

## Management Update

December 30, 2011

# Supreme Court Will Determine Validity of Health Care Reform Law

**Executive Summary:** On November 14, 2011, the U.S. Supreme Court agreed to review the Eleventh Circuit Court of Appeals' determination that the individual mandate provision of the 2010 Patient Protection and Affordable Care Act (PPACA) is unconstitutional. See *HHS v. Florida*, (U.S. Nov. 14, 2011). The Court will consider several questions in addition to the constitutionality of the individual mandate and is unlikely to issue a ruling for several months. In the meantime, employers should continue to take steps necessary to ensure compliance with the Act's requirements.

### **Background**

The Eleventh Circuit's decision, discussed in our August 18, 2011, Legal Alert, *Eleventh Circuit Finds Individual Mandate Provision of Health Care Reform Law Unconstitutional*, available at <http://www.fordharrison.com/shownews.aspx?show=7510>, held that Congress exceeded its Commerce Clause power in enacting the individual mandate provision of the PPACA. The individual mandate requires that, beginning in 2014, everyone (with certain limited exceptions) must purchase federally-approved health insurance or pay a monetary penalty. Although the Eleventh Circuit held that the individual mandate provision is unconstitutional, it also found that this provision is severable from the remainder of the Act. Accordingly, the Eleventh Circuit did not strike down the entire PPACA.

Although several federal courts have considered the constitutionality of the PPACA, the Eleventh Circuit is the only federal appeals court to hold that the individual mandate is unconstitutional.

***Questions the Court Will Determine:***

- Whether Congress had the power under Article I of the Constitution to enact the individual mandate provision.
- Whether the lawsuit brought to challenge the individual mandate provision is barred by the Anti-Injunction Act.
- Whether, if the individual mandate is unconstitutional, it can be severed from the rest of the Act.
- Whether Congress exceeded its powers and acted coercively by requiring states to expand Medicaid coverage or lose federal funding for Medicaid programs.

The Court has not set a date for oral argument; however, it likely will be sometime in March 2012. The Court has allocated over five hours for oral arguments instead of the usual one hour, illustrating the importance of the case. At this point, it is impossible to predict how the Court will rule; thus, it is important for employers to continue to comply with the PPACA and take steps to come into compliance with the provisions that have not yet taken effect.