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Federal Court Temporarily Enjoins Application Of Contraceptive Mandate To A Local Business

August 21, 2012 | | Employee Health Issues,Labor And Employment

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On July 27, 2012, the Senior Judge John Kane of the United States District Court for the District of Colorado temporarily enjoined the application of part of the Patient Protection and Affordable Care Act (ACA) to a local business while the business and its owners challenge whether the ACA infringes upon their free exercise of religion.

In *Newland v. Sebelius*, several members of the Newland family own Hercules Industries, Inc. (Hercules), a Colorado corporation engaged in the manufacture and distribution of heating, ventilation, and air conditioning products and equipment. The Newlands are Catholic, and object to the use of abortifacient drugs, contraception, or sterilization. As a result, Hercules has a self-insured group health plan that does not cover these items.

A provision of the ACA, commonly known as the contraceptive mandate, requires most health plans to provide coverage for contraceptive services. The contraceptive mandate “grandfathers” many healthcare plans that existed on March 23, 2010, and also provides as exception for certain non-profit religious employers. The Newland family and Hercules argued that the contraceptive mandate violates their right to freely exercise their religion. The court granted a injunction against the application of the contraceptive mandate to Hercules for three months. The court reasoned that the plaintiffs had raised “questions going to the merits . . . so serious, substantial, difficult, and doubtful as to make the issue ripe for litigation and deserving of more deliberate investigation.” The three month injunction is designed to permit the court time to further examine this issue.

Of note, the court found that the government did not show a compelling interest in enforcing the contraceptive mandate because the exceptions to the mandate excluded millions of Americans. Further, the government failed to show that the contraceptive mandate was the least restrictive means for accomplishing the stated goals of the law.

Across the country, there are several other pending lawsuits challenging the constitutionality of the contraceptive mandate, but the vast majority of those lawsuits have been brought by non-profit religious employers. This case suggests that the religious liberties of the owners of for-profit companies may limit the application of contraceptive mandate and other generally applicable laws. Employers and practitioners should watch the future developments in the *Newland* case to see how the courts will define the boundaries of religious liberty.

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