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Labor & Employment Alert
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**U.S. SUPREME COURT UPHOLDS
AFFORDABLE CARE ACT IN LANDMARK DECISION**

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In a landmark ruling, the U.S. Supreme Court has upheld the “individual mandate” and the entire Affordable Care Act as a proper exercise of the Constitution’s power to tax. Chief Justice Roberts wrote the decision, joined by Justices Breyer, Ginsburg, Sotomayor, and Kagan. The Court also determined that the mandate could not be supported by the Constitution’s Commerce Clause.

This decision affirms in part and reverses in part the Eleventh Circuit. The Court agreed with the Eleventh Circuit on the Commerce Clause issue, but disagreed with it on the Tax Clause issue.

Chief Justice Roberts, writing for the majority, concluded that the “individual mandate” was not a valid exercise of the Commerce Clause. The majority reasoned that the power to regulate commerce presupposes the existence of commercial activity, and that an individual decision not to purchase insurance is not commercial activity within the power of Congress to regulate under the Commerce Clause. The Commerce Clause does not give Congress the power to compel persons to engage in interstate commerce; Congress may only act within its enumerated powers.

The majority ultimately voted to uphold the mandate by characterizing it as a tax, since those who choose not to comply with the mandate will have to pay a tax penalty to the IRS. The federal government’s power to “lay and collect taxes” under Article I of the Constitution was deemed sufficient to justify the mandate.

The Chief Justice, writing for the majority, noted that although the Commerce Clause could not support a mandate, “The Federal Government may enact a tax on an activity that it cannot authorize, forbid, or otherwise control.” The majority found it significant that individuals would still be free to refuse to buy health insurance, upon the payment of a relatively small penalty/tax to the IRS.

The Court upheld the Medicaid expansion of the law, allowing the federal government the power to provide expanded health care through grants to the state. Should states refuse to provide expanded Medicaid services, they will forfeit the additional grants but cannot, according to the Court, lose existing Medicaid funding.

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In dissent, Justice Kennedy, joined by Justices Scalia, Thomas, and Alito, argued that the entire ACA should have been invalidated. The dissenters concluded that neither the Commerce Clause nor the power of Congress to tax could have justified the reach of the law.

There was also a concurring opinion written by Justice Ginsburg, noting that she would have upheld the individual mandate under the Commerce Clause. She was joined in her concurrence by Justices Breyer, Sotomayor, and Kagan.

What does this mean for employers and health plans? Interestingly, the Court found the law could not stand based on the power of Congress under the Commerce Clause. Although not determinative of the Court's opinion in this case, the Court's limited interpretation of the Commerce Clause could have future effects on the federal government's power to regulate in several employment areas, such as ERISA, FLSA, OSHA, NLRA, and other areas. Since the Court concludes that individuals cannot be compelled to engage in interstate commerce, could the Court then rule that other aspects of those acts are beyond Commerce Clause reach? The Court's decision may embolden challengers to those laws.

Due to the significance of this decision, we have attached a copy of the 194 page decision in its entirety. We will continue to keep you informed as provisions of health care reform become effective.

If you have any questions or concerns with regard to this alert, please contact Katherine Hesse or Brian Fox, attorneys in the law firm of Murphy, Hesse, Toomey & Lehane, LLP, or the attorney assigned to your account.

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