



## Employer Services Advisory

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### What Do The Recent Court Challenges To Health Care Reform Mean?

Courts have started weighing in on the legality of the health care reform legislation (known as the Patient Protection and Affordable Care Act, or PPACA). PPACA provides that, by 2014, all U.S. citizens must obtain health insurance coverage and all but the smallest employers must provide a minimum level of health care coverage to their employees, or else penalties will be imposed.

In October, a federal court in Michigan held that the individual mandates were a proper exercise of Congress' Commerce Clause authority. The plaintiff's chief argument was that since the coverage mandate regulated "economic inactivity" (the failure to buy health insurance), rather than activity, it was not protected by the Commerce Clause. Specifically, the Court stated that "Congress had a rational basis to conclude that economic decisions not to purchase insurance to pay for [healthcare] services, taken in the aggregate, substantially affect interstate commerce by, among other things, shifting costs to third parties."

In late November, the Federal District Court for Western Virginia dismissed plaintiffs' claims that the individual mandates of PPACA are unconstitutional, stating "I hold that Congress acted in accordance with its constitutionally delegated powers under the Commerce Clause when it passed the employer and individual coverage provisions of the Act."

In December, the Federal District for Eastern Virginia held that PPACA's individual mandate violated the Constitution's Commerce Clause, stating that Congress can not regulate economic inactivity as if it were economic activity. The Court also ruled that the penalties for failing to buy insurance, though administered through the Internal Revenue Service, were really a penalty not a tax and thus can not be justified by Congress's authority to raise taxes.

On Monday, the District Court for the Northern District of Florida held that Congress lacked authority under the Commerce Clause to impose the individual mandates provided under PPACA. It then held that since PPACA lacked a severability clause, PPACA was unconstitutional in its entirety. Some individuals are claiming that this Florida holding means

that employers in that circuit are relieved of their obligation to comply with health care reform.

Surely the cases-to-date will be appealed (in fact, appeals are pending in some already) and there is no way to accurately predict how those appeals will be decided. It is likely that the end decision will have to be made by the United States Supreme Court, which does not appear likely to happen until at least 2012.

All of this court activity leaves employers wondering “*what should I do now?*”. We believe the best approach, given the uncertainty of the outcome and the size of the penalties that apply if violations are found, is for employers and plan sponsors to continue to work toward full compliance with health care reform and to continue to monitor the cases as they move toward the Supreme Court.

With a team of attorneys who are highly experienced in the employee benefits field, MLA can provide answers to questions and assistance in complying with these requirements.

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