

GEO-BASED AHP “PAUSE”

DOL FILES APPEAL OF AHP RULING

The Department of Labor has filed an appeal of a March 28 ruling by US District Judge John D. Bates. In a lawsuit brought by 11 states and the District of Columbia, Judge Bates had ruled that two elements of the DOL’s rule on Association Health Plans (AHPs) were invalid. Rather than file a stay, the DOL decided to appeal the decision and has requested an expedited hearing.

What has been ruled invalid?

The judge’s ruling states that two elements of the DOL’s Final Rule are invalid:

- ❖ Per the ruling, the definition of “employer” under ERISA cannot apply to working owners who have no employees. Therefore, AHPs cannot include sole proprietors with no employees.
- ❖ In addition, the ruling states that geographically-defined associations do not meet the commonality of interest requirement and that the “substantial business purpose” required (other than providing health insurance) “is only an ex post facto, perfunctory requirement—merely a box to check—that virtually any association may fulfill on the side and thereby qualify to sponsor an AHP under the Final Rule.... It sets such a low bar that virtually no association could fail to meet it.” Therefore, this ruling prevents an AHP based on common geography (Geo-AHPs) from being treated as a single employer for health coverage purposes.

What does this appeal mean?

Many employers have already taken advantage of the DOL’s Final Rule on AHPs, and therefore,

Remind me: What is an AHP?

AHPs have existed before the DOL’s Final Rule under the “old rules,” but the Final Rule set up “new rules” under which AHPs can operate. AHPs are group health plans offered through associations or employer groups. By using an AHP, small employers “band together to purchase health coverage,” thus creating a large group and potentially experiencing the associated benefits, such as

- ❖ less regulatory complexity
- ❖ more flexibility in plan design because AHPs are allowed to offer large group plans, which are not subject to many of the ACA’s requirements
- ❖ more flexibility in rating as these groups are not subject to adjusted community rating that applies to small group plans under the ACA

They provide one more potential avenue for employers to seek group medical coverage in addition to existing small- and large-group plans, transition relief plans, and self-funded (self-insured) plans.

this ruling and the appeal create questions on whether these AHPs can continue to operate. The DOL and the Employee Benefits Security Administration (EBSA) have released statements explaining what will happen in the meantime while the appeal is in process. For their full statements, please see the links below:

- ◆ DOL Press Release: <https://www.dol.gov/newsroom/releases/ebsa/ebsa20190429>
- ◆ EBSA Press Release: <https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/completed-rulemaking/1210-AB85/ahp-statement-court-ruling>

In short, the DOL has stated that insurers should honor coverage for employers and sole proprietors already enrolled in Geo-AHPs created under the DOL's new rules (as opposed to trade-based AHPs that were created under the DOL's old rules, which are unaffected by this ruling); however, they have asked insurers to "pause" with regard to new business.

Any employer that already has health coverage with an AHP may still enroll new hires when they are eligible and current employees upon special enrollment life events (marriage, birth, adoption, or loss of eligibility for other coverage).

What happens when it is time to renew?

For those with existing coverage under a Geo-AHP, their plan is guaranteed until renewal. At that time, if the appeal has not been heard, these plans will not renew, but the employers will be able to enroll in other non-AHP coverage through their current insurance company.

In Texas, insurance carriers are required to provide a 90-day non-continuance notice. Insurers will probably modify this notice to explain that renewal can occur as long as certain criteria are met (for example, the appeal has been heard by the renewal date, and a judge has decided favorably on the appeal).

What might the outcome be?

A judge may rule favorably on the appeal. If not, those in the insurance community doubt that this case would then proceed to the Supreme Court. Rather, the DOL may use the severability clause written into their rule to amend it. For example, some speculate that if necessary, the DOL may redefine some terms or amend the sole proprietor provision.

For More Information

For more information or assistance, please contact our Employee Benefits team at **210-640-1789**, toll-free at **1-888-757-2104**, or **EmployeeBenefits@BFGonline.com**.



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