

Employers Must Continue to Comply with ACA in Light of High Court Ruling

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Employers should note that the Affordable Care Act (ACA) will remain in full effect following a recent U.S. Supreme Court decision rejecting a challenge to the health care law's individual mandate.

The high court held in a 7-2 decision (www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/Pages/Supreme-Court-Ruling-Leaves-Affordable-Care-Act-in-Place.aspx) on June 17 that Texas and other states challenging the law did not have a legal right to sue.

"The Supreme Court's ruling reaffirms that employers should remain focused on all components of compliance with the ACA," said Joy Napier-Joyce, an attorney with Jackson Lewis in Baltimore. In particular, the ruling means that employers must continue to be mindful of their shared responsibility and reporting requirements, she noted.

The Ruling

The ACA requires most Americans to either maintain a minimum level of health care coverage or pay a specified amount to the IRS. In 2012, the Supreme Court upheld this mandate (www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/pages/supreme-court-will-not-expedite-aca-challenge.aspx) as a legitimate exercise of Congress' taxing power. In 2017, and effective in 2019, Congress amended the ACA to set the penalty to zero, making the individual mandate provision unenforceable.

In two consolidated cases, *California v. Texas* (<https://www.scotusblog.com/case-files/cases/california-v-texas/>) and *Texas v. United States* (<http://www.ca5.uscourts.gov/opinions/pub/19/19-10011-CV0.pdf>), the Supreme Court was asked to decide whether reducing the penalty to zero rendered the minimum-coverage provision unconstitutional—and, if so, whether the rest of the ACA can remain enforceable without it.

The 5th U.S. Circuit Court of Appeals had sided with Texas on the issue, holding that the mandate is unconstitutional since there is no longer a penalty for people who fail to buy health insurance. But the Supreme Court reversed the ruling.

The Supreme Court had to first consider whether the plaintiffs had standing to challenge the ACA before it could move to the merits of the case. The high court held that Texas and the other plaintiffs did not have the legal right to sue. "Neither the individual nor the state plaintiffs have shown that the injury they will suffer or have suffered is 'fairly traceable' to the 'allegedly unlawful conduct' of which they complain," wrote Justice Stephen Breyer for the court. "We proceed no further than standing," he said.

"I think it is unlikely we will see another fundamental challenge to the law," Napier-Joyce predicted. She noted that this is the third time the Supreme Court has upheld the ACA, and public acceptance of the law is growing.

[Visit SHRM's Resource Hub Page on the Affordable Care Act (www.shrm.org/ResourcesAndTools/Pages/Affordable-Care-Act.aspx).]

David Vivero, chief executive officer of digital health care solutions firm Amino, said the decision shows how influential the ACA has been on the U.S. health care system. "The changes this legislation introduced 11 years ago, such as protections for patients with pre-existing conditions and essential health benefits, are integral to our health care experience today."

Employer Compliance

Employers with 50 or more full-time employees or equivalents (<https://www.irs.gov/affordable-care-act/employers/identifying-full-time-employees>) generally are covered under the ACA. Smaller employers (<https://www.healthcare.gov/small-businesses/provide-shop-coverage/small-business-tax-credits/>) are exempt but may be eligible for a tax credit if they choose to offer group health insurance.

Covered employers must either offer group health insurance to at least 95 percent of their qualifying, full-time employees or choose to pay a penalty fee.

Perry Braun, executive director of Cleveland-based Benefit Advisors Network, doesn't think the Supreme Court's ruling prompts any changes for employers, since they had to plan as if the ACA was still going to be effective. "If the ruling came down in favor of Texas, then I think employers would have to spend time thinking through the impact."

He noted that the current administration may focus on audits and penalties, so he encouraged employers to invest in and focus on activities that prepare them for audits and steer clear of penalties.

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"Employers still need to ensure they are accurately capturing full-time employees as defined by the ACA—generally those averaging 30 or more hours a week—and offering compliant coverage, or alternatively, understanding the penalties that could apply for failure to do so," Napier-Joyce explained.

Employers should understand their coverage obligations and reporting requirements, she said, which may have become more complex, since the COVID-19 pandemic has prompted many employers to reduce work hours and carry out furloughs and layoffs. "To date, the IRS has routinely gone about the business of assessing penalties, so employers will be well-served to make sure they are managing the process carefully to avoid any unwelcome surprises."

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