

Supreme Court Upholds Federal Health Exchange Subsidies Under the Affordable Care Act

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On June 25, 2015, in *King v. Burwell*, the United States Supreme Court upheld the availability of subsidies to individuals in states that use federal healthcare exchanges under the Affordable Care Act (ACA). While the decision relates to subsidies individuals may receive when purchasing individual insurance on a healthcare exchange, it has important implications for employers due to how employer penalties are triggered under the ACA. Penalties for employers who fail to offer affordable, minimum value coverage to full-time employees and their dependents are triggered when a full-time employee receives subsidized health coverage through an exchange.

At issue in *King* was the correct interpretation of the ACA's healthcare exchange and subsidy provisions. The ACA requires the creation of an exchange in each state, giving each state the opportunity to establish its own exchange, but providing that the federal government will establish the exchange if the state does not. The ACA further provides that subsidies "shall be allowed" for any "applicable taxpayer," but only if the taxpayer has enrolled in an insurance plan through "*an Exchange established by the State ...*" (emphasis added). The IRS has interpreted this provision in a manner that allows individuals in the federal healthcare exchange – not just state exchanges – to receive subsidies.

The petitioners in the case were four individuals residing in Virginia, a state that has not established its own exchange. The individuals argued that they were not entitled to subsidies under the federal exchange (which was serving as Virginia's exchange). While it may seem counter-intuitive that someone would argue that he or she was not entitled to a subsidy, the lack of subsidy would actually advantage the plaintiffs in this case. This is because the ACA exempts individuals from the individual coverage mandate and the associated penalties if the individual's required contribution toward coverage exceeds eight percent of household income. Absent the subsidies, the petitioners would not be subject to individual penalties should they forego health insurance.

The Supreme Court held that the language limiting subsidies to taxpayers enrolled through "an Exchange established by a State" was ambiguous when read in the context of the overall law.

Although the Court found that the petitioners' plain meaning arguments were strong, the Court ultimately determined that it was implausible that Congress intended for the ACA to operate in the manner proposed by the petitioners because it would render large parts of the law superfluous and would destabilize the individual insurance markets in any state using a federal exchange.

While the decision may not be beneficial to employers in the short term, employers can now act with certainty in working to comply with coverage requirements under the ACA. To this end, on July 16, 2015, we will be presenting an eLunch discussing *King v. Burwell* as well as other ACA hot topics, including employer health coverage obligations for 2015 and 2016, employer reporting requirements, Cadillac tax implications, special ACA issues that arise with respect to contingent workers, health benefit interference claims under ERISA, and potential penalties under the ACA. Signup information will be forthcoming.

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