

Hobby Lobby May Have Caught our Attention, but Halbig and King are the ACA Cases to Watch

Labor & Employment Law Update

By Kelly Haab-Tallitsch on July 29, 2014

In contrast to the Supreme Court's ruling in the recent *Hobby Lobby* case, which directly affected only a handful of employers, two cases with the potential to derail the Affordable Care Act ("ACA") were decided last Tuesday – with conflicting results. Less than two hours after a panel of the D.C. Circuit Court of Appeals ruled in *Halbig v. Burwell* that the insurance subsidies that help millions of Americans pay for health insurance are illegal in 36 states, the 4th Circuit Court of Appeals issued a contradictory ruling in *King v. Burwell*, affirming the exact opposite.

The contradictory rulings stem from different interpretations of the language establishing tax credits and subsidies for low- and middle-income individuals. The ACA states that tax credits would be available for insurance purchased through an "exchange established by the state." But currently, only 14 states run their own exchanges. In 36 states, including Illinois, Indiana, Wisconsin and Missouri, the exchange is run by the federal government. Plaintiffs in *Halbig* and *King* argued that an "exchange established by the state" does not include the federal exchange – an interpretation that makes the subsidies in those 36 states illegal.

ACA supporters argue that such a narrow interpretation is at odds with the law's goal of providing all Americans with health insurance they can afford. Almost 5 million Americans bought subsidized policies through the federal exchange this year, often reducing their costs by hundreds of dollars a month. The Internal Revenue Service (IRS) is charged with administering ACA tax credits and has interpreted the law to mean that tax credits are available for insurance purchased through *any* government-run exchange, state or federal.

The Effect on ACA Employer Penalties

Aside from denying tax credits to millions of Americans, why are the *Halbig* and *King* cases such a big deal? If individual tax credits disappear in 36 states, **so do the employer penalties**. The penalties imposed on large employers for failing to offer health coverage are the backbone of the legislation and the only

enforcement mechanism available to encourage employers to comply. But an employer that doesn't offer the mandated coverage is only subject to a penalty if *one or more of its employees receive a tax credit to purchase individual coverage on the exchange*. If none of its employees receive a tax credit, an employer cannot be subject to a penalty. This result would effectively nullify the ACA in over two-thirds of the country.

What Does This Mean for Employers?

The *Halbig* and *King* appellate court rulings have no immediate impact on individuals or employers. Both sides are likely to request review or appeal of last week's decisions and the Obama administration will almost certainly request a stay of the D.C. court's decision in the meantime. But keep watching – the fight is far from over!

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