



# ACA Ruled Unconstitutional, But It's Status Quo For Employers—For Now

Insights

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A Texas federal judge dealt a serious blow to the Affordable Care Act (ACA) late Friday afternoon, ruling that the tax reform law passed by Congress in late 2017 rendered the healthcare law unconstitutional. While U.S. District Court Judge Reed O'Connor's 55-page opinion overturns the entirety of the law on a national basis, his ruling does not include any sort of injunction that would immediately cause employers to alter their practices with respect to benefit administration. The law remains in place for the foreseeable future, but it certainly stands on shakier ground today than it did just a few days ago.

**[Ed. Note: The federal court judge who issued this opinion just confirmed that the ACA will remain in effect while the appeal of this decision is pending. On Sunday, December 30, the judge released a 30-page order acknowledging that the country's healthcare system would descend into chaos if the law were to be immediately wiped off the books. Those defending the law argued to the judge that, because the ACA has been the law of the land for several years, it is in the country's best interest to exhaust the appellate process before dismantling the law. The judge accepted this argument as "well-taken." "Because many everyday Americans would otherwise face great uncertainty during the pendency of appeal," he concluded, "the court finds that the December 14, 2018 Order declaring the Individual Mandate unconstitutional and inseverable should be stayed."]**

## ACA Under Assault Once Again

The Obama-era healthcare law has faced legal challenges several times before. In fact, the Supreme Court has twice upheld the law as constitutional in both 2012 and 2015. In the former decision, Chief Justice Roberts concluded for the majority that the ACA penalty against those who do not carry health insurance is constitutional because Congress has "the power to impose a tax on those without health insurance."

But late last year, when Congress passed its tax reform law, that ACA penalty was wiped away. The Texas Attorney General, joined by a consortium of 18 other state attorneys general and a governor, initiated a lawsuit attacking the ACA soon thereafter, arguing that the elimination of the linchpin penalty provision rendered the entire law unconstitutional. "Once the heart of the ACA — the individual mandate — is declared unconstitutional," the lawsuit contended, "the remainder of the ACA must also fall."

In his December 14 ruling, Judge O'Connor agreed with this line of argument. He ruled that the insurance requirement was "essential to and inseverable from the remainder of the ACA." He noted that "Congress stated many times unequivocally—through enacted text signed by the president—that the individual mandate is 'essential' to the ACA," and its removal rendered the entire law outside the authority of the constitution.

This caught many by surprise, as the Trump administration had simply argued in joining the attack on the law that the removal of the insurance mandate's penalty would merely invalidate some of the statute's consumer protections, but that the remainder of the law could remain in force as legally distinct. The Justice Department did not support striking down the law as unconstitutional but instead declined to defend the individual mandate and certain coverage and cost provisions for those with pre-existing health conditions.

The Texas judge was not constrained by these recommendations and concluded that the penalty's elimination had a much more profound impact, the effect of which could influence a host of other health coverage issues, including Medicaid expansion; annual and lifetime coverage limits; the employer coverage mandate; federal health care reimbursement rates for hospitals; coverage for adults up to age 26 under their parents' plan; and caps on out-of-pocket costs.

### **What's Next?**

A group of 17 Democratic attorneys general stood in to defend the law during the Texas litigation, and have announced that they will continue their fight at the appellate court level. Their argument, reduced to its essence: while the tax reform law certainly eliminated the penalty for being uninsured, the removal of that provision of the law does not render the entire ACA unconstitutional.

If the defenders of the ACA continue their fight, the case will be heard by the 5th Circuit Court of Appeals, likely at some point in 2019. There is a chance that the Supreme Court could agree to bypass that level of review and take up the case immediately. But even if the Justices prefer for the case to make its way up to their docket in due course, it seems inevitable that the highest court in the land will have its say about the ACA, once again.

### **What Does This Mean For Employers?**

The ACA may be at top of mind for many of your employees right now, especially because this past Saturday was the deadline for individuals in most states to enroll in the law's insurance exchange program. For this reason, and because of the widespread media coverage the decision received over the weekend, you may be faced with a barrage of questions about healthcare coverage from your workers over the next few days.

The easy answer you can provide: nothing will change now or for the foreseeable future. The more specific answers you can provide are:

- there are no impacts to current coverage;

- there are no impacts to 2019 coverage;
- Friday's ruling had no impact on state enrollments through HealthCare.gov for coverage effective January 1 (which ended Saturday, December 15); and
- employees with coverage in the District of Columbia or one of the 11 states that operate their own Marketplaces (California, Colorado, Connecticut, Idaho, Maryland, Massachusetts, Minnesota, New York, Rhode Island, Vermont, and Washington) should determine if they still have an opportunity to enroll. Several of those states have responded to the Texas ruling by extending Saturday's deadline until December 21, and several of those states already have January deadlines for February 1 coverage.

Unfortunately, the longer-term answer is harder to deliver. No one can predict how an appeals court or the U.S. Supreme Court will treat this decision as the case winds its way up the judicial system on review, and it remains to be seen whether a fractured Congress and the president can develop revisions to the law that would satisfy the courts and the American people.

Fisher Phillips will continue to monitor developments, so you should ensure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information. For help with compliance steps or to answer questions, please contact your Fisher Phillips attorney or the authors of this Alert.

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