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Employee Benefits: Trends, Traps, and Tomorrow's Challenges

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Ever-Evolving Landscape of Employee Benefits



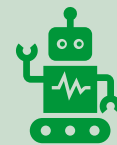
Recent Legislative Highlights



Recent Regulatory Highlights



Recent Litigation Highlights



Artificial Intelligence (AI) in Benefits

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Legislative Updates

Qualified Retirement Plans



SECURE 2.0 Act Implementation – Background



Signed into law at the end of 2022



Transforms many aspects of retirement plans



Intended to enable more retirement plan savings



Some provisions of SECURE 2.0 Act require **MANDATORY** changes, while others are **OPTIONAL**

SECURE 2.0 Act Key Required Provisions

Long-Term, Part-Time Employees

- Employees who meet the definition of a long-term, part-time employee must be eligible to participate in the 401(k) plan
- Service requirement decreased from 3 consecutive years to 2 beginning this year, 2025

"Super" Catch-Up Contributions

- Mandatory for plans that allow catch-up contributions
- Increased catch-up contributions limit for participants aged 60-63 to the greater of (1) \$10,000 (indexed), or (2) 150% of the regular catch-up limit (which would be \$11,250 in 2025)

Mandatory Roth Catch-Up Contributions for High Earners

- Catch-up contributions must be made on a Roth (after-tax) basis for any participants whose prior-year FICA wages were over \$150,000 (indexed)

SECURE 2.0 Act Key Optional Provisions



Enhanced Access to 401(k) Accounts

Hardship Distributions, Terminal Illness, Emergency Withdrawals, Domestic Abuse Victim Emergency Withdrawals, Short-Term Emergency Savings Accounts, Birth & Adoption Distributions



Auto-Portability

Allows third-party administrators to transfer default IRAs of participants into the plans of their employer
Starting to see some plans adopt this and sign service agreements with auto-portability providers

Legislative Updates

Health and Welfare Plans



One Big Beautiful Act (OBBA) – Health Plan Changes

Telehealth Safe Harbor

- Permanently permits HDHPs to offer **first-dollar coverage for telehealth services** without affecting HSA eligibility
- Effective for plan years beginning on and after January 1, 2025

Direct Primary Care

- Permits individuals to remain HSA-eligible even if receiving **direct primary care services** provided by primary care practitioners for a fixed fee
- Monthly fixed fee limits: \$150 (individuals) / \$300 (families)
- Must cover only primary care services
- Effective as of January 1, 2026

One Big Beautiful Act (OBBA) – Welfare Plan Changes

Dependent Care FSA Limit Increase

- Annual cap raised from **\$5,000 to \$7,500**
- Effective for tax years on and after January 1, 2026

Educational Assistance Programs

- Permanently permits **Education Assistance Programs to pay or reimburse student loan payments on tax-free basis** under Code §127
- Employers may contribute up to **\$5,250/year tax-free**
- Excludible amount indexed for inflation starting in 2027

Moving Expenses

- **Permanently suspends exclusion** of employer-paid moving expenses
- Exception for Armed Forces and members of the intelligence community

Pharmacy Benefit Manager Legislation

States emboldened by *Rutledge v. PCMA (2020)* to regulate PBMs more aggressively

- Over 30 PBM-related bills were passed across 20 states in 2024
- All 50 states considering some form of legislation by mid-2025

Some state laws require PBMs to report certain information to the state and impose penalties for noncompliance

- Florida and Arkansas now require PBMs to submit detailed reports on pricing, rebates, and pharmacy reimbursements, with penalties for noncompliance—even for self-funded plans operating across state lines

Some states have passed more aggressive laws affecting network access, cost-sharing incentives, and pharmacy choice

- Courts have held, for self-funded plans, ERISA preempts “any willing provider” and network adequacy laws because it interferes with plan design and administration

Implications for self-funded plans

- Increased compliance complexity for multi-state employers
- Potential cost increases and reduced flexibility in plan design due to state-imposed PBM restrictions

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Catch-Up Contributions Regulations

Background

- SECURE 2.0 requires that certain high-income employees make all catch-up contributions on a Roth basis
- This requirement was originally due to go into effect in 2024, but IRS provided an “administrative transition period” until 2026
- The IRS recently issued final regulations on catch-up contributions in September

Key Points

- The Roth catch-up contributions requirement must be implemented starting on **January 1, 2026**
 - The Roth catch-up requirement for most plans goes into effect in **2026** per the statute, SECURE 2.0
 - The final regulations will apply beginning in **2027** (or later for collectively bargained plans); until then, plans may rely on a reasonable, good faith interpretation of the regulations
- Plan may have a “deemed election” feature in which an affected individual who elected to make catch-up contributions is deemed to have elected to make them as Roth catch-up contributions
- Implementation will require interaction/coordination between company, payroll provider and TPA more than other 401(k) plan features

Cybersecurity Guidance

Background

- DOL initially issued three pieces of guidance related to cybersecurity in 2021
- One piece of guidance, "Cybersecurity Program Best Practices," sets forth 12 best practices that ERISA plan service providers should incorporate into their cybersecurity program
- In 2024, the DOL updated its cybersecurity guidance to clarify that it applies to all ERISA-governed plans

Key Points

- Cybersecurity remains a critical topic for the DOL – e.g., plan audits include a set of cybersecurity-related questions
- The duty to monitor plan service providers is encompassed in the ERISA fiduciary duty of prudence, so plan fiduciaries have an obligation to ensure that all plan service providers have a robust, comprehensive cybersecurity program consistent with the DOL guidance
- "Best practices" are not optional in practice

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Affordable Care Act Regulations and Guidance

Preventive Services Update

Braidwood Management, Inc. v. Becerra (2025)
ACA-covered group health plans must continue to cover *without cost-sharing* preventive services rated "A" or "B" by the US Preventive Services Task Force (USPSTF)

ACA requires all vaccines recommended by ACIP (CDC's Advisory Committee on Immunization Practices) for routine use in children, adolescents, and adults must be covered without cost-sharing

ACIP has been reevaluating the vaccine schedules and made some updated recommendations

COBRA statutes prohibit a group health plan from reducing its coverage of pediatric vaccines below the coverage level in place by the group health plan as of May 1, 1993

Employer Reporting

Employers no longer required to automatically distribute Forms 1095-C/1095-B to employees

Forms must still be filed with the IRS but only provided to individuals upon request

In July 2025, the IRS updated Internal Revenue Manual (IRM 25.21.3)

Clarified procedures for ACA compliance enforcement, including audits of Employer Shared Responsibility Payments

Emphasizes proper filing of Forms 1094/1095-C and accurate offer of coverage reporting

Drugs Costs and Price Transparency

Drug Costs and Tariff Driven Disruptions

- U.S. tariffs expanded in 2025 which may raise generic drug prices
- Risk of supply chain shortages for certain therapies (antibiotics, generics, injectables)

Pharmacy Benefit Manager (PBM) Price Transparency

- President Trump signed an Executive Order directing the DOL to propose regulations by October 12, 2025, to extend ERISA's fee-disclosure rules under § 408(b)(2) to PBMs used by employer group health plans
- PBMs would have to fully disclose direct and indirect compensation

Medicare Part D Creditable Coverage

- Revised simplified determination methodology
- For 2026, non-RDS plans may continue to use the current simplified determination methodology

Other Regulatory Hot Topics

Mental Health Parity

- DOL issued a nonenforcement policy with respect to the 2024 final rules
- Statutory requirement continue to apply
- More guidance is expected (timing unknown)

HIPAA Privacy Rules

- Northern District of Texas largely vacated the HIPAA Reproductive Health Care Rules
- However, certain updates were severed and remain applicable including certain required updates to a group health plan's HIPAA Notice of Privacy Practices

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Litigation Updates

Qualified Retirement Plans



Retirement Plan Litigation Updates

"Quadfecta" of Fee Litigation

- Litigation strategy where plaintiffs allege four simultaneous fiduciary breaches in retirement plan management
- Excessive recordkeeping fees, high managed account fees, underperforming investment funds and improper use of forfeitures

Cunningham v. Cornell University

- Supreme Court Decision issued on April 17, 2025
- Lowers the bar for ERISA prohibited transaction claims to survive early dismissal and shifts burden to fiduciaries to prove exemptions apply

Action Steps for Plan Sponsors

- Benchmark all fees, services and investments regularly
- Monitor plan service providers and investment fund performance and document monitoring efforts
- Establish and follow a clear forfeiture policy aligned with plan terms

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ASO Vendors Acting as Plan Fiduciaries

<i>Tiara Yachts, Inc. v. Blue Cross Blue Shield of Michigan</i>	Functional fiduciary status applies even if duties are contractual
Allegations:	BCBSM overpaid claims using “flip logic” and retained claw-back recoveries via its Shared Savings Program
Claims:	Breach of fiduciary duty, prohibited transactions under ERISA §§ 502(a)(2) and (a)(3)
Key Factors:	Increased scrutiny of TPAs and PBMs as functional fiduciaries; lack of transparency in claims processing
Impact:	Employers must reassess TPA contracts and clarify fiduciary roles. TPAs may be deemed fiduciaries if they control plan assets or compensation

Health Plan Excessive Fee Litigation

Navarro v. Wells Fargo

Allegations: Plan paid inflated prices for generic drugs; PBM retained excessive fees

Claims: Breach of fiduciary duty, prohibited transactions

Key Factors: Lack of PBM oversight, use of conflicted brokers, failure to adopt cost-saving models

Impact: Employers must document fiduciary processes and consider pass-through PBM models

Outcome: Dismissed for lack of standing but plaintiffs may refile

Lewandowski v. Johnson & Johnson

Allegations: Plan Sponsor failed to negotiate lower drug prices with PBM resulting in excessive premiums and out-of-pocket costs.

Claims: Breach of fiduciary duty, failure to monitor PBM, prohibited transactions

Key Factors: Rising drug costs, lack of competitive bidding, PBM spread pricing

Impact: Employers must monitor PBM contracts and pricing structures; litigation risk increases if fiduciary oversight is lacking

Stern v. JPMorgan Chase

Allegations: Plan Sponsor ignored cost-saving recommendations, retained conflicted PBM, and subordinated plan interests to business relationship

Claims: Breach of fiduciary duty, prohibited transactions

Key Factors: lack of transparency and oversight in PBM contracting, failure to benchmark or negotiate drug prices, growing scrutiny of vertical integration

Impact: Employers must monitor PBM, regularly assess PBM contracts and pricing structures, and consider cost-saving options

Wellness Plan Litigation

Allegations:	Wellness plan surcharges violate ERISA and HIPAA by failing to offer reasonable alternative standards or failing to provide full rewards, or having inadequate disclosures
Claims:	Fiduciary breach, discrimination based on health status
Key Factors:	Regulatory complexity, DOL enforcement, tobacco surcharges draw scrutiny
Impact:	Employers must ensure wellness programs meet ERISA/HIPAA standards and provide clear participant communications

Financial Dominance Claim

<i>Barbich v. Northwestern University</i>	Alleges novel theory of financial dominance as a basis for fiduciary breach
Allegations:	Offering a high-premium PPO that is “financially dominated” by a lower-cost option breaches fiduciary duty
Claims:	Imprudence, disloyalty, failure to monitor
Key Factors:	Application of retirement plan fiduciary standards to health plan design
Impact:	Employers may face scrutiny over plan option structures; settlor vs. fiduciary function distinction is key

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Artificial Intelligence in Employee Benefits



Artificial Intelligence in Employee Benefits



Plan service providers may be using AI tools – plan sponsors should understand what tools are being used, how the results are reviewed, and address use AI in the services agreement



AI tools may assist Plan Sponsors with conducting RFPs or RFIs by aiding with data gathering or the review process



AI may potentially become the next wave of employee benefits litigation



AI tools are being used to file lawsuits (e.g., platforms like Darrow AI easily search annual filings to identify plans deficiencies and potential claims)

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Questions



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