



UBA
Compliance Advisor

What every HR leader should know about compliance



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October was a relatively quiet month in the employee benefits world.

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District Court Vacates Parts of ACA Section 1557 Nondiscrimination Rule

As background, the Patient Protection and Affordable Care Act (ACA) [Section 1557](#) provides that individuals shall not be excluded from participation in, denied the benefits of, or be subjected to discrimination under any health program or activity which receives federal financial assistance from the Department of Health and Human Services (HHS), on the basis of race, color, national origin, sex, age, or disability. The current rule applies to any program administered by HHS or any health program or activity administered by an entity established under Title I of the ACA. These applicable entities are "covered entities" and include a broad array of providers, employers, and facilities. On May 13, 2016, the Department of Health and Human Services (HHS) issued a [final rule](#) (current rule) implementing Section 1557, which took effect on July 18, 2016.

On October 15, 2019, the U.S. District Court for the Northern District of Texas (District Court) [vacated](#) portions of the current rule implementing Section 1557 that prohibit discrimination on the basis of gender identity and pregnancy termination. The District Court remanded the vacated portions of the current rule to HHS for revision. While those portions of the current rule have been vacated, covered entities subject to Section 1557 may still face private lawsuits for discrimination based on gender identity and pregnancy termination.

Employers who are subject to Section 1557 should stay informed on this litigation because it is anticipated that the District Court's ruling will be appealed to the Fifth Circuit Court of Appeals.

Please see our UBA Advisors "[Update on Nondiscrimination Regulations Relating to Sex, Gender, Age, and More](#)" and "[Update on Nondiscrimination Regulations Relating to Sex, Gender, Age, and More - for Health Care Providers](#)" for more information.

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On January 13, 2019, the U.S. District Court for the Northern District of California (California Court) granted a [preliminary injunction](#) that prohibits the final rules' implementation and enforcement against California, Connecticut, Delaware, Hawaii, Illinois, Maryland, Minnesota, New York, North Carolina, Rhode Island, Vermont, Washington, Virginia, and the District of Columbia. On October 22, 2019, the U.S. Court of Appeals for the 9th Circuit [affirmed](#) the California Court's preliminary injunction that prohibits the two final rules' implementation and enforcement against the thirteen plaintiff states and the District of Columbia.

[Read more](#) about the status of the final rules.

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