

Department of Labor Announces Statement of Temporary Non-Enforcement Following AHP Ruling

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The U.S. Department of Labor (Department) has released a policy statement and a Questions and Answers – Part Two (FAQ) in reaction to the district court for the District of Columbia’s ruling in *State of New York v. U.S. DOL of Labor*, which vacated a key part of the Department’s final regulations expanding the availability of association health plans (AHPs). The district court held that the Department exceeded its statutory authority by unreasonably defining the term “employer” to include associations of disparate employers and sole proprietors without employees. The Department disagrees with the ruling, and the Department of Justice filed an appeal on April 26, 2019.

In its policy statement, the Department announced that (1) the Department will not pursue enforcement actions against parties that established AHPs or took other actions in reliance on the AHP regulations prior to the district court’s decision, as long as parties meet their responsibilities to association members and covered individuals to pay promised health benefit claims, and (2) the Department will not take action against existing AHPs for continuing to provide benefits to members who enrolled in coverage in good faith reliance on the final AHP regulations before the district court’s decision. This interim period of non-enforcement will extend through the end of the plan year or contract term that was in effect at the time of the district court’s decision on March 28, 2019. The Department announcement acknowledges that mid-year terminations of AHP coverage would cause significant disruption and additional costs for participating employers and covered individuals. The Department’s policy statement also notes that the Department of Health and Human Services (HHS) has advised that HHS will take a similar non-enforcement approach with respect to non-federal governmental plans and health insurance issuers subject to the Public Health Services Act.

In the FAQ, the Department provides additional clarification on the scope of the enforcement relief described in the Department’s policy statement. The FAQ distinguishes AHPs formed under the Department’s pre-rule sub-regulatory guidance, which the Department refers to as “Pathway 1 AHPs”, and which the Department concludes is unaffected by the district court’s decision, from those the Department refers to as “Pathway 2 AHPs”, which are affected by the district court’s decision. In addition, the FAQ provides that a Pathway 2 AHP that signs up new employer members will not be covered under the enforcement relief. The relief is only available for “violations stemming from actions taken before the district court’s decision in good faith reliance on the AHP rule’s validity.”

Winston Takeaway: The Department’s policy statement and FAQ are intended to allow employers participating in insured AHPs before the district court’s decision to keep their coverage through the end of the plan year or

contract term, and qualifies the enforcement relief available. Employers that have purchased health insurance coverage through an AHP maintained by an association of unrelated employers *before* the district court's decision should explore other options for the upcoming plan year. Employers that have purchased health insurance coverage through an AHP maintained by an association of unrelated employers *after* the district court's decision should immediately explore other options.

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