CORPORATE SYNERGIES®

compliance ALERT

District Courts Block New Rules on ACA Birth Control Mandate Exemptions

January 16, 2019

SYNOPSIS

These injunctions affect employers with religious and moral objections to the ACA's contraception coverage mandate.

To obtain a waiver, employers can go back to using the "accommodation" process.

On January 14, 2019, a Pennsylvania federal district court judge issued a nationwide preliminary injunction blocking two recently-issued sets of final regulations that had allowed for broader exemptions to the Affordable Care Act's (ACA) contraceptive coverage mandate. The judge's decision came one day after a district court judge in California issued an order granting a preliminary injunction halting the same ACA regulations from taking effect in 13 states and the District of Columbia.

As we explained in our recent eAlert (available here), the two new sets of final regulations ("the Final Regulations") issued jointly by the U.S. Department of Labor, Health and Human Services (HHS) and the Treasury would have allowed employers to invoke religious or moral objections to avoid the ACA mandate to offer contraceptive coverage at no cost to employees participating in their health plan. The Final Regulations were scheduled to go into effect on January 14, 2019.

Why Were these Lawsuits Filed and Why Did the District Courts Block the New Rules?

In the Pennsylvania lawsuit, the states of Pennsylvania and New Jersey challenged the Final Regulations on grounds that the Final Regulations: (1) failed to comply with the notice-and-comment procedures required by the Administrative Procedure Act (APA); (2) are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" in violation of the substantive provisions of the APA; (3) violate Title VII of the Civil Rights Act; (4) violate the Equal Protection Guarantee of the Fifth Amendment; and (5) violate the Establishment Clause.

In the California lawsuit, the states of California, 12 other states[1], and the District of Columbia challenged the Final Regulations on the same grounds. One of the central arguments of the states in these cases was that the Final Regulations are inconsistent with the ACA's contraceptive coverage mandate, and thus, violate the APA, since the purpose of the ACA is to promote access to women's health care, not limit it, and since the APA requires that agencies issuing regulations issue them in a way that is consistent with the purpose of the underlying legislation drafted by Congress.

Additionally, the states presented evidence that they would suffer irreparable harm if the new Final Regulations were to go into effect because of the estimated high cost of having to provide contraception through government clinics and the estimated costs associated with unwanted pregnancies in their states[2].

The federal agencies that issued the Final Regulations, along with two intervening religious nonprofit organizations, defended the new rules on grounds that the contraceptive coverage mandate was not a mandate at all, but rather, a policy determination that should be left to the agencies' discretion, and that the new rules

[1] These states are Connecticut, Delaware, Hawaii, Illinois, Maryland, Minnesota, New York, North Carolina, Rhode Island, Vermont, Virginia and Washington.

[2] The agencies that issued the Final Regulations estimated that over 126,000 women would be affected by these new rules, and that there would be approximately $68.9 million in transfer costs for women who would no longer receive contraceptive coverage from their employer because of the new rules' expanded exemptions.

were required, or at least allowed, under the Religious Freedom Restoration Act.

While not agreeing with every argument raised by the states, in both cases, the district court judges agreed with the states that the language of the Final Regulations was inconsistent with the APA, and concluded that the injunctions were necessary in order to prevent irreparable harm that would be caused by the new rules.

How Will These Injunctions Affect Employers?

These injunctions will affect employers with religious and moral objections to the ACA's contraceptive coverage mandate since they now prohibit employers from invoking such objections in order to avoid the contraception mandate. Instead, such employers will now have to use the "accommodation" process that was in place during the Obama Administration in order to obtain a waiver from the mandate. This process required such employers to submit a self-certification of their objections to their insurance carrier, or file a notice with HHS—a process that enabled cost-sharing responsibility to be passed to the plan's issuer or third-party administrator.

If you have any additional questions, please call your Corporate Synergies Account Manager or 866.CSG.1719.

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