



IN THE BUSINESS OF YOUR SUCCESS®

HEALTH CARE REFORM

## Eye on Washington

# THE U.S. SUPREME COURT TO REVIEW WHETHER ACA SUBSIDIES ARE AVAILABLE FOR HEALTH INSURANCE PURCHASED ON FEDERALLY FACILITATED EXCHANGES (MARKETPLACES)

On Friday, November 7, 2014, the U.S. Supreme Court (the Court) announced it would review the Fourth Circuit Court of Appeals' decision in *King v. Burwell* that held that the Affordable Care Act (ACA) permits the Internal Revenue Service (IRS) to provide tax credits for health insurance purchased through the federally facilitated Exchange (also referred to as the federal Exchange or Health Insurance Marketplace). Under the plain language of the ACA, individuals who purchase health insurance through state Exchanges are eligible for subsidies or premium tax credits. At issue is whether individuals who purchase health insurance through a federal Exchange would also be eligible for subsidies. In the upcoming months, the Supreme Court will schedule and hear arguments from the attorneys on both sides of this case. The Supreme Court is expected to issue its decision by late June or early July 2015. Despite the perceived uncertainty surrounding this latest ACA development, the ACA remains the law and employers must continue to comply.

### Subsidies for Health Insurance

The ACA added language to the Internal Revenue Code (IRC) making tax credits available as a form of subsidy to individuals who purchase health insurance through Exchanges "established by the State." On May 23, 2012, the IRS issued final regulations relating to the health insurance premium tax credit in the ACA and broadened the definition of Exchange to include state Exchanges, regional Exchanges, subsidiary Exchanges, and federally facilitated Exchanges. Under this interpretation, individuals who purchase health insurance through state Exchanges and the federal Exchange are eligible for premium tax credits.

The ACA requires every state to establish a health insurance Exchange and directs the federal government through the Department of Health and Human Services to establish and operate an Exchange when a state elects not to or is unable to put an Exchange in place. Currently only fourteen states and the District of Columbia have established Exchanges. In the remaining thirty-six states, the federal government operates the Health Insurance Marketplace.

### How This Case Made Its Way to the Supreme Court Now

The Supreme Court's decision on Friday to review the *King* decision accelerates the Supreme Court's consideration of this critical issue in the implementation of the ACA. Otherwise, the Supreme Court would have had to wait for another circuit court case to be decided that reached the opposite conclusion to the *King* decision. If another circuit court came to the opposite conclusion from the Fourth Circuit, the Supreme Court would need to reconcile the split in the circuits. For example, on the same day the Fourth Circuit reached its decision in *King*, a three-judge panel in the D.C. Circuit reached the opposite conclusion in *Halbig v. Burwell*, but that three-judge panel's decision was temporarily stayed for a rehearing by the full panel in the D.C. Circuit. In addition, other cases on subsidies are pending in federal district courts in Oklahoma and Indiana. By agreeing to review the *King* decision now, the Supreme Court can review this issue in this term without waiting for these district court decisions to be reviewed by the applicable circuit courts.



IN THE BUSINESS OF YOUR SUCCESS®

HEALTH CARE REFORM

## Eye on Washington

### What It Means to Employers

Employers need to focus on continued ACA implementation, while awaiting the Supreme Court's decision. The Supreme Court is not expected to issue a decision in *King* until near the end of the current term, in late June or early July, and it is not clear how the Court will rule at that time.

At first glance, it may seem that premium tax credit availability does not directly affect employers, but an employee who is regarded as a full-time employee under the ACA and who receives an Exchange subsidy can trigger the Employer Shared Responsibility penalty. If the Supreme Court rules that the IRS regulatory interpretation to extend subsidy eligibility to federal Exchange participants is vacated, the Employer Shared Responsibility mandate could be weakened considerably because only Exchange participants in the fourteen states and the District of Columbia with state Exchanges would be eligible to receive a subsidy. Residents of the thirty-six states that have not established a state Exchange would not be eligible

to receive a subsidy to help purchase coverage on the federal Exchange. The practical impact would be that, since no full-time employees in these thirty-six states would be able to receive an Exchange subsidy, Shared Responsibility penalties related to employees in these states would not be triggered.

If the Supreme Court upholds the ruling of the Fourth Circuit in *King*, subsidies will remain intact for individuals regardless of whether they obtain coverage on a state or federal Exchange. Keep in mind, however, that subsidies generally are not available for employees who are eligible for employer-sponsored coverage, if the coverage offered meets certain affordability and minimum value thresholds.

No matter how the Supreme Court rules, under the ACA both federal and state Exchanges will still need to report extensive information to the government with respect to the health plans provided through the Exchanges, and employer reporting requirements will also remain intact as well as many other ACA requirements.

### ADP Compliance Resources

ADP maintains a staff of dedicated professionals who carefully monitor federal and state legislative and regulatory measures affecting employment-related human resource, payroll, tax and benefits administration, and help ensure that ADP systems are updated as relevant laws evolve. For the latest on how federal and state tax law changes may impact your business, visit the ADP *Eye on Washington* Web page located at [www.adp.com/regulatorynews](http://www.adp.com/regulatorynews).

ADP is committed to assisting businesses with increased compliance requirements resulting from rapidly evolving legislation. Our goal is to help minimize your administrative burden across the entire spectrum of employment-related payroll, tax, HR and benefits, so that you can focus on running your business. This information is provided as a courtesy to assist in your understanding of the impact of certain regulatory requirements and should not be construed as tax or legal advice. Such information is by nature subject to revision and may not be the most current information available. ADP encourages readers to consult with appropriate legal and/or tax advisors. Please be advised that calls to and from ADP may be monitored or recorded.

If you have any questions regarding our services, please call 855-466-0790.