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Texas Judge Issues Controversial ACA Ruling

A Texas district court judge has issued a decision in *Texas v. Azar*, ruling that the individual mandate of the Affordable Care Act (ACA) is unconstitutional. The judge also argued that the individual mandate is inseverable from the ACA, and consequently, the entire law must be considered invalid. While the opinion is dramatic, and making front page news, it is important to note that the judge did not issue an injunction. Therefore, the current law will stay in full effect while procedural issues are addressed, and the case works its way through the appeals process.

BACKGROUND

In 2010, when the constitutionality of the individual mandate was challenged in *National Federation of Independent Businesses (NFIB) v. Sebelius*, the Supreme Court ruled that Congress had the right to impose the individual mandate under its power to tax. Congress then reduced the individual mandate penalty to \$0.00 effective beginning in 2019 as part of the Tax Cuts and Job Acts (which was passed in late 2017). The *Texas v. Azar* case was filed in February 2018 by Republican state attorneys general and governors from 20 states, arguing that since the individual mandate penalty was reduced to \$0.00, the individual mandate is no longer constitutional because it cannot be considered a tax.

The Trump administration agreed with the plaintiffs that some, but not all, of the ACA should be struck down. The Department of Justice (DOJ) decided not to defend the constitutionality of the individual mandate. The DOJ went on to argue that certain ACA provisions were tied to the individual mandate, including: the ban on preexisting

condition exclusions, guarantee issue requirements, and protections against discrimination based on health status. Thus, if the individual mandate were found unconstitutional, these provisions of the law would also not stand. Notably, the DOJ did not take the position that the entire ACA should be found to be unconstitutional.

With the DOJ choosing not to defend the ACA, Democratic state attorneys general from 16 states and the District of Columbia were allowed by the court to intervene to take up the defense of the law. The intervenor states argued that even if the court found the individual mandate to be unconstitutional, that provision was severable from the rest of the law, and other ACA provisions should remain in force.

NEXT STEPS

In ruling that the ACA is unconstitutional, the judge entered a declaratory judgment, not an injunction. That means the law remains in force while the case moves forward through the courts. The Centers for Medicare and Medicaid Services (CMS) issued a statement the day after the decision was released and pointed out that since the case was still moving through the court system, “*there will be no impact to enrollee’s current coverage or their coverage in a 2019 plan*” for individual health insurance offered through Healthcare.gov, or a state public Marketplace.

California has already announced plans to appeal the decision if necessary; however, since there is no injunction in place, and thus no immediate impact on the law, there may be no reason to appeal until the district court takes further action.

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Employers should note that the IRS is moving forward with its efforts to collect penalties from applicable large employers who did not meet §4980H offer of coverage requirements. The IRS first started sending Letter 226Js back in November 2017 to employers who appeared not to have met §4980H requirements for 2015. We have now started to see the first Letter 226Js for 2016.

SUMMARY

Employers should continue to comply with the ACA as it will take significant time for this case to be resolved by higher courts. Even if the district court judge were to issue an injunction, it would likely be stayed pending inevitable appeals.

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