



COMPLIANCE BULLETIN

HIGHLIGHTS

- A federal court vacated two provisions of the DOL's final rule on AHPs.
- The ruling found that the DOL exceeded its authority under ERISA in how it defined employers.
- The DOL has been directed to reconsider how the rest of the rule is affected by this ruling.

IMPORTANT DATES

September 1, 2018

Final rule applies to fully insured AHPs.

January 1, 2019

Final rule applies to existing self-insured AHPs.

April 1, 2019

Final rule applies to new self-insured AHPs.

Provided By:

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Federal Court Strikes Down Association Health Plan Rules

OVERVIEW

On March 28, 2019, a federal judge [ruled](#) that parts of the Trump administration's [2018 final rule](#) on association health plans (AHPs) were invalid. The court directed the Department of Labor (DOL) to reconsider how the remaining provisions of the final rule are affected.

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 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 business owners without employees that have joined an AHP, or are considering doing so, should review how their plans may be affected by the court's ruling. These employers can also monitor developments from the DOL on any changes made to the rule.

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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.

AHPs are subject to ERISA's rules for group health plans, including the Form 5500 and M-1 annual filing requirements. Also, employers who are members of the AHP have a fiduciary duty to monitor the AHP and get periodic reports on the fiduciaries' management and administration of the AHP.