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EEOC Finalizes Regulation Implementing the Pregnant Workers Fairness Act

In April, the Equal Employment Opportunity Commission ("EEOC") finalized its regulations implementing the Pregnant Workers Fairness Act ("PWFA"), which requires covered employers to provide reasonable accommodations in the workplace for employees with certain pregnancy- or childbirth-related conditions. The regulations will go into effect on June 18, 2024.

Background and Overview of PWFA

The PWFA, which has been in effect since June 2023, requires employers covered by the law to provide reasonable accommodations for employees (or applicants) who have a "known limitation," which the statute defines as a physical or mental condition that is related to, affected by, or arises out of pregnancy, childbirth, or related medical conditions and that the employee has communicated to the employer. The definition encompasses a wide range of limitations, including conditions such as migraines or morning sickness and the need to limit certain physical tasks such as lifting heavy objects.

Borrowing from the Americans with Disabilities Act, the PWFA provides that a reasonable accommodation may include making existing facilities readily accessible to the employee, modifying work schedules, and modifying equipment or devices. However, an employer is not required to provide a reasonable accommodation if it causes the employer an "undue hardship," meaning an action requiring significant difficulty or expense. The PWFA also prohibits covered employers from requiring an employee to take leave if a reasonable accommodation could be provided that would let them continue to work.

Employers covered by the law include public and private sector employers with 15 or more employees, congressional offices, federal agencies, employment agencies, and labor organizations. The PWFA does not replace other federal, state, or local laws that are more protective of pregnant workers.

Regulations

On August 11, 2023, the EEOC published proposed regulations to implement the PWFA. The proposed regulations explained the scope of the term "known limitations," provided examples of reasonable accommodations, and detailed the process for an employee to request an accommodation. (A more thorough explanation of the proposed regulations is available at Rewards Policy Insider 2023-18.)

Following a public comment period, the EEOC released final regulations on April 15, 2024. Highlights of the final regulations include:

- Examples of Reasonable Accommodations. Like the proposed regulations, the final regulations provide a number of examples on possible reasonable accommodations under the PWFA. The examples include allowing additional breaks to eat, drink, or rest; granting time off requests for health care appointments; temporarily suspending certain job duties; and allowing the employee to telework.
- Supporting Documentation. The final regulations clarify that an employer is not required to seek supporting documentation regarding an employee's request for an accommodation and should only do so when it is reasonable under the circumstances. The regulations provide examples of when seeking supporting documentation would

be inappropriate. In one such example, a pregnant employee requests that the functions of her job that require her to be around certain chemicals are temporarily suspended. The employer requests confirmation of the pregnancy through an ultrasound, even though the employer already has sufficient information to determine that the employee has a pregnancy-related condition and needs an adjustment in her job. By comparison, the final regulations do not provide any examples of when seeking supporting documentation would be "reasonable." However, risk-averse employers probably should probably avoid asking for supporting documentation except for very limited circumstances. In addition, employers should not assume that it would be reasonable to ask for supporting documentation in any situation that the final regulations do not specifically identify as "unreasonable."

- Accommodation Only Applies to Pregnant Individual. In response to some public comments asking for clarification on whether the proposed regulations required employers to provide reasonable accommodations to an employee when the employee's partner, spouse, or family member – but not the employee themselves – has a pregnancy- or childbirth-related condition (e.g., a spouse is experiencing anxiety due to their partner's pregnancy), the final regulations provide that the PWFA does not require such accommodations.

The final regulations go into effect on June 18, 2024.

IRS Issues Inflation-Adjusted Health Savings Accounts Limits for 2025

The Internal Revenue Service recently published Rev. Proc. 2024-25 to provide inflation-adjusted limits for high-deductible health plans (HDHPs) and health savings accounts for 2025.

The updated limits are summarized in the following table:

	2024	2025
Annual Contribution Limit -- Self	$4,150	**$4,300**
Annual Contribution Limit -- Family	$8,300	**$8,550**
Age 55+ Catch-up Contribution	$1,000	**$1,000**
HDHP Minimum Deductible -- Self	$1,600	**$1,650**
OOP Max -- Self	$8,050	**$8,300**
HDHP Minimum Deductible -- Family	$3,200	**$3,300**
OOP Max -- Family	$16,100	**$16,600**

The revenue procedure also provides that the maximum amount that can be made newly available for an Excepted Benefit HRA during plan years beginning

in 2025 will be $2,150, up from $2,100 for 2024 plan years. An Excepted Benefit HRA is a special standalone HRA that, in addition to the annual limit on employer contributions, may not be used to reimburse health insurance premiums and must meet certain other requirements.

Other inflation-adjusted limits for health and welfare plans, including the salary reduction limit for health flexible spending arrangements (FSAs), will be announced by the IRS later this year.

Department of Labor Proposes Retirement Plans Voluntarily Provide Information to Build Upcoming Lost and Found Database

In connection with the requirement in the SECURE 2.0 Act of 2022 ("SECURE 2.0") to create a "Lost and Found" online database to allow retirement plan participants to look up information about retirement accounts that they have lost track of, the Department of Labor ("DOL") recently issued a proposal to have plan administrators voluntarily provide plan information in order to establish the database.

Background

Section 303 of SECURE 2.0 requires DOL, in consultation with the Treasury Department, to establish the Retirement Savings Lost and Found, an online searchable database that will allow retirement plan participants to locate contact information for: (1) the plan administrator of any plan from which they are owed a benefit; (2) the trustee or issuer of an automatic rollover IRA; and (3) the issuer of a distributed annuity contract issued on their behalf. The aim of the Lost and Found is to connect individuals to retirement assets that they have lost track of. This can occur, for example, when an employee has a retirement account associated with one employer, changes jobs, and then the former employer goes out of business or merges with another company. Plans may also have trouble communicating with plan participants or their beneficiaries because of inadequate recordkeeping practices and faulty procedures for searching for individuals for whom they have incorrect or incomplete contact information.

SECURE 2.0 requires the Lost and Found to be established by the end of 2024. Although DOL officials have stated that they are aiming to meet that deadline and are currently working on developing the database, they have indicated that this project is a massive, complex undertaking. It is still unclear when the Lost and Found will be up and running and ready to collect information from plans.

Information Collection Request

On April 15, 2024, DOL released a proposed Information Collection Request ("ICR") pertaining to the Lost and Found. One major uncertainty regarding the Lost and Found has been how DOL would populate the database and keep the information up to date. In the past, DOL has indicated that the agency would

– at least in the initial stages – populate the database using information collected by the Internal Revenue Service ("IRS") on Form 8955-SSA, which is used to report information relating to participants who separated from service and are entitled to a retirement benefit under the plan but are not paid that benefit. However, DOL states in the ICR that the IRS declined to provide DOL with this information, citing concerns with a provision in the Internal Revenue Code that requires tax returns and return information to be kept confidential. As a workaround, the ICR proposes that plan administrators (or their authorized representatives, such as recordkeepers) voluntarily provide certain information to DOL so that it can establish and operate the Lost and Found. The ICR envisions that the information reported to DOL would be provided by plan administrators in an attachment to their Form 5500 submitted through the ERISA Filing Acceptance System (EFAST2). DOL would provide a spreadsheet file template and would make available a model format that plan administrators could use to submit the information.

The proposal has elicited concerns from many plans and service providers about the voluntary sharing of the requested information with DOL. Many data privacy laws and service provider agreements permit the sharing of participant data as required by law, but since the sharing of information for the Lost and Found would be voluntary, plans and providers would need to make sure such reporting is permissible under those laws and contracts. In addition, the proposed ICR asks for information dating back to the date a covered plan first became subject to ERISA (or as far back as possible, if shorter). This has raised some eyebrows because the collection of this information would fall outside the scope of section 303 of SECURE 2.0, which appears to suggest that DOL would collect information for the Lost and Found for plan years beginning in 2024 and later. Comments on the proposal are due by June 17, 2024.

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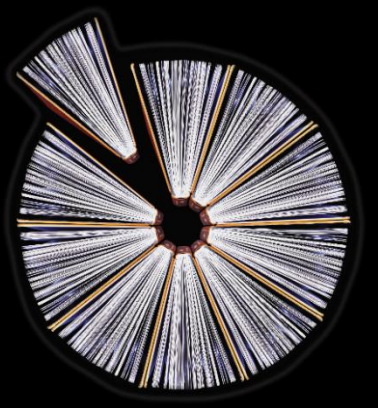

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