outlining the mandatory "look-back" measurement method to determine eligibility).

⁴⁰ Veer Gidwaney, *What Every Employer Needs to Know About Employee Benefits in 2015*, INC. (Dec. 8, 2014), <http://www.inc.com/veer-gidwaney/what-every-employer-needs-to-know-about-employee-benefits-in-2015.html>.

every year the data improves in detail and scope, its data only goes back a few years.⁴¹ In light of the difficulty in benchmarking in our industry, calibrating against national trends is the next best option.

In a recent article on the subject, Stephen Miller of the Society of Human Resource Management summarized the findings of a University of South Carolina study.⁴² The study was comprised of the input of 213 Chief Human Resource Officers (CHROs) from medium to large organizations.⁴³ Employment actions in the next 12 months as result of the ACA, according to CHROs, were summarized in the following table:

Employment Actions Taken as a Result of the ACA ⁴⁴	Have Done So	Plan to Do So
Move employees to consumer-directed health plans.	56%	17%
Raise employee contributions toward health insurance	52%	19%
Move pre-65 retirees to the ACA's public exchanges	12%	18%
Cut back coverage eligibility (spouses, dependents, etc.)	11%	16%
More rigorously ensure part-time employees work <30 hours	13%	10%
Increase the proportion of part-time workers.	9%	3%
Limit the number of full-time hires (relative to pre-ACA)	7%	3%
Move current employees to private exchanges	1%	10%
Cut back the hours of part-time workers	6%	3%
Move current employees to public exchanges	.5%	1%

While small employers cannot always follow in the footsteps of large employers with more resources, this information is important when

⁴¹ See, e.g., THE NEW BREWER—BREWERS ASS'N, Vol.31 No.3, May 1, 2014.

⁴² Stephen Miller, *CHROs Shift Health and Labor Policies in ACA's Wake: Labor strategies aimed at limiting full-time hires—and holding down part-time workers' hours*, SOC'Y FOR HUMAN RES. MGMT. (Oct. 1, 2014), <http://www.shrm.org/hrdisciplines/benefits/articles/pages/chros-health-labor.aspx>. See also Patrick M. Wright, Anthony J. Nyberg, Donald J. Schepker & Michael D. Ulrich, *The Impact of the Patient Protection and Affordable Care Act on Employment Strategies*, UNIV. OF S.C. DARLA MOORE SCH. OF BUS. (2014), available at <http://www.moore.sc.edu/UserFiles/moore/Documents/News/CHRO%20ACA%20Report.pdf>.

⁴³ Miller, *supra* note 42.

⁴⁴ *Id.*

considering that small and large employers alike compete to recruit and retain talented employees.⁴⁵

IV. POSSIBLE SOLUTIONS

While it is certainly a difficult and interesting time, there are solutions. Surly adopted many of the following approaches when it developed its 2014–2015 strategic benefits plan.

A. Growth Itself: Keep the Big Picture in Mind

Successful and sustainable growth provides most organizations with the ability to provide, and even enhance, benefits for their employees. Maintaining compliance with the ACA should not be viewed as a constraint, but rather, a responsibility that helps transform growth into sustainability. Beyond the ACA, compliance responsibilities extend to many other impactful labor laws, such as the Civil Rights Act and the Americans with Disabilities Act.⁴⁶ From a human resources perspective, legal compliance requires diligence and rigor, but the result should be a healthy, inclusive, diverse, and sustainable workforce.

B. Cost Increases: Get Creative and Offer Choice

To address the cost of providing health insurance coverage, rather than reduce employer contribution or overall benefits, employers should consider leveraging employee choice by offering several plan designs with various price points and structures. This can provide a framework that manages cost over time. Health care exchanges, such as Minnesota's MNsure, have set a new example for consumers, offering multiple plan designs at various price points.⁴⁷ Offering employees a similar choice can be a powerful tool for employers interested in controlling costs. Additionally, just as choice built into exchange model empowers individuals to be selectors and consumers of their own health care, so too can this be applied to the employee experience with plan selection given the option. The employer provided benefit is more visible to employees engaged in selecting a plan design that suits them best. Building in this process can also educate employees as to what that particular plan provides, and what it does not, and lead to higher utilization of preventative coverage.

Facing a 36% price rate increase, Surly was forced to be creative with its plan design and network. It maintained its plan design, and added

⁴⁵ *Id.*

⁴⁶ Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended in scattered sections of 2 U.S.C., 28 U.S.C., and 42 U.S.C.); Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101–12213 (2008).

⁴⁷ *See generally*, MNSURE, *supra* note 29.

two others, including a High Deductible Health Plan (HDHP). Furthermore, rather than limiting its network to providers in the Minneapolis/Saint Paul area, Surly opted to maintain a network that allows access to multiple health care providers to ensure that its out of state employees have usable coverage on its plan. While limited networks may reduce cost, employers must understand that doing so may severely limit provider choice for employees. Surly eventually chose a provider network that excluded Mayo Clinics at a significant savings and reduced the overall renewal cost by over 6%. Because Surly currently has no employees residing in the Rochester area, and its data revealed that its employees infrequently sought care at Mayo Clinics, it saved costs without causing inconvenience to its employees. Between plan design and network, Surly reduced its cost increases under the ACA by 16%.

Surly also chose to be as transparent as possible with its employees regarding the increase and the impact this increase had on the overall cost of benefits. By offering choice and encouraging open communication, Surly's employees have been encouraged to discuss the effectiveness of the current plan designs as well as plan designs they have been exposed to through word of mouth or on MNsure. Surly welcomes this expanded employee knowledge and open dialogue as guidance for future benefits planning. Rey Velasco expressed this sentiment in a personal interview on the subject:

Choice is good and helpful for you to bring a benefit to the people. It matters to them at that point in their lives, whether it's a HDHP because you are young and bulletproof . . . or you know you will have a lot of expenses coming up. They have flexibility both ways, and then some like the convenience of the co-pays. Employers are looking at exchanges because they don't know how to handle health care costs. They want to offer a defined contribution and let the employees select the plan that best fits them. The groups that will do the best are also those that are doing something to deal with the underlying costs: the health of the group.⁴⁸

Surly also plans to implement elective wellness programs and other initiatives to manage its group health and further reduce costs. In March 2015, Surly kicked off its first wellness plan, which includes a bicycle commuter program, weekly onsite yoga, and plans to include other facets of wellness such as financial wellness.

⁴⁸ Telephone interview with Rey Velasco, Client Executive, Ahmann-Martin Benefits Consulting (Jan. 4, 2015).

C. Reporting and Compliance Testing: Leverage Technology

Many Human Resource Information Systems (HRIS), which handle payroll, digital personnel files, as well as other human capital management administration, now come with standard reporting compliance testing for the ACA.⁴⁹ While a robust HRIS might not fit for a small employer of less than 50 employees, HRISs offer great benefits for organizations with over 50 employees. Surly changed its barebones payroll system to a cloud based payroll/HRIS platform with robust reporting. The change allows Surly to do point in time reporting, look-backs to test for benefits eligibility, and affordability testing. As Surly continues to grow, the new system will also allow it to keep the pulse on eligibility, distribute information about benefits to staff through an employee self-service portal, as well as offer online benefits enrollment with carrier feeds, all of which will add even more efficiency. Leveraging technology can also keep the overhead required to manage compliance and administer benefits to a minimum.

D. Moving Target: Focus on the Intent of the Law

Revisions to the ACA are still occurring and a polarized U.S. Congress continues battle over the existence of the law. One example is the House of Representatives' vote to change the definition of "full-time" employee to employees that work an average of 40 hours per week, despite its unlikely passing through a Democratic Senate, much less a presidential veto.⁵⁰ In fact, as of April 2014, the GOP-led House vote on the definition of a "full-time" employee marked the 55th time it aimed to scale back all or part of the ACA.⁵¹ Beyond legislative maneuvering, the ACA recently faced a legal challenge that reached the Supreme Court of the United States, and may significantly affect its expansion across the country.⁵²

These uncertainties and continual changes create challenges for employers, but ultimately providing access to care should be rooted in a business prioritization: that employee health is important to employers. Above all else, making employee health and access a priority as an

⁴⁹ See, e.g., PAYLOCITY, <http://www.paylocity.com/> (HRIS platform providing built-in mandatory testing modules); ADP WORKFORCE NOW, <http://www.adp.com/solutions/employer-services/workforce-now.aspx> (same); ULTIMATE SOFTWARE ULTI PRO SERVICES, <http://www.ultimatesoftware.com/UltiPro-Services> (same).

⁵⁰ Ed O'Keefe, *House votes to change health-care law's definition of full-time work*, WASH. POST (Apr. 3, 2014), http://www.washingtonpost.com/politics/house-votes-to-change-health-care-laws-definition-of-full-time-work/2014/04/03/dc0b7066-bb69-11e3-9a05-c739f29ccb08_story.html.

⁵¹ *Id.*

⁵² *King v. Burwell*, 759 F.3d 358 (4th Cir. 2014), cert. granted, 135 S. Ct. 475 (2014); Margot Sanger-Katz, *King v. Burwell: A Quick Take on a Crucial Case*, N.Y. TIMES, Feb. 25, 2015, http://www.nytimes.com/2015/02/25/upshot/video-king-v-burwell-a-quick-take-on-a-crucial-case.html?_r=0&abt=0002&abg=1 (noting that *King v. Burwell* may "jeopardize[the ACA's] ability to expand access to health insurance across the country").

organization can help cut through the ‘Where do I start?’ moments for many smaller employers. ACA compliance issues add another layer of complexity and apprehension, but overall, it boils down to providing access to care for employees.

Providing coverage is not the end of the story. Prudent employers will utilize every mode of communication available to share information about what coverage entails, what preventative care is available, as well as what wellness programs are available and encourage employees to utilize those programs. Regardless of cost, if the coverage is not utilized, it is wasted dollars. Most carrier websites are flush with information for employees, including how to select a provider, how to locate the closest urgent care, wellness assessments, and more.⁵³ Conducting annual open enrollment information sessions, carrier website tutorials, recurring benefits communications, and wellness fairs are simple ways to keep employees informed of how to maximize the coverage already available to them.

V. CONCLUSION

While the outlook for the ACA is still cloudy, there is light. The core intent of the law, from my perspective as the Director of Human Resources, is to provide access to care. Providing quality coverage for employees has been, and continues to be, a goal for many organizations, especially when competing for high-quality employees. When contemplating “Where do I start?” employers should keep their employees in mind and act upon all available information, while planning ahead with choices that give your organization and employees the flexibility to adapt as the first few years under the ACA employer mandate unfold. While there continue to be adjustments, changes, and challenges to the ACA, some of which can cause a feeling of uncertainty for employers and employees alike, it is important for organizations to keep the broader intent of this legislation in mind, as well as the fundamental reasons an employer should offer employee benefits in the first place: the health and wellbeing of employees.

⁵³ See, e.g., UCARE, <https://www.ucare.org/Pages/default.aspx> (last visited Apr. 4, 2015) (allowing users to quickly explore health plans and search UCare’s network of health providers).