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BLOG

Affordable Care Act Held Unconstitutional – What Does This Mean for Employers?

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The Affordable Care Act (ACA) was struck down in its entirety by a Texas district court judge in a case that is likely to wind up in the Supreme Court of the United States and potentially serve as a catalyst for further legislative action in the area of health care reform. On Friday, December 14, the day before the close of the open enrollment period on the Health Marketplace Exchanges, Judge Reed O'Connor held that the ACA mandate requiring individuals to buy health insurance is unconstitutional when the tax penalty is eliminated in 2019. Judge O'Connor concluded that the individual mandate cannot be severed from the rest of the law, so the entire ACA law is unconstitutional. The ACA will likely remain in place pending a legal fight.

When originally enacted, the ACA was presented as intertwined pillars of individual insurance market reforms (such as guaranteed issue, community rating, and elimination of pre-existing condition exclusions), an individual mandate to purchase insurance to keep healthy individuals in the insurance markets and an employer mandate to encourage employers to continue to provide health insurance to their employees. The law was previously upheld in a landmark decision by the Supreme Court in 2012 largely based on the finding that the individual mandate was a tax. The individual mandate penalty was reduced to zero by the 2018 Tax Cuts and Jobs Act, which presented an opportunity for Texas and 19 other states (all with Republican attorney generals) to challenge the constitutionality of the law. The Trump Administration announced it would not defend the ACA.

Immediately after the ruling, the Department of Health and Human Services (HHS) issued a statement that the ACA will continue to be implemented pending further developments in the case, which will certainly be appealed to the U.S. Court of Appeals for the Fifth Circuit. The 16 state attorney generals (all Democrats) who intervened in the case to defend the health law vowed to appeal. In addition, Democrats in the U.S. House of Representatives, who now hold a majority, have pledged to join the lawsuit; they argue that the basic consumer protections of the ACA must be preserved, such as the ban on pre-existing condition exclusions and the requirement to cover essential health benefits, such as emergency services, maternity and newborn care, mental health and prescription drugs, and pediatric care. If the Fifth Circuit upholds Judge O'Connor's decision, it will likely be appealed to the U.S. Supreme Court.

What's Next: For now, based on statements from HHS, it appears that coverage on the Exchanges will remain in place for the remainder of 2018 and for elections made for 2019 coverage. Under the Tax Cuts and Jobs Act, the federal penalty for not having individual insurance coverage has been reduced to zero starting on January 1, 2019.

However, it is nearly certain that the defendants will seek a stay of the ruling while it is being appealed. Assuming a stay is granted, employers will continue to be subject to the ACA requirements while the case is winding through the courts. Unless guidance to the contrary is issued by the Internal Revenue Service, the employer shared responsibility requirements of the law will also remain in effect, including 1094 and 1095 reporting, which is due in early 2019.

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