

December 2018

Business As Usual (For Now) – Federal Judge Strikes Down the ACA

Late Friday afternoon, December 14, 2018, federal District Court Judge Reed O'Connor struck down the entire Affordable Care Act ("ACA") as unconstitutional. In general, as the Tax Cuts and Jobs Act of 2017 set the individual mandate (the provision called essential to the ACA) penalty to zero effective January 1, 2019, the judge reasoned removal of this essential pillar of the ACA invalidated the entire law.

The Supreme Court ruling in 2012 (*National Federation of Independent Business v. Sebelius*) that upheld the ACA, also centered around the individual mandate. A key issue at that time was whether the government could compel individuals to purchase a product or be subject to a "penalty". The ACA was largely upheld on the Court's reasoning that the individual mandate penalty was a tax and within the powers of Congress to enact. In this current ruling, as the individual mandate tax will be zero, the court determined the "individual mandate may no longer be upheld under the Tax Power [of Congress]".

This is not the end of the ACA as we know it today, as further legal challenges will ensue. The judge did not issue an injunction to cease application or enforcement of the ACA. Therefore, it's business as usual most likely until appeal and possibly Supreme Court rulings are handed down. Employers should continue to comply with the law's provisions, although we will need to pay close attention to the legal twists and turns of the ACA, especially with a newly elected divided Congress that will begin its term in January.

A major concern for many individuals, should this ruling eventually be upheld, are the ability to secure coverage with pre-existing conditions, premium assistance for individual market coverage and Medicaid expansion of benefits. Expect these topics to be in the forefront of political debate, as well.

We will continue to monitor the "life of the ACA" and progress of the appeals process, and will keep you apprised of any and all new developments that may impact the healthcare industry and coverage options, including the group health plans you provide to your employees. And yes, as 2018 comes to a close, large employers with group health plans must prepare and file those Forms 1095-C with the IRS in 2019.

ADDITIONAL INFORMATION

Information contained in this Client Alert is not intended to render tax or legal advice. Employers should consult with qualified legal and/or tax counsel for guidance with respect to matters of law, tax and related regulation. Cherry Bekaert Benefits Consulting, LLC provides comprehensive consulting and administrative services with respect to all forms of employee benefits, risk management, qualified and non-qualified retirement plans, private client services, transaction services, and compensation and human resources.

For additional information about our services, please contact Kyle Frigon at 404-733-3256 or via email at: kfrigon@cherrybekaertbenefits.com.