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Federal Courts Divided on Contraceptive Coverage Mandate

More than three dozen reported lawsuits have been filed by for-profit employers to challenge on religious grounds an Affordable Care Act (ACA) mandate that requires certain health plans to cover contraceptives without cost-sharing. So far, courts have reached opposite conclusions in these cases. Some courts have granted temporary injunctions for the employers involved in the cases, which allow the employers to avoid ACA's contraceptive coverage mandate while their cases proceed in court. However, other courts have denied the injunctions, requiring employers to comply with the mandate while their cases continue.

Two recent cases from the U.S. Courts of Appeals have created a split among the federal circuit courts on whether a for-profit business can challenge ACA's contraceptive coverage mandate on religious grounds.

Tenth Circuit

The Tenth Circuit Court of Appeals ruled that a for-profit craft store business was likely to succeed in its claim that the contraceptive coverage mandate violated its federal rights to religious freedom. *Temporary injunction granted.*

Third Circuit

The Third Circuit Court of Appeals ruled that a for-profit wood cabinet company cannot challenge ACA's coverage contraceptive mandate on religious grounds because the business does not have its own right to free exercise of religion. *Temporary injunction denied.*

These rulings apply only to the specific businesses involved in the lawsuits and do not invalidate ACA's contraceptive coverage mandate.

The circuit court split is significant because it makes it more likely that the U.S. Supreme Court will ultimately review the constitutionality of the contraceptive coverage mandate. However, any Supreme Court ruling would be limited to the contraceptive mandate and would not affect other ACA provisions.

Employers should be aware of potential changes to the contraceptive coverage mandate that could result from lawsuits. CIG Benefits LLC will monitor any legal actions and rulings related to this issue.

CONTRACEPTIVE COVERAGE MANDATE

Required Coverage

ACA requires non-grandfathered health plans to cover preventive health services without imposing cost-sharing requirements. This mandate generally became effective for plan years beginning on or after Sept. 23, 2010. The preventive care services that must be covered are described in a series of guidelines.

Plans and issuers must also comply with additional preventive care guidelines for women, effective for **plan years beginning on or after Aug. 1, 2012**. These additional guidelines require non-grandfathered health plans to cover women's preventive health services, including contraceptives, without charging a copayment, a deductible or coinsurance.

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Under the guidelines, plans must cover all Food and Drug Administration-approved contraceptive methods, sterilization procedures and patient education and counseling for all women with reproductive capacity. According to the Department of Health and Human Services (HHS), the recommendations do not include abortifacient drugs.

Special Rules for Religious Employers

Group health plans sponsored by religious employers (that is, churches, other houses of worship and their affiliated organizations) are exempt from the requirement to cover contraceptive services.

HHS also provided a temporary safe harbor allowing nonprofit employers that do not provide contraceptive coverage to their employees because of religious beliefs to delay covering contraceptive services until the first plan year beginning on or after Jan. 1, 2014. This extension covers church-affiliated organizations that do not qualify for the exemption for religious employers, such schools, hospitals, charities and universities.

For plan years beginning on or after Jan. 1, 2014, HHS created an accommodation approach for eligible nonprofit religious organizations that oppose providing coverage for some or all of the required contraceptive services based on religious objections. Under the accommodations, eligible organizations will not have to contract, arrange, pay or refer for any contraceptive coverage to which they object on religious grounds. However, separate payments for contraceptive services will be provided to female employees by an independent third party, such as an insurance company or third-party administrator (TPA), directly and free of charge.

For-profit, secular employers that object to providing contraceptive coverage on religious grounds are not eligible for the exemption, the delayed effective date or the accommodations approach that apply to religious organizations.

COURT CASES

Tenth Circuit – Temporary Injunction Issued Barring Mandate's Enforcement

On June 27, 2013, the Tenth Circuit Court became the first federal court of appeals to rule on the contraceptive mandate. The federal appeals court reversed an Oklahoma district court's decision to deny a preliminary injunction that would block the enforcement of the contraceptive mandate against Hobby Lobby Stores and Mardel, Inc., affiliated private retail stores that are owned by the Green family, who run their businesses according to strongly held religious convictions.

Because of their belief that human life begins when a sperm fertilizes an egg, the Green family specifically objects on religious grounds to methods of contraception that would lead to the death of an embryo. They argued that ACA's contraceptive coverage mandate violates the Religious Freedom Restoration Act (RFRA) and the U.S. Constitution's Free Exercise Clause by requiring them to provide insurance coverage through their health plan for methods of contraception that are contrary to their religious beliefs.

The federal court of appeals ruled that **some for-profit corporations are "persons" that can have their own religious beliefs and exercise those beliefs.** The court believed that corporations absorb, as their own, the religious views of their owners and then conduct their businesses as a way to express those convictions. The court held that it is likely that the Green family's rights under the RFRA are substantially burdened by the contraceptive mandate and that they would suffer irreparable harm in the form of millions of dollars in penalties if an injunction was not issued.

As a result of the Tenth Circuit Court's ruling, the case was sent back to the district court with specific instructions to reassess whether the injunction should be granted. On July 19, 2013, the district court issued a preliminary injunction barring enforcement of the mandate and put the case on hold to give the U.S. Justice Department time to decide whether to file a petition for review with the U.S. Supreme Court. The Justice Department has until Sept. 25, 2013 to petition the Supreme Court to review the case.

A copy of the Tenth Circuit's ruling can be found here.

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Third Circuit – For-Profit Corporation Cannot Challenge Mandate on Religious Grounds

On July 26, 2013, the Third Circuit Court ruled that Conestoga Wood Specialties Corporation (Conestoga), a wood cabinet company owned by the Hahn family, was not entitled to a preliminary injunction barring the enforcement of ACA's contraceptive coverage mandate. Like the Green family in the Tenth Circuit case, the Hahn family runs their business according to strongly held religious convictions and it is company policy not to support anything that terminates a fertilized embryo.

Because of their religious beliefs, the Hahn family objects to certain forms of contraception included under ACA's mandate. They argued that ACA's contraceptive coverage mandate violates the U.S. Constitution's Free Exercise Clause and the RFRA by requiring them to provide insurance coverage through their health plan for methods of contraception that are contrary to their religious beliefs.

The federal court of appeals ruled that **the right to exercise a religious belief under the U.S. Constitution is a personal right that exists for the benefit of people and not "artificial" beings, such as for-profit, secular corporations.** The court also noted that the basic nature of a corporation is that it has its own independent identity, rights and powers and, thus, the Hahn family's religious beliefs cannot "pass through" to Conestoga. The court noted that all of the responsibility for ACA's contraceptive mandate falls on the corporation and does not require the Hahn family to do anything. The court also rejected Conestoga's RFRA claim because it is not a person who can exercise religion.

A copy of the Third Circuit's ruling can be found here.

MORE INFORMATION

Please contact AGH Employer Solutions for more information on ACA's required preventive care coverage.