



UPDATE Employee Benefits and Compensation

JUNE 2012

Supreme Court Declares the Patient Protection and Affordable Care Act Constitutional

In a landmark [5-4 decision](#) written by Chief Justice John Roberts, the United States Supreme Court upheld the constitutionality of the Patient Protection and Affordable Care Act (the Act). The Court upheld the Act and its key provision, the "individual mandate" to purchase health insurance, as constitutional, but limited the mandatory expansion of the Medicaid program for states.

BACKGROUND

Beginning in 2014, most Americans will be required to maintain minimum essential health coverage as part of the shared responsibility provisions of the Act. Those who do not comply with this individual mandate must pay a penalty.

The Act also expands the Medicaid program and increases the number of individuals the states must cover under Medicaid. The Act provides that if a state does not comply with the new coverage requirements, it may lose federal Medicaid funding not only for the new requirements, but for all of its Medicaid programs.

Twenty-six states, several individuals, and the National Federation of Independent Business brought suit to challenge these provisions of the Act. During the week of March 26, 2012, the Court heard three days of oral argument on the Act's constitutionality. The Court heard oral arguments on four issues: (1) whether the Anti-Injunction Act, which prevents courts from deciding lawsuits on the validity of a tax before a tax is imposed, bars the Court from considering the constitutionality of the individual mandate until after the mandate takes effect; (2) whether the individual mandate itself is constitutional; (3) whether and to what extent the individual mandate is severable from the rest of the Act; and (4) whether the Act's expansion of Medicaid is constitutional.

THE COURT'S DECISION

The Court held that Congress does not have the power under the Commerce Clause or the Necessary and Proper Clause to impose the individual mandate. The Court did, however, find

the mandate to be constitutional under Congress' power to lay and collect taxes. Chief Justice Roberts' opinion, which was joined by Justices Breyer, Ginsburg, Sotomayor, and Kagan, held that the individual mandate need not be read as more than imposing a tax on individuals who forego health insurance.

Interestingly, the Court held that the Anti-Injunction Act did not apply, because Congress did not intend that the individual mandate's shared responsibility payment be treated as a tax for purposes of the Anti-Injunction Act, as the Act describes the payment as a "penalty," and not a tax. While the penalty label cannot control whether the payment is a tax for purposes of the Constitution, it can dictate the application of the Anti-Injunction Act.

Finally, with regard to Medicaid, the Court held that it is constitutional for Medicaid to be expanded, but it is unconstitutional for the federal government to withhold existing Medicaid funds from states who do not comply with the expansion provisions.

THE IMPACT

As a result of the Court's ruling, most of the provisions of the Act will remain intact. For example, upcoming provisions include the reporting of employer-provided health benefits on employees' Form W-2s for 2012, and the issuance of summaries of benefits and coverage as part of 2012 open enrollment. In 2014, the health insurance exchanges, the individual mandate, and the employer mandate to provide affordable minimum essential coverage are scheduled to go into effect.

The ruling regarding Medicaid may make it possible for some states to essentially opt out of the Act's expanded Medicaid provisions without consequence to their current Medicaid funding. It is unclear what impact this will have on the availability of health coverage for those below the federal poverty level in those states.

Although the Court has ruled on the constitutionality of the Act, statements from both political parties indicate the debate over health reform is far from over, particularly given the upcoming election.

If you have any questions about this case and its impact, please contact any of the following attorneys in Robinson & Cole's [Employee Benefits and Compensation Practice Group](#):

Bruce B. Barth (860) 275-8267 bbarth@rc.com	Cynthia R. Christie (860) 275-8259 cchristie@rc.com	Melanie J. Hancock (860) 275-8311 (941) 906-6857 mhancock@rc.com
--	---	--

Virginia McGarrity (860) 275-8291 vmcgarrity@rc.com	Jean E. Tomasco (860) 275-8323 jtomasco@rc.com
--	---

or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior written permission. This document should not be considered legal advice and does not create an attorney-client relationship between Robinson & Cole and you. Consult your attorney before acting on anything contained herein. The views expressed herein are those of the authors and not necessarily those of Robinson & Cole or any other individual attorney of Robinson & Cole. The contents of this communication may contain attorney advertising under the laws of various states. Prior results do not guarantee a similar outcome.

