

Dueling Decisions in the 4th and D.C. Circuit Courts of Appeals Spell More ACA Uncertainty for Employers

Article By:

Joy Napier-Joyce

Just as employers are gearing up to prepare for **compliance** with the **Shared Responsibility rules** under the **ACA**, a pair of decisions from two federal appeals courts has thrown a curve ball into what was already a complicated assessment of risk for employers and raised new questions.

The U.S. Court of Appeals for the District of Columbia Circuit ruled yesterday in a 2-1 decision (*Halbig vs. Burwell*) that the plain language of the ACA does not authorize the federal government to provide subsidies to help individuals pay for health coverage through a federally run health exchange or marketplace (“Marketplace”). Hours later, the U.S. Court of Appeals for the 4th Circuit (*King vs. Burwell*) reached the opposite conclusion with a unanimous ruling, finding that the text of the law is ambiguous as to whether subsidies are available for coverage through a federally run Marketplace, and requiring the court to give deference to the Administration’s position (established through IRS regulations) that subsidies are available for coverage obtained through both state and federal Marketplaces. 14 states and the District of Columbia run their own Marketplace where subsidies are clearly authorized. Marketplaces in the other 36 states are run by the federal government. Under the D.C. Circuit’s interpretation, subsidies would be unavailable for Marketplace coverage in these 36 states. To date, 4.7 million individuals have enrolled in federally run Marketplaces and qualified for subsidies.

The most immediate impact of an outcome that recognizes that only state run Marketplaces can offer subsidized coverage is that far fewer individuals will have access to “affordable” health coverage and the Marketplaces may be less effective in expanding coverage. While yesterday’s decisions, and most of the press surrounding the decisions, focus on an individual’s entitlement to subsidized Marketplace coverage, there are very important implications for the calculation of employer penalties under the “Shared Responsibility” or “Pay or Play” provisions of the Act.

By way of background, the ACA provides that applicable large employers, defined to be those with at least 50 full-time and/or full-time equivalent employees, may be subject to a penalty for either (1) the failure to offer minimum essential coverage to substantially all of its full-time employees and their dependents; or (2) the failure to offer affordable, minimum value coverage. A penalty is *only* triggered, however, if a full-time employee obtains *subsidized* coverage through a Marketplace. Generally speaking, an individual must have a limited household income and not be offered affordable, minimum essential coverage through their employer in order to be eligible for a

subsidy.

If the D.C. Circuit's interpretation survives an *en banc* appeal and/or likely review by the United States Supreme Court, the result would be that subsidies would only be available in the states that run their own Marketplace. Applicable large employers operating in states with federally run Marketplaces could offer noncompliant health coverage, or no coverage, to employees in those states and not be subject to penalties under the employer Shared Responsibility requirements. This would change the potential penalty exposure for employers dramatically.

Until the conflict is resolved, current IRS regulations provide that subsidies will be available in all Marketplaces, regardless of whether they are run by a state or the federal government. For employers with 100 or more full-time or full-time equivalent employees, January 1, 2015 is the first day from which employer penalties could possibly be assessed (transition relief under the final regulations is discussed in our [prior post](#)). Employers should therefore proceed with their compliance strategies on the basis that subsidies will be available for coverage in all Marketplaces.

As with many of the requirements under the ACA, employers will have to stay alert for further guidance and developments.

Jackson Lewis P.C. © 2024

National Law Review, Volumess IV, Number 204

Source URL: <https://natlawreview.com/article/dueling-decisions-4th-and-dc-circuit-courts-appeals-spell-more-aca-uncertainty-emplo>