

Federal Judge in Pennsylvania Puts Temporary Nationwide Stop on Religious or Moral Exemption to the Affordable Care Act's Contraception Mandate

The Affordable Care Act ("ACA"), the health-care law enacted in 2010, contains a provision which mandates that most insurance providers (including most employers providing insurance plans) fully cover the cost of female insureds' preventative health services. The Department of Health and Human Services under President Obama enumerated contraception as one of the preventative health services included under the provision. Originally, certain employers were exempt from the contraception mandate under limited circumstances.

In 2017, the Trump Administration issued regulations which expanded the circumstances under which employers can seek an exemption to the contraception mandate if they object to birth control coverage on religious or moral grounds. Under the Trump Administration's regulations, essentially all nongovernmental employers could invoke a religious or moral objection.

The Commonwealth of Pennsylvania and State of New Jersey jointly filed suit in the U.S. District Court for the Eastern District of Pennsylvania, challenging the legality of the religious/moral exemption regulations. On January 14, 2019, the same day that the regulations were to take effect, Judge Wendy Beetlestone issued a Preliminary Injunction which stays implementation of the regulations and maintains the status quo pending the conclusion of litigation. Judge Beetlestone considered that the regulations would force states to bear the expenses of women seeking state-funded contraceptive services, and of unintended pregnancies and other medical consequences of lack of access to birth control. (Pennsylvania v. Trump, No. 17-4540, Doc. No. 136, (E.D. Pa. Jan. 14, 2019)).

The Judge determined that a nationwide injunction was necessary to fully protect women in Pennsylvania and New Jersey, who may have out-of-state employers, or who may be out-of-state students attending Pennsylvania or New Jersey universities. An estimated 70,500 women would lose coverage under the Trump Administration's religious/moral objection regulations. Just one day prior, on January 13, 2019, a federal judge in California also issued a temporary injunction which stayed the implementation of the regulations in thirteen states and the District of Columbia.

Comment: This is not a final decision, and the Trump Administration may appeal and seek to limit the scope of the injunction. However, for now, employer-based health plans will continue to have limited ability to invoke a religious objection to coverage of female employees' preventative health services, including contraception.

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