

Robinson+Cole

Employee Benefits and Compensation

EMPLOYEE
HANDBOOK

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White House Expands Exemptions to ACA Contraceptive Mandate

The Department of Health and Human Services (HHS) issued interim final rules on October 6, 2017, expanding exemptions to protect religious beliefs and moral convictions for certain entities and individuals whose health plans are subject to a mandate of contraceptive coverage under the Affordable Care Act. These interim rules are effective October 6, 2017.

The contraceptive coverage mandate has been a hallmark of controversy since the enactment of the Affordable Care Act in 2010, with many religious organizations claiming the mandate was in violation of their religious beliefs. In response to this, the regulations were amended in 2011, which provided an exemption for religious employers, and again in 2013 to provide "accommodations" to nonprofit religious organizations that did not qualify for an exemption under the 2011 rules. The accommodation was further extended in 2015 to some closely held, for-profit companies.

The Departments of HHS, Labor, and the Treasury (Departments) revisited this issue in response to several Presidential Executive Orders. The President's first Executive Order 13765 was issued on January 20, 2017, and required that the secretary of HHS and others take action to essentially delay the implementation or requirements of the Affordable Care Act that would impose a financial burden on states, individuals, families, health care providers, or makers of medical devices, products, or medication. Several months later, on May 4, 2017, the President issued the Promoting Free Speech and Religious Liberty Order, which called for the Departments to issue regulations to address conscience-based objections to preventive care. The Departments understood such order to include moral convictions, not just religious beliefs.

The interim final rules expand the pre-existing exemptions to those with conflicting religious beliefs or moral convictions to nonprofit organizations, for-profit organizations (and for those seeking an exemption for religious reasons, this includes publicly traded for-profit organizations), higher education institutions that arrange for insurance for their students, individuals employed by companies that are open to providing a plan option that would not provide contraceptive coverage, and health insurance issuers. Also, the previous accommodation process will remain available to those seeking a religious exemption and is further expanded to those seeking a moral exemption. The accommodation program is essentially untouched and will be available on a strictly voluntary basis. Lastly, the new rules do not place a new notification requirement on employers seeking an exemption under these rules.

The Departments have stated that, in some instances, current litigation does not provide enough information to determine how big an impact this change will have. As a result, employers seeking an exemption under these rules may want to do so cautiously and with the advice of counsel to avoid

any potential participant claims and/or litigation. Additionally, while the interim rules do not explicitly establish a new notice requirement, existing ERISA participant notice requirements still apply; therefore, employers and plan sponsors may wish to pay careful attention to notice and timing requirements before implementing any changes.

Robinson+Cole's [Employee Benefits and Compensation Group](#) is available to assist clients in reviewing their employee benefit and health care plans. If you have any questions about health and welfare plans or the Affordable Care Act (ACA) in general, please contact any of the following lawyers:

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