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AFFORDABLE CARE ACT

A victory for Obamacare and hope for its opponents

by Rachael E. Luzietti

Last year, the U.S. Supreme Court upheld the constitutionality of the Affordable Care Act's (ACA or Obamacare) mandate that individuals must purchase health insurance or be penalized by the IRS. However, the Supreme Court's ruling did not end the wrangling over the legality of the ACA.

Liberty University's challenge to ACA

The January 2013 issue of *Virginia Employment Law Letter* reported on the Supreme Court's decision to direct the U.S. 4th Circuit Court of Appeals (which is based in Richmond and whose rulings apply to all Virginia employers) to consider Liberty University's constitutional challenge to the ACA's requirement that employers with 50 or more employees offer a minimum level of healthcare coverage to employees (see "High court to reconsider Liberty University's challenge to Obamacare" on pg. 4).

Since the ACA's passage in 2010, Liberty, which is located in Lynchburg, has been engaged in litigation claiming that certain provisions of the Act are unconstitutional. Specifically, the university asserts that the ACA imposes an unconstitutional and costly burden by requiring employers with at least 50 employees to provide healthcare coverage. Further, Liberty contends that the ACA violates religious freedoms that are protected by the First Amendment to the U.S. Constitution by requiring the school, which adheres to traditional Christian views, to offer employees healthcare coverage for certain methods of abortion.

4th Circuit's decision

The 4th Circuit has now spoken. In late July, a three-judge panel of the court upheld the constitutionality of the ACA's employer mandate while providing Liberty another opportunity to take its case to the Supreme Court. In a unanimous decision, judges Diana Gribbon Motz, Andre Davis, and James A. Wynn Jr. rejected both of Liberty's arguments.

The judges determined that the ACA's requirement that employers provide healthcare coverage is within Congress' authority to regulate interstate commerce. The court also dismissed Liberty's First Amendment claim, pointing out that employers and employees are free to offer and choose plans that do not cover abortions except in instances of rape, incest, or when necessary to save the mother's life.

The 4th Circuit's decision represents a significant defeat for Liberty's long-running challenge to the ACA, but as Yogi Berra once said, "It's not over 'til it's over." Mathew Staver, founder and chairman of the Liberty Counsel (the public interest law firm representing Liberty University) and dean of Liberty University Law School, sees the 4th Circuit's decision as an opportunity "to clarify the issues and to continue the fight." Indeed, he is "glad the court reached the merits on the employer mandate, even though the court got it wrong, because it clears the way for the case now to go to the Supreme Court." Staver has already confirmed that he will ask the Supreme Court to review the 4th Circuit's decision, and he is confident that the Court will agree with Liberty and strike down the ACA's employer mandate.

Bottom line

The Supreme Court's decision to uphold Obamacare was not the last word on the constitutionality of the ACA's various requirements. Legal challenges to the Act will continue in the foreseeable future. Despite the legal challenges, the ACA continues to be the law of the land. Come 2014, the individual mandate will take effect, and starting this fall, individuals will be able to purchase health insurance policies through state and federal health insurance exchanges.

Recently, the Obama administration postponed employers' obligation to offer health insurance coverage until 2015. However, the delay does not mean you should ignore the ACA's requirements. Even if the Supreme

Court agrees to consider Liberty's constitutional challenge, most pundits predict the Court will uphold the legality of the ACA's employer mandate. Accordingly, now is the time to start preparing to comply with the ACA's mandates.

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