Court Vacates Key Provisions of the DOL?Ã‡Ã–s Association Health Plan Regulations

April 12, 2019

In its recent decision in *State of New York v. U.S. Department of Labor*, the federal district court for the District of Columbia vacated key provisions of the final regulations issued in 2018 by the DOL under ERISA regarding the establishment of ?ÃÂ£association health plans?ÃÂ¥ (the ?ÃÂ£***Final Regulations***?ÃÂ¥). The Final Regulations broadened the criteria under ERISA for determining when a group of employers may join together as a ?ÃÂ£single employer?ÃÂ¥ to sponsor a single group health plan in the form of an association health plan (?ÃÂ£***AHP***?ÃÂ¥). The Final Regulations were applicable to fully-insured AHPs as of September 1, 2018, to existing self-funded AHPs as of January 1, 2019, and to newly created self-funded AHPs as of April 1, 2019. See our prior **blog post**?Ã¡for additional information regarding the Final Regulations. In response to the Final Regulations, 11 states and the District of Columbia sued the DOL alleging that (i) key provisions of the Final Regulations conflicted with the text and purpose of both ERISA and the Affordable Care Act (the ?ÃÂ£***ACA***?ÃÂ¥) and exceeded DOL?ÃÃs statutory authority, and (ii) the Final Regulations were arbitrary and capricious under the federal Administrative Procedure Act. The court agreed, holding that the DOL did not reasonably interpret ERISA under the Final Regulations because (i) the ?ÃÂ£bona fide association?ÃÂ¥ provisions of the Final Regulations did not appropriately limit the types of associations that may qualify to sponsor an ERISA plan, and (ii) the ?ÃÂ£working owner?ÃÂ¥ provisions of the Final Regulations exceeded ERISA?ÃÃs scope by defining ?ÃÂ£employer?ÃÂ¥ to include working owners without employees, thus impermissibly expanding ERISA?ÃÃs coverage to plans arising outside of any employment relationship. The court also found that such provisions permitted AHPs to qualify both as ?ÃÂ£large employers?ÃÂ¥ for purposes of the ACA?ÃÃs essential health benefits coverage requirements as well as ?ÃÂ£small employers?ÃÂ¥ or individuals for purposes of the ACA?ÃÃs employer shared responsibility requirements, thereby enabling certain AHPs to avoid both sets of requirements. Based on its findings, the court vacated the ?ÃÂ£bona fide association?ÃÂ¥ and ?ÃÂ£working owner?ÃÂ¥ provisions of the Final Regulations and remanded the Final Regulations to the DOL to determine how the severability provision of the Final Regulations would affect its remaining provisions. The DOL recently posted a set of questions and answers on its website, in which the DOL confirms it is considering all available options in response to the court?ÃÃs decision, including the possibility of filing an appeal or requesting that the court stay its decision pending an appeal. View the court's **opinion**?Ã¡and?Ã¡the DOL's?Ã¡**Q&As**.

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