

Another Supreme Court Challenge to Health Care Reform? Why It May Matter to an Employer...

Labor & Employment Law Update

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I know, I know. You may have seen the headlines indicating that the Supreme Court is going to be reviewing another case challenging the Affordable Care Act and not even bothered to read the articles this time. After all, who hasn't become a little tired of hearing about challenges and changes to the Affordable Care Act with constant updates occurring over the now almost five years since the act was signed into law by President Obama? Or perhaps it isn't that you are tired of hearing about the ACA; you were just distracted when Kim Kardashian broke the internet. In any event, the Supreme Court has recently decided to hear *King v. Burwell*, and their somewhat surprising decision to do so could affect employer ACA compliance strategies in as many as 36 states.

What is the case about? Well, at the surface it appears to be a case that wouldn't interest employers at all. Specifically, *King v. Burwell* is about the ability of the federal government to provide tax subsidies for health insurance coverage purchased through federally-facilitated health insurance marketplaces. The crux of the issue is that the ACA states that subsidies are to be provided to qualifying taxpayers and their dependents when they purchase coverage "through an Exchange established *by the State*." The question is whether Congress intended for a federally-facilitated marketplace to be included in the phrase "an Exchange established *by the State*."

Why does this matter to employers in as many as 36 states? Currently, there are 27 states that declined the opportunity to establish their own marketplace and elected to only make the federally-facilitated marketplace available to their residents. In addition to those 27 states, other states currently partake in what is referred to as a "partnership" with the federally-facilitated marketplace. Those states have also not technically established their own Exchange. *King v. Burwell* could implicate employers in as many as 36 states as the shared responsibility penalties under the ACA are only triggered when a qualified individual purchases coverage and receives a subsidy. If none of the individuals in a state are able to access the subsidies, employers would not have the potential risk for penalty exposure from employees residing in those states.

While no employer should use the Supreme Court's pending review as a reason to procrastinate their ACA compliance planning, *King v. Burwell* will be a Supreme Court opinion that all employers should be watching and waiting for.

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