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U.S. Supreme Court Issues Two Landmark Decisions

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In the last two days, the United States Supreme Court issued two landmark decisions addressing same-sex marriage and the Affordable Care Act ("ACA").

Same-Sex Marriage

On June 26, 2015, the Supreme Court issued a landmark civil rights decision, Obergefell v. Hodges, addressing same-sex marriage. This case arose from a multiple challenges to state laws that banned same-sex marriage. In short, the Court held in a 5-4 decision that same-sex couples may exercise the "fundamental right to marry" protected by the Fourteenth Amendment to the United States Constitution. The court held that every state now must allow marriage between two people of the same sex on the same terms as accorded to couples of the opposite sex (*i.e.*, cannot refuse to license a same-sex marriage), and must also recognize a marriage between same-couples if lawfully married in a different state.

This decision may not directly affect employers operating only in Massachusetts, which has long recognized same-sex marriage. However, employers operating in states – or whose employees live or work in states – which have not previously recognized same-sex marriages should consult with counsel to review their benefit plans and other policies.

Challenge to the Affordable Care Act

On June 25, 2015, the Supreme Court issued a decision in the case of King v. Burwell, upholding a key component of the Patient Protection and Affordable Care Act (*i.e.*, the "ACA"), dealing a blow to its critics. The ACA requires most individuals to have health insurance or face a penalty tax (often referred to as the "individual mandate"). The individual mandate only applies to individuals for whom the insurance is considered "affordable" by law. To help maintain the "affordability" of the insurance premiums, the ACA provides a federal tax credit to help offset the cost. Without the federal tax credit, many individuals would not be required to purchase insurance because it would not be considered "affordable" under the Act.

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The ACA also requires all states to have government-regulated health insurance marketplaces, called "exchanges," but allows the states either to create their own exchanges or to rely on the federal government to run exchanges for them. Thirty-four states currently utilize this federal option, with sixteen running their own exchanges. The Act's statutory language provides that tax credits are available where the individual enrolled in the health plan through an exchange "established by the State." It is these last four words which were the subject of the case.

In this case, two Virginia taxpayers brought suit against the federal government, arguing, based solely on the phrase "established by the State," that tax credits are only available for premiums purchased through state-run exchanges, and are not available for coverage purchased through federally-run exchanges. Virginia has a federally-run exchange. Limiting the credits to state-run exchanges could largely gut the individual mandate and the financial underpinnings of the ACA, as this would decrease the number of healthy people in insurance pools. This, the Court stated, "could well push a State's individual insurance market into a death spiral".

In a 6-3 decision, the Supreme Court found that the tax credit was available for all taxpayers regardless of what kind of exchange they used to purchase their insurance. While acknowledging that there was a strong argument based solely on the statutory language of the tax credit provision, the Court determined that in the context of surrounding provisions the phrase was ambiguous. From there the Court examined the purpose of the law, and held that it would be entirely contrary to Congress's stated purpose to limit tax credits to individuals who purchased insurance through state-run exchanges.

While critics of the ACA have vowed to continue fighting the Act, this decision has removed a serious challenge to the act's future viability. Moving forward, employers, benefit funds, and insurance companies should continue to work with legal counsel and other vendors to comply with the ACA's mandates and reporting requirements, including the rapidly approaching July 31 deadline to file and make PCORI payments.

If you have any questions about this alert, please contact Attorney Katherine Hesse or the attorney responsible for your account, or call (617) 479-5000.

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