

## INSIGHTS + NEWS

## Client Alert: Three Federal Courts Strike Down U.S. Department of Health and Human Services' Conscience Protection Rule

NOVEMBER 21, 2019

Three federal courts recently struck down the U.S. Department of Health and Human Services' ("HHS") "Conscience Protection Rule" (the "Rule"), which was expected to go into effect on November 22, 2019.

Purporting to enforce pre-existing "conscience laws" that had been enacted by bipartisan majorities in Congress, the Rule protected the rights of certain employees of healthcare institutions that receive federal funds to refuse to participate in certain healthcare procedures based on religious or moral objections, such as abortion, sterilization and assisted suicide. Covered hospitals, health plans and local governments that compelled their workers to perform such tasks despite objections would have been subject to penalties, including a potential loss of all federal funding.

In response to the Rule's proposal in May 2019, numerous states, the District of Columbia, local governments, healthcare organizations and non-profit healthcare advocacy groups lodged several challenges in federal courts across the country.

On November 6, 2019, the U.S. District Court for the Southern District of New York struck down the Rule in a detailed 147-page decision. Finding that the Rule violates the Administrative Procedure Act and the U.S. Constitution, the Court stated that HHS did not have the authority to impose major portions of the rule and that HHS' stated justification for the Rule — an alleged significant increase in civilian complaints relating to the conscience provisions — was factually untrue. The Court also held that the Rule conflicted with Title VII's provisions allowing an employer to not accommodate an employee's religious beliefs when: (a) doing so would be an "undue hardship" on the employer; or (b) the employer has offered the employee an alternative "reasonable accommodation." Although the Court left the door open for HHS to issue a new rule, it specifically noted that HHS must do so within the confines of the APA and the Constitution.

The U.S. District Court for the Eastern District of Washington then struck down the Rule on November 7. On November 19, the U.S. District Court for the Northern District of California followed suit and held that the Rule's issues were so significant that it had no choice but to vacate the Rule in its entirety.

HHS has not yet appealed the decisions and other federal court actions remain pending. Employers should be aware that striking the Rule does not change an employee's existing rights under Title VII of the Civil Rights Act and applicable state anti-discrimination laws.