Contraceptive Mandate Accommodation Requirements Are Holding Strong Despite Recent Supreme Court Opinion

Labor & Employment Law Update

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There have been very few if any health care policies as controversial as the Affordable Care Act (ACA). One of its most talked about provisions, the contraception mandate, again made headlines this past month, especially here in the Seventh Circuit. Unless you were living under a rock or enjoying a tropical vacation without Wi-Fi last July, you've heard of *Burwell v. Hobby Lobby, 134 S. Ct. 2751 (2014),* the Supreme Court decision that held corporations controlled by religious families cannot be required to pay for contraception coverage for their female workers, contrary to the contraception mandate found in the ACA. This decision sparked the attention of the nation but, although lost in most of the media coverage, was a decision that applied to only a handful of employers.

Just last month, the Supreme Court revived the University of Notre Dame's challenge to the contraceptive mandate accommodation under the ACA that applies to religious nonprofit organizations (RNO). This accommodation to the customary mandate requires RNOs to tell the Health and Human Services Department in writing that they object to the mandate on religious grounds and their insurance provider must then provide the mandated contraception coverage. In its February 2014 decision, *Univ. of Notre Dame v. Sebelius, 743 F.3d 547 (7th Cir. 2014)*, the Seventh Circuit upheld the accommodation and denied Notre Dame's argument that it was unenforceable. However, just last month the Supreme Court vacated the decision and asked the Court to determine if the subsequent *Hobby Lobby* decision impacts the outcome. The parties filed their respective position briefs on April 7th. The government argued *Hobby Lobby* has no impact and the accommodation should remain, while faith-based Notre Dame argued it's a substantial burden against religious beliefs and thus the prior decision must be reversed.

What does this mean for employers? If you are not a closely held corporation controlled by a religious family (a very small group qualifies), or a RNO (albeit a much larger group), this means nothing. If you are an RNO, it is important to remember your contraceptive mandate accommodation requirements are still

intact. The Supreme Court did not attack the Seventh Circuit's decision, it did not waive the accommodation requirement for RNOs, and it did not extend *Hobby Lobby* to apply to any other employer group. As such, there should be no change in policy or practice and there should be no expectation that a change is imminent as the Seventh Circuit is anticipated to affirm its prior ruling.