

## DOL Proposed Regulations Make Association Health Plans a More Viable Option for Some Employers

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The DOL recently issued proposed regulations which broaden the criteria under ERISA for determining when a group of employers may join together as a single employer to sponsor a single group health plan under ERISA, in the form of an "association health plan" (**AHP**). Joining an AHP could be a more viable option for many small employers. Various federal and state laws affecting employer-sponsored health coverage, including the Affordable Care Act (the "**ACA**"), impose requirements that differ based on whether employer-sponsored health coverage is insured or self-funded and, if insured, whether it is offered in the "small group" or "large group" insurance market. The status of coverage as either small or large group coverage generally depends on how many employees the employer has and affects the employer's compliance obligations under the ACA and other laws. Under current DOL guidance, a group of small employers that want to associate in order to be treated as a single large employer sponsoring one health plan must meet a "commonality of interest" test (the "**Current Test**"). The Current Test cannot be met if the sole purpose of the employers' association is to provide employee benefits. Instead, some other close economic or representational nexus must exist among the association, the employers, and their employees. The proposed regulations expand the criteria for determining commonality of interest, whereby a group of employers may associate to form an AHP, including for the express purpose of offering health coverage, if the employers are either (i) in the same trade, industry, line of business, or profession; or (ii) have a principal place of business within a region that does not exceed the boundaries of the same state or metropolitan area (the "**New Test**"). Employer associations that satisfy the Current Test would be treated as satisfying the New Test. If the New Test is satisfied, the AHP must comply with additional requirements set out in the proposed regulations. The proposed regulations also provide that working business owners, such as sole proprietors and other self-employed individuals, may act as employers for purposes of participating in an AHP and may be treated as employees of their businesses for purposes of obtaining health coverage under the AHP. The DOL will accept comments regarding these proposed regulations until March 6, 2018. [View the proposed regulations.](#)