

U.S. Supreme Court Upholds Health Care Reform **By: Attorney Emily L. Ruhsam**

On Thursday, June 28, 2012, the United States Supreme Court issued a landmark decision upholding the Patient Protection and Affordable Care Act (also referred to as “Obamacare” and “health care reform”). Signed into law two years ago by President Obama, the Court upheld the Act in a 5-4 decision. The Court held that the Act’s “individual mandate” is constitutional, but only as a tax.

Individual Mandate

The individual mandate which requires most individuals in the U.S. purchase health insurance or pay a tax penalty will become effective on January 1, 2014. There are some exceptions for certain individuals such as those with religious objections, those who cannot afford coverage, incarcerated individuals and individuals unlawfully in the U.S. In holding the individual mandate constitutional, the Court noted that the “precedent demonstrates that Congress had the power to impose the exaction ... under the taxing power, and that [it] need not be read to do more than impose a tax. This is sufficient to sustain it.” Importantly, the Court upheld the mandate under Congress’s taxing power rather than its commerce power (which would have permitted Congress to require individuals to purchase things). Essentially, Congress is not requiring individuals to purchase things—instead, if an individual does not want to comply with the mandate, he/she can pay the tax penalty. Since the Court upheld the individual mandate, it declined to reach the severability issue and subsequently the constitutionality of the other provisions, including those currently in effect (e.g., allowing children to remain on their parents insurance until age 26), except for the Medicaid provisions, which do not directly impact employers.

Pay or Play Mandate

The largest effect of the Act that employers have yet to see is the “pay or play” provisions – requiring larger employers to offer “affordable” health insurance to employees or pay penalties. This requirement, which is effective January 1, 2014, will be measured by staffing levels in 2013. It is only applicable to “large employers,” defined as an employer which employs at least 50 full-time equivalent employees. (Employers with less than 50 FTE’s will not be required to offer health insurance to employees.) Employers who meet the 50 FTE threshold, but fail to offer full-time employee health coverage will be required to pay a penalty in any month in which the employee receives a federal individual insurance subsidy. The penalty, calculated on a monthly basis, is \$2,000 per year per full-time employee (defined as an employee averaging 30 or more hours per week). In addition, the definition of “affordable” under the Act is complicated, but essential coverage is unaffordable if: (1) the employee’s share of the premium for self-coverage is more than 9.5% of the employee’s modified adjusted gross household income or if the employer’s share of the cost of benefits is less than 60%; and, (2) an employee obtains a tax credit for coverage through a state exchange.

There are many questions about the Act's requirements that remain unanswered. Regulations interpreting the Act will continue to issue from the Departments of Labor, Department of Health and Human Services and the Treasury Department and political debate over implementation, amendment or repeal will continue through the November Election, at least. If you have any questions about the Act and how it may affect your business, please contact Emily Ruhsam at (952) 921-4617 (eruhsam@seatonlaw.com) or any Seaton, Peters & Revnew attorney.

**Health Care Reform After the Supreme Court Decides –
What Every Employer Needs to Know
Thursday, July 17, 2012
12:00 p.m. - 1:00 p.m.**

Join employee-benefits teacher Peter Gulia – counsel to Seaton, Peters & Revnew – and attorney Emily Ruhsam for a timely discussion about what every employer needs to know following the U.S. Supreme Court's decision on health care reform. We'll include an overview of the current and coming-soon requirements. And we'll explain which employers are required to provide coverage to their employees (or pay a penalty). This webinar is designed for owners, senior managers, and human resources professionals wanting practical advice about what is required following the Supreme Court's decision. Consider what health care options could help you retain key talent in your organization. HRCI credit applied for.

This webinar is free to anyone currently receiving our LawFacts. Space is limited! To sign up, please visit our website at: <http://www.seatonlaw.com/seminar-registration>. If you have any questions, please call us at (952) 896-1700.