

## DOL Finalizes Rules to Expand Access to Health Plans for Small Businesses

This week, the U.S. Department of Labor (DOL) issued [final rules](#) to expand access to “Association Health Plans” for small businesses that are unaffiliated, but are in the same line of business or geographic area. An “Association Health Plan” or “AHP” is a group health plan adopted by members of an employer group or association to provide health coverage for their employees. The DOL also posted a series of [“Frequently Asked Questions”](#) on its website about the final rules.

The final rules permit employers in the same industry or geographic region to join together to obtain healthcare coverage as if they were a single large employer. For example, small employers in such businesses as restaurants, retail sales, health services, senior care and retirement community operations can now join together to purchase coverage under a single group health plan. And employers in the same city, county, state, or multi-state metropolitan area may adopt an AHP, regardless of the employers’ type of business.

The final rules include one significant change from the [proposed rules](#) that were issued in January 2018: while the primary purpose of an employer group or association may be to provide group health coverage to employees of its members, the group must have at least one substantial business purpose other than providing health benefits. For example, the group could hold conferences or offer educational materials, have a tax-exempt purpose under Internal Revenue Code section 501(c), or exist simply to advance the well-being of the industry in which the group’s members operate.

An employer group or association that sponsors an AHP must have a formal organizational structure, with a governing body and by-laws. The group’s activities must be controlled, both in form and in substance, by the members of the group, either directly or through elected representatives. This means that 1) the group’s members must control the functions and activities of the group, and 2) employer members that participate in the AHP must control the plan. Whether control exists is a “facts and circumstances” test, taking into account: 1) how individuals who serve on the governing body of the group are elected and removed, and 2) whether the group’s members can approve or veto plan design, amendment and termination decisions.

by Judith W. Boyette & Elizabeth J. Masson



An association may not set different premium rates under its AHP for an employer member of the group based on the health status or claims history of its employees. Premium rates and eligibility criteria can vary, however, based on nondiscriminatory job classifications, such as part-time or full-time, or by industry, so long as the distinction is not directed at individual participants or beneficiaries based on their health status.

In response to questions about the proposed rules, the DOL clarified that the rules are not intended to indicate that participating in an AHP sponsored by a group or association of employers gives rise to joint employer status under federal or state law.

The rules take effect on August 20, 2018, and are scheduled to have staggered applicability dates. For fully-insured AHPs, the rules will apply as of September 1, 2018. For existing, self-insured AHPs, the rules will apply as of January 1, 2019, and for new, self-insured AHPs, the rules will apply as of April 1, 2019.

Earlier this week, the attorneys general from New York and Massachusetts announced that those states will file a lawsuit to block implementation of the final rules, citing risks of fraud and harm to consumers, as described in [written comments](#) on the proposed rules.

Hanson Bridgett's employee benefits practice group will monitor the status of legal challenges to the final rules and provide updates through future Employee Benefits Law Alerts.

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