



Published: July 24, 2020

# Supreme Court Affirms Expansion of ACA Contraception Exemptions

Charmaine Naut | Capital Management Enterprises, Inc | 610-265-9677 | [cnaut@cme-group.com](mailto:cnaut@cme-group.com)

The Supreme Court recently ruled in a 7-2 decision to uphold regulations that expand the Affordable Care Act (“ACA”) contraception exemptions.

The ACA requires all non-grandfathered group health plans to cover, without cost sharing, certain preventive care items and services, including contraceptive services. Religious employers are exempt from the contraceptives mandate. Certain religious non-profits and closely held for profit organizations with religious objections may qualify for an accommodation.

The regulations at issue in this Supreme Court decision permit non-governmental employers, institutions of higher education, and individuals with seriously held religious or moral objections to cease providing coverage for some, or all, contraceptive services.

With the Court’s decision, employers with religious or moral objections to providing some, or all, of the mandated contraceptives under the ACA may qualify for an exemption. However, as discussed in this article, additional challenges to these regulations are expected.

## Supreme Court Decision

The Supreme Court held that the religious and moral objection exemption rules promulgated by the Departments were a valid exercise of their authority under the ACA.

Further, there were no procedural issues the Departments violated in issuing the contraception exemption rules under the Administrative Procedures Act. The Court reversed the Third Circuit’s decision and remanded the case for the Third Circuit to dissolve the nationwide injunction consistent with the Court’s ruling.

In both concurring and dissenting opinions, various justices indicated it is likely these cases will continue to be fought in the lower courts on other legal grounds. In fact, shortly following the Supreme Court’s decision, the New Jersey and Pennsylvania Attorneys General indicated they will argue that the Department’s regulations are arbitrary and capricious under the Administrative Procedures Act, an issue not addressed in the lower court decisions.

## Employer Action

The Supreme Court’s decision may permit more employers to exclude some or all contraceptives from their group health plans based on religious and/or moral objection. However, this is unlikely to be the final word on this issue. As these cases are likely to continue in the lower courts, employers who are considering removing coverage for contraceptives based on the Supreme Court’s decision should discuss implications with counsel. In addition, state insurance laws may limit an employer’s ability to exclude such coverage from a fully insured plan.