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Supreme Court Creates Limited Contraceptive Exemption from Affordable Care Act Requirements

On Monday, June 30, the U.S. Supreme Court barred the federal government from penalizing several closely held, for-profit corporations for failing to cover morning-after pills and intrauterine devices ("IUDs") under their employee group health insurance plans. In Burwell v. Hobby Lobby Stores, 573 U.S. ____ (2014), the Court ruled that the corporations in question were exempt from the penalty because their refusal to cover these modes of contraception constituted a protected form of religious expression.

The employer shared responsibility provisions of the Patient Protection and Affordable Care Act of 2010, as amended (the "ACA"), require large employers to offer full-time employees minimum essential health coverage or pay a fine should one of those full-time employees receive a subsidy to buy health insurance on a public health insurance exchange. The Department of Health and Human Services ("HHS") stipulates that minimum essential coverage includes coverage for all Food and Drug Administration ("FDA")-approved forms of contraception, including morning-after pills and IUDs.

The corporations in question claimed that providing coverage for the morning-after pill or an IUD violated their religious principles and sought protection from the employer shared responsibility penalty under the Religious Freedom Restoration Act of 1993, as amended ("RFRA"). RFRA provides that a "person" need not comply with any federal action that substantially burdens his or her religious exercise unless the federal government can prove the action is the least restrictive means to further a compelling government interest.

The Court sided with the corporations and held they could not be penalized under the ACA for failing to cover the aforementioned forms of contraception. The Court's rationale is based on (i) RFRA's definition of "person," which the Court found included for-profit, closely held corporations, and (ii) the Court's conclusion that the government has other less restrictive means at its disposal to ensure women can access FDA-approved forms of contraception.

While this decision is receiving widespread media attention, it is unclear how large an impact it will have on the ACA and employer-provided group health plans. In its ruling, the Court noted that the corporations in question were all private, for-profit corporations run by separate families that had clearly demonstrated the mutuality and sincerity of their religious convictions. The Court did not speculate on whether the outcome of the case would have been different had the corporations been publicly owned. Rather, it said it would be unlikely for a public corporation to raise a claim under RFRA, as it would be difficult, if not impossible, for the corporation to ascertain the shared religious convictions of its shareholders.

If you have any questions about the Hobby Lobby decision, the ACA, or any other employee benefits or executive compensation matter, please contact a member of Day Pitney's Employee Benefits and Executive Compensation group.

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