

VIEWPOINT

How Court Ruling Might Affect Mass. Firms

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Last month, the U.S. Supreme Court heard three days of oral arguments about the constitutionality of the Patient Protection and Affordable Care Act. During the hearings, the most widely known and discussed challenge focused on the individual mandate, the centerpiece of the law.

The issue of severability — whether to separate that mandate from the rest of the law — has the potential to make a strong or a minimal impact on Massachusetts businesses.

There are three possible outcomes: (1) the Affordable Care Act is upheld; (2) a portion of the Affordable Care Act, likely the individual mandate, is deemed unconstitutional and provisions that depend on it or are related to it are also struck down; or (3) the entire law is ruled unconstitutional.

Each scenario has different implications for Massachusetts.

If the Affordable Care Act is upheld, then Massachusetts and Bay State businesses will likely need to change procedures put into place under Massachusetts' own health care reform, passed in 2006. One major difference involves which businesses will face a penalty for not offering health insurance. Massachusetts law says companies with more than 10 employees will face a penalty, but the Affordable Care Act says more than 50 employees. If no changes are made, businesses will need to abide by both laws, thus subjecting some to a double penalty if they don't offer coverage.

On the other hand, the Affordable Care Act offers one benefit to small businesses: the availability of a sliding-scale tax credit to provide insurance coverage. Massachusetts health reform does not include a similar

provision.

One particular Massachusetts business sector faces a large impact: medical device manufacturers. Starting in 2013, they will face a 2.3-percent excise tax on the first sale or use of a medical device. Although the final impact is not known, the medical device industry expects job cuts and growth restrictions. While efforts have been made to repeal the tax, it's on track to be implemented next year.

However, if the Supreme Court deems the individual mandate unconstitutional, the exact impact on Massachusetts businesses will depend on what other provisions are struck down. But for the most part, the typical business won't see much change. Massachusetts has already enacted many of the provisions impacting businesses under the Affordable Care Act. Bay State businesses are supposed to offer coverage to their employees, and mechanisms are in place on the state level to assist these efforts. One of the only impacts, therefore, would be the elimination of potential double penalties for certain businesses.

If the Supreme Court strikes down the entire law, then businesses in Massachusetts will return to operating procedures that were in place before passage of the Affordable Care Act on March 23, 2010. The focus will then shift to containing and reducing costs, both of which Massachusetts is already pursuing.

You never know how the Supreme Court will rule on an issue, but businesses need to prepare for each possible scenario. ■



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