



COMPLIANCE BULLETIN

HIGHLIGHTS

- A federal district court vacated key parts of the DOL's final rule on AHPs.
- The court decided that the final rule's interpretation of "employer" was unlawful under ERISA.
- The DOL may appeal the ruling and ask that the court stay its decision pending an appeal.

IMPORTANT DATES

June 21, 2018

DOL issues final rule on AHPs.

September 1, 2018

Final rule starts applying to certain types of AHPs.

March 28, 2019

Federal court strikes down key portions of the final rule on AHPs.

Provided By:
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Federal Court Strikes Down Association Health Plan Rules

OVERVIEW

On March 28, 2019, a federal district court [invalidated](#) key parts of the Trump administration's [2018 final rule](#) on association health plans (AHPs). The court directed the Department of Labor (DOL) to consider how the remaining provisions of the final rule are affected by its decision.

In its ruling, the court stated that the final rule was an "end-run" around the Affordable Care Act (ACA) and that the DOL exceeded its authority under ERISA. The court specifically struck down two parts of the final rule:

- The provision defining "employer" to include associations of disparate employers; and
- The provision expanding membership in these associations to include working owners without employees.

ACTION STEPS

Employers and working owners that have joined an AHP, or are considering doing so, should consider how these plans may be affected by the court's ruling. According to the DOL, participants in AHPs affected by the court's decision have a right to benefits as provided by the plan or policy, although these plans may change their rules going forward.

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Association Health Plans

An AHP is a type of ERISA-covered group health plan that is sponsored by a **group or association of employers** (instead of a single employer) to provide health coverage to employees of the AHP's members. Under ERISA, an AHP is both a group health plan and a multiple employer welfare arrangement (MEWA).

On June 21, 2018, the DOL published a [final rule](#) that allows more employer groups and associations to join together as a single group to purchase health coverage. The final rule allows AHPs to offer coverage to some or all employers in a state, city, county or multistate metro area, or to businesses in a common trade, industry, line of business or profession in any area, including nationwide.

The final rule did not affect existing AHPs that were allowed under prior DOL guidance. Under the final rule, these plans could continue to operate under the prior guidance or could elect to follow the provisions of the final rule. The final rule also gave new plans the option to follow either the new final rule or the old rules. However, the option to follow the new rules may be affected by the court's ruling.

The Court's Ruling

After the final rule was issued, 11 states and the District of Columbia sued the DOL, claiming that the final rule's interpretation of the definition of "employer" in ERISA was unlawful. The court agreed, and vacated the relevant portions of the final rule.

The court noted that, because the ACA defines terms key to its implementation—including "employer" and "employee"—according to the definition of these terms in ERISA, the final rule was intended to expand AHPs in a way that allows small businesses and some individuals to avoid the health care market requirements imposed by the ACA.

As stated by the court, the final rule's definition allows virtually any association of disparate employers connected by geographic proximity to qualify as single ERISA plans. These associations no longer have to be viable apart from offering an AHP, and may form solely for the purpose of creating an AHP. In addition, the final rule brings sole proprietors without any employees within ERISA's scope by counting them as both "employers" and "employees."

The court ruled that the bona fide association and working owner provisions of the final rule were unreasonable interpretations of ERISA and must be vacated. Under the final rule's severability provision, the remainder of the rule is still valid. However, the court has directed the DOL to reconsider how the rest of the rule is affected by its ruling.

The court decided that the final rule's interpretation of "employer" to include working owners and employer groups without a common interest was an unreasonable interpretation of ERISA and a clear "end-run" around the ACA's requirements.

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DOL's Response

Following the court's ruling, the DOL released a set of [questions and answers](#) (Q&As) to address issues related to the court decision. According to these Q&As, the DOL disagrees with the court's ruling and is considering all available legal options, including the possibility of appealing the ruling and requesting that the court stay its decision pending an appeal.

The DOL's Q&As also address how the court's ruling may impact individuals who are currently enrolled in an AHP. According to the DOL, participants in AHPs affected by the court's decision have a right to benefits as provided by the plan or policy. Plans and health insurance issuers must keep their promises in accordance with the policies and pay valid claims. However, the DOL recognizes that AHPs may change their structure or operations going forward. An AHP's plan administrator is the best resource for information about changes that the AHP may make in the future.