

The ERISA Express – April 4, 2023

The Employee Benefits & Executive Compensation practice group has gathered the latest legal updates covering ESG and President Biden's first veto, the end of the COVID-19 national emergency, updates from federal agencies, and more. Our practitioners help guide employers and other stakeholders through the diverse range of laws and regulations that govern employee benefits, executive compensation, and related areas.

The latest headlines cover a multidisciplinary perspective. Consistent with the firm's principles, the attorneys in our practice group strive to simplify issues, provide innovative solutions, and offer practical, understandable advice.

Biden vetoes legislation nixing DOL's ESG rule

- On March 20th, President Biden issued his first veto of legislation that nixed the [DOL's Environmental, Social, and Governance \("ESG"\) rule](#), which gives ERISA fiduciaries more freedom to consider ESG factors in making investment decisions.
- The House failed to override the veto, falling far short of the required two-thirds majority with a 219-200 vote.
- The Freedom to Invest in a Sustainable Future Act, which seeks to codify the ESG rule, was recently introduced in the [House](#) and [Senate](#).

COVID-19 national emergency set to end; agencies advise on impact

- With President Biden [expected to sign](#) a joint resolution to terminate the national emergency related to the COVID-19 pandemic, the Departments of Labor, Health and Human Services, and the Treasury have issued FAQs regarding the impact on health plans and insurers.
- [The FAQs](#) provide that, following the end of the national emergency, plans and insurers will no longer be required to cover the cost of COVID-19 testing. In most cases, however, plans and insurers must continue to cover the cost of COVID-19 vaccines when those vaccines are delivered on an in-network basis.
- The FAQs further detail plans' obligations to notify participants when COVID-19-related coverage ends, the ability of HDHPs to continue covering the costs of COVID-19 vaccines before a participant meets their deductible, and the end of the rule tolling benefit plan deadlines in certain situations.

IRS provides FAQs addressing nutrition, wellness, and general health-related costs

- The IRS provided [FAQs](#) addressing whether several expenses related to nutrition, wellness, and general health are medical expenses that may be paid under a health savings account, health flexible spending arrangement, Archer medical savings account, or health reimbursement arrangement.
- Among the 14 expenses included in the FAQs, only one (exercise for the improvement of general health) was not deemed an eligible medical expense.
- Dental exams, eye exams, substance and alcohol use disorder treatment, over-the-counter drugs, and various other expenses were all deemed eligible medical expenses.

PBGC issues 2020 Pension Insurance Data Tables

- The Pension Benefit Guaranty Corporation (“PBGC”) ensures that pension plan participants receive their pensions if their plans terminate without sufficient assets.
- The PBGC releases an annual publication that outlines claims, benefit payments, and PBGC operations. The latest report is available [here](#).

IRS provides 2024 ACA employer shared responsibility penalties

- The IRS has updated the Code Section 4980H(a) and 4980H(b) penalties for 2024, which are imposed on employers who fail to offer employees the opportunity to enroll in minimum essential coverage, or fail to offer affordable coverage.
- The IRS provided in [Rev. Proc. 2023-17](#) that the 2024 penalties are:
 - \$2,970 for Code Section 4980H(a) violations
 - \$4,460 for Code Section 4980H(b) violations

Biden requests more authority for DOL to enforce ERISA, 3 months paid family leave

- In his 2024 [budget request](#), President Biden asked Congress to give the DOL additional authority to go after violations by administrative services providers of plans regulated by ERISA, impose civil fines, and amend ERISA to allow participants to recover losses caused by parity violations. These requests were previously made in 2022 and were largely ignored by Congress.
- President Biden also called for three months of paid family leave, which he argues would allow Americans to take time off from work to “bond with a new child; care for a seriously ill loved one; heal from their own serious illness; address circumstances arising from a loved one’s military deployment; find safety from domestic violence, sexual assault, or stalking; or grieve the death of a loved one.”