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DOL Appeals Association Health Plan Ruling

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On April 26, 2019, the Department of Labor filed a notice of appeal in the case that invalidated key provisions of its Association Health Plan (AHP) regulations.

Released last summer, the AHP regulations loosened the criteria that must be met for an association of employers to establish an employee welfare benefit plan which is regulated under ERISA and the Affordable Care Act as a single employer plan. Under the AHP regulations, small employers and self-employed individuals with no employees who work in the same trade, industry or geographic area were able to band together for the purpose of purchasing health plan coverage as a large employer.

Shortly after the AHP regulations were issued, eleven states and the District of Columbia (the "States") filed a lawsuit alleging that the DOL's interpretation of the definition of "employer" in ERISA to include association health plans was not reasonable. On March 28, 2019, the federal district court in the District of Columbia agreed and set aside the provisions in the AHP regulations establishing the criteria for qualifying bona fide associations and allowing working owners to participate in an AHP because the DOL failed to establish a meaningful limit on the types of associations that can qualify to sponsor an AHP. The court found that the AHP regulations were an "end-run" around the protections that the ACA intended to provide in the small group and individual markets.

The next step will now be for the Department of Labor and the States to file legal briefs with the Court of Appeals for the DC Circuit. Once that is finished, a hearing before the Court of Appeals will be scheduled.