Employee Benefits Report

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Compliance April 2022 Volume 21 • Number 4

Compliance Issues for The Rest of 2022

Even though we are well into 2022, there are compliance issue changes on the horizon involving overtime, booster shots and paid leave. Here's what the changes could mean to your company this year.

Overtime Rule

The U.S. Department of Labor (DOL) is expected to update its overtime rule this month. As part of the Fair Labor Standards Act (FSLA), the overtime rule sets a threshold salary level for employers to use to determine which employees are eligible to receive overtime pay when they work more than 40 hours in a single workweek.

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Health Insurance Premium Penalties

The state of Nevada became the first state to impose a surcharge on state workers who have not received the COVID-19 vaccine.

The state's Public Employees' Benefits Program Board voted to charge unvaccinated workers up to $55 per month. Workers' spouses, partners and dependents age 18 and older will have to pay a surcharge of $175 a month. The penalty takes effect July 1, 2022, and includes a requirement that unvaccinated workers, who are enrolled in public employee health insurance plans, be routinely tested.

The surcharges will be used to help offset the costs of COVID-19 testing and is expected to save around $18 million in annual testing costs.

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An employee who qualifies for overtime usually is paid hourly and is referred to as a nonexempt employee. The overtime rule does not apply to exempt employees who generally are paid based on an annual salary above the FSLA threshold and hold executive, administrative, professional, computer and outside sales roles in a company.

The current overtime threshold is $35,568 per year or $684 per week and was set during the Trump administration. The DOL has indicated that the threshold, which was instituted in 2020, is too low. Some advisors want the minimum salary threshold to be as high as $85,000 per year to qualify as an exempt employee. During the Obama presidency, there were calls to raise the threshold to $47,476. The Biden administration has signaled its desire to return to the approach attempted by the Obama administration and there have been discussions to review the rule regularly.

Some states and municipalities also are adjusting their employee salary thresholds, so you must check local requirements.

If the threshold is changed, you will need to recalculate the exemption status of all employees whose salaries fall under the new rule. For instance, if you employ 15 people who make $40,000 annually but the threshold is raised to $45,000, these employees may need to be compensated with overtime wages if they work more than 40 hours in a workweek. You also will need to rework your budget to account for the new required overtime wages.

If you misclassify your employees, it can be a costly mistake and lead to other noncompliance issues regarding attendance, timesheets, payroll and benefits.

To avoid this mistake, you can reference the FLSA and current overtime provisions, or the North American Industry Classification System for a breakdown of how to classify most jobs by industry.

Booster Shot Policies

Employers who feel it's necessary for their employees to be fully vaccinated against COVID-19 will face a new legal question as they formulate their policies.

The biggest question with the appearance of the Omicron variant is, "What is fully vaccinated?" The U.S. Centers for Disease Control and Prevention (CDC) currently does not include booster shots in its definition of "fully vaccinated." The CDC considers full vaccination to take effect two weeks after the second dose in a two-dose series, such as the Pfizer or Moderna COVID-19 vaccines, or two weeks after a single-dose jab, such as the Johnson & Johnson shot.

Employers must decide whether to impose booster requirements for their employees, contractors, vendors and guests. And, without CDC guidance, you must determine whether this will become a legal issue if you require a booster.

Paid Leave Laws

While the U.S. Family and Medical Leave Act (FMLA) entitles eligible employees to unpaid family and medical leave, some jurisdictions in 2020 and 2021 enacted or expanded personal and family paid leave laws.

This trend and the disparity of paid leave laws is expected to continue in 2022. For example, four states and Washington, D.C. are either adding paid leave, modifying existing leave laws or making changes to unpaid leave legislation this year. The states that plan to change their laws in 2022 include Colorado, Connecticut, California and Oregon.

To complicate the matter, states without paid sick-leave laws have passed laws barring local governments from enacting their own requirements according to a new study conducted by the NYU School of Global Public Health. The majority of the workers affected were lower-wage workers whose employers often don't provide sick-leave benefits.

The Bureau of Labor Statistics data indicates that paid sick leave was available to 77 percent of the private workforce in March 2021, but only 59 percent of workers in service occupations and 33 percent of the lowest-earning 10 percent of workers had access to paid leave.

Consult the state labor law guide to learn more about other employment laws in your area.

Employers who oversee private companies also can legally impose wellness incentive surcharges on employees who refuse to get the COVID-19 vaccine. However, experts caution that imposing a penalty has not been proven effective in influencing employee behavior because the costs are spread over the year. It also can make it difficult to reach minimum plan participation if unvaccinated employees opt out of coverage because they cannot afford the extra cost. The surcharge often hurts those who can least afford it. Plus, it can create administrative and legal headaches down the road.

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Life Insurance for the Life of Your Business

Life insurance is usually purchased to protect a family's finances when the breadwinner dies. But business owners may also wish to purchase life insurance to protect partners, the business and employees.

Business life insurance is much like personal life insurance, but it's owned by a business rather than an individual. It can be a permanent or term policy.

Permanent Policies

A permanent policy is more expensive than term, but it builds cash value over time and is designed to last the lifetime of a partner. There are three main types:

- ***Whole life — the most conservative option:*** Whole life insurance can be participating, where policyholders may receive dividends, or non-participating, where policyholders do not receive dividends, but premiums are generally lower.
- ***Universal life — the most flexible:*** The policy pays interest into the cash value instead of dividends.
- ***Variable universal — the most aggressive:*** The policy's cash value accumulation is invested in a portfolio of mutual fund subaccounts and the principal is not guaranteed, but the investment gains can be more generous than the first two options.

Term Policies

These are the least expensive options and only provide coverage for a specific time. There is no cash value.

Disability Rider

Experts recommend adding an accelerated benefit rider regardless of whether a permanent or term policy is chosen that will pay out some or all of the death benefit to a policy holder while the insured is still living if they become disabled, need nursing care or are diagnosed with a critical disease.

How it Works

Business life insurance is usually an important component of a buy-sell agreement and outlines what happens to each owner's share in a company if one of the owners dies or leaves the business. Scenarios where a buy-sell agreement is appropriate include when partners want to:

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- Set a fair price for each share of the business in case there is a dispute among the owners or if one owner wants to be divested of their interest in the business so that the other parties can buy out the exiting share of the business.
- Restrict other owners from selling their shares of the business to a person or entity that might not have the business's best interest in mind.
- Guarantee that the current owners sell their shares back to the business when they die or become incapacitated.
- Guarantee all remaining owners in the business will buy out all deceased partners' shares.

The terms can include an agreement that co-owners will insure each other to protect the continued ownership and operations of the business. This ensures that if one business partner suddenly leaves the business or dies, the remaining partners will be able to fund any costs that arise as opposed to having all the cash on hand.

A buy and sell agreement that includes insurance can include an entity purchase plan or a cross-purchase agreement for the co-owners.

It is often too complicated for the partners to buy life insurance on each other if there are multiple owners. In this case, the partners can use an "entity purchase" agreement where the business buys one policy on each partner. The death benefits can be used to buy the deceased co-owner's shares.

With a cross-purchase agreement, every partner purchases life insurance on the other partners. If a partner dies, the remaining partners can use the death benefits to buy the deceased partner's shares in the company.

A buy and sell agreement will only work for these two additional plans if the partners agree to purchase life insurance to buy the shares of the deceased partner. This is called a "funded" buy-sell agreement.

Your insurance agent or broker can help you choose the coverage that is best for you and help you manage the application process.

Employers' Guide to Understanding ERISA

The Employee Retirement Income hSecurity Act (ERISA) provides inhsurance companies and private emhployers with guidelines on how to administer retirement and health plans to employees. ERISA was enacted in 1974 and applies to plan years starting on or after Jan. 1, 1975.

Previously, the U.S. Department of Labor regulated employee benefit plans under the Welfare and Pension Plans Disclosure Act, but that act's scope was limited, and the public had concerns over the mismanagement and abuse of private pension plans. ERISA broadened the scope of information available to plan participants; required employers to manage health care funds in plan participants' best interests; expanded on the reporting procedures to the govern ment; and sets minimum standards for employers who provide pension plans.

ERISA does not cover retirement plans by governmental entities or plans established by churches for their employees. It also doesn't cover plans that relate to state benefit laws, such as unemployment or workers' compensation. Although the ERISA definition does

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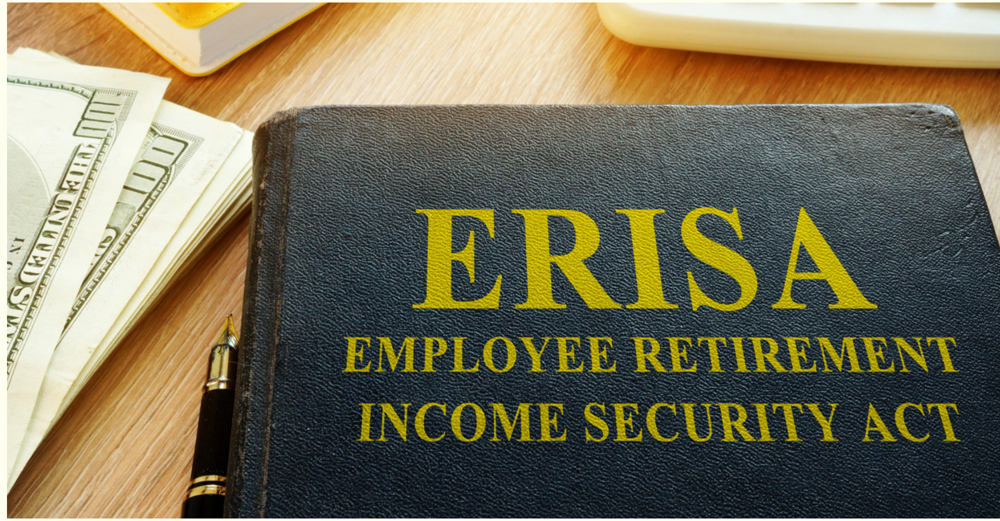
not require private employers to have pension plans, it provides minimum standards for those that do.

Since its inception several amendments have been made to ERISA to expand the protections available to health benefit plan participants and beneficiaries, including protections for mental health issues, longer periods of coverage and reconstructive surgery for cancer patients.

For instance:

- The Consolidated Omnibus Budget Reconciliation Act (COBRA) provides employees and their families the right to continue their health coverage after the loss of a job.
- The Health Insurance Portability and Accountability Act (HIPPA) limits preexisting medical conditions and gives employees credit for the time they held previous coverage.
- The Newborns' and Mothers' Health Protection Act requires plans that offer maternity coverage to pay for the mother's hospital stay after childbirth.
- Other protections were granted through the Mental Health Parity Act, the Women's Health and Cancer Rights Act, the Affordable Care Act and the Mental Health Parity and Addiction Equity Act.

The key provisions in ERISA require employers to:



Provide Information

Employers must provide information to employees with pension plans on how to file a claim for benefits and give them notice when significant plan changes are made. In addition, employers also must make participants aware of what they need to do to be vested in the plan.

Assume Fiduciary Responsibilities

A plan administrator is a fiduciary – someone who has discretionary authority and control over the management and assets of the plan.

Fiduciaries must work solely for the benefit and in the best interests of plan participants. For instance, they must seek to minimize risk when investing an employee's retirement funds. If any improper planning results in a large loss for the employee, a fiduciary must restore that loss.

Establish Processes

Employers must establish a grievance and appeals process to help participants who are having problems accessing benefits from their plans.

Enable the Right to Sue

Plan participants can sue if they believe their company has unfairly denied them access to their benefits or if there has been a breach of fiduciary duty.

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401(k)s Do's and Don'ts

When employees decide to leave htheir jobs, they have a lot on their minds. So, they don't always give a lot of thought to what to do with their 401(k) plans. It's an important decision that can have a big impact on their retirement savings.

Your human resources department can counsel them on what they can do and shouldn't do:

Can Do

- ***Nothing:*** The easiest option is keeping their plan with your company. The downside for them is that you might need to pass along to them the fees you normally pay for employees. If the account balance is below $5,000, your account upkeep expenses are probably high, and you might want to advise against leaving the money in the plan. If the account is worth $1,000 or less, most 401(K) plan sponsors just send the employee a check – which is subject to taxes and penalties.
- ***Roll it Over to their New Employer's Plan:*** Most employees choose to roll their old plan into the 401(k) account they get from their new employer. The employee will need to check to see if they can roll it over right away or if they need to wait until they're eligible for their new plan.
- ***Roll into an IRA:*** unds from a 401(k) also can be put into an Individual Retirement Account with a simple account-to-account transfer. Later, the employee can move their account back into their future employer's 401(k) plan.

Shouldn't Do

- ***Cash Out:*** Many employees are tempted to cash out their plan and use the money for bills or other expenses. The problem is that if they are younger than age 59.5, they will have to pay income tax and a 10 percent penalty.