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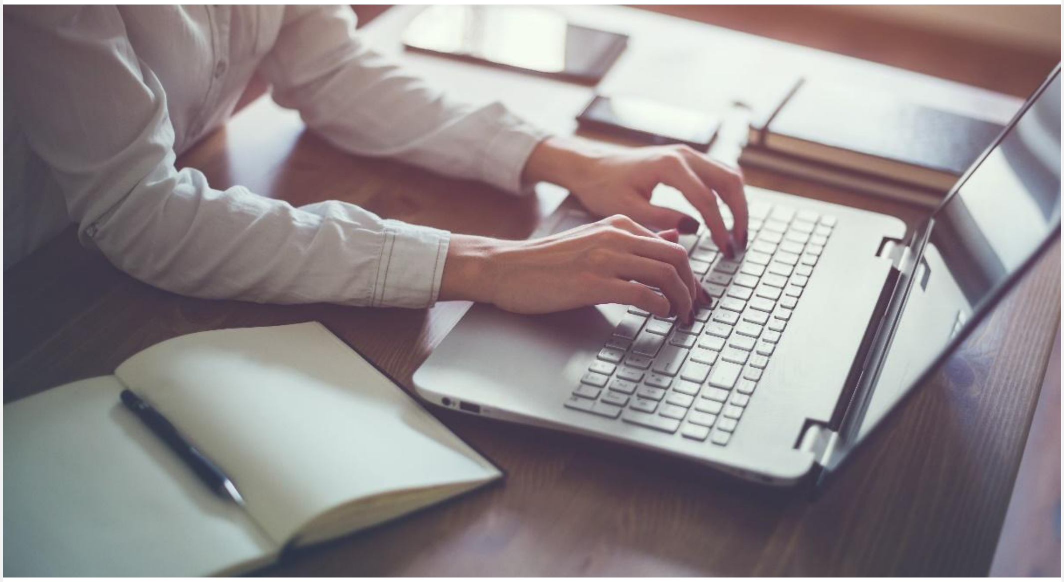

In this Issue:

Upcoming Compliance Reminders for Calendar Year Employee Benefit Plans

June 2026

1st: Prescription Drug Data Collection Reporting Deadline
1st: Request to Use Substitute Mortality Tables in 2027

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.

President Issues Executive Order on Retirement Savings

In April, President Trump signed an Executive Order ("EO") that instructs the Treasury Department to set up a website that provides access to private-sector IRAs.

On April 30th, President Trump signed an EO entitled "Promoting Retirement-Savings Access for American Workers by Establishing TrumpIRA.gov," which directs the Treasury Department to set up an online "IRA marketplace" website by January 1, 2027.

According to the EO, the goal of this website – TrumpIRA.gov – is to provide access to retirement-savings options by providing a central online marketplace for individuals to view and select available IRA options. The EO states that the marketplace should have a particular focus on independent contractors, self-employed individuals, and other workers who do not have access to an employer-sponsored retirement plan.

To be listed on the website, financial institutions that provide IRAs must meet certain criteria, including that they accept the Saver's Match, which, as discussed in more detail below, was enacted by the SECURE 2.0 Act of 2022. In addition, the EO states that the website will identify financial institutions that meet the following criteria:

- They provide a menu of investment options that meet certain requirements, including a target date fund or balanced fund, or a fund designed to protect principal;
- They maintain low administrative costs, with overall net-expense ratios limited to .15%; and
- They do not impose minimum contribution or balance requirements.

Executive Order Shines Light on Saver's Match

As noted, the EO also focuses on promoting the Saver's Match, which goes into effect in 2027. Under the Saver's Match, certain lower-income individuals who make qualified retirement savings contributions in a year are eligible to receive a matching contribution of up to $1,000 from the federal government. The EO provides that TrumpIRA.gov must be designed to increase awareness of the opportunity to receive the Saver's Match. In this regard, the Treasury Department is required by the EO to take steps to encourage financial institutions to accept the Saver's Match.

What's Next

It is important to note that the EO does not call for the establishment of a government-run retirement program or new requirements for retirement plan sponsors. Financial institutions interested in being featured on TrumpIRA.gov should watch for future guidance from the Treasury Department. Long-anticipated guidance on the Saver's Match is expected in the near future as well.

More Voluntary Benefits Lawsuits Filed

Two new voluntary benefits class action lawsuits have been filed by different law firms against the same employer. The latest suits, filed only days apart, closely mirror the 4 that were filed last December. Employers that offer voluntary benefits – such as hospital indemnity and critical illness plans – may want to watch these lawsuits carefully and consider taking steps to mitigate their own risk if targeted.

What are the lawsuits about?

Generally, the class action lawsuits allege that employers have breached their ERISA fiduciary duties and engaged in prohibited transactions by offering voluntary benefit plans with low loss ratios, which measures how much of every $1 in premiums goes to pay benefits. According to the complaints, the loss ratios for the plans at issue often fall well below .5. One of the reasons for this, the complaints argue, is that the employers allowed their benefits brokers to charge excessive commissions that end up being baked into premiums, which are fully paid by participants.

The suits also target the brokers for allegedly breaching their own fiduciary duties, and/or knowingly participating in the employer's breach.

What are the issues?

Each complaint raises numerous issues, but the 3 that will be fundamental to each case are as follows:

- *Are the voluntary benefit plans ERISA covered plans?* Because these plans provide health-type benefits – *e.g.*, fixed dollar payments for being admitted to the hospital or for being diagnosed with a specific disease – they may be welfare benefit plans within the meaning of ERISA. However, ERISA provides an exception if they are offered on a voluntary basis, premiums are paid only by employees, the employer does not endorse the plan in any way, and other conditions are satisfied. Each of the lawsuits so far has involved employers that reported the relevant plans on their Form 5500 filings, which means they are holding them out as ERISA plans. Nonetheless, some employers may still attempt to claim the voluntary exception applies. If a court determines the plans at issue are not subject to ERISA, then all ERISA claims must be dismissed.

- *Was the employer and/or broker acting as a fiduciary?* Even when plan sponsors and others are fiduciaries with respect to a plan, not everything they do is a fiduciary act. In these cases, some employers might try to argue that their decision to offer these benefits coincided with their choice of insurance carriers, and thus their actions were not fiduciary actions.
- *Did the employer and/or broker breach their fiduciary duties?* The complaints focus largely on assumptions and conclusions based on the amount of brokerage commissions and premiums, but ERISA's core fiduciary obligations are about process. The fact that the premiums for an employer's voluntary benefit plans are high relative to others does not necessarily mean a breach has occurred. Instead, the process the employer used to gather data and make a decision is what matters. This will be an important issue if any of these cases ever go to trial.

Outlook and Next Steps

All six cases filed to date are still in the pre-trial stage, and there is still a long way to go before any final judgments are entered. Between now and then, more lawsuits of this type are expected to be filed. Some employers are beginning to wonder if they too might be targeted, and what they can do to mitigate their risk if they are.

As noted, all the lawsuits filed to date have been against employers that report voluntary benefits on their Form 5500 filings, typically as part of a wrap welfare benefit plan. Employers that have not historically reported voluntary benefits on their Form 5500 filings are probably less likely to be sued over these plans, but could still be vulnerable if they otherwise hold their voluntary benefit plans out as ERISA plans. Things to look out for include bundling voluntary benefits with group health plans and other ERISA plans during annual enrollment, putting the plan sponsor's logo on voluntary benefit plan materials, and including voluntary benefits in any tools that are offered to help employees select the "right" benefits for their life situation.

For employers that believe their voluntary benefits are ERISA plans, or think they might be, it could be helpful to review the processes and procedures they have in place for selecting and monitoring brokers, insurers, and any other related service providers. Among other things, those processes might include compiling and reviewing up to date benchmarking data on broker commissions, premium rates, and other plan features to help fiduciaries fulfill their core obligations of prudence and loyalty to the plan's participants and beneficiaries.

IRS Releases Inflation-Adjusted ACA Employer Shared Responsibility Penalties for 2027

The Internal Revenue Service ("IRS") announced the new inflation-adjusted amounts for employer shared responsibility penalties under the Affordable Care Act ("ACA"), which generally apply to large employers that do not offer health coverage or whose coverage does not meet certain minimum standards. The updated amounts will be effective for calendar year 2027.

What Are Employer Shared Responsibility Payments?

Under Internal Revenue Code ("Code") section 4980H, applicable large employers ("ALEs") – i.e., employers with at least 50 full-time employees in the previous year – are subject to the ACA's employer shared responsibility payment ("ESRP") provision. ESRPs are payable to the IRS if an employer fails to offer minimum essential coverage to at least 95% of its full-time employees and their dependents, and at least one full-time employee receives a premium tax credit for purchasing coverage on an ACA Health Insurance Marketplace.

ESRPs are also payable if the employer does offer coverage to full-time employees, but the coverage is not "affordable" or does not provide "minimum value." Employer-provided coverage is considered "affordable" if the employee-required contribution for coverage is no more than a particular percentage of the employee's household income (9.96% for 2026). Employer-provided coverage generally meets the "minimum value" standard if it covers at least 60% of the covered health care expenses for the standard population.

ESRP amounts are adjusted annually.

Updated ESRP Amounts for 2027

In May, the IRS provided the updated inflation-adjusted ESRP amounts for 2027 in Revenue Procedure 2026-22. The updated amounts for 2027 are described below (with the ESRP amounts for 2026 also included for comparison):

Penalty	2026	2027
ESRP under Code § 4980H(a)(1)—Applies to employers that fail to offer minimum essential coverage to 95% of full-time employees and their dependents.	$3,340 per full-time employee	$3,780 per full-time employee
ESRP under Code § 4980H(b)(1)— Applies with respect to each full-time employee who opts out of the employer's coverage because it is not affordable or fails to provide minimum value.	$5,010 per full-time employee	$5,670 per full-time employee

To avoid paying ESRPs, ALEs should regularly ensure that at least 95% of all full-time employees are offered minimum essential coverage and confirm that such coverage meets the "affordable" and "minimum value" thresholds. The IRS has answered a series of FAQs on ESRPs, available here.

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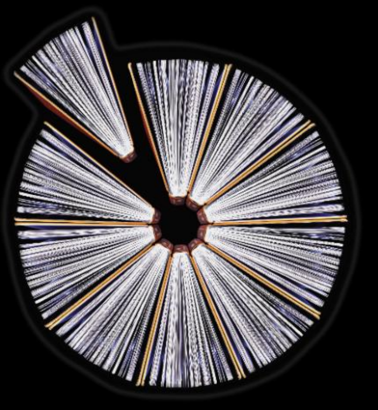

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