

## **Regulatory disincentives that discourage small businesses from hiring their sixteenth employee**

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### **ABSTRACT**

Many statutes that regulate employment, such as non-discrimination statutes, exempt small businesses by exempting employers with fewer than a specified number of employees. Many such statutes, including the Equal Employment Act and the Americans with Disabilities Act, for example, apply only to employers with more than fifteen employees. Other statutes apply to employers with differing employment thresholds, such as twenty or fifty employees.

This paper considers several federal and state statutes with applicability thresholds of fifteen employees. Each statute is analyzed in an effort to identify specific marginal costs associated with that statute for employers who hire their sixteenth employee. Costs are estimated based on general economic data in an effort to develop some initial parameters and models for this type of analysis.

Given our rough estimates of the costs of hiring the sixteenth employee in the case of each statute that we consider, two issues emerge. First, if the stated purpose each statute (such as non-discrimination based on color or creed) is a significant public policy issue, does it make sense to have a fifteen-employee exemption? In other words, if discrimination is so wrong, why should employers with fifteen employees be allowed to discriminate while employers with sixteen employees be prohibited from doing so?

Second, can and should the cost of hiring the sixteenth employee be somehow mitigated? Or, is the unintended consequence of these employment statutes – that employers have an incentive to stop hiring full-time employees once they hit the fifteen-employee threshold – an acceptable outcome given the statutory regime that intentionally favors small businesses.

Keywords: Employment regulation; discrimination; small business; employment costs