

United States Supreme Court Upholds Health Care Reform Law

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The Supreme Court of the United States has ruled that the 2010 health care reform law (the Patient Protection and Affordable Care Act of 2010 as amended by the Health Care and Education Reconciliation Act of 2010) is constitutional. *National Federation of Independent Business et al. v. Sebelius*, No. 11-393 (June 28, 2012) (together with *Department of Health and Human Services et al. v. Florida et al.*, No. 11-398, and *Florida et al. v. Department of Health and Human Services et al.*, No. 11-400). In a 5 to 4 decision, Chief Justice John Roberts wrote that the law is constitutional as an exercise of Congress' power to tax. Therefore, the changes made by the health care reform law to the Employee Retirement Income Security Act of 1974 ("ERISA"), Internal Revenue Code of 1986 ("Code"), and other statutes remain in force.

Implications for Employers

Employers sponsoring group health plans now need to focus on ensuring compliance with the [summary of benefits and coverage](#) regulations. These require distribution of summaries of benefits and coverage during upcoming open enrollments. (The summaries must be distributed no later than the first day of the first open enrollment period beginning on or after September 21, 2012.) Employers that are negotiating collective bargaining agreements now must take into account the near- and long-term effects of the health care reform requirements. Employers also must prepare to issue [Form W-2s for 2012](#) that include the cost of group health coverage.

Here is a summary of other key health care reform provisions affecting employers:

- **Play or Pay.** Each employer with 50 or more full-time employees will have to either (a) provide at least a specified minimum level of health coverage that its employees can afford or (b) pay a penalty beginning in 2014.
- **Benefit Dollar Limitations.** Employer group health plans are prohibited from imposing lifetime or annual limits on benefit amounts, waiting periods in excess of 90 days, and pre-existing condition limitations.
- **Tax Treatment.** Eliminated are the Code's tax-free reimbursements for over-the-counter medicines and, beginning next year, the law limits the maximum health care flexible spending account amount to \$2,500.
- **Retiree Drug Costs.** Beginning next year, the employer tax deduction for retiree prescription drug benefit costs for employers receiving a related subsidy is eliminated.
- **Non-discrimination.** Insured group health plans are barred from discriminating in favor of highly compensated individuals regarding coverage and benefits. (The Internal Revenue Service has not yet issued implementing regulations for this prohibition to become effective.)
- **Tax Reporting.** Employers must report the annual cost of health coverage on each employee's W-2, supplement information already reported on annual Form 5500 reports, and pay a per-plan-participant fee to the government for research purposes.
- **Automatic Enrollment.** Beginning in 2014, employers with more than 200 full-time employees are required to automatically enroll new full-time employees in group health plans.
- **Patient Rights.** The law already requires plans to provide coverage for children up to age 26, provide specific preventive care benefits on a first-dollar basis, and supplement the claim procedures already required under ERISA.

Individual Mandate

In addition to imposing requirements and restrictions on employers and employer-sponsored group health plans, the law requires individuals to purchase health coverage or pay a tax penalty (the

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“individual mandate”) and increases the Federal Income Contributions Act (“FICA”) tax on individuals with compensation in excess of \$200,000 by 62 percent. The law also permits states to expand Medicaid eligibility to cover some additional 30 million individuals.

Putting the Decision in Context

Last year, the Court agreed to take three cases that could determine the fate of the health care reform law: *Department of Health and Human Services v. Florida* (to decide whether the individual mandate is constitutional and whether, as an initial matter, that issue even could be decided before the individual mandate actually goes into effect), *National Federation of Independent Business v. Sebelius* (to decide whether the rest of the law can survive if the individual mandate is found unconstitutional), and *Florida v. Department of Health and Human Services* (to decide whether Congress can force states to choose between complying with the health care reform law or losing Medicare funding and whether the rest of the law can survive if the individual mandate is found unconstitutional). The Court heard arguments in these cases for three days this March, reviewed 126 *amicus* briefs, and analyzed and discussed the law, possibly for more hours than did Congress. The decisions were released June 28, 2012.

Readers should bear in mind that while the Court’s decisions are the final word on the specific challenges presented, they may not be the last word on health care reform legislation. Republican lawmakers have vowed to repeal and replace the health care reform law and the presumed Republican presidential candidate Mitt Romney has vowed to support that effort.

Jackson Lewis LLP Health Care Reform Task Force

The [Health Care Reform Task Force](#) at Jackson Lewis LLP will continue to monitor developments. We will provide updates on new and revised regulations and other agency guidance as it is released.

Jackson Lewis attorneys assist employers with health care reform compliance, including reviewing summaries of benefits and coverage, providing advice on plan documentation and administration, and strategizing with respect to collectively-bargained benefits and health care reform provisions.

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