U.S. District Court Strikes Down AHP Regulations

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A United States District Court in *New York State v. U.S. Department of Labor* struck down the U.S. Department of Labor's (DOL's) final regulations permitting small employers and individuals to band together to form association health plans (AHPs), which would then qualify for treatment as large employer group health plans under ERISA and the Affordable Care Act (ACA).

The AHP rules were one of three sets of regulations proposed last year by various government agencies pursuant to an Executive Order signed in 2017 by President Trump. The district court held that the AHP rules were "unreasonable interpretations of ERISA" that attempted "to end run the requirements of the ACA [by] ignoring the language and purpose of both ERISA and the ACA."

Background

The AHP regulations, which were finalized in 2018, significantly relaxed the rules that an association had to satisfy to qualify as a "bona fide association" under ERISA. Being treated as a bona fide association would permit the group health plans of the association's members to be treated as a single large employer group health plan under ERISA and the ACA instead of many small group health plans. As a result, the AHPs would avoid regulation as insurance plans under state insurance laws. The State of New York and ten other states plus the District of Columbia sued the DOL.

Under the final AHP regulations, a bona fide association of employers can form with a primary purpose to offer health insurance as long as it has at least one other "substantial business purpose" besides offering health insurance. The AHP regulations do not define substantial business purpose, but a safe harbor exists where the group or association would be a viable entity even in the absence of sponsoring an employee benefit plan. An association of employers can be related either by trade or by geography ("commonality of interest"), must have a formal organizational structure, be controlled by the member employers, and can cover working owners and self-employed.

Ruling

The district court held that the AHP rule was an unreasonable interpretation of ERISA's definition of "employer," stating that "the Final Rule stretches the definition of 'employer' beyond what the statute can bear." The court struck down the AHP rule's definition of a bona fide association as failing to set "meaningful limits on the character and activities of an association." The court held that the commonality of interest rule "permits unrelated employers in multiple, unrelated industries to associate [despite] the fact that the interests of these employer members may be very different or even conflicting." The court also ruled that the "geography test . . . creates no meaningful limit on these associations." The court held that the AHP's "control" test "is only meaningful if employer members' interests are already aligned."

With respect to the "working owner" rule, the court stated that "the contention that two working owners without employees, neither of whom is within ERISA's scope alone, could associate with one another and thereby come within the statute's reach is absurd." The court provides the following example in its analysis:

> *When one counts the employees employed by two self-employed persons without employees, the sum is zero. DOL's feat of prestidigitation transforms two individuals, neither of whom works for the other, into a total of three employers and two employees. This interpretation strains the ERISA definition of "employee," which contemplates an individual "employed by" another. It doubly strains the ACA's express limit of employers to "employers of two or more employees," which contemplates two individuals employed by another. An association of two working owners without employees has no employers or employees—DOL's explanation is pure legerdemain.*

The district court's decision remands the AHP rule back to the DOL.

Resources

The ruling is available here.

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