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Final Rules – 90 Day Waiting Period & Orientation Period

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In a 5 to 4 decision, the Supreme Court has ruled that certain privately held corporations do not have to comply with some of the Affordable Care Act’s (ACA) contraception coverage requirements if they violate the owner’s religious views. The decision opens the door for companies that meet the IRS definition of a “closely held corporation” to opt-out of providing certain contraception coverage in their employer sponsored group health plan.

Background

The ACA requires non-grandfathered group health plans to offer a broad set of preventive health services with no cost-sharing to plan participants. Coverage for some forms of contraception are included in this preventive care requirement.

Previous regulations provided an exception to this requirement for religious organizations and most non-profit entities. Qualified organizations wishing to take advantage of this exemption were subject to certification and participant notification requirements. The exemption also required non-profits to arrange for their insurance carrier or administrator to provide the contraceptive coverage directly to employees who want it, outside the term of the employer’s plan. This exemption, however, has not been available to for-profit companies.

Impact of the Court Decision on Employer Plans

The court specifically limited its decision to “closely held corporations.” The IRS defines a closely held corporation as a corporation that:

- Has more than 50% of the value of its outstanding stock owned (directly or indirectly) by 5 or fewer individuals at any time during the last half of the tax year; and
- Is not a personal service corporation.

The court case does not automatically mean that the current IRS definition will be controlling. However, based on this definition, it seems likely that the exception will not be granted to larger organizations, publicly held companies, or even closely held companies with a larger number of owners.

The court also suggested that employers who do qualify for the exception will be subject to the existing rules applicable to non-profit entities (as described above). It is expected that the regulatory agencies will issue new guidance regarding this process.

Summary

Employers interested in taking advantage of the exception should study the rules in place for non-profit entities, and also watch for new guidance, expected soon from the regulatory agencies. Additional guidance on exactly which companies can take advantage of the exemption is of particular importance.

As always, should you have any questions, please contact your Parker, Smith & Feek Benefits Team.

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