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BLOG

Appellate Courts Issue Conflicting Opinions on Subsidies for Individuals Obtaining Health Coverage in the Federal Exchange

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On July 22, 2014, the Court of Appeals for the District of Columbia struck down subsidies for individuals who participate in the federal health care exchange under the Affordable Care Act (ACA), dealing a potentially crippling blow to the ACA. However, hours later, the Appellate Court for the Fourth Circuit reached the opposite conclusion.

The ACA makes tax credits available as a subsidy to individuals under certain income thresholds who purchase insurance through health insurance marketplaces, often referred to as exchanges. The pertinent language in the ACA provides that such subsidies are available under exchanges that are established by a state. On its face, it appears that subsidies should not be available to individuals located in states that have not set up an exchange of their own and have instead relied on the federal exchange. Currently, 36 states participate in the federal exchange. In order to accommodate subsidies for individuals purchasing insurance through the federal exchange, the IRS has interpreted the relevant provision of the ACA broadly. Specifically, the IRS has taken the position that the extension of credits to participants in the federal exchanges is consistent with the language, purpose, and structure of the ACA.

Whether an individual may receive a subsidy on a federal exchange is of critical importance to employers subject to the ACA "pay or play" mandate. This is because employers are subject to penalties if they fail to provide adequate health coverage to full-time employees who then go out and get *subsidized* coverage on an exchange. If an employee receives no subsidy, the employer penalty is not triggered.

The Court of Appeals for the District of Columbia reversed the IRS's interpretation, finding that it was not supported by the plain language of the subsidy provision in the ACA, the interplay of the subsidy provision with the remainder of the ACA, or in the legislative history.

In contrast, the Court of Appeals for the Fourth Circuit found that the language in the ACA was ambiguous and subject to multiple interpretations. The court then granted deference to the IRS's interpretation as a permissible exercise of the agency's discretion.

Given the clear circuit split, it is likely that the Supreme Court will take up this issue in the near future. For now, employers can only sit tight and see how this issue ultimately plays out. In the meantime, employers should continue to implement pay or play requirements in order to avoid potential penalties in 2015.

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