

**June 28, 2012****HEALTH CARE REFORM FOR EMPLOYERS:  
THE SUPREME COURT HAS RULED**

As you probably already know, the United States Supreme Court announced its long-awaited decision this morning in the cases challenging the constitutionality of the Patient Protection and Affordable Care Act (“PPACA”).

There are four separate opinions and these opinions add up to 193 pages. It will take some time for attorneys and other scholars to work their way through these opinions and to identify the implications of everything the Court has said. For now, however, here is what we know:

- (1) The “individual mandate” – that is, the requirement that individuals purchase coverage for themselves and their family members or else pay a “shared responsibility penalty” – was sustained. A majority of the Court agreed that Congress did not have the power to impose this mandate under the Commerce Clause of the Constitution; *however*, a different majority concluded that Congress could impose the mandate pursuant to its taxing authority. The fifth and deciding vote as to both questions was that of Chief Justice John Roberts.

This part of the Court’s ruling came as a surprise to many people because Congress did not call it a tax. But the Court said that labels do not control and that the individual mandate could be sustained based on Congress’s authority to levy taxes.

- (2) Because the challenges to the law all depended on the individual mandate being declared unconstitutional, and because the majority of the Court said that it was not unconstitutional, the law will remain in effect. This means, among other things, that employers will need to comply with the requirements of the law as those requirements continue to take effect.

In addition to the constitutional challenges against the individual mandate that were decided by the Court, the Court also decided a challenge against the expansion of the Medicaid program. Although this part of the Court’s decision does not directly affect employers, it may be of interest and we will briefly summarize it here:

- (1) Medicaid started out as a voluntary program. Congress agreed to provide money to those states that agreed to cover the cost of medical services for the disabled, the blind, the elderly, and needy families with dependent children. Over time, the details of the program changed, but this basic outline remained. Today, funding for Medicaid is shared by the states and the federal government.
- (2) Under PPACA, however, Medicaid was transformed into a program to meet the needs of the *entire* non-elderly population with an income below 133% of the federal poverty level. If a state did not agree to expand its Medicaid program in this way, it would lose not just the new and additional funding that Congress was providing for the Medicaid expansion, but also all of its existing Medicaid funding as well as funding for various other “safety net” programs.

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- (3) A majority of the Court held that the threat of losing all of a state's Medicaid funding if a state did not agree to the Medicaid expansion was unconstitutional because it did not give states a genuine choice as to whether they wanted to agree to the Medicaid expansion.
- (4) Although the Court found that this was unconstitutional, it did not strike down the entire law on this basis. Instead, it said that Congress could, at most, hold back only the new and additional funding that would otherwise be provided. The Court held that Congress could not hold back a state's existing funding if the state did not agree to the Medicaid expansion.

As a result, it seems likely that at least some states will say “no” to the Medicaid expansion that was part of PPACA.

The Supreme Court has spoken. PPACA remains in effect. Employers will need to pay attention and will need to be prepared as new requirements start to take effect later this year and next. We will provide additional Alerts in the near future focusing on some of these new requirements, including the new dollar limits for health flexible spending accounts (or “Health FSAs”) and the new Summary of Benefits Communication (or “SBC” requirement).

In the meantime, if you have any questions regarding PPACA and/or the Supreme Court's rulings, please feel free to call Steven Smith, Eric Namee, or Brad Schlozman at (316) 267-2000.