

On Mar. 28, 2019, the United States District Court for the District of Columbia vacated key provisions of the Department of Labor’s (DOL) Association Health Plan (AHP) Final Rule. The court found that the DOL’s interpretation of a “bona fide association” and an “employer” under the Final Rule exceeded the statutory authority delegated by Congress in the Employee Retirement Income Security Act (ERISA).

The court’s decision is in response to the lawsuit filed by eleven states (including Pennsylvania) and the District of Columbia asserting that the Department of Labor’s interpretation of employer is unlawful under the Administration Procedures Act.

Bona Fide Association—Commonality of Interest Standard

Prior to the Final Rule, a bona fide association was defined as an association of employers in the same industry (i.e., commonality of interest) **and** the same region.

Under the Final Rule, DOL relaxed this standard by allowing groups to have a “commonality of interest” — permitting **either** groups of employers in the same industry **or** the grouping of employers from multiple unrelated trades in a shared region to join for the purpose of forming an AHP.

Although the court acknowledged the deference given DOL in its interpretation of ERISA, the court opined that DOL’s interpretation of the “commonality of interest” standard failed to set appropriate limits on the types of associations that could qualify to sponsor an ERISA plan.

DOL’s Interpretation of “Employer”

Under ERISA, an employer is defined as “any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; an includes a group or association of employers acting for an employer in such capacity.”¹ An employee is defined as “any individual employed by an employer.”² The Final Rule allowed working owners without any employees to qualify as both an employer and employee under ERISA.

The court took issue with DOL’s interpretation of employer under the Final Rule. The court held that, due to the absence of an employer-employee relationship, the final rule’s provision which would allow sole proprietors to qualify as an “employer” for the purpose of participating in an AHP exceeded ERISA’s scope and was in conflict with the Affordable Care Act.

District Court Ruling

The court ultimately held the Final Rule’s bona fide association and working owner provisions unlawful and, subsequently, struck these provisions from the regulation. However, due the Final Rule’s severability provision, the Court remanded the Final Rule to the agency to determine how the severability provision affects the rest of the Final Rule.

¹ 29 USC §1002(5).

² 29 USC §1002(6).