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Administration's Proposed FY25 Budget Includes Employee Benefits Proposals

The Biden Administration released its proposed budget for the 2025 fiscal year on March 11, 2024 – just days after the President's State of the Union address to Congress. Two things that are typically true of a President's proposed budget are also true for this latest version as well: a number of proposals relating to employee benefits are included; and the proposed budget will mostly be ignored by Congress. Nonetheless, the proposed budget provides valuable insights into the Administration's policy objectives for the coming year.

Retirement and Executive Compensation Proposals

The proposed budget includes numerous retirement and executive compensation-related proposals, almost all of which are repeats from prior Biden Administration proposals. These include, for example, a $10 million lifetime cap on IRA and defined contribution plan accumulations for certain high-income taxpayers.

Another interesting (but not new) proposal would undo a previous change that accelerated the due date for PBGC premiums for 2025 by one month in order to raise revenue needed to pass the Bipartisan Budget Act of 2015. The Biden budget would shift the premiums back to their regular due date. Unlike other proposals in the budget, this one has a reasonable chance of being enacted at some point, although probably not this year.

Finally, one updated executive compensation proposal would expand the scope of the Code section 162(m) $1 million cap on deductible compensation. Significantly, the proposal would make the cap applicable to all C corporations, whether publicly or privately held, and with respect to all employees. Currently, the cap generally applies only to the top 5 highest paid employees.

More details on these and other retirement and executive compensation proposals are included in the Treasury Department's Green Book and the Department of Labor's FY 2025 Budget in Brief.

Health and Welfare Proposals

Like last year's proposed budget, the FY 2025 proposals would propose new limitations on advance funding of retiree health benefits for current retirees. But unlike last year, the FY 2025 proposals do not include changes to the tax treatment of fixed indemnity health plans. However, that is because the IRS will be addressing those issues in regulations that are expected to be published in the near future.

Also of interest, the proposed budget would require group health plans to cover mental health and substance use disorder benefits. This would be a dramatic shift from current law, which only requires plans to maintain parity between medical and surgical benefits and mental health and substance use disorder benefits if the plan chooses to offer such benefits.

One new proposal would expose group health plan third-party administrators (TPAs) to excise taxes that are now imposed solely against plan sponsors if certain requirements – including mental health parity and the ACA's group health plan mandates – are not satisfied. Under the proposal, this $100 per participant per day penalty could be imposed against the TPA to the extent the TPA is responsible for the failure.

Mandatory Paid Leave

Similar to previous budgets, the FY25 budget proposes to guarantee employees up to 12 weeks of paid leave to bond with a new child; care for a seriously ill loved one; heal from their own serious illness; or address circumstances arising from a loved one's military deployment; find safety from domestic violence, dating violence, sexual assault, or stalking ("safe leave"); or up to three days to grieve the death of a loved one. The FY25 budget also proposes a paid sick leave entitlement of 7 days per year.

Additional details on these and other proposals are included in the Treasury and Labor Department documents linked to above. The complete proposed budget for FY25 is available here.

Mandatory State-Run Retirement Programs Continue to Gain Momentum

In response to widespread concerns about the retirement preparedness of many Americans, a growing number of states have turned to enacting their own state-run retirement programs that are mandatory for certain employers that do not already offer an employer-sponsored retirement plan. The last few years have seen a wave of new state programs launch, other states enact new laws requiring such programs, and still other state legislators introducing bills for state-run programs.

New Plan Launches

With the launch of Virginia's RetirePath Virginia program in June 2023 and Maine's MERIT program in January 2024, a total of eight states have now launched their own "mandatory automatic IRA programs," which generally require employers that do not already maintain a private retirement plan to enroll their employees in the program. Although each state-facilitated program has its own unique design, typically, employees enrolled in the program can save for retirement through an IRA that is managed by the program (subject to the employee opting out).

RetirePath Virginia, for example, requires non-governmental employers in Virginia to facilitate the program for eligible employees if the employer (1) has at least 25 eligible employees; (2) has been in operation for at least two years; and (3) does not already sponsor a qualified retirement plan for its employees. Employers that voluntarily sponsor a retirement plan for their employees are exempt from the program's mandate.

Similarly, the employer mandate for Maine's MERIT program applies to employers that (1) have five or more employees; (2) have been in business during both the current and prior calendar years; and (3) do not already offer a qualified retirement plan to some or all of their employees.

Plans Under Development

Several additional states have enacted laws establishing retirement programs with an employer mandate and are currently in the process of developing the programs. Vermont's VT Saves Program, for example, has announced that it anticipates a full launch in the second half of 2024. Other states are still in the more preliminary stages of development, such as Hawaii, Minnesota, and New York.

As more and more mandatory programs have been developed, states have gotten faster at implementing the programs. Streamlining the development process even further, in 2023, the Colorado Secure Savings Program launched an interstate partnership with other state programs in order to coordinate on program design and administration, financial service partners, and marketing. Maine and Delaware are currently members of the partnership, and other states are reportedly in talks with Colorado to join. (A small number of states have enacted programs that are voluntary in nature, but these are less common and often have trouble acquiring enough participation from employers to sustain the program.)

Looking Forward

With at least a dozen state legislatures currently considering similar mandatory auto-IRA program legislation in 2024, the growth of state-run retirement programs shows no signs of stopping. Even for employers that already sponsor their own retirement plan and are therefore exempt from any program mandates, it is still important for them to be aware of these developments in case – as currently happens to some degree with respect to many state mandatory paid leave programs – they are required to certify or register their exemption with the state auto-IRA program.

District Court Rules that a Religious Trade Group's Members Cannot be Required to Cover Gender-Affirming Health Care Treatment

A North Dakota district court recently ruled that employers that are members of a specific Christian trade organization and receive federal funding cannot be required by the Equal Employment Opportunity Commission ("EEOC") and the Department of Health and Human Services ("HHS") to provide gender transition health care services to employees because it would violate their religious beliefs regarding gender identity.

Background

Section 1557 of the ACA prohibits a federally funded or administered health program from denying benefits to, or subjecting to discrimination, an individual on certain grounds. Title VII of the Civil Rights Act of 1964 prohibits discrimination against employees on the basis of sex. In an expansion of Title VII, in 2020, the Supreme Court ruled in *Bostock v. Clayton County* that Title VII protects employees against discrimination based on their sexual orientation, including their transgender status.

The EEOC and HHS enforce Title VII and the ACA, respectively, subject to restrictions in the Religious Freedom Restoration Act ("RFRA"), which generally prohibits the federal government from substantially burdening a person's religious exercise. Through regulations and other actions, the EEOC and HHS have interpreted Title VII and section 1557 of the ACA as prohibiting employers' group health plans from denying claims for certain otherwise covered services because they are being sought as gender-affirming treatment.

District Court Case

In 2021, the Christian Employers Alliance ("CEA") – a trade organization whose members include conservative Christian non-profit and for-profit employers – sued HHS and the EEOC, alleging that both the EEOC's and HHS's mandates requiring employers to comply with the health care coverage rules for gender-affirming treatment violated their religious beliefs, as protected under the RFRA. The CEA also argued that the federal government's mandates violated its rights under the First Amendment to express its views on gender identity.

In its March 4, 2024 decision, the U.S. District Court for the District of North Dakota issued a permanent injunction prohibiting the federal government from enforcing its rules and regulations requiring CEA members to provide gender-affirming treatment through their health care plans. The court reasoned that a permanent injunction was appropriate because the federal government's mandate would substantially burden CEA members' exercise of religion, and, if forced to comply with the mandate, CEA members would have to act contrary to their sincerely held religious beliefs, in violation of both the First Amendment and the RFRA. Addressing the defendants' arguments, the court found that while protecting transgender employees was a compelling interest, the government did not provide any evidence that its policies requiring the coverage of gender-affirming treatment were the only feasible means to achieve this interest.

While the ruling has limited applicability because it is restricted to CEA members receiving federal funds under the jurisdiction of the Northern District of North Dakota – and the federal government may still appeal – this case is an important development in the ongoing evolution of the legal and regulatory landscape for providing health benefits to transgender individuals.

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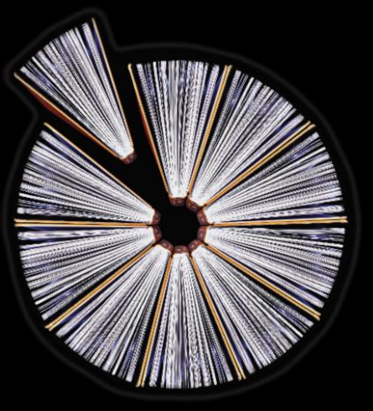

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