



BACKGROUND ON THE PPACA DECISION

The federal government had argued that Congress has authority under the Constitution to require individuals to purchase health coverage or pay a penalty (the individual mandate) under two separate powers -- the power to regulate commerce and the power to tax. Most of the debate has been over how broad the Commerce Clause is and whether a decision to not buy insurance could be considered economic activity or commerce.

As expected, the four traditionally liberal justices (Breyer, Ginsburg, Kagan and Sotomayor) concluded that Congress has the authority to impose the mandate under both powers. To the surprise of some, Chief Justice Roberts determined that while the Commerce Clause was not broad enough to support requiring individual purchases, the power to tax was broad enough, and that regardless what the penalty was called, it operates like a tax. Basically, the decision was that while Americans can't be required to purchase health coverage, they can be taxed if they choose not to purchase coverage.

The individual mandate was considered by many to be the most controversial part of the law, and also necessary to create a large enough pool of covered individuals -- some healthy and some not -- to keep the cost of coverage affordable. Once the individual mandate was upheld, the balance of the requirements that apply to individuals and employers was also upheld.

Separately, a number of states challenged the expansion of Medicaid. PPACA provided that if states chose not to participate in the expansion, they would lose all Medicaid funding. The Court held that the expansion of Medicaid was permissible as long as the penalty for choosing not to participate in the expansion of Medicaid was limited to forfeiting the federal funds that would have been available to cover the newly eligible. As PPACA intended for much of the coverage to come through expanded Medicaid, it remains to be seen how this decision will affect implementation of the law, but the Medicaid issue should have no short-term effect on employers.

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