HCR ALERT!

June 26, 2015

King v. Burwell Decision

In a 6-3 holding released Thursday, the United States Supreme Court upheld the availability of subsidies in exchanges maintained by the federal government. Six members of the Court voted to validate the Internal Revenue Service's interpretation of the Affordable Care Act ("ACA") that permits premium tax credits in both state- and federally-operated exchanges. This means two things: (i) some 7.5 million Americans will not lose their subsidies that help them to pay for health insurance and (ii) it is back to "business as normal" for the ACA—meaning all employers must continue to attend to their compliance efforts.

BACKGROUND OF KING V. BURWELL

Seven words lay at the heart of this case: "through an exchange established by the state." That is how the ACA describes where premium tax credits are available. Early in the roll out of the ACA, the federal government itself realized that the law prevented premium tax credits from being offered on federally-run exchanges. The normal route to "fix" a hole in a federal statute, of course, is to have Congress pass a corrective amendment and for the President to sign that corrective amendment into law. However, because Congress was gun-shy over most any legislation about the ACA—and adding to that the Republican takeover of the House—there was no chance that a legislative fix could occur. Enter the Internal Revenue Service ("IRS"). The IRS addressed the issue by releasing guidance in which they clarified that the phrase "established by the state" was to be read as "established by the state and/or federal government."

THE CASE & DECISION

The arguments of the two sides in King are fairly straightforward. On the one hand, the plaintiffs argued that the plain language of the ACA permits premium tax credits only in states that have state-run exchanges. The government disagreed, and maintained that the IRS was well within its regulatory mandate to interpret the ACA to allow premium tax credits in federally-run exchanges. The government argued that read as a whole, the context of the ACA clearly anticipated that subsidies are to be available to all Americans. In other words, the context of the statute must be taken into account to interpret this particular phrase.

The Court focused on determining the correct reading of the provision of the ACA allowing for premium tax credits. The Court found that the phrase "through an exchange established by the state" is ambiguous and that there are other provisions in the ACA that would be rendered nonsensical if the premium tax credits were not available on a federal exchange. The Court noted that it stood to reason that Congress meant for the tax credits to be available in every state when they made the ACA's guaranteed issue and community rating requirements applicable in every

state, as those two provisions only work when combined with the individual mandate and tax credits.

IMPACT OF THE DECISION

For individuals living in federal exchange states who are receiving subsidies to purchase insurance, the decision means they will be able to continue to maintain that coverage at a cost they can afford. For employers, it means business as usual under the ACA. While this case was pending, many employers—and particularly those doing business in the federal exchange states—appear to have put their compliance efforts on hold, as they awaited the Court's decision. Now that one of the last major legal challenges to the ACA has been decided, it is time for all employers to focus on the ACA. We suggest focusing on:

1. **Hours Determinations.** Many employers have not devoted sufficient attention to determining who qualifies as a full-time employee. For some, this determination is easy because all or substantially all of their employees work 30 or more hours per week. For others, particularly those in business sectors and industries where hours are not typically tracked or where variable hour employees are used, the full-time hour determination process has not been appropriately addressed and is now long overdue.

2. **Recordkeeping/Reporting.** In six short months all employers—and particularly those with over 50 full-time equivalents—will be required to meet the Internal Revenue Code Section 6055/6056 reporting requirements. This reporting is complex and establishing the data systems to accurately record and report is time consuming. Employers who wait until the last quarter of this year will find that their vendors do not have the capacity to assist them. Time is well past due to focus on recordkeeping and reporting.

3. **Independent Contractor Review.** Penalties under the ACA may be assessed if any full-time employee of an applicable large employer obtains subsidized coverage on an exchange. The Internal Revenue Service has indicated that it will use a "common law employee" approach to determine employee status. Employers who use significant numbers of "independent contractors" may be shocked when they are assessed pay or play penalties because they did not offer these individuals insurance coverage. These employers should be assessing employment status today and make a realistic assessment about an independent contractor's employment status.

4. **Cadillac Tax.** 2018 is just 2½ years away. In 2018 employers will pay a nondeductible excise tax of 40% on the value of insurance coverage over specified threshold amounts. The amounts are $10,200 for individual coverage and $27,500 for family coverage. Employers that have not as of yet assessed whether they are on trend to pay this excise tax and/or who have not implemented steps to curve their premium trend should do so now. At the very least, human resource and benefits professionals should be alerting their chief financial officer that they may have a substantially increased tax burden starting in 2018.

5. **Documentation.** ERISA requires that plan documents and summary plan descriptions (SPDs) set forth the terms of a plan. Employers need to review their plan documents—including SPDs—to make sure they have been updated for the ACA and to also ensure that they

accurately capture any eligibility requirements, including any process by which full-time status is determined.

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Your Trion Strategic Account Managers are here to answer any questions you might have as you prepare to comply with upcoming ACA requirements. If you are not currently a Trion client and would like assistance navigating the changes required by health care reform, please contact us today by emailing trionsales@trion-mma.com.

ACA REGULATIONS & GUIDANCE ISSUED IN THE LAST THREE MONTHS

Jun. 2015:	Agencies Issue Final SBC Regulations and Fact Sheet
May 2015:	ACA FAQs XXVII – Cost Sharing Limits and Provider Nondiscrimination
May 2015:	IRS Issues Q&As on Section 6056 Rules and Completing Forms 1094-C and 1095-C
May 2015:	ACA FAQs Part XXVI – Preventive Care
Apr. 2015:	ACA FAQs Part XXV – Wellness Programs
Apr. 2015:	EEOC Issues Proposed Regulations on Wellness Programs and the ADA

Content provided in collaboration with our compliance partner, Marathas, Barrow and Weatherhead LLP.

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