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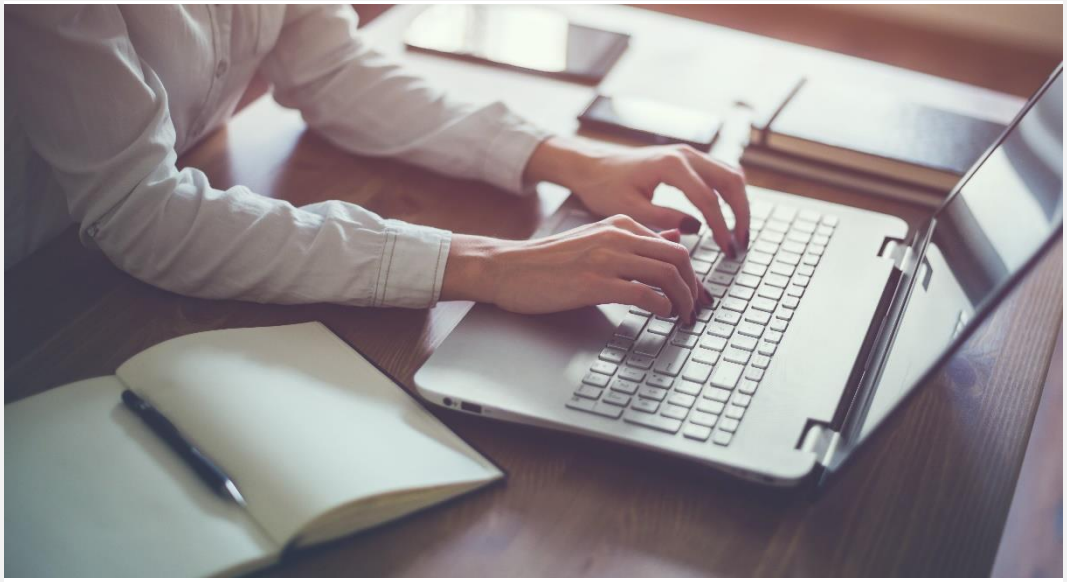

In this Issue:

Supreme Court Eliminates Chevron Deference: What Does that Mean for Employee Benefits Regulations?

For the last 40 years, Federal courts – when faced with challenges to the validity of Executive branch agency regulations – have generally deferred to the agency's reasonable interpretation of ambiguous statutes. This is known as "*Chevron* deference," based on the 1984 Supreme Court decision that established the controversial standard of review. On June 28, the Supreme Court reversed itself, meaning courts are no longer required to defer to agency interpretations, whether reasonable or not. What could this mean for legal challenges to employee benefits-related regulations – including the new fiduciary rule?

Legal challenges to new regulations are common, and regulations affecting employee benefit plans have not been spared. There are multiple active cases challenging the Department of Labor's new fiduciary rule, which was issued in April and is scheduled to take effect in September, and the upcoming final mental health parity regulations may spur lawsuits as well.

Whether, and to what extent, the elimination of "*Chevron* deference" as a standard of review will affect these and future legal challenges to employee benefits regulations remains to be seen. Courts can still consider an agency's interpretation, and may be reluctant to substitute their own interpretation unless the agency's interpretation is clearly not supported by the statute.

Furthermore, Congress can limit the potential impact of the Supreme Court's decision by giving agencies specific authority in the statute to interpret its terms or fill in gaps, as needed.

Does the Decision Only Affect New Regulations?

The Supreme Court made clear that its decision would apply only prospectively so as not to undermine cases that upheld regulations based on *Chevron* deference. However, in a separate case also decided this term, the Supreme Court ruled that the 6-year statute of limitations on challenging the validity of a regulation runs from the date the plaintiff is injured, and not from the date the regulation was issued. That decision might create opportunities for plaintiffs to initiate new challenges to older regulations in the post-*Chevron* deference environment.

This is an evolving situation that Rewards Policy Insider will continue to monitor and report on as needed.

State Law Update: Developments in Mandatory Retirement Programs & Paid Leave

In an exceptionally busy year for the development of state-run retirement programs, two states – Washington and Rhode Island – have enacted mandatory retirement program laws in recent months. Two other states – New Jersey and Delaware – launched their own programs over the summer. And in Maine, the public comment period recently closed on draft regulations for the state's paid family and medical leave law.

New Mandatory Retirement Program Laws

Over the past decade, many states have responded to worries about Americans' ability to save for retirement by enacting their own state-run retirement programs. These programs generally require certain private-sector employers who do not already offer a retirement plan to automatically enroll their employees who do not opt-out in the state-run program, which facilitates the employees saving through an IRA (i.e., "mandatory auto-IRA programs"). In 2024, two additional states – Washington and Rhode Island – have enacted such laws. This brings the total number of states that have enacted a program with an employer mandate to 17.

In March 2024, the governor of Washington signed a law establishing the Washington Saves Program, which will generally require private sector employers that have five or more total full-time employees, have been in business in Washington state for at least two years, and do not offer a retirement plan (such as a 401(k)) to enroll their Washington employees in the program. Employers that already offer a plan are exempt from the program's mandate.

In late June, Rhode Island enacted the Rhode Island Secure Choice Retirement Savings Program, a mandatory auto-IRA program that generally will apply to private sector employers that have five or more employees and do not offer either a retirement plan (such as a defined benefit plan or 401(k)) or an automatic enrollment payroll deduction IRA. Like the Washington law, employers that already offer a plan are exempt. The time from enactment of a mandatory auto-IRA program law to the actual launch of the program has varied widely across different states, so it is uncertain when these programs will launch.

New Program Launches

Joining the eight states that have already launched mandatory auto-IRA programs, New Jersey and Delaware opened their programs in late June and early July, respectively. New Jersey's "RetireReady NJ" mandatory auto-IRA program has employer registration deadlines of September 15, 2024 (for employers with 40 or more employees) and November 15, 2024 (for employers with 25-39 employees). Delaware's "EARNS" mandatory auto-IRA program requires all employers to register by October 15, 2024. Typically, these programs send out notices to employers they believe are covered by the mandate, which direct the employer to either register with the program or certify that they are exempt.

Public Weighs in on Maine Paid Leave Regulations

In 2023, Maine enacted a paid family and medical leave law which will, beginning in 2026, require employers to provide covered workers with up to 12 weeks of

paid time off for certain family and medical reasons. The law applies to most employers in the state, including state departments and agencies, cities and towns, and private sector employers of any size. Leave covered under the law includes time off for an employee to bond with their newborn child, to care for a family member with a serious health condition, to take safe leave because the individual or their family member is a victim of domestic violence, or time off if the individual has a serious health condition. Employer premium contributions to the program will begin in January 2025.

Earlier this year, the Maine Department of Labor released draft regulations to clarify and expand on certain aspects of the law. One notable clarification is that the draft regulations outline the process for employers to apply for a private plan substitution. In addition, the draft regulations exclude from coverage two groups of employees who were not excluded in the statute – college students who earn wages as part of the federal Work-Study program and incarcerated individuals earning wages. By the time the public comment period on the laws closed in early July, the Department had reportedly received nearly 300 comments. Now, the Department will review those comments and potentially make modifications before the program goes into effect.

Abortion Litigation Roundup: New Court Decisions Shape State and Federal Abortion Policy

To close out its 2023-2024 term, the Supreme Court ruled on two abortion related cases: one preserving access to the abortion drug mifepristone, and another deciding not to hear a case challenging Idaho's strict abortion ban. At the state level, the Iowa Supreme Court joined a growing number of state high courts weighing in on abortion, deciding that a near-total abortion ban can go into effect in the state.

Supreme Court's End-of-Term Decisions Implicate Abortion Rights

Two years after striking down the constitutional right to abortion in *Dobbs v. Jackson Women's Health Organization*, the Supreme Court tackled two abortion-related cases prior to the end of its 2023-2024 term. On June 13, 2024, the Supreme Court preserved access to mifepristone, which is now the most widely used method of abortion. In the unanimous ruling, the Court held that the plaintiffs – which included anti-abortion medical associations and several individual doctors – could not challenge the Food and Drug Administration's ("FDA") approval of mifepristone over two decades ago because they lacked legal standing to sue.

Just two weeks later, the Supreme Court declined to rule on a challenge to Idaho's near-total abortion ban. That case was brought by the Biden Administration, which sued the state of Idaho on the grounds that its restrictive abortion law violates the federal Emergency Medical Treatment and Labor Act ("EMTALA"). EMTALA generally requires doctors to treat emergency medical

conditions regardless of the patient's ability to pay. Months ago, the Biden Administration successfully convinced a lower court to strike down part of the Idaho law – specifically, provisions banning doctors from performing an abortion in order to protect the pregnant individual's health – by arguing that EMTALA requires hospitals and doctors to perform emergency abortions in such cases. However, when the Supreme Court agreed to hear the case in January 2024, it ruled that Idaho could temporarily enforce the entire law. The Supreme Court's decision in June to not hear the case – despite originally agreeing to do so – is largely seen as a sidestep to avoid weighing in on Idaho's abortion law for the time being. In light of the Supreme Court's dismissal, the case will return to the lower courts and continue to play out, and in the meantime, doctors and hospitals in Idaho will be able to perform abortions in emergency situations to protect the pregnant individual's health.

Restrictive Iowa Law Set to Go into Effect

At the state level, on June 28, 2024, the Iowa Supreme Court ruled that the state's "fetal heartbeat" law can go into effect, relying on its own 2022 decision which held that abortion is not a fundamental right under the Iowa Constitution. The law bans all abortions after the detection of a fetal heartbeat, with few exceptions, such as for medical emergencies. Originally enacted in 2023, the law was blocked by a lower court shortly after its enactment. The exact date that the fetal heartbeat law will go into effect is not yet known, as the case must return to the lower court for further proceedings before becoming effective. In the meantime, abortion will remain legal in Iowa for up to 20 weeks.

Moving into the latter half of 2024, we expect to see additional developments on abortion in several states. Most notably, voters in several states, such as Maryland, New York, and Florida, will take to the polls in November to vote on abortion-related referenda.

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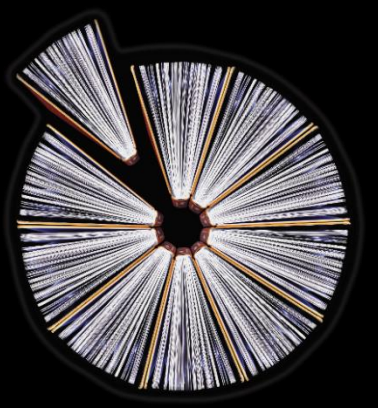

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