

EMPLOYMENT SERVICES ALERT

7/2/13

Court Rules Hobby Lobby Can Challenge the Affordable Care Act's Contraception Mandate and Will Not Have to Pay Fines

On June 27, 2013, the Tenth Circuit Court of Appeals in Denver ruled that Oklahoma City-based arts-and-crafts retailer Hobby Lobby Stores, Inc. may contest the contraception mandate provision of the Affordable Care Act and will not have to pay fines in the meantime. This decision is a significant victory for opponents of the federal birth-control coverage mandate.

The family-owned company (along with its sister company Mardel, Inc., a chain of Christian bookstores) is challenging the law, which requires businesses to provide employee health insurance coverage for contraceptives, as a violation of religious freedom. The reprieve gives Hobby Lobby more time to argue in a lower court that for-profit businesses – not just currently exempted religious groups – should be allowed to seek an exception if the law violates their religious beliefs. Hobby Lobby is arguing that the mandate violates the faith of company founder and CEO David Green and his family. Conversely, the government argues that allowing for-profit corporations to exempt themselves from requirements that violate their religious beliefs would be in effect allowing the business to impose its religious beliefs on employees.

The appeals court remanded the case for more argument, but the judges indicated that Hobby Lobby has a reasonable chance of success. "We hold that Hobby Lobby and Mardel . . . have established a likelihood of success that their rights under this statute are substantially burdened by the contraceptive-coverage requirement, and have established an irreparable harm." Hobby Lobby faced fines of \$100 per day for each employee it refused to cover beginning July 1. With more than 13,000 employees, the company would have faced fines of at least \$1.3 million per day, or almost \$475 million per year, had the appeals court not ruled in their favor.

Roetzel will continue to monitor this case and provide further updates as litigation progresses. It would not be surprising if this issue ultimately comes before the Supreme Court for final adjudication.

Roetzel remains ready and able to assist you with all of your ACA compliance issues. For additional information, please contact any of the following attorneys:

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