

The Affordable Care Act after Texas v. United States

Labor & Employment Law Update

on December 20, 2018

On Friday, December 14th, a U.S. District Court judge in the Northern District of Texas issued a ruling in *Texas, et al., v. United States of America* declaring the entire Affordable Care Act (ACA) unconstitutional, based on the requirement that individuals must buy health insurance or face a tax penalty. Previously, the U.S. Supreme Court upheld the ACA individual mandate as constitutional under Congress's authority to tax Americans. But the Texas judge held that because the tax bill passed by Congress in December 2017 reduced the individual mandate penalty to zero, it is no longer a tax and no longer under Congress' taxing power.

The broad ruling has left many employers unsure about their responsibilities under the ACA. Here are the key takeaways:

1. The ACA remains in effect, for now.

The judge's ruling in *Texas v. U.S.* is not an injunction requiring the government to stop enforcing the ACA. Rather, the ruling reaches a legal conclusion that the individual mandate is unconstitutional and the mandate is integral to the entire ACA. The controversial decision is likely to be appealed and the law remains in place pending the outcome of an appeal. Noting that the decision is not the final word on the ACA, the Department of Health and Human Services issued a statement that it "will continue administering and enforcing all aspects of the ACA as it had before the court issued its decision."

2. Applicable Large Employers (ALEs) must continue to comply with the ACA's employer shared responsibility provisions.

The employer shared responsibility provisions of the ACA remain in place. ALEs (i.e. employers with 50 or more full-time equivalent employees (FTEs)) must continue to comply with such provisions, including the information reporting requirements due in early 2019. ALEs must also continue to offer qualifying coverage to 95% or more of their full-time employees (and dependents) or face penalties.

3. The future of the ACA is unknown.

The decision in *Texas v. U.S.* will almost certainly be appealed to the Fifth Circuit Court of Appeals and potentially to the Supreme Court. The sweeping nature of the ruling invalidating the entire law is likely to be scrutinized in the higher

courts. Opponents of the Texas judge's decision are likely to argue that the individual mandate is severable from the remainder of the ACA and even if found to be unconstitutional, the remainder of the law should stand.

What's the bottom line?

Nothing has changed for employers. As noted above, the Texas judge's decision is likely to be appealed and the case may be winding its way through the courts for months. Employers should continue their compliance activities and stay tuned for further developments.

The
Affordable
Care Act
after Texas
v.
United States