# DOL Proposes to Rescind 2018 Association Health Plan Rule

The original rule, had it not been vacated by a federal court, would have significantly relaxed the parameters for creating an association health plan.

*Reported by* PAUL MULHOLLAND

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The Department of Labor on Tuesday proposed to formally rescind a rule finalized in 2018 that was intended to make it easier to form and join association health plans. The 2018 rule was vacated by the U.S. District Court for the District of Columbia in 2019.

The DOL press release explained that the 2018 rule made it easier for small and individual plans to be treated as large group plans in order to evade some of the requirements and protections of the Affordable Care Act.

"A lot of it has to do with getting around the Affordable Care Act rules," says Roberta Casper Watson, a partner with the Wagner Law Group. The district court decision also remarked that the rule was "clearly an end-run around the ACA."

Watson explains that the Employee Retirement Income Security Act includes the concept of employer associations in its definition of employer. Under ERISA, an association can be considered an employer for the purposes of creating a health plan, but "there were several rules that are hard to comply with" in order to be classified as one prior to the 2018 rule.

According to Watson, an association must exist for a legitimate business purpose and not merely to create a health plan; there must be a "commonality of interest" among the members, such as belonging to the same industry; and member employers must "exercise control over the plan in form and substance."

The 2018 rule made it easier to become an association health plan by liberalizing these standards. It permitted associations to be created for the purpose of making a plan; expanded the commonality requirement to include geographic proximity; and added the concept of a working owner, meaning a small business owner with no employees.

In 2019, a federal court determined that this rule violated ERISA because it effectively permitted associations that did not resemble an employer relationship to act as if they had such a relationship with their members.

Assistant Secretary of Labor Lisa Gomez, in an interview with PLANSPONSOR, explains that the 2018 rule "provided guidance on under what circumstances employers or associations of different entities could set up what are called association health plans and by doing so, they would be treated as a large group coverage rather than individual or small group health coverage."

She adds that "we have been working on what the response to that court case should be and so we issued this proposal earlier this week, which is a proposal to formally rescind that rule and to get comments from the public about where we should be moving forward."

A comment period will remain open until February 20, 2024.

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**Tags** ACA, association health plans, DOL, EBSA, ERISA, The Wagner Law Group

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