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The Supreme Court Ruling on the Affordable Care Act and Implications for Employers

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The Supreme Court's Ruling

In a landmark decision, the Supreme Court has upheld the most important, and at the same time the most controversial, of the Affordable Care Act provisions, namely the individual mandate that requires most Americans to maintain "minimum essential health coverage." The Court rejected the government's argument that the individual mandate is a valid exercise of Congress' power under the Commerce Clause and the Necessary and Proper Clause, and upheld the mandate as within Congress' power under the Taxing Clause. In reaching its conclusion, the Court held that labeling the "shared responsibility payment" as a "penalty" not a "tax," is not a controlling factor in determining whether the mandate is constitutional, as one must look at its application and substance.

Some of the factors considered in determining whether the "shared responsibility payment" may for constitutional purposes be considered a tax, not a penalty were: the amount of tax due will be far less than the price of insurance; there is no scienter requirement; the payment will be collected solely by the IRS through the normal means of taxation; and there are no negative legal consequences for individuals who choose not to buy health insurance, other than payment of the "tax" to the IRS. Even though, the Court upheld the individual mandate under the Taxing Clause, the Court held that the same mandate is not a tax for purposes of the Anti-Injunction Act, and therefore it had jurisdiction over the case.

The other provision of the Affordable Care Act that was before the Court, the Medicare expansion, was found to "violate the Constitution by threatening existing Medicaid funding." The Court found that the Congress simply has "no authority to order the States to regulate according to its instructions. States must have a genuine choice whether to accept the offer." Under the Act, the Secretary of Health and Human Services had the authority to penalize States that chose not to participate in the Medicaid expansion by taking away their entire existing Medicaid funding. The Court found that the threatened loss of over 10 percent of a State's overall budget is economic "dragooning that leaves the States with no real option but to acquiesce in the Medicare expansion." The Court also rejected the government argument that Medicare expansion can be viewed merely as modification of the existing program because the States agreed that Congress could change the terms of Medicare when they signed on

in the first place. After comparing previous amendments to Medicaid with Medicaid extension under the Affordable Care Act, the Court found that the Medicare expansion "accomplishes a shift in kind, not merely degree." The Court found the expansion would be constitutional if the federal government is precluded from denying noncomplying States all Medicaid funding. The Court was careful to emphasize that States could voluntarily accept the Medicare expansion and receive the additional governmental funding.

The Court utilized a significant portion of its opinion to explain its duty to keep as much of the Act intact as possible and to find constitutionality where possible. For instance, the Court's explanation of the "penalty" versus "tax" seemed to reflect a last resort to find constitutionality. Finally, the Court at several points in the opinion emphasized that its duty was not policy making and it was not expressing "any opinion on the wisdom" of the Act. The Court noted that "it is not our job to protect the people from the consequences of their political decisions."

What the Ruling Means For Employers and Plan Sponsors

Even though the individual mandate is not effective until 2014, there are certain provisions of the Affordable Care Act that are already in effect and with which employers and plan sponsors must continue to comply and other provisions that will become effective in the very near future. Some of those provisions are:

- Form W-2 reporting requirement on the value of health coverage for the 2012 tax year;
- Summary of Benefits and Coverage for open enrollment periods starting on or after September 23, 2012;
- $2,500 limit on employee contributions to health flexible spending accounts for plan years beginning in 2013;
- Requirement for employers to notify employees of the availability of health insurance exchanges (March 2013);
- Expansion of Medicare to include an additional 3.8% tax on the unearned income of high earners for the 2013 tax year;
- 0.9% Medicare payroll tax increase on higher-income earners for the 2013 tax year; and
- The patient-centered outcomes trust fund fees for plan years ending on or after October 1, 2012, and before October 1, 2019.

Additional provisions of the Affordable Care Act that become effective in 2014 include:

- The "play or pay" employer mandate;

- Employer certification to the U.S. Department of Health and Human Services regarding whether its group health plan provides “minimum essential coverage”;
- Detailed reporting to the IRS of health coverage availability and cost to full time employees;
- Increase in permitted wellness incentives from 20% to 30%;
- For large employers (more than 200 employees), automatic enrollment of new employees in a group health plan (effective date unknown);
- 90-day limit on waiting periods;
- Coverage under non-grandfathered plans for certain approved clinical trials;
- Initial phase of the Medicare Part D “donut hole” fix, which will completely eliminate the Medicare Part D coverage gap by 2020;
- Guaranteed availability and renewability of insured group health plans;
- Complete prohibition on preexisting condition exclusions for enrollees aged 19 or older (prohibition has already taken effect for enrollees under age 19); and
- Complete prohibition on annual dollar limits.

In addition, states will be required to have their health insurance exchanges up and running by 2014. The rules governing many of these provisions have not yet been drafted by the regulators. Thus, employers and plan sponsors should move carefully when implementing these provisions, and continue to work closely with qualified advisors in order to comply with the applicable law.

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