



Eye On Washington Healthcare Reform Update



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U.S. District Court Rules Individual Mandate and Remainder of ACA Unconstitutional, But Decision Likely to Be Appealed

Employers Should Continue to Comply With ACA Requirements to Avoid Penalties

The United States District Court for the Northern District of Texas released its opinion in *State of Texas, et. al. v. United States* on Friday, December 14, 2018, in the latest challenge to the constitutionality of the Affordable Care Act (“ACA”). The District Court ruled that the individual mandate — and, as a result, the rest of the ACA — are unconstitutional, but the decision was issued in the form of a declaratory judgment. The injunction the plaintiffs asked for was not granted, which means the District Court did not order the federal government to stop enforcing the law. Further, an appeal is expected to be filed soon and the District Court itself has other issues to decide. It is expected that court activity will continue for the foreseeable future.

In 2012, when the U.S. Supreme Court found the individual mandate to be constitutional, it concluded, that although the individual mandate was not a permissible economic regulation under the Commerce Clause, it was permissible under Congress’ taxing power. In this most recent challenge to the individual mandate, Texas and 20 other Republican-led plaintiff-states argued that Congress’ elimination of the individual mandate penalty during the 2018 tax reform legislation meant that the individual mandate was no longer a tax, and was therefore unconstitutional. The

plaintiffs also argued that, because the Supreme Court had previously concluded that the individual mandate was not severable from the rest of the ACA, the entire ACA is now unconstitutional.

In the decision, the District Court agreed with the plaintiffs, ruling that the individual mandate was unconstitutional and that, as a result, the rest of the ACA was invalid as well. The District Court rejected arguments that even if the individual mandate was now unconstitutional — because it no longer raises any revenue as a tax — the individual mandate was severable from the rest of the ACA. Instead, the District Court held that the individual mandate “is essential to and inseparable from” the other provisions of the ACA and, as a result, the entire ACA is invalid. In doing so, the District Court also went further than the position of the Department of Justice of the Trump Administration that only the ACA guaranteed issue and community-rating provisions should fall along with the individual mandate.

Because the District Court’s ruling was issued in the form of a declaratory judgment and the Court did not issue an injunction, the federal government has not been ordered by the District Court to stop enforcing the law. Shortly after the



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ruling was released, the Trump Administration issued the following statement: “We expect this ruling will be appealed to the Supreme Court. Pending the appeal process, the law remains in place.” California Attorney General Xavier Becerra, who led a group of 16 Democratic states and the District of Columbia that intervened to define the ACA, indicated that they immediately will appeal the ruling. Therefore, the ruling does not have any immediate impact and the ACA is still in effect, including the employer mandate, pre-existing condition protections, Medicaid expansion, premium subsidies, and health coverage up to age 26.

While the appeals process plays out, employers should continue to comply with all of the ACA mandates and other requirements to avoid potential penalties. For example, employers will need to continue to comply with the employer “shared responsibility” mandate and file the related Forms 1094-C/1095-C, which will be due in early 2019 for 2018 filings, in order to avoid potential penalties. In addition, employers will continue to be required to respond to IRS employer mandate penalty notices (Letters 226J).

ADP will continue to analyze the opinion and monitor related developments, including the appeals process, and provide alerts as necessary.

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