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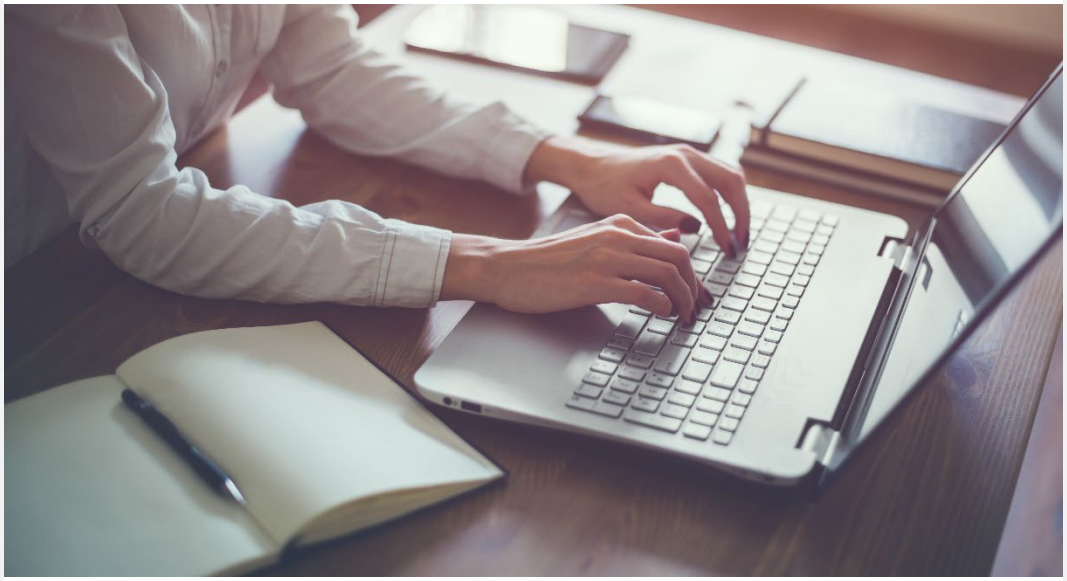

In this Issue:

Upcoming Compliance Reminders for Calendar Year Employee Benefit Plans

September

30th: Summary Annual Report (SAR)

October

14th: Deadline to provide Creditable Coverage notice
15th: Form 5500 (with extension)

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.

DOL Issues Long-Anticipated Proposed Rules to Provide New E-Delivery Safe Harbor Option for Group Health Plans

New proposed rules from the Department of Labor's (DOL) Employee Benefits Security Administration (EBSA) would establish an alternative safe harbor for ERISA-covered group health plans to furnish a wide range of participant disclosures electronically. Unlike the existing safe harbor, which dates back to 2002, the proposed safe harbor would give group health plans the flexibility to establish e-disclosure as the default method for required disclosures.

Comparing the Proposed Safe Harbor to the 2002 Safe Harbor

The proposed safe harbor for health plans closely mirrors the notice-and-access safe harbor for retirement plans that EBSA established by regulation in 2020, but the two are not identical. Like the 2020 retirement plan safe harbors, the proposed safe harbor for group health plans would not replace the existing electronic delivery safe harbors that were issued in 2002 (the 2002 safe harbors) but instead would be an alternative option.

A main difference between the proposed safe harbor for group health plans and the 2002 safe harbor is that the latter is available only with respect to individuals who are "wired at work" or who affirmatively consent to receive documents electronically. By comparison, the proposed group health plan

safe harbor – like the 2020 retirement plan safe harbors – would cover anyone who is assigned an e-mail or other electronic access for employment-related purposes, or who otherwise provides the plan sponsor with an e-mail address or cell phone number where they can receive a required Notice of Internet Availability (NOIA), as discussed below.

Summary of Proposed Safe Harbor

Some key points about the proposed safe harbor for group health plans are as follows:

- *Applies Only to ERISA Group Health Plans*. As indicated, the proposed safe harbor would be available to ERISA-covered group health plans, but not to other welfare benefit plans, such as short- and long-term disability plans.

- *Applies to all ERISA-Required Disclosures*. The safe harbor would apply to any document or information the group health plan administrator is required to furnish to participants and beneficiaries pursuant to ERISA Title I, including the SPD, COBRA-related disclosures, and the Summary of Benefits and Coverage (SBC), among others. Unlike the 2020 retirement plan safe harbor, the proposed safe harbor could be used for disclosures that are required only upon request as well (e.g., the plan document or the plan's latest Form 5500 filing).

- *Initial Notice of Electronic Delivery*. Before relying on the proposed group health plan safe harbor for an individual, plan administrators would have to furnish to that individual a notice that covered documents will be furnished electronically to an electronic address, including the electronic address that will be used by that individual, instructions for accessing covered documents, and certain other information. This initial notice generally would have to be furnished on paper. However, it could be provided electronically to any individuals who were already receiving electronic disclosures pursuant to the 2002 safe harbor prior to the first day of the calendar year following the date the final regulations are published.

- *Disclosures Must be Posted to a Website*. To take advantage of the proposed group health plan safe harbor, the plan administrator would have to establish a website where covered documents could be accessed. Significantly, the proposed group health plan safe harbor would not permit direct disclosures via e-mail. The website could be an "internet website, or other internet or electronic-based information repository, such as a mobile application, to which covered individuals have been provided reasonable access." The website would not have to be public, but it would have to be accessible outside of the workplace.

- *Notice of Internet Availability (NOIA).* When a covered document is made available on the website, the plan administrator must furnish a NOIA to each covered individual. The NOIA must be furnished electronically to the covered individual's applicable e-mail address or text-enabled cell phone number, and include a web address or hyperlink that will take the recipient directly to the covered document or to a landing page that includes a prominent link to the document. The NOIA also must include information about the individual's right to request and receive free paper copies of the document, as well as information about opting-out of electronic delivery, among other things. Additionally, the NOIA would have to identify the covered

document by name (e.g., "HIPAA Notice of Special Enrollment Rights," etc.) and include prominent statements designed to alert the covered individual that they are receiving important information about their health plans.

- *Opt-Out Rights*. In addition to giving participants the option to request and receive paper copies of covered documents without charge, the proposed safe harbor would also require plans to give covered individuals the right to globally opt out of electronic delivery and receive only paper versions of covered documents. Plans would not be permitted to limit the number of paper copies an individual could request and receive for free.

State Leave Laws Continue to Develop as Federal Lawmakers Consider Ways to Encourage Leave Programs

In 2026, changes to existing paid and unpaid leave programs have been enacted in multiple states, including New Jersey and Virginia. Employers operating in these states should review their leave policies. At the federal level, Members of Congress have introduced legislation to encourage states to maintain paid leave programs.

New Jersey Family Leave Amendments Now In Effect

In early 2026, New Jersey enacted amendments to the New Jersey Family Leave Act (NJFLA), which generally requires employers to provide eligible employees with up to 12 weeks of unpaid, job-protected leave during a 24-month period to (1) care for or bond with a child within one year of the child's birth or adoption; (2) care for a family member with a serious health condition; or (3) care for a family member who is quarantined or for a child whose school is closed during a state of emergency. Most significantly, the amendments – which went into effect on July 17, 2026 – expand the NJFLA to cover employers with 15 or more employees (previously 30 employees). In addition, among other changes, the definition of an eligible employee has been expanded – now, employees are eligible for leave under the NJFLA if they have been employed for at least three months (previously 12) and have worked at least 250 hours (previously 1,000) during the prior 12 months.

More information about these changes is available here.

Virginia Enacts Major Paid Sick Leave Expansion

In May, Virginia enacted significant changes to its paid sick leave law, which previously only applied to certain home health workers. Now, all private employers with one or more employees and almost all state and local governments will be required to provide paid sick leave to employees. The law provides that employees accrue a minimum of one hour of paid sick leave for every 30 hours worked, which must carry over to the following year. Paid sick

leave generally is defined to include leave for (1) an employee's mental or physical illness, injury, or health condition; (2) care of a family member with a mental or physical illness, injury, or health condition; or (3) absence due to domestic violence, sexual assault, or stalking.

The deadline for employers to comply with the new law depends on their size: (1) July 1, 2027 for employers with 50 or more employees; (2) January 1, 2028 for employers with at least 25 employees but fewer than 50; and (3) January 1, 2029 for employers with at least one employee but fewer than 25.

Members of Congress Propose Paid Leave Grant Program

At the federal level, a bipartisan group of members of the Senate and House of Representatives has introduced legislation to expand access to paid family and medical leave. The "More Paid Leave for More Americans Act" (S. 5017 and H.R. 3089) would establish a public-private partnership grant program for states that provide a minimum of six weeks of paid parental, caregiving, or medical leave (and meet other conditions). To be eligible for a grant, the state would be required to establish a partnership with a private entity that provides a paid family leave benefit to eligible employees pursuant to the paid leave program established by the state. Grant funds could be used for certain authorized purposes, such as start-up costs associated with a leave program and partnership financing.

The bill would also create an interstate agreement program to coordinate paid leave benefits across states. Participating states would agree to adhere to a single policy standard, including common definitions for certain policy terms (such as employee eligibility) and common administrative standards (such as employers' reporting responsibilities).

Although the legislation is unlikely to advance in the near-term, it provides insight into how federal lawmakers are thinking about paid leave.

Voluntary Benefits Lawsuits Raise Fundamental Questions About ERISA Status

Two recent developments have highlighted a key question about ERISA's voluntary benefits safe harbor, and whether that safe harbor can be used for a plan that has been reported on a Form 5500. The most recent voluntary benefits class action lawsuit relies heavily on the plan sponsor's Form 5500 filing to support its claim that the plans are subject to ERISA. But the DOL has recently said filing a Form 5500 is a relevant factor, but not determinative.

What is the Voluntary Benefits Safe Harbor?

Basically, ERISA provides an exemption for certain plans – including accident-only, hospital indemnity, and critical illness plans, etc. – that otherwise would be "employee welfare benefit plans" if they are offered by an insurer to the employer's employees, and the following conditions are satisfied:

- No contributions are made by the employer;
- Participation is completely voluntary;
- The employer's sole functions with respect to the program, without endorsing it, are to permit the insurer to publicize it to employees, to collect premiums through payroll deductions, and to remit them to the insurer; and
- The employer receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation for administrative services actually rendered.

If a group insurance plan or program that otherwise would be subject to ERISA satisfies these conditions, then it is not required to satisfy any of ERISA's reporting and disclosure requirements, and it is not subject to ERISA's fiduciary rules.

Voluntary Benefits Lawsuits

As a general matter, the seven voluntary benefits lawsuits filed to date – including the most recent, which was filed in early July – basically allege the employers sponsoring those plans breached their ERISA fiduciary duties because they failed to negotiate a better deal on broker commissions – and thus, on premiums – for participants. The brokers are also named as defendants in each suit, either as fiduciaries themselves or as knowing participants in the employer's fiduciary breach, and as parties-in-interest under the prohibited transaction rules.

A potential threshold issue in each of the suits could be whether the voluntary benefits plans at issue – accident-only, hospital indemnity, critical illness, and similar types of plans – are exempt from ERISA, based on the voluntary benefits safe harbor. If they are exempt, the ERISA claims would have to be dismissed.

In each of the complaints, the plaintiffs point out that the employer has filed a Form 5500 with respect to the plans, and thus that the voluntary benefits safe harbor is not available. Several of the complaints also point out that the voluntary benefits are integrated into the employer's open enrollment platform, which is the type of endorsement of the plans that is not permitted by the voluntary benefits safe harbor.

What Does the DOL Say?

Just before this most recent lawsuit was filed, the DOL addressed this issue in a footnote to DOL Technical Release 2026-02. According to that footnote: "An employer that includes information about a voluntary payroll deduction arrangement on the Annual Return/Annual Report (the 5500) of the employer's ERISA-covered plan does not, by that act alone, stamp its approval on the voluntary benefit arrangement such that the arrangement necessarily is an ERISA-covered plan. Such reporting is a relevant but not dispositive fact in the view of the Department."

The technical update also highlights other common practices that, in its view, would not constitute an impermissible "endorsement" for purposes of the safe harbor. These include:

- Placing information provided by the insurer about the plans on their intranets.
- Providing neutral information about the benefits of using the payroll deduction arrangement to buy these benefits, as long as they do not put their "stamp of approval" on, or vouch for, the quality of the product or provider.

How Will Technical Release 2026-02 Impact the Voluntary Benefits Lawsuits?

It is too early to tell what, if any, impact the DOL's statements will have. Employers that try to have the cases dismissed likely will cite Technical Release 2026-02 to support their arguments that the plans are not subject to ERISA. However, that alone may not be sufficient to succeed on a motion to dismiss. This also could be a significant issue if any of these cases go to trial, but employers who are unable to get the claims dismissed might choose to settle rather than incur the additional cost of litigation.

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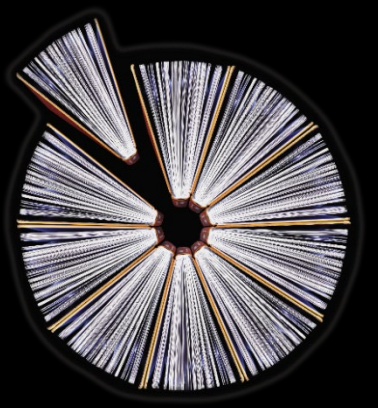

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