



BENEFITS BULLETIN

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Court Invalidates New Association Health Plan Rule

On March 28, 2019, a judge for the United States District Court for the District of Columbia ruled against the Department of Labor (DOL) by invalidating critical aspects of the new association health plan rule (the Rule). In its decision, the Court found the Rule to be an unreasonable interpretation of the Employee Retirement Income Security Act (ERISA) and labeled the DOL's actions to be an attempt to circumvent the Affordable Care Act (ACA).

The Rule

In response to a 2017 Executive Order issued by President Trump, the DOL crafted regulations to expand access to Association Health Plans (AHPs). Prior guidance restricted AHPs to employers within the same industry or line of business and required that the underlying association of employers exist for a legitimate purpose other than offering health insurance. The DOL's Rule, finalized in June 2018, broadened the criteria under ERISA for determining when employers can band together for purposes of offering a single group health plan through an AHP. Specifically, the Rule permitted associations to be formed by employers not just within the same industry or line of business, but also those within the same geographic area. Additionally, the Rule allowed the underlying association to hold the offering of health insurance as its primary purpose and to extend participation in the AHP to self-employed working-owners.

While nothing in the Rule exempted AHPs from the patchwork of challenging state regulation, it nevertheless represented a new opportunity for small employers to join a large group plan and avoid ACA community rating and other coverage requirements. This stark departure from prior guidance prompted a lawsuit against the DOL by the attorneys general of eleven states and the District of Columbia (State of New York et al. v. U.S. Department of labor et al.).

The Court's Decision

The Court took issue with two components of the Rule. First, the Court found the Rule's expanded criteria upon which to form an association to lack meaningful limits. In particular, the Rule allowed disparate employers to find a commonality of interest in nothing more than geographic area; no other shared interest, such as industry or line of business, need exist. The Rule also permitted associations to form for the primary purpose of offering health insurance. In the

view of the Court, these new criteria are insufficient to ensure the existence of a bona fide association.

Second, the Court concluded that the Rule's recognition of self-employed working-owners as both employees and employers to be inconsistent with ERISA. Previously, a plan offered by working-owners without employees would have fallen outside the scope of ERISA. This expansion of the concept of an employer to include working-owners without employees is, in the Court's opinion, illogical and the product of unreasonable interpretation on the part of the DOL.

Importantly, the Court also took note of the DOL's perceived intent to undermine the ACA. By broadening the definition of a large group employer, the Rule risked the destabilization of the small employer and individual markets.

An Uncertain Future

The Court's decision is likely just the start of the legal challenges that lay ahead. Not only will the DOL need to reconsider (and possibly revise) the Rule in light of the now-invalidated provisions, but an appeal is also anticipated. Consequently, employers that are in the process of forming AHPs in reliance upon these provisions may find the uncertainty to be disruptive and unnecessarily risky – particularly for small employers and self-employed working-owners. At minimum, these employers should be aware of the potential outcomes and should evaluate whether an AHP can continue to provide meaningful advantages.



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