

## *Supreme Court Upholds the Constitutionality of Affordable Care Act's Individual Mandate: Implications for Employers and Group Health Plan Sponsors*

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The U.S. Supreme Court held today that the Patient Protection and Affordable Care Act's (the "Act"'s) requirement, effective beginning in 2014, that individuals either purchase health insurance or pay a penalty to the federal government was constitutional under Congress' power to assess and collect taxes. The Court did hold a portion of the Act's Medicare expansion was unconstitutional, but the Court declined to strike down any other portions of the Act because of that defect.

While the Act's long-term prospects remain uncertain due to the November election and the presidential and Congressional changes that it might bring, the Court's decision means that the Act will remain in effect for the foreseeable future. Accordingly, employers that sponsor group health plans should continue with their efforts to comply with the Act's requirements.<sup>1</sup> Notable items include:

- Employers and insurers must provide a summary of benefits and coverage for open enrollment periods beginning on or after September 23, 2012 (a different effective date applies for enrollments occurring outside open enrollment such as new hires).<sup>2</sup>
- The aggregate cost of employer-sponsored health coverage must be reported on Form W-2 for 2012 and later years (i.e., beginning with the 2012 W-2 that will be issued in January of 2013).<sup>3</sup>
- Self-insured plans must pay a fee to fund the Patient Centered Outcomes Research Institute beginning with the 2012 plan year (insurers pay the fee for fully insured plans).
- Health FSAs must limit salary contributions to \$2,500 for plan years beginning on or after January 1, 2013.
- Fully insured plans may not discriminate in favor of highly compensated individuals once regulations implementing this requirement are issued.

- Beginning in 2014, large employers (defined as employers with an average of 50 or more full-time employee equivalents determined on a control group basis) are required to offer full time employees (defined as employees employed an average of at least 30 hours per week) health coverage or pay a penalty for each full time employee if any full time employee is not offered coverage and receives an income-based tax credit to participate in an insurance exchange.
- Beginning in 2014, large employers who provide health coverage that is not valuable enough, because either the employee's share of the premium would exceed 9.5 percent of the employee's income or because the plan's share of the cost of benefits available is less than 60 percent, will have to pay a penalty for each full time employee who declines the coverage and receives an income-based tax credit to participate in an insurance exchange.
- Beginning in 2014, plans may not impose waiting limits longer than 90 days.
- Beginning in 2014, annual limits for essential health benefits are prohibited.

In conclusion, the Supreme Court's decision has eliminated some of the uncertainty regarding the Affordable Care Act and employers and group health plan sponsors should continue their Affordable Care Act compliance efforts without delay.



*If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:*

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<sup>1</sup> For an overview of the Act's requirements that apply to employers and their group health plans, please see our Client Alert [Health Care "Reform" Provides No Relief for Employers \(March 2010\)](#).

<sup>2</sup> For details concerning this requirement, please see our Client Alert [Employer Must Provide Group Health Plan Participants with a New Summary of Benefits and Coverage \(March 2012\)](#).

<sup>3</sup> For details concerning this requirement, please see our Client Alert [Health Care Act W-2 Requirements: To Report or Not to Report – That is the Question \(April 2011\)](#).