



ACA COMPLIANCE BULLETIN

HIGHLIGHTS

- + A federal judge ruled that the entire ACA is invalid due to the elimination of the individual mandate penalty.
- + This ruling is expected to be appealed and will likely be taken up by the Supreme Court.
- + The ACA will remain in place pending appeal.

IMPORTANT DATES

December 14, 2018

A federal judge ruled that the entire ACA is invalid due to the elimination of the individual mandate penalty

January 1, 2019

Individuals will no longer be penalized under the ACA for failing to obtain acceptable health insurance coverage.

THE ACA REMAINS IN PLACE AFTER BEING STRUCK DOWN BY FEDERAL COURT

OVERVIEW

On Dec. 14, 2018, a federal judge [ruled](#) in Texas v. United States that the **entire Affordable Care Act (ACA) is invalid** due to the elimination of the individual mandate penalty in 2019. The decision was not stayed, but the White House announced that **the ACA will remain in place pending appeal.**

This lawsuit was filed by 20 states as a result of the 2017 [tax reform law](#) that eliminates the individual mandate penalty. In 2012, the U.S. Supreme Court upheld the ACA on the basis that the individual mandate is a valid tax. With the penalty's elimination, the court in this case ruled that the ACA is no longer valid under the U.S. Constitution.

ACTION STEPS

This ruling is expected to be appealed and will likely be taken up by the Supreme Court. As a result, a final decision is not expected to be made until that time. The federal judge's ruling left many questions as to the current state of the ACA; however, the White House announced that **the ACA will remain in place pending appeal.**



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BACKGROUND

The ACA imposes an “individual mandate” beginning in 2014, which requires most individuals to obtain acceptable health insurance coverage for themselves and their family members or pay a penalty. In 2011, a number of lawsuits were filed challenging the constitutionality of this individual mandate provision.

In 2012, the U.S. Supreme Court upheld the constitutionality of the ACA in its entirety, ruling that Congress acted within its constitutional authority when enacting the individual mandate. The Court agreed that, while Congress could not use its power to regulate commerce between states to require individuals to buy health insurance, it could impose a tax penalty using its **tax power** for individuals who refuse to buy health insurance.

However, a 2017 tax reform bill, called the Tax Cuts and Jobs Act, reduced the ACA's individual mandate penalty to zero, effective beginning in 2019. As a result, beginning in 2019, individuals will no longer be penalized for failing to obtain acceptable health insurance coverage.

TEXAS V. UNITED STATES

Following the tax reform law's enactment, 20 Republican-controlled states filed a lawsuit again challenging the ACA's constitutionality. The plaintiffs, first, argued that the individual mandate can no longer be considered a valid tax, since there will no longer be any revenue generated by the provision.

In addition, in its 2012 ruling, the Supreme Court indicated (and both parties agreed) that the individual mandate is an essential element of the ACA, and that the remainder of the law could not stand without it. As a result, the plaintiffs argued that the elimination of the individual mandate penalty rendered the remainder of the ACA unconstitutional.

The U.S. Justice Department chose not to fully defend the ACA in court and, instead, 16 Democratic-controlled states intervened to defend the law.

FEDERAL COURT RULING

In his ruling, Judge Reed O'Connor ultimately agreed with the plaintiffs, determining that the individual mandate can no longer be considered a valid exercise of Congressional tax power. According to the court, “[u]nder the law as it now stands, the individual mandate no longer 'triggers a tax' beginning in 2019.” As a result, **the court ruled that “the individual mandate, unmoored from a tax, is unconstitutional.”**

Because the court determined that the individual mandate is no longer a valid tax, but is an essential element of the ACA, it ultimately ruled that the ACA is invalid in its entirety.

Because the court determined that the individual mandate is no longer valid, it now had to determine whether the provision is “severable” from the remainder of the law (meaning whether other portions of the ACA can remain in place or whether the entire law is invalid without the individual mandate).

In determining whether the remainder of the law could stand without the individual mandate, the court pointed out that “Congress stated three separate times that the individual mandate is essential to the ACA ... [and that] the absence of the individual mandate would 'undercut' its 'regulation of

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the health insurance market.' Thirteen different times, Congress explained how the individual mandate stood as the keystone of the ACA ... [and,] 'together with the other provisions' [the individual mandate] allowed the ACA to function as Congress intended." As a result, the court determined that **the individual mandate could not be severed, making the ACA invalid in its entirety.**

IMPACT OF THE FEDERAL COURT RULING

Judge O'Conner's ruling left many questions as to the current state of the ACA, because it did not order for anything to be done or stay the ruling pending appeal. However, this ruling is expected to be appealed, and the White House announced that the ACA will remain in place until a final decision is made. Many industry experts anticipate that the Supreme Court will likely take up the case, which means that a final decision will not be made until that time.

While these appeals are pending, all existing ACA provisions will continue to be applicable and enforced. Although the individual mandate penalty will be reduced to zero beginning in 2019, employers and individuals must continue to comply with all other applicable ACA requirements. This ruling does not impact the 2019 Exchange enrollment, the ACA's employer shared responsibility (pay or play) penalties and related reporting requirements, or any other applicable ACA requirement.

This compliance bulletin is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal counsel.