

# Association Health Plans Expanded Under DOL Final Rule

## Labor & Employment Law Update

By Kelly Haab-Tallitsch on July 10, 2018

On June 21, 2018, the US Department of Labor (DOL) published a final rule making it easier for a group or association of small employers to band together to buy health insurance. The rule allows employers that previously could only purchase small group health coverage to join together to purchase insurance in the less-regulated large group market.

The rule broadens the definition of an “association” that can act as a single “employer” to sponsor an Association Health Plan (AHP) under the Employee Retirement Income Security Act of 1974 (ERISA). Employers that pass a “commonality of interest” test based on geography or industry can form an association for the sole purpose of offering an AHP to their employees.

Under the new rule employers can show a commonality of interest if they are:

- In the same trade, industry or profession throughout the United States; or
- In the same principal place of business within the same state or a common metropolitan area, even if the metro area extends across state lines.

### ***Potential Benefits***

In most states employers with less than 50 employees must purchase health coverage in the small group market, which is subject to greater regulation (a few states set the cut off at 100 employees). Under the new rule, an association of employers with a total of 50 (or 100) or more employees among them will have access to the large group market. Why does this matter? Large group plans are exempt from some of the regulatory requirements imposed on small group health plans by states and the Affordable Care Act (ACA), including the requirement to provide coverage for 10 essential health benefits. This will allow an AHP to offer a “skinnier” (and cheaper) plan than those available in the small group market.

AHPs may also help employers leverage the bargaining power of a larger group and reduce administrative costs through economies of scale. The regulations also enable AHPs to self-insure, subject to state oversight, an option not previously available to most small employers. Sole proprietors may also

participate in an AHP.

### ***Considerations***

AHPs are still subject to nondiscrimination regulations. Coverage of an individual cannot be restricted based on any health factor or denied based on a preexisting condition.

Because AHPs are not subject to the same rules as small group health plans, employers must read the fine print and understand the details of the coverage they are purchasing. AHPs are closely regulated by state and federal regulations and compliance will continue to be complex. AHPs are a type of a multiple employer welfare arrangement (MEWA), which are generally required to file a Form M-1 and a Form 5500 annually unless otherwise exempt.

### ***Implementation Timeline***

The new rule will be phased in beginning in September 2018, at which time fully-insured AHPs may begin to operate under the rule. Existing self-insured AHPs may begin to operate under the new rule on January 1, 2019 and new self-insured AHPs can begin on April 1, 2019.

## Association Health Plans Expanded Under DOL Final Rule