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BLOG

The Department of Labor's "End Run" Around the Affordable Care Act Ends in Defeat

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In June of last year, at the Trump administration's direction, the Department of Labor (Department) issued final regulations (Final Rule) which expanded the types of groups that could ban together to offer medical plan coverage under the definition of an Association Health Plan (AHP). The Final Rule addressed the criteria necessary under the Employee Retirement Income Security Act (ERISA) for employers, individuals, or working owners to join together in a group or "association" of employers for the purpose of offering health coverage to their employees (and eligible dependents) while treating the group as a single multiple-employer welfare benefit plan. Although ERISA includes a definition of "employer" as well as references to an "association," the Final Rule, took these definitions to another level in a significant departure from prior Department guidance and case law.

Many states that are strong supporters of the Affordable Care Act (ACA) opposed the Final Rule on the basis that it was an "end run" around the ACA. 11 states (California, Delaware, Kentucky, Maryland, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, Virginia, Washington) and the District of Columbia sued the Department in July 2018, arguing that the Final Rule violated the "text, structure and purpose" of the ACA and misinterpreted ERISA's definition of employer for purposes of securing group health coverage. The plaintiff states charged that the Final Rule stretched "the definition of 'employer' beyond what ERISA's text and purpose will bear."

On March 28, 2019, in *the State of New York et al. v. U.S. Department of Labor et al.*, case number 1:18-cv-01747, in the U.S. District Court for the District of Columbia, a Washington, D.C. federal judge agreed with the Pro-ACA states, and struck down a key part of the Final Rule. While the court acknowledged that federal agencies have the discretion to interpret ambiguous statutory language, the court held that the Final Rule's provisions defining "employer" to include associations of disparate employers, and expanding membership in associations to include working owners with no employees, is unlawful and must be set aside. The court held that the Department designed the Final Rule to expand access to AHPs in order to avoid the most stringent requirements of the ACA, and the Department's expansion of the definition of what it considered to be an "employer" under ERISA ignored "Congress's clear intent" for the law to cover only benefit plans arising from related company's employment relationships. Large groups could therefore not be comprised of unrelated small businesses and individuals. Essentially the court held, "the Final Rule exceeds the statutory authority delegated by Congress in ERISA," and vacated the portion of the Final Rule that permits working owners (sole proprietors with no employees) to join AHPs and associations that are formed based on geographic or industry commonality with no significant business purpose

other than formation of an AHP. The judge remanded the rule back to the Department to decide how the severability provision in the Final Rule would affect the remaining portions of the rule.

Winston Takeaway
Many states were already reluctant to permit individuals and small groups to participate in AHPs if they were not otherwise members of pre-existing tax-qualified bona fide associations. The case will effectively put a hold on development of AHPs in all states, even those states that were open to implementation of the Final Rule. These states may now need to unwind any prior AHP related approvals. Under the ruling, small groups, individuals, and sole proprietors are not permitted to band together to gain the buying power of a large group for purposes of purchasing health insurance unless the group qualifies as an "employer" or an Association under pre-Final Rule guidance. The Department now may choose to revise the Final Rule to comply with the ruling, rescind the Final Rule, or seek a stay of the court's ruling and appeal the decision to the Court of Appeals.
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