EMPLOYMENT SERVICES ALERT

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High Court Holds Closely Held Corporations Can Avoid Contraception Mandate for Religious Reasons

By Anne Prenner Schmidt and Nathan Pangrace

On June 30, 2014, the Supreme Court ruled that Hobby Lobby and other family owned and closely held for-profit companies can opt out of the Affordable Care Act's requirement to provide no-cost prescription contraception in most health insurance plans. Hobby Lobby's owners had objected on the grounds of religious freedom. The cases are *Kathleen Sebelius et al. v. Hobby Lobby Stores Inc.* et al., case number 13-354, and *Conestoga Wood Specialties v. Sebelius et al.*, case number 13-356, in the U.S. Supreme Court.

In enacting the Affordable Care Act (ACA), Congress required large employers to provide basic preventive care for employees, including all birth control methods approved by the FDA. Under the law, religious nonprofits were exempted from this requirement, but for-profit corporations were not.

The ruling affirms a Hobby Lobby victory in a lower court and gives new standing to similar claims by other companies. Justice Samuel Alito wrote the majority opinion. Dissenting against the majority were Justices Stephen Breyer, Elena Kagan, Ruth Bader Ginsburg and Sonia Sotomayor. In a concurring opinion, Justice Anthony Kennedy wrote that the federal government could choose to pay for contraception coverage, eliminating the issue decided today.

In a 5-4 vote, the majority held that the Religious Freedom Restoration Act (RFRA) applies to closely held companies and shields them from providing contraception coverage to their employees. “RFRA's text shows that Congress designed the statute to provide very broad protection for religious liberty and did not intend to put merchants to such a choice," Justice Alito wrote for the court. "Protecting the free-exercise rights of closely held corporations thus protects the religious liberty of the humans who own and control them."

In the majority opinion, Alito indicated that employees could still be able to obtain the birth control coverage via an accommodation to the mandate that the Obama administration has already introduced for religious-affiliated nonprofits. The accommodation allows health insurance companies to provide the coverage without employer involvement in the process.

Under the accommodation, eligible non-profits must provide a "self-certification," described by one lower court judge as a "permission slip" authorizing insurance companies to provide the coverage.

Although the ruling appears to be a clear victory for the companies that brought the case and for perhaps 50 to 60 other companies like them with similar objections to the contraceptive requirement, the decision appeared to be limited. It does not appear to open the door to other types of religious-exemption claims by companies, as the high court refused to expand its ruling to other medical practices such as blood transfusions or vaccinations, regardless of an employer's religious beliefs.

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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