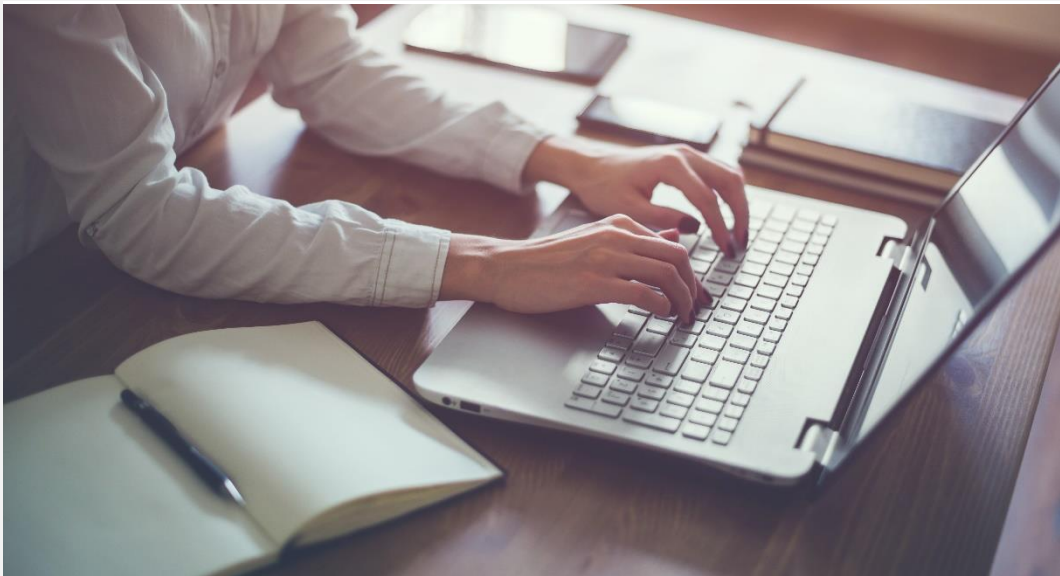




Rewards Policy Insider 2024-25



In this Issue:

1. Agencies Announce Employee Benefit Plan Relief in Light of Recent Hurricanes
2. COMPLIANCE REMINDER: Group Health Plan “Gag Clause” Attestation Due by December 31, 2024
3. Paid Sick Leave Laws Approved by Voters in Three States
4. Before Turning to Next Year, the 118th Congress Still has Work to do

Agencies Announce Employee Benefit Plan Relief in Light of Recent Hurricanes

As a result of Hurricanes Helene and Milton affecting residents of several states, the Department of Labor (“DOL”) and the Internal Revenue Service (“IRS”) issued guidance providing relief to health and retirement plan sponsors and participants that extends various requirements and deadlines.

Background

When major natural disasters occur, DOL and IRS occasionally release guidance to give affected employee benefit plan sponsors and participants additional time to comply with various requirements and deadlines under ERISA. Typically, the guidance provides relief by delaying the deadlines that apply to employee benefit plans, plan sponsors and fiduciaries, plan service providers, and participants and beneficiaries. The agencies have released this guidance in the past to address disasters such as tornadoes, severe winter storms, and the COVID-19 pandemic.

Relief for Hurricanes

Following the devastation of Tropical Storm Helene, Hurricane Helene, and Hurricane Milton, DOL and the IRS issued guidance for plans and participants impacted by the storms (referred to as the Covered Disasters). The guidance includes three documents:

- [Disaster Relief Notice 2024-01](#). Notice 2024-01 provides relief from various ERISA requirements and deadlines otherwise due beginning from the first day of the applicable “Incident Period” and ending on May 1, 2025 (the “Relief Period”). The applicable Incident Periods, which are described in the Notice, are dependent on the affected state (i.e., Florida, Georgia, North Carolina, South Carolina, Tennessee, and Virginia). For example, the Incident Period for disaster areas in Florida began on September 23, 2024. Highlights of the relief include:
 - **Good faith relief.** An employee benefit plan and the responsible plan fiduciary will not violate ERISA for failing to timely furnish an ERISA-required notice, disclosure, or document that must be furnished during the Relief Period if the plan and fiduciary act in good faith and furnish the document as soon as administratively practicable under the circumstances.
 - **Loans and distributions.** A retirement plan will not be treated as failing to follow procedural requirements for plan loans and distributions imposed by the terms of the plan if: (1) the failure is solely attributable to a Covered Disaster; (2) the plan administrator acts in good faith; and (3) the plan administrator makes a reasonable attempt to correct any deficiencies as soon as administratively practicable.
- [Joint Notice Extending Employee Benefit Timeframes](#). A joint notice published by DOL and the IRS extends certain timeframes for employee benefit plan participants affected by the Covered Disasters. The joint notice provides that covered plans must disregard the relevant Relief Period for plan participants, beneficiaries, qualified beneficiaries, or claimants affected by the Covered Disasters when determining whether

participants and beneficiaries timely perform certain actions relevant to: (1) HIPAA's special enrollment periods for group health plans; (2) COBRA's continuation coverage rules; and (3) most relevant to retirement plans, the ERISA deadlines for participants and beneficiaries to file benefits claims and appeals (including external appeals in the case of non-grandfathered group health plans). These extensions can have a significant impact on plans, since they must hold certain rights (such as COBRA election rights) open for much longer than otherwise would be the case.

- [FAQs for Participants and Beneficiaries](#). DOL and the IRS also published a series of FAQs designed to answer questions for health and retirement plan participants and beneficiaries who were affected by the Covered Disasters and who are trying to determine and/or receive their benefits. For example, the FAQs explain that if a participant's place of employment temporarily closes because of a Covered Disaster, the participant is generally still covered under the existing health plan despite the temporary closure.

COMPLIANCE REMINDER: Group Health Plan “Gag Clause” Attestation Due by December 31, 2024

Group health plans and health insurance issuers must submit their annual attestations of compliance with rules banning certain “gag clauses” in contracts with providers and others by December 31, 2024.

Background

The Consolidated Appropriations Act, 2021 (“CAA 2021”) amended the Code, ERISA, and the Public Health Service Act to prohibit group health plans and group health insurance issuers from entering into agreements with health care providers, a network of providers, third-party administrators (“TPA”) or other service providers offering access to a network of providers that include certain “gag clauses.” For this purpose, a “gag clause” refers to any direct or indirect:

- restrictions on the disclosure of provider-specific cost or quality of care information or data to referring providers, the plan sponsor, participants, beneficiaries, or enrollees, or individuals eligible to become participants, beneficiaries, or enrollees of the plan or coverage;
- restrictions on electronic access to de-identified claims and encounter information or data for each participant, beneficiary, or enrollee upon request and consistent with HIPAA and other privacy rules; and
- restrictions on sharing any information or data described above, or directing that such information or data be shared, with a business associate pursuant to the HIPAA privacy rule.

Additionally, the rules require group health plans and issuers to submit an annual attestation of compliance – the Gag Clause Prohibition Compliance

Attestation – to the Agencies. The attestation is due by December 31 of each calendar year.

Completing and Filing the Attestation

The attestation must be submitted by group health insurance issuers, and by fully-insured and self-insured group health plans. This includes ERISA plans, non-federal governmental plans, and Church plans subject to the Code. Group health plans that are “grandfathered” for purposes of the Affordable Care Act are subject to the prohibition on gag clauses, and also must file the annual attestation.

The Departments of Health and Human Services, Labor, and Treasury have established a website to receive the Gag Clause Prohibition Compliance Attestation. Instructions and other information, including a link to the page for submitting the Gag Clause Prohibition Compliance Attestation, is available [here](#).

Paid Sick Leave Laws Approved by Voters in Three States

In November, voters in Alaska, Missouri, and Nebraska approved ballot measures to implement paid sick leave laws. These laws will go into effect at different times during 2025.

Alaska

58% of Alaska voters approved [Ballot Measure No. 1](#), which, effective July 1, 2025, generally requires all employers in the state to provide their employees with paid sick leave. Employers with 15 or more employees must allow employees to accrue a minimum of one hour of paid sick leave for every 30 hours of work, up to 56 hours annually (unless the employer sets a higher limit). Employers with less than 15 employees must follow the same requirement, with the annual cap set at 40 hours. The law’s definition of “employee” generally includes all employees, but there are some narrow exceptions, such as apprentices and employees of non-profit organizations.

Employees must be permitted to use paid sick leave for: (1) an employee’s mental or physical illness, injury, or health condition; (2) care or assistance to the employee’s family member for the same reasons; or (3) absences necessary due to domestic violence, sexual assault, or stalking. Employers may require documentation for leave that lasts more than three consecutive workdays. Employers must give employees written notice of the leave policy when they commence employment, or within 30 days of the law going into effect, as applicable.

Missouri

[Proposition A](#), which was approved by 58% of voters, will institute paid sick leave in Missouri beginning on May 1, 2025. The law’s requirements for annual paid leave accrual are the same as the Alaska law. The law’s definition of employee excludes, for example, employees of non-profit organizations and individuals who are employed on a casual or intermittent basis.

Employees may use paid sick leave for: (1) an employee's mental or physical illness, injury, or health condition; (2) care of a family member for the same reasons; (3) closure of the employee's place of business or the employee's child's school or place of care due to a public health emergency; or (4) absence necessary due to domestic violence, sexual assault, or stalking. Employers may require reasonable documentation for earned paid sick time that lasts three or more consecutive workdays.

Employers must give employees written notice about the paid sick time policy within 14 calendar days of starting employment or beginning April 15, 2025, as applicable. It is expected that the Missouri Department of Labor will issue guidance clarifying certain aspects of the law.

Nebraska

Nearly 75% of Nebraska voters approved [Initiative Measure 436](#), under which, starting on October 1, 2025, employers that employ one or more employees in the state will be required to provide earned paid sick time for employees (not including employees who work in Nebraska for fewer than 80 hours in a calendar year). Small businesses – i.e., employers with 19 or fewer employees in 20 or more calendar weeks in the current or preceding year – are required to allow employees to accrue up to 40 hours of paid sick time in a year (one hour for every 30 hours of work), and employers with 20 or more employees must allow accrual of up to 56 hours.

Employees may use paid sick time for (1) an employee's mental or physical illness, injury, or health condition; (2) care of a family member for the same reasons; or (3) closure of the employee's place of business or the employee's child's school or place of care due to a public health emergency. The documentation requirements are very similar to those under the Alaska and Missouri laws. Employers must give employees written notice of the new leave policy at the commencement of employment or by September 15, 2025, as applicable. The Nebraska Department of Labor will be responsible for implementation and enforcement of the law.

What Does this Mean for Employers with Existing Leave Policies?

All three laws provide that employers with their own paid leave policies that make available an amount of paid leave sufficient to meet each law's requirements are not required to provide additional paid leave pursuant to the new law. As with other states that have paid leave laws, each of these states presumably will issue guidance to help employers determine what – if anything – they need to do to take advantage of these special rules.

Before Turning to Next Year, the 118th Congress Still has Work to do

Even though much of the focus now is on the priorities of the upcoming 119th Congress and the incoming Trump Administration, the 118th Congress still has work to do during the final weeks of 2024. The top priority is

keeping the federal government funded and operating after December 20, when the current temporary funding resolution expires. But there is still a chance for action on certain legislation of interest to employer-sponsored health plans.

Here are some of the relevant legislative initiatives that could be included in an end-of-session health legislative package:

- **Extension of the Special Telehealth Safe Harbor for HSA-compatible high-deductible health plans (HDHPs).** Currently, HSA-compatible HDHPs can provide first-dollar coverage for telehealth services. This special rule first appeared during the COVID-19 pandemic and has been extended several times previously. However, the current safe harbor will not be available for plan years beginning on or after January 1, 2025 unless Congress extends it again. There is support for a permanent extension, but another temporary extension is the more likely outcome.
- **Special Telehealth Rules for Medicare.** There is also support for a 2-year extension of certain telehealth flexibilities for the Medicare program, which are scheduled to expire at the end of 2024. These include extending the authority to provide audio-only telehealth services, as well as the temporary moratorium on the requirement for Medicare beneficiaries to have an in-person visit within 6 months of their first tele-mental health service.
- **Pharmacy Benefit Manager Reform.** There is bicameral support for federal legislation regulating pharmacy benefit managers, or “PBMs.” However, House and Senate negotiators have struggled to develop a compromise package. If something does come together during the lame duck session, it will probably include rules relating to PBM transparency and disclosure.
- **Lowering Health Care Costs.** A broad set of legislative proposals aimed at lowering health care costs through health provider price transparency and site-neutral payment reforms, among other things, passed the House in late 2023. The vote in favor of the Lower Costs, More Transparency Act (H.R. 5378), which also includes some PBM-related provisions, was 320-71.

Earlier this year a series of proposals to enhance health savings accounts (“HSAs”) by increasing contribution limits and relaxing certain eligibility criteria, etc., was also being discussed as an option for a health package. But even if such a health package does materialize, it now seems unlikely that any HSA-related enhancements (other than possibly the telehealth safe harbor, discussed above) will be included. However, many of these proposals could be revived in the next Congress, when significant tax legislation is expected.

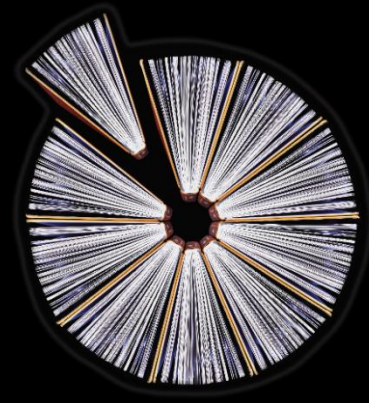
Whatever happens (or doesn't happen) during the next few weeks, RPI will be back in January to bring you up-to-date and help you prepare for what might be coming in 2025!

Visit the Archive

All previous issues of the Rewards Policy Insider are archived on Deloitte.com and can be accessed [here](#).

Don't forget to bookmark the page for quick and easy reference!

Upcoming editions will continue to be sent via email and will be added to the site on a regular basis.



Get in touch

Subscribe/Unsubscribe

This publication contains general information only and Deloitte is not, by means of this publication, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This publication is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional adviser. Deloitte shall not be responsible for any loss sustained by any person who relies on this publication.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte is a leading global provider of audit and assurance, consulting, financial advisory, risk advisory, tax and related services. Our global network of member firms and related entities in more than 150 countries and territories (collectively, the “Deloitte organization”) serves four out of five Fortune Global 500® companies. Learn how Deloitte’s approximately 330,000 people make an impact that matters at www.deloitte.com.

None of DTTL, its member firms, related entities, employees or agents shall be responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

© 2024 Deloitte Consulting LLP

To no longer receive emails about this topic please send a return email to the sender with the word “Unsubscribe” in the subject line.