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Federal court strikes down 2018 association health plan rules

Squeezing what might be the last bit of air from the Trump administration’s 2018 association health plan regulations, a federal trial court yesterday invalidated the two key elements of those much hailed – and assailed – regulations.

Judge John Bates, a George W. Bush appointee, ruled that the 2018 AHP regulations went too far in allowing AHPs to cover both sole proprietors and employers outside the boundaries of traditional, industry-centric associations.

The ruling throws into doubt whether entities such as state and local chambers of commerce may continue efforts to establish AHPs in reliance on the 2018 rules.

Lockton comment: The court ruling leaves intact prior Department of Labor (DOL) guidance allowing industry-centric AHPs to exist, provided the association members participating in the AHP control the health plan, membership excludes sole proprietors and the AHP satisfies existing regulatory requirements.

The 2018 AHP rules began with such promise ...

The Trump administration’s AHP rules garnered significant attention when proposed and again when finalized last year. They were designed to permit far more small employers, and even working owners or sole proprietors, to leave the highly regulated and expensive small-group and individual health insurance markets in favor of enrollment under large-group insurance plans issued to associations.

Large-group insurance plans do not suffer the same intense regulation, particularly under the Affordable Care Act, that small-group and individual health insurance policies do. For that reason, large-group plans are often less expensive on a per-employee basis, making AHP plans attractive to small business owners and sole proprietors.
Older DOL guidance required an association sponsoring a health plan to be a bona fide, industry-centric association. The new rules allowed employers in different industries to band together to buy health insurance, even if the main reason for coming together was to buy health coverage. This opened greater opportunity and an easier path, as the AHP could be established primarily, although not solely, to take advantage of large-group health insurance.

... but not all states were willing to play along

The Trump administration’s rules, however, reserved to the states the right to restrict formation of these new AHPs, and many states quickly balked. Several, particularly in the northeast, issued guidance saying insured coverage of small-group employers, even under an AHP, had to comply with the state’s small-group insurance rules. This guidance effectively eviscerated the intended impact of the new AHP rules in those states. They then joined forces to sue the DOL, alleging that the rules unlawfully and unreasonably expanded association coverage rules. It is that case that landed on Bates’ doorstep.

Federal court: Too abrupt an about-face

Regulations adopted to clarify or provide guidance under a federal law must make reasonable interpretations of the law. Here, the court was troubled by the DOL’s “abrupt change in course” from its older AHP rules requiring close representational interest between the association and its members (like traditional trade or industry associations) to a new rule that allows “virtually any association of disparate employers connected by geographic proximity to qualify as single ERISA plans.”

“The Final Rule is clearly an end-run around the ACA,” Bates concluded, and “does violence to ERISA.”

*Lockton comment:* ERISA is central to the AHP analysis because the DOL’s old and new AHP rules center on ERISA’s definition of “employer” as the entity that can sponsor an employee benefits plan. The old (and still valid) DOL rules allow associations to serve as the “employer” if, as noted above, the association adequately represents its employer-members’ interests and exists for reasons other than health insurance. The new AHP rules dramatically – and in the court’s eyes, unreasonably – expanded this definition of “employer,” causing the states to bring their lawsuit.

Conclusion

The court’s decision, if it stands on appeal, is simply the *coup de gras* to the new AHP rules, which were already hamstrung by the ability of the states to decline to honor them. The reluctance of a handful of key states to play along had already frustrated national associations of unrelated employers (like a national chamber of commerce or small business federation) from establishing nationwide AHPs for their members.

Unless and until Congress passes legislation allowing for the changes intended by the new AHP rules and forcing states to play along, the promise of lower-cost health insurance for many small employers will likely remain elusive.
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