

A Texas court says the ACA is unconstitutional, but it means nothing – for now.

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A federal district court in Texas made headline news in December 2018 when it ruled that the Affordable Care Act (ACA) was unconstitutional and, therefore, invalid. The decision was appealed, and it's likely that it will ultimately be reviewed by the Supreme Court. While the case is significant because a final ruling *could* dismantle the current law, **the bottom line is the ACA remains in effect for now**. And because it's still the law of the land, employers and insurers need to continue to comply with its rules and regulations. This article provides a high-level overview of the court case and potential long-term implications.

Overview

This lawsuit is specifically aimed at the individual mandate and the corresponding tax penalty on individuals who don't have qualifying health coverage. The history of the case dates back to 2012:

» **In 2012: The Supreme Court ruled the ACA constitutional because of Congress' authority to impose taxes.**

The National Federation of Independent Businesses (NFIB) and 26 states filed a lawsuit that argued that the ACA individual mandate was unconstitutional. However, the Supreme Court ruled that the mandate was indeed constitutional because Congress had the authority to impose taxes (and the mandate was imposed as a tax).

» **In 2017: Congress tried unsuccessfully to repeal and replace the ACA in 2017.**

Congress considered a number of different bills that would have repealed and replaced the ACA, but they were unable to pass any repeal legislation.

The bottom line is the ACA remains in effect, so employers and insurers will need to continue to comply with its rules and regulations.

- » **Late 2017: Congress passed the Tax Cut and Jobs Act (TCJA).** The TCJA kept the “mandate” to have coverage in the law; however, it reduced the tax penalty to zero for individuals without qualifying coverage starting in 2019. As a practical matter for individuals, a zero penalty and eliminating the “mandate” are the same; however, the fact that the “mandate” remained in the law became a core issue in the current lawsuit.
- » **2018: Texas and 19 other states sued the federal government after the TCJA was signed into law.** This lawsuit argued that when the tax penalty was reduced to zero, the “mandate” was no longer a tax and therefore was unconstitutional. Further, because the ACA was so intertwined with the mandate, the lawsuit argued that all of the ACA was unconstitutional. The lower court federal judge in the case agreed but “stayed” the decision, meaning that it’s on hold until the case goes through the appeals process. It’s likely that the case will ultimately end up with the Supreme Court.

What do employers need to do now?

The short answer is nothing. Because the district court decision is “stayed” pending appeal of the case, the ACA remains in effect. It is expected to take some time for the case to work through the appeals process. A final decision is not expected until 2020, but could be even later.

As the lawsuit works through the appeals process, employers and insurers need to continue to comply with the ACA. This includes:

- ✓ Applicable large employers need to offer affordable, minimum value to full-time employees and dependents or face employer penalties.
- ✓ Dependent coverage to age 26.
- ✓ Coverage for essential health benefits (small groups).
- ✓ Pre-existing condition protections.
- ✓ 100 percent coverage for certain preventive care.
- ✓ Metal tier levels/minimum value.
- ✓ Out-of-pocket limits.
- ✓ No annual or lifetime dollar limits.

Regardless of how the lawsuit turns out, starting in January 2019 and into the foreseeable future, there is no penalty for individuals who don’t have qualifying health coverage.

What happens if the Supreme Court rules the ACA unconstitutional?

We can't really know the answer to this question unless and until such a decision is reached. However, there are two possible options. A final decision could rule that (1) all of the ACA is unconstitutional or (2) just certain parts of the law are unconstitutional. If some or all of the ACA health coverage mandates are ruled unconstitutional, then employers will have new decisions to make about their benefits programs. For example, some employers may decide to keep in place certain aspects of the law that are very popular, such as coverage of certain preventive care services without cost sharing and coverage of dependent children to age 26, while adjusting other aspects of plan coverage (e.g., imposing dollar limits on certain benefits). A decision holding some or all of the ACA invalid wouldn't have an effect on the abilities of states to regulate fully insured plans. So, state laws and insurance mandates will continue to be an issue for fully insured plans.

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Conclusion

The federal district court ruling sparked a lot of media attention, but for now, the ACA is in effect. It will take some time for the case to make its way through the appeals process, and a final decision isn't expected before 2020. Employers may want to start considering what sort of plan changes they'd make if some or all of the ACA is eventually ruled invalid, but for now, employers and insurers must continue to comply with the ACA.

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