



Rewards Policy Insider 2026-05



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Upcoming Compliance Reminders for Calendar Year Employee Benefit Plans

March 2026

31st: Forms 1094-C and 1095-C due to IRS

June 2026

1st: Prescription Drug Data Collection Reporting

Note: This is meant to be a reminder of certain upcoming compliance deadlines for employee benefit plans operating on a calendar year basis. It is not an exhaustive list of compliance obligations. Specific plans may be subject to different obligations and deadlines depending upon a variety of factors, including the plan type, plan year, and whether or not the plan is subject to ERISA, among other things.

Congress Passes PBM Reforms

Days after the Department of Labor issued proposed regulations to require pharmacy benefit managers (PBMs) to disclose specific information about how they are compensated to ERISA plan fiduciaries, Congress approved its own set of PBM-related reforms.

Background

As reported in RPI 2026-04, the Department of Labor (DOL) in late January issued proposed regulations under ERISA section 408(b)(2) to impose specific disclosure requirements on PBMs when contracting with ERISA group health plans. Even though ERISA section 408(b)(2) already includes extensive disclosure requirements for certain providers of brokerage and consulting services to group health plans, some have questioned whether those specific requirements apply to PBMs.

Only days later, in early February, Congress passed the Consolidated Appropriations Act, 2026 (CAA, 2026), which also includes some PBM-related reforms.

Mandatory Pass-Through of Rebates

One of the most significant changes is an amendment to ERISA section 408(b)(2) that will require PBMs to pass-through to the group health plan (or to the health insurance issuer) all rebates, fees, alternative discounts, and other remuneration they receive related to utilization of drugs or drug spending. This new requirement will apply to plan years beginning 30 months after the date of enactment, or August 3, 2027.

CAA, 2026 also amends ERISA section 408(b)(2) to clarify that it applies not just to PBMs, but to almost any service provider to ERISA group health plans. As a result, most service providers to ERISA group health plans will now be required to disclose all direct and indirect compensation they expect to receive in connection with their agreements. This change is effective immediately.

Additional PBM Disclosure

CAA, 2026 also amends ERISA, the Internal Revenue Code, and the Public Health Service Act to require PBMs to provide regular reports to the group health plans they work with. Unlike the changes to ERISA section 408(b)(2) discussed above, these new reports will be required for most group health plans – and not just ERISA plans.

These reports – which will generally be required at least twice a year but may be provided on a quarterly basis upon the group health plan’s request – will include specific information about the plan’s drug utilization and spending, among other things.

This requirement will become effective for plan years beginning 30 months after the date of enactment.

Litigation Spotlight: Forfeiture Class Actions Continue to Target Plan Sponsors

A wave of recent lawsuits challenges how plan sponsors use forfeited funds in their retirement plans. These class actions argue that ERISA prohibits employers from using forfeited funds to offset future employer contributions to participants’ accounts.

What are Plan Forfeitures?

When an employee leaves an employer before their retirement account funds have become fully vested, those funds are forfeited and go back to the plan. For example, consider an employer that sponsors a 401(k) plan and agrees to match employees’ contributions up to 6% of their compensation. In this example, the employer matches vest once an employee completes two years of service. If an employee leaves before the two-year mark, they would forfeit the matching funds.

The terms of the plan document typically outline how forfeitures may be used. For example, many plan documents provide that an employer, in its sole discretion, may use such funds to offset future employer contributions to employees’ retirement accounts or pay administrative expenses of the plan. It is common practice for retirement plans to use plan forfeitures to offset future employer contributions.

Forfeiture Litigation Overview

Since 2023, class action plaintiffs have filed over 70 lawsuits challenging plan sponsors' use of plan forfeitures. These lawsuits argue that an employer violates its fiduciary duties under ERISA when it uses forfeitures to reduce future employer contributions, even if the plan document specifically allows the plan to use forfeitures to do so. Rather, the lawsuits claim that, in order to comply with ERISA's basic requirements for fiduciaries to act solely in the interest of participants and beneficiaries, and to use plan assets only to pay benefits and reasonable administrative expenses, employers must first use forfeitures to pay recordkeeping and administrative fees (which would reduce the amount of plan participants' fees) or otherwise top up participants' accounts before using the funds to reduce employer contributions.

District courts have dismissed the majority of these cases, concluding that ERISA does not require plan sponsors to reduce the expenses paid by participants or allocate the funds to their accounts. Courts have also reasoned that the mere fact that an employer chooses to use forfeitures to fund future matching contributions – which is in many cases explicitly permitted by the plan document – is not sufficient to show a fiduciary breach. Courts have also cited Treasury Department guidance as support for the longstanding practice of using forfeitures to offset employer contributions.

What Employers Should Know

Because using plan forfeitures to offset employer contributions is relatively common among plan sponsors, employers should be aware of this ongoing wave of forfeitures litigation, especially since several cases are now pending in appellate courts. Depending on how the appellate courts rule, those rulings could either provide support for more forfeiture litigation or confirm that employers are well within their rights to use forfeited funds to offset employer contributions.

In the meantime, plan sponsors should review their plan document and ensure that the document explicitly describes how forfeitures may be used.

Fifth Circuit Becomes Latest Appeals Court to Rule on Arbitration Clauses in ERISA Plans

The Fifth Circuit Court of Appeals has joined the growing number of appellate courts finding that an arbitration clause in an ERISA plan is unenforceable because it denies the plaintiffs' rights given to them under ERISA.

Background

In general, plan sponsors are permitted to modify their plan at any time, as long as plan participants are properly notified. The Federal Arbitration Act ("FAA") is designed to enforce arbitration agreements and requires that parties consent to arbitration in order to form a valid agreement.

Fifth Circuit Ruling Addresses Arbitration Clauses

In February 2026, the [Fifth Circuit](#) became the latest appeals court to find that an arbitration clause in an ERISA plan was unenforceable.

The case involved a former employee of the defendant, who brought a class action lawsuit claiming that the plan sponsor violated its fiduciary duties under ERISA by improperly investing plan assets. When the plaintiff filed his case, the plan sponsor attempted to compel arbitration. The plan sponsor pointed to a retroactively effective arbitration clause that had been added to the plan in 2024. The plaintiff, who left the company in 2021, argued that he had never consented to the arbitration clause.

First, the Fifth Circuit concluded that, in the context of the plaintiff's specific type of ERISA claim, the question is not whether the individual plaintiff consented to the addition of the arbitration provision, but whether the plan itself consented. Therefore, the court brushed off the plaintiff's argument that the arbitration clause was invalid under the FAA because he had not consented.

Second, and most importantly, the Fifth Circuit concluded that the arbitration clause was invalid and unenforceable based on the "effective vindication" doctrine, which requires a court to invalidate arbitration agreements that waive a party's right to pursue remedies that are contained in a statute. The court held that the plan's arbitration provision violated this doctrine because the provision only allowed participants to sue and seek individualized relief rather than plan-wide relief. The court explained that the arbitration provision was clearly at odds with ERISA because ERISA explicitly allows plaintiffs to sue on behalf of the plan as a whole (not just on behalf of themselves).

Takeaway

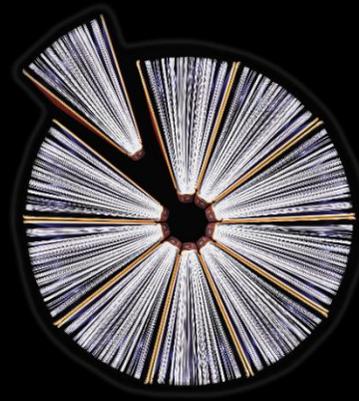
Although this ruling only affects jurisdictions within the Fifth Circuit, the majority of circuit courts have also adopted the effective vindication doctrine. In order to reduce litigation risk, plan sponsors should consider reviewing any arbitration provisions in their plan to ensure they do not run afoul of this doctrine.

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