

## Supreme Court Upholds Individual Mandate: The Employer Impact

Yesterday, the Supreme Court issued its much-anticipated decision on the Patient Protection and Affordable Care Act (ACA). Most notably, the Court has upheld the constitutionality of the individual mandate under Congress's taxing power. Accompanying this alert is an [analysis](#) provided by our Appellate Litigation colleagues that describes in detail the Court's decision, including the limits it places on the ACA's Medicaid provisions. This alert will focus on the decision's impact on employers.

By upholding the mandate and, for all intents and purposes, the ACA as a whole, the decision eliminates one layer of uncertainty for employers about the many group market reforms and administrative requirements that are already in effect or about to take effect. Importantly, it enables employers to focus on planning for upcoming open enrollment periods and implementation of the Act's various requirements without concern that their efforts will be for naught. Following yesterday's ruling, employers should continue with plans to implement all of the ACA's administrative requirements (*e.g.*, issuing the Summary of Benefits and Coverage and reporting group health plan value on each employee's W-2) as well as certain plan design changes (*e.g.*, capping employee contributions to a health FSA at \$2,500 per year).

The decision also gives the Departments of Labor, Health and Human Services, and the Treasury (the Departments) the green light to provide direction on implementation of the core features of the ACA that are tied in some way to the minimum coverage requirements that are at the foundation of the individual mandate. For example, we can expect further guidance on the employer shared responsibility provisions under Code section 4980H, including what it means to "offer coverage," how "affordability" is measured, how an employer determines who is a full-time employee, and how the 90-day waiting period limitation interacts with these various rules. We should also see guidance on the individual mandate itself under Code section 5000A. This may have implications for guidance that has already been provided under other provisions of the ACA, such as the premium tax credits under Code section 36B.

Numerous other aspects of the ACA that are tied in some way to the mandate's minimum essential coverage provisions should also be clarified, including, for example, how the limitation on the deduction of compensation for employees of certain health insurance providers will be interpreted and how new nondiscrimination rules will be applied to fully-insured plans. The nondiscrimination rules may prove to be an important piece of the overall ACA puzzle if they are used to eliminate or mitigate the fear expressed by some that, with health care costs rising and the individual mandate in effect, employers will provide coverage only to more highly paid employees while leaving other full-time employees to seek coverage through a state exchange.

While the decision answers many questions about the short-term future of the ACA, much remains to be seen. In addition to the guidance that the Departments will continue to issue, the November elections may lead to changes to the Departments' regulatory and enforcement efforts or to the ACA itself by legislative amendment. That said, with this decision, the ACA remains the law of the land, and employers should continue all efforts to comply with its requirements.

For further information, please contact any member of Ropes & Gray's [Employee Benefits Practice Group](#) or your usual Ropes & Gray advisor. For further analysis on yesterday's decision and the ACA generally, please visit the Ropes & Gray [Health Reform Resource Center](#).