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ACA Compliance Remains "Business as Usual" for Employers Following *King v. Burwell*

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In its much-anticipated June 25, 2015 decision in *King v. Burwell,* the United States Supreme Court upheld nationwide federal health care subsidies under the Affordable Care Act ("ACA"). *King* affirmed that the premium tax credit under Section 36B of the Internal Revenue Code (the "Code") is available to qualifying individuals, regardless of whether they obtain health insurance coverage on a State or Federal Exchange. While the ruling ensures that millions of Americans will continue to have access to affordable individual health insurance, for employers, the ruling confirms two major points: (1) employers with 50[1] or more full-time equivalent employees in a state whose Exchange is operated by the federal government will be subject to assessment under the employer shared responsibility provision under Code Section 4980H; and (2) the continuing endurance of the ACA despite two U.S. Supreme Court challenges and resulting need for plan sponsors to comply with its requirements.

Interpretive Uncertainty before *King*

King resolved an interpretive split between the Fourth Circuit Court of Appeals and the Court of Appeals for the District of Columbia regarding Code Section 36B. The provision defines the annual premium tax credit available to a taxpayer to purchase coverage by reference to the coverage months in which the taxpayer is enrolled in a health plan "through an Exchange established by the State". In issuing its implementing regulations, the Internal Revenue Service ("IRS") interpreted the statute to grant the credit to individuals who purchase health insurance through either a State Exchange or the Federal Exchange [see 26 CFR Section 1.36B-2(a)(1)].

Fourth Circuit: In *King v. Burwell,* the Fourth Circuit ruled that the aforementioned language was ambiguous and subject to multiple interpretations, and opted to apply deference to the IRS's interpretation. The court found that Section 36B permits the IRS to grant the credit to a taxpayer who enrolled in either a State or Federal Exchange, and further reasoned that the IRS's interpretation was consistent with the ACA's goal of expanding access to health insurance coverage, and subsidizing the purchase of insurance through federal exchanges helped to further that goal.

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[1] As provided in the preamble to the final regulations implementing Section 4980H of the Code (http://www.irs.gov/irb/2014-9_IRB/ar05.html#d0e1288), employers with at least 50 full-time employees (including full-time equivalents), but fewer than 100 full-time employees (including full-time equivalents) in 2014, generally will be eligible for transition relief and will not be subject to any "employer shared responsibility payment" under Section 4980H(a) or (b) for any calendar month during 2015. This relief is set to expire for coverage months in 2016.

D.C. Circuit: In *Halbig v. Burwell,* the D.C. Circuit ruled that the language above "unambiguously restricts the Section 36B subsidy to insurance purchased on Exchanges 'established by the State'" and vacated the IRS's interpretation. In contrast to the Fourth Circuit, the Court concluded there was no evidence of Congressional intent to establish subsidies to purchase health insurance coverage on both Federal and State Exchanges.

In the past year, that split created a great deal of uncertainty for employers, because the ACA's 'employer mandate' — the provision requiring "applicable large employers" to offer affordable health insurance or pay substantial penalties under Section 4980H — uses employees' receipt of federal subsidies as the triggering mechanism for noncompliance assessments. Under Section 4980H, an "applicable large employer" may be assessed a payment depending on whether:

- The employer offers its full-time employees the opportunity to enroll in "minimum essential coverage" (for a discussion of these penalties, see our February 2014 newsletter); AND
- At least one full-time employee purchases individual Exchange coverage with a federal premium tax credit or cost-sharing reduction.

Because the federal Exchange operates in 34 states, if the Court had struck down the availability of subsidies to purchase coverage on the Federal Exchange, the employer mandate would not have applied to countless employers, and the ACA more broadly could have been severely compromised as millions of Americans would not have been able to obtain affordable coverage.

The Court Resolves the Split

In *King,* the Court held that the tax credit under Section 36B is available throughout the country via the State Exchanges and the Federal Exchange. The Court stated that because the ACA was intended to expand health plan coverage, Congress did not intend to limit the tax credits to coverage purchased through State Exchanges only. It concluded that Section 36B allows tax credits for insurance purchased on any Exchange created under the ACA, as such "credits are necessary for the Federal Exchanges to function like their State Exchange counterparts, and to avoid the type of calamitous result that Congress plainly meant to avoid," by denying access to affordable coverage to millions of Americans.

What Does *King* Mean to Employers?

King does not impose any new ACA obligations, but rather confirms that existing ACA provisions apply in full force. Employers that have implemented compliance strategies can now be assured that their time and efforts were well spent, and can focus on meeting the offer of coverage requirement that took effect in 2015 under Section 4980H (and the related reporting requirement under Sections 6056 via the Forms 1094-C and 1095-C) and other upcoming ACA requirements including the excise tax on high-cost employer-sponsored coverage (or "Cadillac" tax, Section 4980I) and nondiscrimination requirement for insured non-grandfathered plans. Those that had opted to 'wait and see' should recognize that significant legal challenges to the ACA have been exhausted, and should begin implementing compliance strategies immediately with respect to its requirements (for example, coverage for children up to age 26 and elimination of annual and lifetime dollar limits on "essential health benefits") and the above referenced "offer of coverage" and reporting requirements. If you have any questions, please contact the author of this article.

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