FEDERAL COURT STRIKES DOWN SIGNIFICANT COMPONENTS OF ASSOCIATION HEALTH PLAN REGULATIONS

Hodgson Russ Employee Benefits Newsletter
April 30, 2019

On March 28, 2019, a federal district court held that the U.S. Department of Labor exceeded its authority when it issued final rules allowing unrelated small employers and working owners to band together to form association health plans ("AHPs"). The suit, instituted by the State of New York, ten other states and the District of Columbia, challenged the DOL's final regulations issued in June, 2018, which materially expanded the standards under which small employers and working owners could form AHPs that would qualify as single-employer plans under ERISA. See our June 2018 newsletter article.

The AHP regulations were issued against the backdrop of an October, 2017 executive order by President Trump, seeking to bypass many of the "costly requirements" of the Affordable Care Act ("ACA"). As the executive branch instructed, the DOL issued regulations: (1) relaxing the definition of "bona fide association" to allow the formation of an employer association whose primary purpose is to provide health coverage so long as the association engages in at least one substantial business purpose unrelated to the provision of health care coverage; and (2) easing the "commonality of interest" test so that the standard is satisfied if association members are either in the same trade or geographic area (state or metropolitan area covering more than one state). In addition, the DOL created a new rule for AHPs, allowing participation by working owners without employees. A purpose of the final regulations was to expand participation in AHPs so that the associations might qualify as large group health plans, thereby avoiding many consumer protections of the ACA, including the requirement of providing coverage for "essential health benefits."

Acknowledging the court's obligation to give deference to the DOL's reasonable interpretation of ERISA, the district court nonetheless concluded that the final rule "does violence to ERISA" by eviscerating the statute's focus on employer relationships. Finding ERISA to be exclusively concerned with benefit plans arising in the employment context, the district court examined the limited statutory exception created for employer associations and held that the DOL's final rule went too far. ERISA allows an association-sponsored employee benefit plan to be treated as a single-employer plan so long as the group is a "bona fide association" acting "in

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the interest of" an employer. The DOL's final AHP regulations diluted this requirement by allowing an association of employers in the same industry or geographic area to join together for the primary purpose of sponsoring a group health plan, so long as they have at least one other "substantial business purpose."

Several conclusions were set forth by the district court:

* it held that the final AHP regulations were an unreasonable interpretation of ERISA and found that the loosening of the primary purpose to allow participation for the sake of obtaining health plan coverage did not sufficiently limit AHPs to associations acting "in the interest of" employers.

* it found that the trade or geographic location standard impermissibly expanded the "commonality of interest" test beyond the employer-centered scope that Congress intended in enacting ERISA: "The Final Rule would permit a group of employers with no common characteristic other than presence in the same state to qualify as a single employer under ERISA so long as that group had an election-based officer structure and some modest business-related side project."

* it rejected the DOL's expansion of AHPs to include working owners without common law employees as an affront to more than forty years of ERISA precedent which held that working-owners without employees are ineligible to join associations.

* it found it illogical to accept the DOL's argument that the association itself can be treated as an employer for purposes of satisfying the ACA definition of employer, which requires that the employer must have two or more employees.

The district court remanded the final rule to the DOL for consideration of how the remaining provisions are affected by its order. The DOL has expressed disagreement with the ruling and is exploring its options. We will continue to monitor this issue for future guidance. *State of New York v. United States Department of Labor, 2019 WL 1410370 (D. D.C.), Memorandum Opinion, March 28, 2019.*

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