

**Testimony of Donnie Meadows  
Vice President Human Resources  
K-VA-T Food Stores, Inc.**

before the

**Subcommittee on Health, Employment, Labor, and Pensions  
Committee on Education and the Workforce  
United States House of Representatives**

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**“Health Care Challenges Facing Kentucky’s Workers and Job Creators”**

Farish Theater  
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140 East Main Street  
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Chairman Roe, Representative Guthrie, Representative Barr, good morning. My name is Donnie Meadows, and I am the Vice President of Human Resources for K-VA-T Food Stores, Inc. One of my responsibilities includes the administration of health plan benefits; on behalf of the company I strive to meet the needs of our associates by offering a wide range of benefits that are a good value for our associates while maintaining a reasonable cost for the company. An important function of benefits administration is to insure compliance with the various laws and regulations, which brings me here before you. Thank you for allowing me the opportunity to appear here today to express some of the challenges we are facing as we continue preparing to comply with the *Patient Protection and Affordable Care Act*.

K-VA-T Food Stores is headquartered in Abingdon, Virginia. We currently operate 106 retail supermarkets throughout the tri-state regions of Southeast Kentucky, Southwest Virginia and Northeast Tennessee. In addition to our retail outlets we operate a distribution center and water bottling plant in Abingdon, Virginia. In total, we employ over 13,000 associates. Today, we have 14 retail supermarkets in Kentucky where we employ approximately 1500 associates. KVAT is committed to our associates and is very community-oriented; we are involved in local efforts as well as initiatives like School Bucks, in which the company has donated 14.4 million dollars in equipment to schools throughout the K-VA-T trade area.

We are also here as one of the voices of the Food Marketing Institute and the overarching supermarket industry. Food retailers and wholesalers employ 3.5 million full-time, part-time and seasonal workers—many operating under fluctuating schedules to meet employee needs and varying consumer demand. Generally, the supermarket industry operates at approximately a one percent margin, on average, so our industry has been steadfast in seeking to minimize new burdens in implementing regulations and/or changes to the Patient Protection and Affordable Care Act (ACA; PL 111-148) so retailers and wholesalers can continue providing quality health coverage that is affordable to both the employee and the employer. While the Administration has provided flexibility within the scope of the ACA’s regulations, they remain complex, and there are outstanding concerns

with the law itself that are impacting how food retailers manage their workforces, adjust work schedules and offer employee benefits well beyond health care.

We are committed to provide competitive wages and benefits to our associates. Today, we have a wide selection of benefits that we offer to our associates and many of those apply to our part time workforce. Through our profit sharing plan and 401-k plan, we provide all eligible associates (age 21 and 1000 hours) with retirement benefits and company ownership. Other offerings made available include vision, life, short term & long term disability, critical care, and accident insurance. Some are 100% paid by the company; others are on a cost share basis or paid by associates. Our health plan is grandfathered and provides a 100% paid wellness plan along with pharmacy and dental benefits. We have a full time nurse and registered dietician on staff to provide education, coaching, and guidance to our associates.

### **Challenges Facing K-VA-T Food City Stores and Associates under the Affordable Care Act**

Under the *Patient Protection and Affordable Care Act*, K-VA-T is considered a “large employer”, so the law requires our company to offer health coverage to full-time employees that is “affordable” to the employee and meets a certain “minimum value” or our company will face a tax penalty based on the number of people we employ.

Even though K-VA-T has long offered—quality, affordable health coverage to its full-time associates; you might be surprised by the challenges that our company, distribution network, and by each of our 106 stores are facing in order to comply with this new law. Over the past couple years, I have spent a significant amount of time attending conferences, reading the regulations, engaging with consultants and legal counsel to interpret the Affordable Care Act and its many new rules—some of which we are still awaiting— and to figure out the administrative details along with the development of system reports to ensure that our workforce management and benefits system will be in proper compliance.

While we appreciate the Obama Administration’s decision, as well as legislation (H.R. 2667) passed by the House of Representatives, to delay enforcement of some of the ACA’s employer provisions, our operations are still being impacted as we continue preparing to comply with the law’s regulations.

I would like to outline some of these challenges and offer support to some proposed solutions that are before Congress and the Administration. There are still outstanding concerns that need to be addressed in the ACA, such as the law defining a full-time employee as working 30-hours per week, a mandatory auto-enrollment that will increase administrative costs and cause confusion between employers and employees, and some provisions outside of the law’s employer coverage mandates that are impacting our retail business.

#### Definition of Full-Time Employee

The ACA has defined a full-time employee as someone who averages working 30-hours-per-week for an employer to be obliged to offer health coverage. K-VA-T employs a significant number of full-time and part-time associates. Currently, 42% of our associates are in full time positions. We also employ a large number of associates in age groups that possibly have other health coverage from

other sources such as their parents or from Medicare. At present time, 67% of our part time workforce falls into one of two age groups, those less than age 26 and those who are age 65 or older. As I mentioned earlier, K-VA-T currently provides health coverage to people working full-time, but a 30-hour per week threshold is beyond what we can afford without potentially impacting the quality of coverage to our current full-time associates. It also impacts how our stores hire, structure responsibilities and offer benefits to new hourly associates.

The health care law's 30-hours per week full-time employee threshold does not fit into the realities of supermarkets that operate outside of a traditional 9-to-5 work schedule. Our stores are staffed based on customer needs and our associates who are seeking flexible work arrangements. Think about a peak period, between the hours of 3 to 7 p.m., when people are shopping for dinner or during other peak times associated with preparation for holiday gatherings; to meet customer needs requires the availability of flexible staffing. Or conversely, think about the student or retiree who wants to pick-up or swap shifts based on family travel or funds for holiday shopping.

Earlier this year, the Administration released "look-back period and stabilization period" rules in an attempt to reduce these circumstances by tracking and averaging out employees' hours over a longer period of time, but this tool remains complex. Until we can trust our systems and our store managers to properly operate and track these look-backs, we are compelled to base staffing decisions on ensuring part-time employees do not trigger the additional liabilities of working 30-hours or more per week. By effectively capping part-time employees' at 30 hours per week, reduces our ability to offer jobs to people seeking flexible schedules or periodically higher-hour work periods.

We support legislation (H.R. 2575) introduced and co-sponsored by Chairman Roe, Representatives Guthrie, Barr and more than 100 Member of Congress to address this issue. We also support similar legislation (H.R. 2988) introduced by Rep. Dan Lipinski and other House members and S. 1188 introduced by Senators Susan Collins and Joe Donnelly. And quite frankly, we support any legislation or legislator that is honestly trying to correct ACA's definition of full-time employees (Sec. 1513 of ACA) so it is in-line with practical working environments.

#### Affordability, Value and Reporting of Employer-Sponsored Coverage

Under the Affordable Care Act, when our company offers health coverage to our full-time employees, we may still get penalized if the premium costs the associate more than 9.5% of his/her household income or if the benefits do not cover at least 60% of the average costs. Again, the regulatory agencies have offered some options, such as an "affordability test" based on employee wages and a calculator to certify coverage value. But we still are awaiting guidance on reporting and interactions with Health Exchanges to protect against someone being mistakenly awarded an ACA tax credit and/or to protect our company from getting penalized even when we've attempted to follow all of the rules.

#### Mandatory Auto-Enrollment

We are also concerned that the Affordable Care Act's mandatory, auto-enrollment provision will increase administrative costs and cause confusion between employers and employees. We anticipate scenarios where our company offers coverage to a qualified, full-time employee who ignores the offer due to already receiving health benefits from a parent, spouse or other retiree program. Under this ACA provision, the employer is required to deduct a premium from the associates' paycheck. As a result, an employee is being charged a premium (and the employer is paying an even higher

percentage) for coverage the employee does not want or need. K-VA-T supports legislation (H.R. 1254) introduced by Rep. Richard Hudson and co-sponsored by Chairman Roe, Representatives Guthrie, and Barr that would repeal the *Affordable Care Act's* mandatory enrollment provision(Section 1511), helping to ensure that associates opt-in to employer-sponsored coverage rather than forcing an employer to make that decision.

#### Temporary Reinsurance and PCORI Fees

We are also being forced to absorb a \$400,000 reinsurance fee on top of all the compliance costs associated with offering health coverage under these rules. The ACA's "Temporary" Reinsurance fee for employers offering self-insured plans that will charge our company \$5.25 per month per participant in benefit year 2014 (\$63 per capita for all of 2014) and annual costs going forward. In addition, we are being assessed for each person our company insures in order to fund the Patient-Centered Research Outcome Institute (PCORI). These new, additional fees, not only affect our business, but given the low margin environment of the supermarket industry, they would directly impact consumers.

#### Flexible Spending Account/Over-the-Counter Medicine Purchases

As a retailer that also sells medicine, we are also being impacted by a separate provision in the ACA that prohibits individuals' ability to purchase Over-the-Counter medicine (OTCs) with a Flexible Spending Account (FSA) debit card unless a consumer obtains a doctor's prescription. In 2008--prior to the ACA--retailers—including K-VA-T Food Stores-- sunk costs and investments into creating a point-of-sale system to comply with Internal Revenue Service regulations to accept customers' FSA cards for approved healthcare and pharmacy items. We support legislation (H.R. 2835) introduced by Rep. Lynn Jenkins that would restore Flexible Spending Account (FSA) purchases of Over-the-Counter (OTC) medicine without a prescription.

### **Conclusion**

Thank you for allowing me to testify today and for listening to K-VA-T's and the supermarket industry's concerns as you consider the impact of the Affordable Care Act. K-VA-T Food Stores remains committed to our community and to providing competitive, quality benefits to our associates. As I mentioned, we find ourselves in an uneasy position as an employer that is currently providing health coverage to our full-time associates but is also anxious about the impact that these new mandates are having on our associate benefits, workforce, and business operations. We support addressing the law's 30-hour full-time employee definition, repealing the mandatory auto-enrollment provision, and restoring the use of Flexible Spending Account debit card purchases without a prescription. These are common-sense measures that help correct some of the unforeseen challenges that the ACA imposes on businesses like ours. K-VA-T Food Stores and the supermarket industry remain committed to work with Congress and the Administration to address these issues as soon as possible.

Again, thank you for your time; I will answer any your questions you may have for me.