

Publications

Labor and Employment Alert: District Court Holds ACA Unconstitutional – But That’s Not The Final Word On The Issue

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On December 14, 2018, a District Court in Texas held that the Affordable Care Act (ACA) is unconstitutional. *Texas v. United States*, No. 4:18-cv-00167 (N.D. Tex. 12/14/2018). However, this is far from the last word on the issue. While the case makes its way through the appeal process, group health plan sponsors should continue to comply with the ACA.

The Individual Mandate under the ACA provides that (1) individual taxpayers must maintain health coverage (e.g., employer-sponsored health coverage, Medicare, Medicaid or an individual insurance policy) and (2) if an individual taxpayer fails to maintain health coverage, he or she must pay a tax penalty.

In *NFIB v. Sebelius*, 567 U.S. 519 (2012), the U.S. Supreme Court held that the Individual Mandate was a permissible exercise of Congress' taxing power. The Supreme Court rejected other basis for upholding the Individual Mandate (e.g., the Constitution's commerce clause). In other words, if the Supreme Court had not found the Individual Mandate to be a tax, the Supreme Court would have found the Individual Mandate to be unconstitutional.

The tax penalty is the greater of \$695 or 2.5% of the individual's income for a single individual in 2018. However, the Tax Cuts and Jobs Act reduced the amount of the tax penalty to \$0, effective in 2019.

The zeroing out of the tax penalty is significant for the current case. The District Court decided that a \$0 tax is not a tax and, since the Individual Mandate will not be a tax in 2019, it will be unconstitutional in 2019. The District Court also decided that the balance of the ACA is not severable from the Individual Mandate and so its order invalidated the entire ACA.

The District Court's December 14, 2018 order does not have immediate effect. Further proceedings at the District Court level and an appeal are expected. The ultimate outcome of the case may be quite different from this initial order. Therefore, employers should continue to comply with the ACA (including the distribution of Form 1095-Cs by March 4, as

explained in this [previous alert](#), as the case continues to move through the courts.

