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Labor & Employment Alert July 2014

United States Supreme Court Issues Decision on Contraception Insurance Coverage Mandate

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In a 5-4 decision in Burwell v. Hobby Lobby, Inc., the United States Supreme Court held on June 30, 2014, that closely held, for-profit corporations can claim a religious exemption from the Affordable Care Act's requirement to provide insurance coverage for contraception. Justice Alito, writing for the Court, wrote that such a requirement violates the Religious Freedom Restoration Act of 1993 (RFRA), which prohibits the federal government from taking action that substantially burdens the exercise of religion unless the action is the least restrictive means of serving a compelling state interest.

The Court held that requiring closely held, for-profit corporations to pay for insurance coverage for contraception substantially burdened the exercise of religion where the owners of closely held, for-profit corporations had religious objections to abortion and where they considered the contraceptive methods at issue, such as the so-called "morning after pill," to cause abortion to be induced. The Court further held that mandating closely held corporations to provide insurance coverage for contraception was not the least restrictive means of achieving the government's interest of providing women with free contraception.

In a dissenting opinion, Justice Ginsburg (joined by Justice Sotomayor and, for the most part, by Justices Kagan and Breyer) wrote that the majority's decision is broader than it claims and will allow commercial enterprises to opt out of any law (except tax laws) that conflicts with their religious beliefs. Justice Ginsburg was concerned that the majority was extending religious rights to for-profit corporations.

In a concurring opinion, Justice Kennedy wrote that the majority's decision is not as broad as the dissent views it. Justice Kennedy highlighted the fact that because religious exemptions and accommodations have already been provided under the Affordable Care Act to some organizations, such as churches, schools, religious hospitals and non-profits, such accommodation could be extended to closely held, for-profit corporations.

This decision only affects whether closely held, for-profit corporations must comply with the contraception mandate. Other employers subject to the Affordable Care Act's pay or play provisions,

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including public sector employers and publically held companies, would still have to comply with the contraception mandate or face possible penalties.

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For questions about pending or proposed laws or regulatory enforcement priorities, and how they will affect your operations, please contact Katherine Hesse or Brian Fox or the attorney assigned to your account.

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