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Federal Judges Halt Expanded Exemption From ACA Contraceptive Mandate

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In back-to-back decisions, two federal district court judges have blocked implementation of a Trump administration rule that would exempt more employers from the Patient Protection and Affordable Care Act (ACA) requirement that employer-sponsored group health plans cover birth control supplies and services as preventive care without cost-sharing. *State of California v. Health and Human Services*, No. 17-cv-05783-HSG (U.S. District Court for the Northern District of California, January 13, 2019). *Commonwealth of Pennsylvania v. Trump*, No. 2:17-cv-04540-WB (U.S. District Court for the Eastern District of Pennsylvania, January 14, 2019).

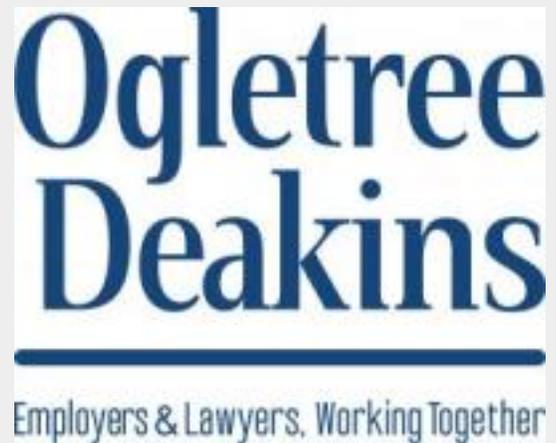
The now-stalled rule would have significantly broadened the number of employers that could claim exemption from the ACA's birth control coverage mandate. The rule both broadened the religious exemption and also created a "moral" exemption from the mandate. The U.S. District Court for the Northern District of California's order barred implementation of the rule in only the 13 states joined as plaintiffs in the case and the District of Columbia. The next day, the U.S. District Court for the Eastern District of Pennsylvania's order halted implementation of the rule nationwide. The rule was scheduled to go into effect on January 14, 2019.

Background

The ACA requires employer-sponsored group health plans to cover specified preventive care and screenings without cost-sharing by the employee. When the ACA went into effect, the U.S. Department of Health and Human Services' (HHS) Health Resources and Services Administration considered birth control and birth control counseling to be preventive services that must be covered with no cost-sharing; however, nonprofit religious employers were granted an accommodation under a religious exemption to that rule: they need not provide birth control coverage if they self-certify that they meet the requirements of the religious exemption and give notice of their exemption to their insurance carrier, which must then provide the birth control coverage to the organization's employees. Subsequent court decisions and rulemaking expanded the availability of the exemption to closely held for-profit entities.

The Final Rule

[The rule at the center of these cases](#) was issued pursuant to President Trump's [Executive Order 13798](#), which directed the U.S. Department of the Treasury, Department of Labor (DOL), and HHS to consider issuing amended regulations to address conscience-based objections to the ACA preventive care mandate. The resulting final rule broadened the existing religious exemption by extending it to *any* entity or individual that holds a sincere religious belief objecting to coverage of birth control. It also further expanded the exemption to include entities and individuals that hold a *moral* objection to covering birth control and made the established self-certification process optional.



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The January 2019 Cases

The plaintiff states allege that the final rule violates current law, including the federal Administrative Procedure Act, Title VII of the Civil Rights Act of 1964, and the U.S. Constitution. They also presented evidence that the states will bear the costs of consequences of the rule. After a hearing, both the California and Pennsylvania district courts concluded that the final rule should be put on hold until the courts can fully hear the cases on their merits and determine whether the final rule is legally sound.

What's Next?

Until the nationwide injunction is lifted, the previous rules for religious exemption from the ACA's birth control mandate will apply. Under those rules, religious employers, closely held for-profit entities, and individuals with sincerely held religious beliefs objecting to coverage of contraception need not cover such services, but they must certify either to their plan's health insurer or third-party administrator (TPA) that they satisfy the religious exemption, or they must self-certify as much to the DOL or HHS. The insurer or TPA must then provide or arrange for payment for contraceptive services.

Catholic organizations that joined the litigation to challenge the final rule have appealed both cases. The U.S. Court of Appeals for the Ninth Circuit's website indicates that there is presently no change to its operations due to the partial federal government shutdown. The U.S. Court of Appeals for the Third Circuit's website indicates that the court is open but that government filing deadlines in nonemergency cases will be suspended during the shutdown.

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