

WHAT YOU NEED TO KNOW



Status of Court Case Challenging ACA Constitutionality

In June 2018, the U.S. Department of Justice (DOJ) filed a [response](#) in ongoing litigation regarding the individual mandate and the Patient Protection and Affordable Care Act (ACA).

As background, earlier this year, twenty states filed a [lawsuit](#) asking the U.S. District Court for the Northern District of Texas to strike down the ACA entirely. The lawsuit came after the U.S. Congress passed the Tax Cuts and Jobs Act in December 2017 that reduced the individual mandate penalty to \$0, starting in 2019.

The plaintiffs argue that, without the penalty, the individual mandate is unconstitutional because it can no longer be considered a tax. The plaintiffs argue that the individual mandate is not severable from the rest of the ACA so if the individual mandate is unconstitutional, then the rest of the ACA is unconstitutional.

The DOJ's response is that the individual mandate is unconstitutional without the penalty. The DOJ also argues that because the guaranteed issue and community rating provisions are inseparable from the individual mandate, the guaranteed issue and community rating provisions are also unconstitutional.

The individual mandate requires most people to have a certain level of health insurance coverage or pay a penalty (for 2018, the penalty is \$695 per adult and \$347.50 per child, or 2.5 percent of household income, whichever is greater). Guaranteed issue prohibits insurers from basing coverage eligibility on an individual's medical history and from excluding preexisting conditions on new plans. In the individual and small group markets, adjusted community rating means that premiums cannot be based on medical history and can only vary based on age, tobacco use, and geographic area.

Further, the DOJ argues that because the individual mandate penalty of \$0 starts in 2019, the district court should not immediately strike the individual mandate, guaranteed issue, and community rating portions of the ACA. Instead, the DOJ asks the district court to declare that the individual mandate, guaranteed issue, and community rating provisions will be unconstitutional as of January 1, 2019.

It's too early to determine whether the plaintiffs, the DOJ, or the other defendants will prevail in their arguments. Even if the district court makes a decision in the next few weeks, its decision will likely be appealed.

At this time, the case's status does not impact employers' group health plans. However, employers should stay informed for the final decision in this case.

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