HINSHAW

The Affordable Care Act's Contraceptive Care Mandate Applies to Covered For-Profit Corporate Employers

2 min read

Oct 28, 2013

By: Ambrose V. McCall

On October 24, 2013, the U.S. Court of Appeals, Sixth Circuit, held that a for-profit natural foods corporation could not establish that it can exercise religion, and therefore could not use the Religious Freedom Restoration Act, (RFRA), as a vehicle to challenge the contraceptive care requirements created by the Affordable Care Act. *Eden Foods, Inc. v. Sebelius*, No. 13-1677 (6th Cir. Oct. 24, 2013). In addition, the Sixth Circuit held that the plaintiff corporation's chairman, president and sole shareholder lacked standing to challenge the obligations solely imposed upon the corporate employer. The framing of the issues by the Court points out that what tripped up plaintiffs' attempt to obtain a court order exempting the employer from the contraceptive care requirements did not arise from the U.S. Constitution.

For employers covered by the Act, Congress required that their group health plans supply "additional preventive care and screenings" for women as detailed in cited guidelines supported by the Health Resources and Services Administration. The guidelines at issue specified that covered employers and health plans had to provide "[a]ll Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity." The cited guidelines exempt religious employers, who are identified as qualifying non-profit entities that meet certain Internal Revenue Code requirements and to whom certain accommodations are provided. [Employers covered by the cited mandate who fail to supply a health plan with the mandated contraceptive care coverages become subject to a daily fine of $100 for each day the non-compliance occurs. Additional penalties may be assessed to a non-compliant covered employer for failing to offer employees any health insurance coverage.]

The trial court denied the plaintiffs' motion that sought a court order stopping enforcement of the contraceptive coverage requirements. One of the grounds relied upon by the trial court was the weak relationship between the religion of the plaintiff and activity by someone else that is condemned by the plaintiff's religion. The trial court also rejected the plaintiffs' First Amendment free-exercise of religion claim in the absence of authority that extended such claims to secular for-profit corporations.

The Sixth Circuit promptly affirmed and stressed that it had recently rejected another similar challenge to the contraceptive care coverage mandated by the Affordable Care Act. The Sixth Circuit underscored that with respect to the individual corporate officer plaintiff, he lacked standing under corporate law to bring a claim in his individual capacity. The corporate co-plaintiff is a distinct entity with its own rights and obligations. Moreover, the Affordable Care Act places contraceptive care coverage obligations on the corporate employer, and not the corporate officer.

The claims of the corporate plaintiff under the RFRA failed because as a for-profit commercial entity, it cannot exercise religion as understood by the RFRA. Of some interest, the Third Circuit opinion relied upon by the Sixth Circuit involves one or more parties seeking review by the U.S. Supreme Court. In sum, the reality is that the contraceptive care coverage mandate has the force of law. Furthermore, the cited mandate is not easily, if at all, subject to challenge by for-profit covered employers. With other parties seeking judicial review from the U.S. Supreme Court on this issue, many employers will consult with their insurance professionals to obtain compliant contraceptive care coverages and watch any continuing battles from the sidelines due to their long-shot nature and additional expense.

Topics

Affordable Care Act