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SEXUAL ORIENTATION DISCRIMINATION

Expanding Title VII: Who needs Congress when we have the EEOC?

by Andy Rodman
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.

Legislative efforts to add sexual orientation and gender identity to the list of federally protected classifications under antidiscrimination laws have repeatedly failed. But that hasn't deterred the Equal Employment Opportunity Commission's (EEOC) quest to protect the LGBT community from employment discrimination. On July 15, 2015, following on the heels of the U.S. Supreme Court's historic Obergefell decision legalizing same-sex marriage, the EEOC issued an opinion interpreting the reference to "sex" in Title VII of the Civil Rights Act of 1964 as encompassing sexual orientation. (For more information on the Obergefell ruling, see "What's next after Supreme Court's same-sex marriage decision?" on pg. 6.)

EEOC: 'Sex' includes sexual orientation

In *Complainant v. Anthony Fox, Secretary, Department of Transportation (Federal Aviation Administration)*, a supervisory air traffic controller at the Miami International Airport alleged that he was passed over for a promotion because of his sexual orientation. In support of his claim, the employee, whose identity has not been disclosed, attributed remarks such as "[you are a] distraction in the radar room" and "we don't need to hear about that gay stuff" to his supervisor.

The EEOC had no trouble concluding, almost matter-of-factly, that "sexual orientation discrimination is sex discrimination because it necessarily entails treating an employee less favorably because of the employee's sex." In support of its holding that the word "sex" includes sexual orientation, the EEOC explained:

> For example, assume that an employer suspends a lesbian employee for displaying a photo of her female spouse on her desk, but does not suspend a male employee for displaying a photo of his female spouse on his desk. The lesbian employee . . . can allege that her employer took an adverse action against her that the employer would not have taken had she been male. That is a legitimate claim under Title VII that sex was unlawfully taken into account in the adverse employment action.

The EEOC reasoned that sexual orientation discrimination is a form of unlawful "associational discrimination" (treating an employee differently because he associates with a person of the same sex) and necessarily involves gender stereotyping (the belief that men should exhibit "masculine" traits and women should exhibit "feminine" traits).

The EEOC also took the position that under Title VII, the word "sex" encompasses gender identity. In September 2014, the EEOC filed a lawsuit alleging that a Lakeland employer discriminated against an employee who was in the process of transitioning from male to female. The lawsuit was settled for $150,000 in April 2015. (For more information on the case, see "Title VII protection for transgender employees" on pg. 3 of our May issue.)

Strategies for Florida employers

Here are a few strategies for Florida employers in the wake of the EEOC's recent decision:

- Consider revising your antiharassment and antidiscrimination policies to include sexual orientation and gender identity or expression, particularly if you employ workers in a county or city that expressly prohibits discrimination based on those characteristics. The Florida Civil Rights Act (FLCRA) does not expressly prohibit discrimination based on sexual orientation or gender identity or expression. However, discrimination based on those characteristics is banned in some Florida counties and cities, including Miami-Dade, Broward, Palm Beach, Leon, Monroe, Orange, Volusia, and Hillsborough counties and Gainesville, Tampa, Miami Beach, and Key West.
- Train employees and HR professionals on the scope of prohibited sex discrimination. You don't want your supervisors and HR team to ignore complaints about harassment or discrimination based on sexual orientation or gender identity because of a mistaken belief that it's not illegal.
- Foster an inclusive environment by putting an end to watercooler banter and off-color remarks about sexual orientation and gender identity issues (even if employees are discussing current events such as Caitlyn Jenner's transition from male to female).

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WORKPLACE VIOLENCE

OSHA cites Florida healthcare company for workplace violence violations

by Tom Harper
Law and Mediation Offices of G. Thomas Harper, LLC

Occupational Safety and Health Review Commission (OSHRC) administrative law judge (ALJ) Dennis L. Phillips recently affirmed citations and penalties levied against a Florida healthcare services company by the Occupational Safety and Health Administration (OSHA).

Background

Integra Health Management, Inc., performs mental and physical health assessments and coordinates case management with various insurance companies that cover "high-risk" patients. In a 94-page opinion, Phillips described how Integra is hired by insurance companies to help individuals avoid hospital admissions and emergency room visits.

The assessments are performed by employees known as community service coordinators (CSCs). CSCs work out of their homes, with no central office in Florida. CSCs are assigned a caseload and are responsible for calling clients and arranging face-to-face meetings. During the meetings, clients are assessed and encouraged to register for services that will lead to better health.

At a hearing, OSHA presented evidence that CSCs coordinated community resources for Integra "members." Members were identified by insurance companies as individuals who incurred high costs associated with emergency room care and hospitalizations. Many members had a history of not complying with their doctors' orders. CSCs helped members schedule medical and social services appointments, drove them or arranged for travel to their appointments, and assisted them in completing paperwork. CSCs were required to "track down" many members who did not have telephones. Members generally lived in publicly provided housing in "high-crime" neighborhoods. CSCs often met with members alone in areas off the beaten path where the general public could not see them (e.g., trailer parks, government housing projects, and high-crime areas).

OSHA compliance officer Jason Prymmer testified for OSHA at the hearing. He described the business of Integra by saying it was paid "based on . . . phone calls and . . . face-to-face visits and the . . . seven-day period hospital readmission." He testified that Integra conducted a program in Florida in which CSCs coordinated healthcare-related services for mentally or physically disabled members. According to Prymmer, "Most members were severely mentally ill, with maladies including bipolar disorder and schizophrenia. Most members also had criminal backgrounds. Many were substance abusers."

In 2012, Integra hired a 25-year-old woman to work as a CSC. The employee's name was redacted in Phillips' decision. The ALJ described the CSC's encounters with a member:

> The first time [the CSC] visited [the member], on October 12, 2012, she went to his house

ASK ANDY

'Shhh! Be vewy, vewy quiet'— Elmer J. Fudd takes on the NLRB (and loses)

by Andy Rodman
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.

Q *When I conduct interviews as part of an internal investigation, I routinely instruct witnesses to keep the matter confidential because I don't want rumors to spread around the workplace like wildfire. Is that permissible?*

A While this answer may sound strange, it's highly unlikely that requesting confidentiality in every investigation you conduct is permissible. In fact, that's precisely what the National Labor Relations Board (NLRB) recently said in *Banner Health Systems*, 362 NLRB No. 137 (June 26, 2015).

When I read *Banner Health,* I immediately thought of Elmer J. Fudd, the *Looney Tunes* character and Bugs Bunny's archenemy. As he attempted to hunt down Bugs, Fudd would say, "Shhh! Be vewy, vewy quiet. I'm hunting wabbits." What's the connection between *Banner Health* and Elmer Fudd? In its seemingly never-ending attempt to disrupt business operations in the name of protecting employees' rights under Section 7 of the National Labor Relations Act (NLRA), the NLRB told Banner Health that it could not direct employees to be "vewy, vewy quiet" and maintain confidentiality during workplace investigations.

During interviews, HR representatives at Banner Health told employees that investigations were confidential and asked them not to discuss the interviews with coworkers because "when people are talking, it is difficult to do a fair investigation." The issue before the Board was whether HR's request violated employees' Section 7 right to discuss with coworkers issues that affected their terms and conditions of employment (for example, discipline possibly arising from an internal investigation). Simply put, the Board had to decide whether an employer may tell an employee, "Keep your mouth shut, and don't tell any of your coworkers about what we just discussed." In a 2-1 decision, the NLRB reaffirmed its previous precedent and struck down Banner Health's confidentiality policy.

The Board's decision is not absolute. An employer may tell employees to be "vewy, vewy quiet" if it can show that a legitimate and substantial business justification outweighs employees' Section 7 rights. In *Banner Health*, the NLRB explained that legitimate reasons may exist when an employer uses an individualized case-by-case review to determine that confidentiality is necessary to:

- Protect witnesses;
- Prevent the destruction of evidence;
- Prevent the fabrication of testimony; or
- Prevent a cover-up.

The Board placed a fairly heavy burden on employers. A general concern about maintaining the integrity of an investigation will not suffice. According to the NLRB, "Only if the employer determines that such a corruption of its investigation would likely occur without confidentiality is the employer then free to prohibit its employees from discussing these matters among themselves."

The *Banner Health* rule is not new, but the decision serves as a very good reminder for employers, especially nonunion employers, that they may not require confidentiality in all internal investigations. Proceed cautiously, make a case-by-case assessment, and keep in mind the fairly heavy burden imposed by the Board.

"That's all folks!"

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> unannounced, introduced herself and Integra, and arranged a return visit for October 15, 2012, to conduct an initial assessment. [She] reported in her progress note report for that day that during their conversation, [the member] "said a few things that made [her] uncomfortable, [so she] asked [the] member to be respectful or she would not be able to work with him." She also documented in her progress note report that "because of this situation, [I am] not comfortable being inside alone with [the] member and will either sit outside to complete assessment or ask another [CSC] to accompany [me]."

When the CSC visited the member in November, he told her that he was not her patient and was instead his twin brother.

In December 2012, the CSC, who had worked for Integra for only a few months, was attacked by the deranged member. When the employee tried to conduct an assessment of the member's needs, he stabbed her nine times, reportedly with a butcher knife. The CSC tried to run, but the member chased her into his front yard while repeatedly stabbing her. The member then went back inside his house, leaving the mortally wounded employee on his front lawn. A passerby saw the employee lying on the ground and drove her to Pasco Regional Hospital. The CSC died of her wounds about an hour after the attack.

It was later learned that the member had a long history of violent conduct and arrests. Police arrested him and charged him with murder in the first degree, a capital felony. However, in May 2013, he was found mentally unable to stand trial by a Florida criminal court.

OSHA steps in

Integra did not report the CSC's death to OSHA as required. According to OSHA, an anonymous family member reported the employee's death to the agency, which conducted an extensive investigation. After its investigation, OSHA cited Integra for (1) violating the Occupational Safety and Health Act's (OSH Act) General Duty Clause by failing to provide a safe workplace and (2) failing to report a workplace fatality within eight hours. Indeed, OSHA presented evidence that Integra had never kept a log of workplace injuries.

OSHA claimed Integra committed a serious violation of the General Duty Clause by exposing employees "to the hazard of being physically assaulted by members with a history of violent behavior." The agency claimed Integra did not furnish a place of employment that was free from recognized hazards that caused or were likely to cause death or serious physical harm because CSCs "regularly interacted on their own directly with members with a history of violent behavior." OSHA proposed a fine of $7,000 for the General Duty Clause violation and a $3,500 fine for Integra's failure to report the employee's death within eight hours.

In a May 2014 hearing, Prymmer testified that during a face-to-face interview, an Integra official told him that at the time the employee was killed, the company did not have a workplace violence prevention program, perform criminal background checks on members, or identify "high-risk groups" before assigning caseloads to employees. He testified that during his investigation, he discovered that Integra provided a 40-hour online training course for CSCs. He stated, "Session 8 of this course, In-Home & Community Safety, dealt with workplace violence or safety, including: (1) screening dangerous members, (2) identifying risky situations, (3) safety in the community, (4) recognizing high[-]risk behaviors, and (5) minimizing risk on the job." However, he noted that none of the employees he interviewed had anything good to say about the training. OSHA used that evidence to show that Integra was aware that its members presented safety issues.

Prymmer acknowledged that OSHA does not have a standard for workplace violence. However, he stated, "Integra was required to create a workplace violence prevention program because health care and social services have a higher incidence of workplace violence than other industries." He testified about the risk factors OSHA compliance officers consider when performing workplace violence-related inspections, including (1) working with unstable or volatile persons in certain healthcare and social service settings, (2) working alone, (3) having a mobile workplace, and (4) working in high-crime areas. Prymmer noted that OSHA's Guidelines for Preventing Workplace Violence for Healthcare and Social Service Workers can help employers establish effective workplace violence prevention programs.

Prymmer testified that Integra's response to the threat of workplace violence before the CSC's murder was insufficient. Integra did not (1) have a written comprehensive workplace violence program; (2) perform criminal background checks on members; (3) stop providing services to members who were considered dangerous; or (4) require CSCs to use a buddy system.

In a very detailed and well-researched opinion, Phillips found that wherever employees performed work-related tasks for Integra was a covered workplace. That included private homes, automobiles, and public places. In addition, the ALJ found that Integra had received previous reports about violent and dangerous patients. Phillips held that Integra's training system and the steps it took to protect employees were inadequate and that the company committed OSH Act violations. The ALJ affirmed the citations and penalties. Integra has appealed the decision to the full OSHRC. *Secretary of Labor v. Integra Health Management, Inc.*, OSHRC Docket No. 13-1124 (June 22, 2015).

Takeaway

Florida is primarily a service-industry state, and many companies provide services to the state's large population. The ALJ's decision has implications for all employers that have workers who interact with nonemployees, not just healthcare companies. This is a good time to consider the risks faced by your employees in a society that is becoming increasingly violent.

For a copy of the ALJ's decision, e-mail the author at tom@employmentlawflorida.com. The decision provides insight on how OSHA views similar situations, and you will find many ideas that may help you provide a safe work environment for your employees. ✤

WHISTLEBLOWING

Florida appellate court refines public whistleblower law jurisprudence

by Rob Sniffen and Jeff Slanker
Sniffen and Spellman, P.A.

In the past, we have highlighted the precarious position in which claims filed under Florida's whistleblower laws often put employers. The laws prohibit employers from retaliating against employees who engage in whistleblower activity. A recent decision from a Florida appellate court further highlights the importance of treating anything resembling whistleblower activity seriously. The appellate court clarified the reporting standards for protected activity under the Florida Public Whistleblower Act. In doing so, the court explained that it is easier to engage in protected activity under the statute than defense lawyers have argued.

Facts

Broward Health is a hospital that was created by special taxing district legislation, meaning it falls within the auspice of the Public Whistleblower Act, not the Florida Private Whistleblower Act. Barbara Rustowicz initially worked as a secretary in the hospital's audit department. When that position was eliminated, she became an audit associate. The audit department independently reviews and evaluates the hospital's transactions and reports to the board of directors the accuracy of financial record keeping and the hospital's compliance with laws, rules, regulations, policies, and procedures.

Rustowicz complained to the internal audit director that questionable payments were being made to one of the hospital's CEOs. The director instructed Rustowicz to investigate the expenditures. During her investigation, Rustowicz discovered several violations of law and the hospital's code of conduct. She wrote a report detailing the violations. The report was eventually submitted to her supervisor, the audit department, and the board of directors. An investigation followed.

Later, Rustowicz was informed that her audit associate position was being eliminated because of a restructuring of the internal audit department. Although her previous secretary position had been reinstated, it had been filled. The hospital offered her the opportunity to apply for other jobs, but she was not qualified for any of the positions that had college degree requirements. She filed a lawsuit against the hospital alleging that her separation from employment was retaliation for her complaint about the payments to the CEO and that the complaint was protected whistleblowing activity.

The hospital filed a motion requesting summary judgment (pretrial dismissal), which the trial court granted in favor of the hospital. The court held that Rustowicz did not engage in protected whistleblowing activity because she did not complain in writing and she did not complain to the appropriate local official as required by the Public Whistleblower Act. Rustowicz appealed.

Appellate court's decision

The 4th District Court of Appeals reversed the trial court's grant of summary judgment. The court explained that the legislature passed the Public Whistleblower Act to prevent employers from retaliating against employees for reporting certain types of government wrongdoing. Since the law is remedial in nature, it must be interpreted liberally in favor of granting remedies.

In this case, the appellate court's principal focus concerned the lower court's finding that Rustowicz did not engage in protected activity because she did not complain in writing and she did not complain to the appropriate local official. Regarding the written complaint requirement, the appellate court held that it was enough that Rustowicz blew the whistle during an investigation and that such activity need not be in writing to be protected under the whistleblower statute. The court explained that although some types of complaints must be in writing to be protected by the statute, complaining during an investigation, hearing, or other inquiry conducted by an agency or federal government entity need not be in writing to be protected.

Further, the appellate court expounded on the mandate that employees of local government entities (e.g., a hospital created by special taxing district legislation) must complain to an "appropriate local official." The court held that under the statute, an "appropriate local official" means a local government entity's CEO or "an official or official entity who is affiliated with the violating governmental entity and has the authority to investigate, police, manage, or otherwise remedy the violation or act by the violating governmental entity."

The appellate court held that the hospital should not

AGENCY ACTION

$1.25 million going to study paid leave programs. The U.S. Department of Labor (DOL) announced in June that $1.25 million is to be made available to research and analyze how paid leave programs can be developed and implemented across the country. Greater access to paid leave is a priority for the Obama administration. A number of state and local governments have adopted or are now considering paid leave legislation, according to the DOL announcement. The grant program will enable similar actions in other jurisdictions. The funding announcement builds on a 2014 DOL Women's Bureau grant program that awarded a total of $500,000 to support paid leave feasibility studies in three states and Washington, D.C.

DOL says 3,000 Gulf Coast workers owed back wages. The DOL's Wage and Hour Division (WHD) announced in June that six Gulf Coast staffing agencies have agreed to pay more than 3,000 workers nearly $3.5 million in back wages after DOL investigators found part of their wages were mislabeled as "per diem" payments as reimbursement for expenses they never incurred. Investigators found that the back wages are owed to welders, electricians, pipe fitters, and other craftspeople on maritime vessels and other oil and gas industry projects. The investigations are part of an ongoing multiyear initiative aimed at ending what the DOL calls an illegal trend of employers labeling part of employee wages as per diem payments, often to avoid overtime, payroll taxes, and other costs. Investigators are actively monitoring staffing agencies and other employers in the 1,600-mile Gulf Coast region for signs of the practice.

United Airlines settles EEOC disability lawsuit. The Equal Employment Opportunity Commission (EEOC) announced in June that United Airlines Inc. has agreed to pay more than $1 million and implement changes to settle a federal disability lawsuit. The EEOC's lawsuit charged that United's competitive transfer policy violated the Americans with Disabilities Act (ADA). The law requires an employer to provide reasonable accommodation to an employee or job applicant with a disability unless doing so would impose an undue hardship for the employer. By requiring workers with disabilities to compete for vacant positions for which they were qualified and which they needed to continue working, the practice frequently prevented employees with disabilities from continuing employment with the company, according to the EEOC. The settlement requires United to pay $1,000,040 to a small class of former employees with disabilities and to make changes nationally. United also is to revise its ADA reassignment policy, train employees on the policy changes, and provide reports to the EEOC. ✤

have been granted summary judgment because there was evidence that Rustowicz made disclosures to the hospital's internal audit department and board of directors, both of which had the authority to investigate and remedy the violations. *Rustowicz v. North Broward Hospital District a/k/a Broward Health,* Case No. 4D13-2059 (July 1, 2015).

Takeaway for Florida employers

Retaliation claims of all types, including claims filed under Florida's whistleblowing laws, are becoming more and more prevalent. This case illustrates that complaints that are protected under the Public Whistleblower Act can come in a number of forms. It also shows one of the many forms protected activity can take under the Public Whistleblower Act—an employee providing information by participating in an investigation and making protected disclosures. Public and private employers should note the different types of protected activity that could provide a basis for a whistleblower lawsuit when confronted with anything resembling a whistleblower complaint.

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CONSTITUTIONAL RIGHTS

What's next after Supreme Court's same-sex marriage decision?

In a landmark 5-4 decision, the U.S. Supreme Court in Obergefell v. Hodges held that the Fourteenth Amendment to the U.S. Constitution requires states to license a marriage between two people of the same sex and to recognize a same-sex marriage that was lawfully licensed and performed out of state. The decision ends the ban against same-sex marriage in 13 states and affects employers on several levels.

Challenges to the decision

As soon as the Supreme Court released its decision, local officials in some states said they wouldn't issue marriage licenses to same-sex couples because of their religious beliefs. In addition, Texas and several other states that banned same-sex marriage were involved in litigation on the issue. On July 1, however, the U.S. 5th Circuit Court of Appeals struck down the Texas ban, and after lengthy battles in the courts, the issue appears to be settled once and for all.

Supreme Court decision and the FMLA

The Family and Medical Leave Act (FMLA) allows eligible employees to take leave from their jobs to care for a spouse with a serious health condition (among other reasons). Until recently, many employees in same-sex marriages either couldn't qualify for FMLA leave to care for their spouse or were forced to overcome hurdles in proving the validity of their marriage in the state where they lived or the state where the marriage was celebrated.

In March 2015, the U.S. Department of Labor (DOL) significantly simplified and expanded the FMLA's spousal leave rule by changing the definition of a covered spouse so that "spouse" is determined by the law of the state where the employee entered into his or her marriage (known as the "place of celebration" rule). This change allowed eligible employees to take FMLA leave to care for a same-sex or common-law spouse with a serious health condition.

Texas and several other states challenged the FMLA spousal rule in court. The Supreme Court's decision, however, makes same-sex marriage lawful in every state and effectively puts an end to the legal challenges. In fact, the *Obergefell* decision means the definition of "spouse" under the FMLA includes same-sex couples regardless of the state in which the marriage was licensed or performed. All married couples will be covered under the FMLA, regardless of their sex, where they were married, or where they live.

Same-sex marriage and employee benefits

In light of the Supreme Court's decision, you should revisit your employee benefit plans. For instance, many large employers already offer group health insurance for employees' domestic partners even though same-sex marriage wasn't legal in all 50 states. The benefit placed additional administrative burdens on employers and had certain tax implications for employees in states that didn't recognize same-sex marriage.

Now that same-sex marriage is legal in all 50 states and same-sex spouses must be covered under employer benefit plans on the same basis as opposite-sex spouses, you may want to consider phasing out domestic partner coverage. You will want to consider the impact such a decision will have on employees, including how many employees take advantage of domestic partner coverage. Communicating any change well in advance of implementation is critical.

Review and update policies

When there is a change in the law, it's important to review and update policies. In states where same-sex marriage wasn't recognized before the Supreme Court decision, employers will need to review benefit plans and audit policies that reference spouses or domestic partners or that may be affected by the ruling.

FMLA and other leave policies should be reviewed. A written FMLA policy should include same-sex spouses in the definition of spouse. Sick leave and bereavement leave policies also should be reviewed and updated if necessary.

As noted above, group health insurance plans should be reviewed so that same-sex spouses are treated equally with opposite-sex spouses. Other benefit plans, including 401(k) and other retirement plans, life insurance, and any other benefit with beneficiary designations, should be reviewed as well. In some cases, employees will need to review their beneficiary designations. ✤

HEALTH CARE

No change for employers after the Supreme Court's latest ACA decision

Since the Affordable Care Act (ACA) became law in 2010, there have been a variety of judicial challenges to it, and this term, the U.S. Supreme Court reviewed the law for the third time. The Court previously examined issues relating to the law's individual mandate and its contraceptive mandate. This time, in a 6-3 opinion, the Court decided that ACA tax credits are available to individuals in states that have federal exchanges. Essentially, this means nothing has changed for employers regarding their ACA requirements.

The issue

Section 36B of the Internal Revenue Code (enacted as part of the ACA) made tax credits available as a form of subsidy to individuals who purchase health insurance through exchanges. On its face, the provision authorized such credits for insurance purchased through state-based exchanges. However, the IRS interpreted the provision to also authorize the subsidy for insurance purchased on exchanges established by the federal government.

Federal courts disagreed on whether the IRS could do that or whether the ACA unambiguously restricted the subsidies to insurance purchased on state-based exchanges. Thus, the Supreme Court decided to address the issue.

Court's opinion

The Court's opinion, written by Chief Justice John G. Roberts, noted that it had to determine the correct reading of Section 36B. According to the Court, when read in context, the phrase in dispute—"an Exchange established by the State under [42 U.S.C. Section 18031]"—was ambiguous. The Court opined that the phrase could refer to state exchanges only, or it could also refer to all exchanges (i.e., state exchanges and federal exchanges) for purposes of tax credits.

Since the Court determined the text was ambiguous, it looked to the broader structure of the ACA. The Court then noted, "Here, the statutory scheme compels [the Court] to reject petitioners' interpretation because it

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would destabilize the individual insurance market in any State with a Federal Exchange, and likely create the very 'death spirals' that Congress designed the [ACA] to avoid." Additionally, the Court stated that the structure of Section 36B itself also suggested that tax credits weren't limited to state exchanges.

Finally, the Court noted that while the petitioners' plain-meaning arguments were strong, the ACA's "context and structure" compelled the Court to conclude that "Section 36B allows tax credits for insurance purchased on any Exchange created under the Act." *King v. Burwell.*

What's next?

The Supreme Court's decision doesn't change anything for employers. You still need to make sure you are in compliance with the ACA provisions that are already in effect and any that will become effective in the future. Below are some of the ACA provisions you should be particularly concerned about.

The ACA play-or-pay provision. Applicable large employers with *100 or more employees* started having to contend with possible penalties under the play-or-pay provision in 2015. Additionally, applicable large employers with *50 to 99 employees* will begin to face potential penalties under the provision in 2016.

Employer and insurer reporting requirements. To help the IRS collect data and enforce the play-or-pay provision, the ACA amended the Internal Revenue Code to provide for related reporting requirements. Section 6056 concerns information reporting by applicable large employers on health insurance coverage offered under employer-sponsored plans, while Section 6055 deals with information reporting requirements for *providers* of minimum essential health coverage (including self-insured employers that provide "minimum essential coverage" to individuals). Such reporting is first required in early 2016 with respect to calendar year 2015.

The Supreme Court's decision doesn't change anything for employers.

Preparing for the "Cadillac tax." Another ACA provision you need to be planning for is the excise tax on so-called "Cadillac" plans that becomes effective in 2018. Generally, under this provision, a 40 percent excise tax is imposed on employer-sponsored health plans with total values that exceed $10,200 for individual coverage and $27,500 for family coverage. ✤

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