BENEFITS BUZZ

MAY 2019

DOJ Supports Federal Court Ruling Invalidating the ACA

On Dec. 14, 2018, a federal judge ruled in *Texas v. Azar* that the entire Affordable Care Act (ACA) is invalid due to the elimination of the individual mandate penalty in 2019. In response, on March 25, 2019, the U.S. Department of Justice (DOJ) filed a letter with the 5th Circuit Court of Appeals agreeing with the lower court's ruling. This means that the DOJ believes the lower court's ruling should stand, and the ACA should be struck down as unconstitutional.

Following the ruling, however, the federal judge issued a stay and partial final judgment in the case. As a result, the ACA will remain in place pending appeal. The Department of Health and Human Services also confirmed that it will continue administering and enforcing all aspects of the ACA.

All briefs and responses in this appeal are due by mid-May 2019, and oral arguments will be scheduled shortly thereafter. Following oral arguments, a decision on the appeal will be issued. However, many industry experts anticipate that the Supreme Court will likely take up the case, which means that a final decision will not be made until that time.

While these appeals are pending, all existing ACA provisions will continue to be applicable and enforced. Employers and individuals must continue to comply with all other applicable ACA requirements. This ruling does not impact the 2019 Exchange enrollment, the ACA's employer shared responsibility (pay or play) penalties and related reporting requirements, or any other applicable ACA requirement.

Parts of AHP Final Rule Are Struck Down by Federal Court

On March 28, 2019, a federal judge ruled that parts of the Trump administration's 2018 final rule on association health plans (AHPs) were invalid. The court directed the Department of Labor (DOL) to reconsider how the remaining provisions of the final rule are affected.

In its ruling, the court stated that the final rule was an "end-run" around the ACA and that the DOL exceeded its authority under ERISA.

The court specifically struck down two parts of the rule:

- The provision defining "employer" to include associations of disparate employers
- The provision expanding membership in these associations to include working owners without employees

Employers and business owners without employees that have joined an AHP, or are considering doing so, should review how their plans may be affected by the court's ruling. According to the DOL, participants in AHPs affected by the court's decision have a right to benefits as provided by the plan or policy, although these plans may change their rules going forward. Contact us today for any questions on AHPs.

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