

## WHAT YOU NEED TO KNOW



## Status of Court Case Challenging ACA Constitutionality

Updated January 2019

On December 14, 2018, the U.S. District Court for the Northern District of Texas (Court) issued a [declaratory order](#) in ongoing litigation regarding the individual mandate and the Patient Protection and Affordable Care Act (ACA). The Court declared that the individual mandate is unconstitutional and declared that the rest of the ACA is unconstitutional.

As background, earlier this year, twenty states filed a [lawsuit](#) asking the Court 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 argued that, without the penalty, the individual mandate is unconstitutional because it can no longer be considered a tax. The plaintiffs argued 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 U.S. Department of Justice (DOJ) responded that the individual mandate is unconstitutional without the penalty. The DOJ also argued that because the guaranteed issue and community rating provisions are inseverable 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.

Although the DOJ asked the Court to declare the individual mandate, guaranteed issue, and community rating provisions to be unconstitutional as of January 1, 2019, the Court went further than the DOJ's request.

The Court found that the individual mandate is unconstitutional without the penalty and that the individual mandate is inseverable from the rest of the ACA. Because of its findings, the Court declared that the individual mandate and the entire ACA – including its guaranteed issue and community rating provisions – are unconstitutional.

The Court did not grant the plaintiffs' request for a nationwide injunction to prohibit the ACA's continued implementation and enforcement. The Court's declaratory judgment simply defined the parties' legal relationship and rights under the case (for example, that the individual mandate is unconstitutional as applied to the individual plaintiffs) at this relatively early stage in the case.

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On December 16, 2018, the Court issued an [order](#) that requires the parties to meet and discuss the case by December 21, 2018, and to jointly submit a proposed schedule for resolving the plaintiffs' remaining claims.

On December 30, 2018, the Court issued two orders. The first [order](#) grants a stay of its December 14 order. This means that the Court's order regarding the ACA's unconstitutionality will not take effect while it is being appealed. The second [order](#) enters the December 14 order as a final judgment so the parties may immediately appeal the order.

On December 31, 2018, the Court issued an order that stays the remainder of the case. This means that the Court will not be proceeding with the remaining claims in the case while its December 14 order is being appealed. After the appeal process is complete, the parties are to alert the Court and submit additional court documents if they want to continue with any remaining claims in the case.

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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