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Court Strikes Down Association Health Plan Rules

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On March 28th, 2019, a Federal District Court in the District of Columbia struck down significant portions of the Department of Labor's (DOL's) Association Health Plan (AHP) Final Rule. Specifically, the Court found the DOL "failed to reasonably interpret" ERISA when issuing these rules by:

- expanding the definition of "employers" to include disparate groups of employers with no other commonality of interest other than geographic location; and
- bringing working owners without employees within ERISA's framework.

This ruling effectively eliminates the expansion of AHPs to certain employers and working owners who do not meet the original parameters to be a part of an AHP.

It is now up to the DOL to determine whether, considering this ruling, the Final Rule can continue to stand.

Background

The Department of Labor published a final rule on June 21, 2018 creating flexibilities for employers and working owners to band together to sponsor a single AHP. The final rule allows multiple employers to jointly sponsor a single group health plan by expanding ERISA's definition of "employer." Prior to the Final Rule, unrelated employers had to generally meet three criteria in order to be deemed a bona fide association and thereby able to sponsor one large group health plan. Those criteria were:

- whether the group of employers came together for purposes other than just benefits;
- whether the employers shared a commonality of interest; and
- whether the employers, either directly or indirectly, exercised control over the program.

The intention of the Final Rule was to help groups of small employers form a single health plan and avoid small group market rating, maintain greater flexibility in benefits, and reduce premiums and administrative expenses.

Court Ruling and Agency Follow-Up

The Court invalidated two key provisions of the Final Rule based on overreach by the regulators when crafting these regulations and essentially creating an “end run around the ACA.” Notably, the Court found the Final Rule scraps ERISA’s statutory background and historic focus on employee benefit plans that arise from employment relationships through the expanded definition of an “employer.” The Court also noted that the rules were designed to avoid the most stringent requirements of the ACA, which remains the law of the land. For these reasons, the Court vacated the Final Rule’s provisions expanding the definition of “employer” to include associations of disparate employers and expanding membership in such associations to include working owners.

Due to a severability provision, the Court remands the case to the DOL to determine whether the stricken provisions of the regulations affect the viability of the rest of the Final Rule.

The Employee Benefits Security Administration (EBSA), a division of the Department of Labor, released a series of FAQs addressing the current state of the Final Rule considering the March 28th decision. While disagreeing with the decision and contemplating possible appellate action, EBSA issued these FAQs to confirm that participants in AHPs will still have their benefits paid in accordance with their policies. Furthermore, the FAQs confirm that the District Court’s decision does not lessen state oversight of AHPs.

The EBSA FAQs can be found here: <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/ahp-q-and-a-court-ruling.pdf>

Next Steps

This ruling strikes a blow for entities looking to form association health plans as allowed under the Final Rule. While the market has been slow to respond with association coverage solutions for employers, this latest ruling will likely further stall these arrangements. Nevertheless, associations (and association health plans) are still able to form under the rules in existence prior to the Final Rule. Association plans that looked to the Final Rules as a basis for forming an association based on geography only or providing coverage to working owners with no employees will want to carefully review their position.