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WHAT YOU NEED TO KNOW



Compliance Recap

2018 Year in Review

UBA Compliance Advisor

During 2018, federal agencies and courts provided employers with a significant amount of new guidance, regulation, and FAQs relating to employer benefit plans. This month-by-month guide provides a timeline of these documents, highlighting the major changes and updates in 2018.

To access the complete monthly Compliance Recaps, please click below:

[January 2018 Compliance Recap](#)

[July 2018 Compliance Recap](#)

[February 2018 Compliance Recap](#)

[August 2018 Compliance Recap](#)

[March 2018 Compliance Recap](#)

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January 2018

January was a busy month in the employee benefits world. On January 24, 2018, the U.S. Senate confirmed Alex Azar as the new Secretary of the U.S. Department of Health and Human Services (HHS).

HHS released the 2018 federal poverty guidelines. The DOL issued updated civil monetary penalties for 2018 and announced the applicability date for final regulations regarding disability claims procedures.

Congress and the President delayed the Cadillac tax's effective date, delayed the health insurance tax (HIT), and reauthorized the Children's Health Insurance Program.

HHS Releases 2018 Federal Poverty Guidelines

The U.S. Department of Health and Human Services (HHS) released the 2018 [federal poverty guidelines](#) (FPL). For a family / household of one in the contiguous United States, the FPL is \$12,140. In Alaska the FPL is \$15,180, and in Hawaii the FPL is \$13,960.

For 2018, applicable large employers that wish to use the FPL affordability safe harbor under the employer shared responsibility / play-or-pay rules should ensure that their lowest employee-only premium is equal to or less than \$96.72 a month, which is 9.56% of the 2018 FPL.

Civil Monetary Penalties Inflation Adjustment for 2018

The U.S. Department of Labor (DOL) [published](#) its civil monetary penalties for 2018. Under federal law, the DOL is required to annually adjust its regulations' civil monetary penalties for inflation no later than January 15 of each year. The adjusted penalty amounts are effective for violations occurring after November 2, 2015, that have penalties assessed after January 2, 2018.

Below are some examples of the increases.

Description	2017 Penalty Amount	2018 Penalty Amount
Failure to file Form 5500	\$2,097 per day	\$2,140 per day
Failure to provide the Summary of Benefits and Coverage (SBC)	\$1,105	\$1,128
Failure to provide documents requested by the DOL	\$149 per day, not to exceed \$1,496 per request	\$152 per day, not to exceed \$1,527 per request
Failure to inform employees of children's health insurance program (CHIP) coverage opportunities; each employee is a separate violation	\$112 per day	\$114 per day

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DOL Issues Final Disability Claims Procedures Regulations' Applicability Date

The U.S. Department of Labor (DOL) [announced](#) that April 1, 2018, will be the applicability date for its [rule](#) that amends the claims procedure requirements of ERISA-covered employee benefit plans that provide disability benefits. The DOL's [Fact Sheet](#) contains a summary of the regulation's requirements.

Congress Delays Cadillac Tax Effective Date, Delays HIT Tax, and Reauthorizes CHIP

Congress and the President passed [H.R. 195](#), a short-term spending bill. The bill delays the effective date of the excise tax on high cost employer-sponsored health coverage ("Cadillac tax") to 2022. The bill delays the health insurance tax (HIT) that applies to insurers. The HIT was in effect in 2014, 2015, and 2016, and will be in effect for 2018. Now the HIT will be delayed from 2019 to 2020; essentially, the bill implemented a one-year moratorium for the HIT for 2019. The bill also reauthorizes the Children's Health Insurance Program (CHIP) for six years.

February 2018

Coming off a busy January, the Internal Revenue Service (IRS) updated its Questions and Answers about Information Reporting by Employers on Form 1094-C and Form 1095-C, its Questions and Answers on Information Reporting by Health Coverage Providers, and its Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act.

The IRS released its adjusted penalty amounts under the employer shared responsibility provisions for the 2018 calendar year.

IRS Updates Its Employer Information Reporting Q&As

The Internal Revenue Service (IRS) updated its "[Questions and Answers about Information Reporting by Employers on Form 1094-C and Form 1095-C.](#)" The IRS made one substantive change to the Q&As. At Q&A #5, the IRS provided the 2018 due dates for furnishing forms to employees and filing forms with the IRS.

For reporting in 2018 (for offers of coverage and coverage in 2017), an applicable large employer must furnish Form 1095-C to each full-time employee on or before March 2, 2018. This due date reflects a 30-day extension from the general due date (that is, January 31 of the year immediately following the calendar year to which the information relates); the extension was provided by the IRS in Notice 2018-06 on December 22, 2017. The extension applies automatically and does not require the submission of any request or other documentation to the IRS.

Although the IRS extended the due date for furnishing Form 1095-C for 2017, the due date for filing Forms 1094-C and 1095-C with the IRS was not extended.

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IRS Updates Its Q&As on Information Reporting by Health Coverage Providers

The Internal Revenue Service (IRS) updated its [Questions and Answers on Information Reporting by Health Coverage Providers \(Section 6055\)](#) by adding questions 30 through 35. Among other items, the IRS discussed short-term relief available from penalties for incomplete or incorrect returns [filed](#) with the IRS or [furnished](#) to individuals. For reporting in 2016, 2017, and 2018, the IRS will not impose penalties on employers that can show that they have made good faith efforts to comply with the information reporting requirements.

IRS Announces the Play-or-Pay Adjusted Penalty Amounts

The Internal Revenue Service (IRS) updated its [Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act](#) to reflect adjusted penalty amounts for failures to offer coverage in the 2018 calendar year. For Penalty A (or the “no offer” penalty), the adjusted penalty amount per full-time employee is \$2,320. For Penalty B (or the “inadequate coverage” penalty), the adjusted penalty amount per full-time employee is \$3,480.

March 2018

March was a quiet month in the employee benefits world. The U.S. Department of Labor (DOL) updated its model Premium Assistance Under Medicaid and the Children’s Health Insurance Program notice (CHIP notice).

The IRS issued its updated Employer’s Tax Guide to Fringe Benefits, issued transition relief regarding HSA eligibility of individuals with health insurance that provides benefits for male sterilization or male contraceptives without a deductible, and issued its updated Guide on Health Savings Accounts and Other Tax-Favored Health Plans.

DOL Updates Employer CHIP Notice

The U.S. Department of Labor (DOL) updated its model [Premium Assistance Under Medicaid and the Children’s Health Insurance Program notice](#) (CHIP notice).

Employers that provide health insurance coverage in states with premium assistance through Medicaid or the Children’s Health Insurance Program (CHIP) must provide their employees with the CHIP notice before the start of each plan year. The CHIP notice provides information to employees on how to apply for premium assistance, including how to contact their state Medicaid or CHIP office. The DOL usually updates its model CHIP notice biannually.

IRS Issues Updated Employer’s Tax Guide to Fringe Benefits

The Internal Revenue Service (IRS) issued its 2018 [Publication 15-B](#) which contains information for employers on the employment tax treatment of fringe benefits. The guide is updated to reflect, among other items:

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- The suspension of qualified bicycle commuting reimbursements from an employee's income for any tax year beginning after December 31, 2017, and before January 1, 2026.
- The suspension of the exclusion for qualified moving expense reimbursements from an employee's income for tax years beginning after December 1, 2017, and before January 1, 2026. However, the exclusion remains available for a U.S. Armed Forces member on active duty who moves because of a permanent change of station.
- Limits on the deduction by employers for certain fringe benefits, such as meals and transportation commuting benefits.
- The definition of items that aren't tangible personal property for purposes of employee achievement awards.

The guide lists fringe benefits' tax treatment in its Table 2-1 "Special Rules for Various Types of Fringe Benefits."

IRS Issues Transition Relief Notice for Plans with Male Sterilization or Contraceptive Benefit

Recently, some states adopted laws that require certain health insurance policies to provide benefits for male sterilization and male contraceptives without cost-sharing.

However, under health saving account (HSA) eligibility requirements, a high deductible health plan (HDHP) generally may not provide benefits for any year until the minimum deductible for that year is satisfied. Although an HDHP may provide preventive care without a deductible or with a deductible that is below the minimum annual amount required by HSA eligibility requirements, male sterilization and male contraceptives are not considered preventive care under the Social Security Act or any Treasury Department guidance.

The Internal Revenue Service (IRS) released its [Notice 2018-12](#) (Notice) to clarify that if a health plan provides benefits for male sterilization or male contraceptives before satisfying the minimum deductible for an HDHP, then the plan is not an HDHP, regardless of whether state law requires coverage of such benefits. Further, an individual who is not covered by an HDHP with respect to a month is not an HSA-eligible individual and may not deduct contributions to an HSA for that month. Similarly, HSA contributions made by an employer on behalf of the individual are not excludible from income and wages.

To allow states time to change their laws so their residents will be able to purchase health insurance coverage that qualifies as an HDHP, the Notice provides transition relief for periods before 2020 to individuals who are, have been, or become participants in or beneficiaries of a health insurance policy that provides benefits for male sterilization or male contraceptives without a deductible or with a deductible below the minimum deductible for an HDHP.

During the transition relief period, an individual with this type of health insurance policy will not be treated as HSA-ineligible, merely because the policy fails to qualify as an HDHP.

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IRS Issues Updated Guide on Health Savings Accounts and Other Tax-Favored Health Plans

The Internal Revenue Service (IRS) updated its [Publication 969](#) for taxpayers to use in preparing their 2017 returns. The publication explains health savings accounts (HSAs), medical savings accounts (Archer MSAs and Medicare Advantage MSAs), health flexible spending arrangements (FSAs), and health reimbursement arrangements (HRAs).

April 2018

April was a busy month in the employee benefits world. The Internal Revenue Service (IRS) modified the 2018 health savings account (HSA) family contribution limit back to \$6,900. The U.S. Department of Labor (DOL), U.S. Department of Health and Human Services (HHS), and the Treasury released proposed frequently asked questions regarding mental health parity.

The Centers for Medicare and Medicaid Services (CMS) released the 2019 parameters for the Medicare Part D prescription drug benefit, a 2019 Benefit and Payment Parameters final rule, and a transitional policy extension for non-grandfathered coverage in the small group and individual health insurance markets.

The IRS released frequently asked questions on the employer credit for paid family medical leave.

IRS Changes 2018 HSA Family Contribution Limit

The Internal Revenue Service (IRS) recently released [Revenue Procedure 2018-27](#) to modify the 2018 health savings account (HSA) family contribution limit back to \$6,900. This is the second, and likely final, change in limit during 2018.

As background, in May 2017, the IRS released [Revenue Procedure 2017-37](#) that set the 2018 HSA family contribution limit at \$6,900.

However, in March 2018, the IRS released [Revenue Procedure 2018-10](#) that adjusted the annual inflation factor for some tax-related formulas from the Consumer Price Index (CPI) to a new factor called a “chained CPI.” As a result, the 2018 HSA family contribution limit was lowered to \$6,850 from \$6,900, retroactively effective to January 1, 2018.

Stakeholders informed the IRS that the lower HSA contribution limit would impose many unanticipated administrative and financial burdens. In response and in the best interest of sound and efficient tax administration, the IRS will allow taxpayers to treat the originally published \$6,900 limit as the 2018 HSA family contribution limit.

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Excess Contribution Tax Treatment if Employee Received Distribution Based on Earlier Limit

Employee received distribution of excess contribution with earnings?	Employee repays distribution by the individual's tax return filing date?	Excess contribution is includible in the employee's gross income and subject to the 20% excess contributions excise tax?
Yes	Yes	No
Yes	No	Generally, no. Yes, if the HSA distribution is attributable to employer contributions and not included in the employee's wages because the employer treats \$6,900 as the limit, unless the employee uses the distribution for qualified medical expenses.

DOL, HHS, and Treasury Release Proposed FAQs on Mental Health Parity

The U.S. Departments of Labor (DOL), Health and Human Services (HHS), and the Treasury (collectively, the "Departments") released proposed [FAQs About Mental Health and Substance Use Disorder Parity Implementation and the 21st Century Cures Act Part XX](#).

The Departments respond to FAQs as part of implementing the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA).

Generally, the MHPAEA requires that the financial requirements (for example, coinsurance and copays) and treatment limitations (for example, visit limits) imposed on mental health or substance abuse disorder (MH/SUD) benefits cannot be more restrictive than the predominant financial requirements and treatment limitations that apply to substantially all medical/surgical benefits in a class.

Similarly, a group health plan or issuer cannot impose a nonquantitative treatment limitation (NQTL) on MH/SUD benefits that is more stringent than a comparable limitation that is applied to medical/surgical benefits.

The MHPAEA regulations include express disclosure requirements. For example, if a participant requests the criteria for medical necessity determinations regarding MH/SUD benefits, then the plan administrator must make the information available to the participant.

To assist plan sponsors with disclosure requests, DOL released a revised draft [Mental Health and Substance Use Disorder Parity Disclosure Request](#) that plan sponsors may provide to individuals who request information from an employer-sponsored health plan regarding treatment limitations.

To assist plan sponsors in determining whether a group health plan complies with MHPAEA, the DOL released its [Self-Compliance Tool for the Mental Health Parity and Addiction Equity Act](#).

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CMS Releases 2019 Parameters for Medicare Part D Prescription Drug Benefit

The Centers for Medicare and Medicaid Services (CMS) released the following [parameters](#) for the defined standard Medicare Part D prescription drug benefit for 2019:

Deductible	\$ 415
Initial coverage limit	\$ 3,820
Out-of-pocket threshold	\$ 5,100
Total covered Part D spending at the out-of-pocket threshold (for beneficiaries who are ineligible for the coverage gap discount program)	\$ 8,139.54
Minimum cost-sharing in catastrophic coverage portion of the benefit	\$ 3.40 for generic/preferred multi-source drugs \$ 8.50 for all other drugs

Generally, group health plan sponsors must disclose to Part D eligibility individuals whether the prescription drug coverage offered by the employer is creditable. Coverage is creditable if it, on average, pays out at least as much as coverage available through the defined standard Medicare Part D prescription drug plan.

CMS Issues 2019 Benefit and Payment Parameters Final Rule

The Centers for Medicare and Medicaid Services (CMS) published its 2019 Benefit and Payment Parameters [final rule](#). The rule primarily affects the individual health insurance market inside and outside of the Exchange, the small group health insurance market, issuers, and the states.

Within the rule, three items most directly affect employers and their group health plans:

- Maximum annual out-of-pocket limit on cost sharing for 2019
- New methods for changing state EHB-benchmark plans
- New requirements for employers and issuers participating in the Small Business Health Options Program (SHOP) Marketplace

[Read more about the final rule.](#)

CMS Issues Transitional Policy Extension

The Centers for Medicare and Medicaid Services (CMS) issued a [bulletin](#) extending its transitional policy.

As background, in November 2013, CMS announced a transitional policy for non-grandfathered coverage in the small group and individual health insurance markets. Under its policy, health insurance issuers may choose to continue certain coverage that would otherwise be cancelled because of noncompliance with Patient Protection and Affordable Care Act (ACA) and Public Health Service Act (PHS Act). Further, affected small businesses and individuals may choose to re-enroll in such coverage.

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Under its policy, non-grandfathered health insurance coverage in the small group and individual health insurance markets will not be considered to be out of compliance with the following ACA and PHS Act market reforms if certain criteria are met:

- Fair health insurance premiums
- Guaranteed availability of coverage
- Guaranteed renewability of coverage
- Prohibition of pre-existing condition exclusions or other discrimination based on health status, with respect to adults, except with respect to group coverage
- Prohibition of discrimination against individual participants and beneficiaries based on health status, except with respect to group coverage
- Non-discrimination in health care
- Coverage for individuals participating in approved clinical trials
- Single risk pool requirement

Under CMS' transitional policy, states may permit issuers that have renewed policies under the transitional policy continually since 2014 to renew such coverage for a policy year starting on or before October 1, 2019. However, any policies renewed under this transitional policy must not extend past December 31, 2019.

IRS Releases FAQ on Employer Credit for Paid Family Medical Leave

The IRS released an [FAQ](#) that primarily reiterates the [Tax Cuts and Jobs Act](#)'s provisions that provide a new federal credit for employers that provide paid family and medical leave to their employees.

The IRS explains that an employer must reduce its deduction for wages or salaries paid or incurred by the amount determined as a credit. Also, any wages taken into account in determining any other general business credit may not be used in determining this credit.

The IRS adds this definition of "paid family and medical leave" that, for purposes of the credit, includes time off for:

- Birth of an employee's child and to care for the child.
- Placement of a child with the employee for adoption or foster care
- To care for the employee's spouse, child, or parent who has a serious health condition
- A serious health condition that makes the employee unable to perform the functions of his or her position
- Any qualifying exigency due to an employee's spouse, child, or parent being on covered active duty (or having been notified of an impending call or order to covered active duty) in the Armed Forces.
- To care for a service member who is the employee's spouse, child, parent, or next of kin

The FAQ also explains that, in the future, the IRS intends to address:

- When the written policy must be in place
- How paid "family and medical leave" relates to an employer's other paid leave
- How to determine whether an employee has been employed for "one year or more"

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- The impact of state and local leave requirements
- Whether members of a controlled group of corporations and businesses under common control are treated as a single taxpayer in determining the credit

[Read more about the federal tax credit](#) for employer-provided paid family and medical leave.

May 2018

May was a relatively busy month in the employee benefits world. The Internal Revenue Service (IRS) released the indexed threshold that employers will use in 2019 to determine coverage affordability. The IRS also issued inflation adjusted amounts that will apply to health savings accounts for 2019.

The IRS released guidance on its play-or-pay penalty response acknowledgement letters. The IRS also released a tax reform tip, frequently asked questions about the family and medical leave credit, and a fact sheet on determining whether an employer is a large employer.

IRS Releases ACA Indexed Affordability Threshold for 2019

The Internal Revenue Service (IRS) released its [Revenue Procedure 2018-34](#) that makes an indexing adjustment to the required contribution percentage that is used to determine whether employer-sponsored health coverage is affordable. For 2019, the percentage will be 9.86 percent.

This means that if an employer is using the federal poverty level (FPL) affordability safe harbor, then the maximum monthly self-only contribution will be \$99.75. [9.86% of \$12,140 (the 2018 contiguous U.S. FPL for one person), divided by 12, equals \$99.75.]

IRS Releases 2019 Limits on Health Savings Accounts

The Internal Revenue Service (IRS) released its [Revenue Procedure 2018-30](#) that provides the 2019 inflation adjusted amounts for health savings accounts (HSAs).

For 2019, the annual limitation on deductions for an individual with self-only coverage under a high deductible health plan is \$3,500. For 2019, the annual limitation on deductions for an individual with family coverage under a high deductible health plan is \$7,000.

For 2019, a “high deductible health plan” is defined as a health plan with an annual deductible that is not less than \$1,350 for self-only coverage or \$2,700 for family coverage, and the annual out-of-pocket expenses (deductibles, co-payments, and other amounts, but not premiums) do not exceed \$6,750 for self-only coverage or \$13,500 for family coverage.

IRS Releases Guidance on its Play-or-Pay Penalty Response Acknowledgment Letters

In late 2017, the Internal Revenue Service (IRS) started mailing [Letter 226J](#) to inform large employers of their potential liability for an employer shared responsibility payment (ESRP) for the 2015 calendar year. The IRS’ determination of an employer’s liability and potential payment is based on information reported

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to the IRS on Forms 1094-C and 1095-C and information about the employer's full-time employees that were allowed the premium tax credit.

The letter contains [Form 14764](#) (ESRP Response) which is the form that the employer must use to file its response by the deadline listed in the letter. The employer uses Form 14764 to indicate that it agrees or disagrees with the IRS' letter. If an employer disagrees with the proposed liability, then it must provide a full explanation of its disagreement using [Form 14765](#).

The IRS will acknowledge the employer's response with a Letter 227 that describes the further actions that an employer can take. The IRS' recently released [Understanding Your Letter 227](#) describes the versions of Letter 227 that an employer may receive:

- [Letter 227-J](#) acknowledges receipt of the signed agreement Form 14764, ESRP Response, and that the penalty will be assessed. After the IRS issues this letter, the case will be closed. No response is required.
- [Letter 227-K](#) acknowledges receipt of the information provided and shows the penalty has been reduced to zero. After the IRS issues this letter, the case will be closed. No response is required.
- [Letter 227-L](#) acknowledges receipt of the information provided and shows the penalty has been revised. The letter includes an updated Form 14765 and revised calculation table. The employer can agree or request a meeting with the manager and/or appeals.
- [Letter 227-M](#) acknowledges receipt of information provided and shows that the penalty did not change. The letter provides an updated Form 14765 and revised calculation table. The employer can agree or request a meeting with the manager and/or appeals.
- [Letter 227-N](#) acknowledges the decision reached in appeals and shows the penalty based on the appeals review. After the IRS issues this letter, the case will be closed. No response is required.

If, after receiving Letter 227, the employer agrees with the proposed penalty, then the employer would follow the instructions to sign the response form and return it with full payment in the envelope provided.

If, after receiving Letter 227, the employer disagrees with the proposed or revised shared employer responsibility payment, the employer must provide an explanation of why it disagrees or indicate changes needed, or both, on Form 14765. Then the employer must return all documents as instructed in the letter by the response date. The employer may also request a pre-assessment conference with the IRS Office of Appeals within the response date listed within Letter 227, which will be generally 30 days from the date of the letter.

If the employer does not respond to either Letter 226J or Letter 227, the IRS will assess the amount of the proposed employer shared responsibility payment and issue a notice and demand for payment.

[Read more about the play-or-pay penalty assessment letters.](#)

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IRS Releases Tax Reform Tax Tip and FAQs Regarding Family and Medical Leave Credit

The Internal Revenue Service (IRS) released its [Tax Reform Tax Tip 2018-69: How the Employer Credit for Family and Medical Leave Benefits Employers](#) and its updated [Section 45S Employer Credit for Paid Family and Medical Leave FAQs](#) that primarily reiterates the [Tax Cuts and Jobs Act](#)'s provisions that provide a new federal credit for employers that provide paid family and medical leave to their employees.

In its Tax Tip, the IRS explains that an employer must reduce its deduction for wages or salaries paid or incurred by the amount determined as a credit. Also, any wages taken into account in determining any other general business credit may not be used in determining this credit.

In its FAQs, the IRS indicates that, in the future, it will address when the written policy must be in place, how paid family and medical leave relates to an employer's other paid leave, how to determine whether an employee has been employed for one year or more, the impact of state and local leave requirements, and whether members of a controlled group of corporations and businesses under common control are treated as a single taxpayer in determining the credit.

[Read more about the federal tax credit](#) for employer-provided paid family and medical leave.

IRS Releases Fact Sheet on Determining Whether an Employer is a Large Employer

The Internal Revenue Service (IRS) released [Publication 5208 – Affordable Care Act: Determining if you are an applicable large employer](#) that provides a three-step process for employers to determine whether they are an applicable large employer for purposes of the employer shared responsibility provisions.

Although this one-page fact sheet doesn't provide new information about counting employees, it may be a helpful guide for those employers who have fewer than 50 full-time or full-time equivalent employees and who are growing their staff numbers.

June 2018

June was a relatively quiet month in the employee benefits world. The U.S. Department of Labor issued final regulations regarding association health plans. The Centers for Medicare and Medicaid Services released a form that certain plan sponsors will use for reporting limited wraparound coverage.

DOL Issues Final Regulations Regarding Association Health Plans

On June 19, 2018, the U.S. Department of Labor (DOL) published [Frequently Asked Questions About Association Health Plans](#) (AHPs) and issued a [final rule](#) that broadens the definition of "employer" and the provisions under which an employer group or association may be treated as an "employer" sponsor of a single multiple-employer employee welfare benefit plan and group health plan under Title I of the Employee Retirement Income Security Act (ERISA).

The final rule is intended to facilitate adoption and administration of AHPs and expand health coverage access to employees of small employers and certain self-employed individuals.

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The final rule will be effective on August 20, 2018. The final rule will apply to fully-insured AHPs on September 1, 2018, to existing self-insured AHPs on January 1, 2019, and to new self-insured AHPs formed under this final rule on April 1, 2019.

[Read more about the final rule.](#)

CMS Releases Form for Reporting Wraparound Excepted Benefits

Under a 2015 [final rule](#) by the Internal Revenue Service, U.S. Department of Labor, and U.S. Department of Health and Human Services, certain employers may offer limited wraparound coverage under one of two narrow pilot programs.

These wraparound benefits are considered an excepted benefit and are generally exempt from certain requirements of federal laws, including ERISA, the Internal Revenue Code, and parts of the Patient Protection and Affordable Care Act.

Under the final rule, plan sponsors who offer limited wraparound coverage have reporting requirements. In December 2017, the Centers for Medicare and Medicaid Services (CMS) issued a [notice](#) for comments on a proposed reporting form.

On June 25, 2018, the CMS published its [Reporting Form for Plan Sponsors Offering Limited Wraparound Coverage](#). A plan sponsor of limited wraparound coverage must file the form once, within 60 days of the form's publication (by August 24, 2018), or 60 days after the first day of the first plan year that limited wraparound coverage is first offered.

[Read more about limited wraparound coverage.](#)

July 2018

July was a quiet month in the employee benefits world. The IRS released an information letter on the employer shared responsibility provisions.

IRS Releases Information Letter on Employer Shared Responsibility

The Internal Revenue Service (IRS) released its [Information Letter 2018-0013](#) to reiterate how the employer shared responsibility provisions would apply to an applicable large employer. Specifically, the IRS explained how the Service Contract Act (SCA) interacts with the Patient Protection and Affordable Care Act (ACA).

As background, the SCA requires workers who are employed on certain federal contracts to be paid prevailing wages and fringe benefits. An employer generally can satisfy its fringe benefit obligation by providing the cash equivalent of benefits or a combination of cash and benefits. Alternatively, an employer may permit employees to choose among various benefits, or various benefits and cash. An employer may choose to provide fringe benefits under the SCA by offering an employee the option to enroll in health coverage provided by the employer (including an option to decline that coverage). If the employee declines the coverage, that employer would then generally be required by the SCA to provide the employee with cash or other benefits of an equivalent value.

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This Information Letter refers to IRS [Notice 2015-87](#) which describes how the ACA and the SCA may be coordinated for plan years beginning before January 1, 2017, and until further guidance is issued and applicable. Notice 2015-87 clarifies that, for employees under the SCA, the choice of a cash-out payment will generally not require an employer to pay a greater share of the cost of the health coverage for the coverage to be considered affordable.

August 2018

August was a relatively quiet month in the employee benefits world. The Internal Revenue Service (IRS), the Department of Health and Human Services (HHS), and the Department of Labor (DOL) published a final rule that amends the definition of short-term, limited-duration insurance. HHS also released a fact sheet on the final rule. To provide guidance on association health plans, the DOL posted a fact sheet and the IRS posted a new Q&A for employers.

IRS, HHS, and DOL Issue Final Rule on Short-Term, Limited-Duration Insurance

On August 3, 2018, the Internal Revenue Service, the Department of Health and Human Services (HHS), and the Department of Labor (collectively, the Departments) published a [final rule](#) that amends the definition of short-term, limited-duration insurance. HHS also released a [fact sheet](#) on the final rule.

According to the Departments, the final rule will provide consumers with more affordable options for health coverage because they may buy short-term, limited-duration insurance policies that are less than 12 months in length and may be renewed for up to 36 months.

The final rule will apply to insurance policies sold on or after October 2, 2018.

[Read more about the final rule.](#)

DOL and IRS Release Additional Information on Association Health Plans

On August 20, 2018, the Department of Labor (DOL) posted the [Association Health Plans ERISA Compliance Assistance](#) fact sheet.

On August 20, 2018, the IRS added a new Q&A 18 to its [Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act](#). Q&A 18 confirms that:

- An employer that is not an applicable large employer (ALE) under the employer shared responsibility provisions does not become an ALE due to participation in an AHP.
- An employer that is an ALE under the employer shared responsibility provisions continues to be an ALE subject to the employer shared responsibility provisions regardless of its participation in an AHP.
- The only circumstance when multiple employers are treated as a single employer for determining whether the employer is an ALE is if the employers have a certain level of common or related ownership.

[Read more about the association health plan final rule.](#)

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September 2018

September was another relatively quiet month in the employee benefits world. The IRS issued guidance on the employer credit for paid family and medical leave.

IRS Issues Guidance on Employer Credit for Paid Family and Medical Leave

The Internal Revenue Service (IRS) released [Notice 2018-71](#) (Notice) that provides Q&A guidance on the Internal Revenue Code Section 45S employer credit for paid family and medical leave (FML). The IRS clarified several items in its guidance, including:

- An employer does not need to be subject to Title I of the Family and Medical Leave Act of 1993 (FMLA) to be eligible for the employer credit for FML
- A description of what the employer's written policy must contain, including sample "non-interference" language
- Under Section 45S, paid leave is considered FML only if the leave is specifically designated for one or more FMLA purposes, may not be used for any other reason, and is not paid by a state or local government or required by state or local law
- An employee does not need to work a minimum number of hours per year to be a qualifying employee
- Each member of a controlled group generally makes a separate election of whether to claim the credit
- An employer must file IRS Form 8994, Employer Credit for Paid Family and Medical Leave, and IRS [Form 3800](#), General Business Credit, with its tax return to claim the credit

[Read more about the IRS' Q&A guidance.](#)

October 2018

October was a busy month in the employee benefits world. The Internal Revenue Service (IRS) released final forms and instructions for 2018 ACA reporting. The Department of Health and Human Services (HHS) released inflation-adjusted civil monetary penalty amounts.

Congress and the President enacted a law to prohibit pharmacy gag clauses. The IRS provided tax relief to victims of Hurricane Michael in Florida. The DOL released FAQs for plan participants affected by Hurricanes Florence and Michael.

IRS Releases Final Forms and Instructions for 2018 ACA Reporting

The Internal Revenue Service (IRS) released instructions for both the Forms [1094-B](#) and [1095-B](#) and the Forms [1094-C](#) and [1095-C](#) and Forms [1094-B](#), [1095-B](#), [1094-C](#), and [1095-C](#). There are no substantive changes in the forms or instructions between 2017 and 2018, beyond the further removal of now-expired forms of transition relief. There is a minor formatting change to Forms 1095-B and 1095-C for 2018. There are dividers for the entry of an individual's first name, middle name, and last name.

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Reporting will be due early in 2019, based on coverage in 2018. For calendar year 2018, Forms 1094-C, 1095-C, 1094-B, and 1095-B must be filed by February 28, 2019, or April 1, 2019, if filing electronically. Statements to employees must be furnished by January 31, 2019.

All reporting will be for the 2018 calendar year, even for non-calendar year plans.

[Read more about the final forms and instructions.](#)

HHS Releases Inflation-Adjusted Federal Civil Penalty Amounts

The Department of Health and Human Services (HHS) issued its [Annual Civil Monetary Penalties Inflation Adjustment](#). Here are some of the adjustments:

- Medicare Secondary Payer:
 - For failure to provide information identifying situations where the group health plan is primary, the maximum penalty increases from \$1,157 to \$1,181 per failure.
 - For an employer who offers incentives to a Medicare-eligible individual to not enroll in employer sponsored group health that would otherwise be primary, the maximum penalty increases from \$9,054 to \$9,239.
 - For willful or repeated failure to provide requested information regarding group health plan coverage, the maximum penalty increases from \$1,474 to \$1,504.
- Summary of Benefits and Coverage: For failure to provide, the maximum penalty increases from \$1,105 to \$1,128 per failure.
- Health Insurance Portability and Accountability Act (HIPAA):

Tier	Penalty
1. Did Not Know: Covered entity or business associate did not know (and by exercising reasonable diligence would not have known) that it violated the provision of the Administrative Simplification regulations.	\$114 to \$57,051 for each violation, up to a maximum of \$1,711,533 for identical provisions during a calendar year.
2. Reasonable Cause: The violation was due to reasonable cause and not to willful neglect.	\$1,141 to \$57,051 for each violation, up to a maximum of \$1,711,533 for identical provisions during a calendar year.
3. Willful Neglect – Corrected: The violation was due to willful neglect, but the violation is corrected during the 30-day period beginning on the first date the liable person knew (or by exercising reasonable diligence would have known) of the failure to comply.	\$11,410 to \$57,051 for each violation, up to a maximum of \$1,711,533 for identical provisions during a calendar year.

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Tier	Penalty
4. Willful Neglect – Not Corrected: The violation was due to willful neglect and the violation is not corrected as described in Tier 3.	\$57,051 minimum for each violation, up to a maximum of \$1,711,533 for identical provisions during a calendar year.

The adjustments are effective for penalties assessed on or after October 11, 2018, for violations occurring after November 2, 2015.

Congress and the President Enact Law Prohibiting Pharmacy Gag Clauses

Congress and the President enacted the [Patient Right to Know Drug Prices Act](#) (Act) that prohibits any restriction on a pharmacy's ability to inform customers about certain prescription drug costs.

The Act prohibits a group health plan (or a health insurance issuer offering group or individual health insurance coverage, or a pharmacy benefits management service working with a health plan or health insurance issuer) from taking the following actions against a pharmacy that dispenses a prescription drug to an enrollee in the plan or coverage:

- restricting, directly or indirectly, the pharmacy from informing an enrollee of any difference between the enrollee's out-of-pocket prescription drug cost under the plan or coverage and the amount that the enrollee would pay for the prescription drug without using any health plan or insurance coverage, or
- penalizing the pharmacy for informing an enrollee of any difference between the enrollee's out-of-pocket prescription drug cost under the plan or coverage and the amount that the enrollee would pay for the prescription drug without using any health plan or insurance coverage.

Tax Relief for Victims of Hurricane Michael in Florida

Victims of Hurricane Michael that took place beginning on October 7, 2018, in Florida may qualify for tax relief from the Internal Revenue Service (IRS). The President declared that a major disaster exists in Florida. The Federal Emergency Management Agency's major declaration permits the IRS to [postpone deadlines](#) for taxpayers who have a business in certain counties within the disaster area.

The IRS automatically identifies taxpayers located in the covered disaster area and applies automatic filing and payment relief. But affected taxpayers who reside or have a business located outside the covered disaster area must call the IRS disaster hotline at 866-562-5227 to request this tax relief.

In the prior month, the IRS [extended deadlines](#) for victims of Hurricane Florence in certain counties of North Carolina, South Carolina, and Virginia.

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DOL Releases FAQs for Plan Participants Affected by Hurricanes Florence and Michael

The Department of Labor (DOL) released its [FAQs for Participants and Beneficiaries Following Hurricanes Florence and Michael](#) to answer health benefit and retirement benefit questions. The FAQs cover topics including:

- Whether an employee will still be covered by an employer-sponsored group health plan if the worksite closed
- Potential options such as special enrollment rights, COBRA continuation coverage, individual health coverage, and health coverage through a government program in the event that an employee loses health coverage

November 2018

November was a busy month in the employee benefits world. The Internal Revenue Service (IRS) extended the due date for employers to furnish Forms 1095-C or 1095-B to individuals, extended “good faith compliance efforts” relief for 2018, and issued specifications for employer-provided substitute ACA forms. The Department of the Treasury (Treasury), Department of Labor (DOL), and Department of Health and Human Services (HHS) released two final rules on contraceptive coverage exemptions.

The IRS released indexed Patient-Centered Outcomes Research Institute (PCORI) fees and inflation-adjusted limits for various benefits. The DOL, IRS, and the Pension Benefit Guaranty Corporation (PBGC) released advance informational copies of the 2018 Form 5500 annual return/report and instructions.

For survivors of the 2018 California wildfires, the IRS provided tax relief and the DOL released employee benefit guidance. The IRS provided guidance to employers who adopt leave-based donation programs to provide charitable relief for victims of Hurricane Michael. The Treasury released its Priority Guidance Plan that lists projects that will be the focus of the Treasury and IRS for the period from July 1, 2018, through June 30, 2019.

IRS Extends Due Date to Furnish ACA Forms to Participants and Provides Good Faith Penalty Relief

The Internal Revenue Service (IRS) issued [Notice 2018-94](#) to extend the due date to furnish 2018 Forms 1095-B and 1095-C to individuals. The due date moves from January 31, 2019, to March 4, 2019.

The IRS also extends “good faith compliance efforts” relief for 2018. As in prior years, this relief is applied only to incorrect or incomplete information reported in good faith on a statement or return. The relief does not apply to a failure to timely furnish a statement or file a return.

[Read more about the notice.](#)

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IRS Issues Specifications for Employer-Provided Substitute ACA Forms

The Internal Revenue Service (IRS) issued [Publication 5223 General Rules and Specifications for Affordable Care Act Substitute Forms 1095-A, 1094-B, 1095-B, 1094-C, and 1095-C](#) that describes how employers may prepare substitute forms to furnish ACA reporting information to individuals and the IRS.

Treasury, DOL, and HHS Release Two Final Rules on Contraceptive Coverage Exemptions

The Department of the Treasury (Treasury), Department of Labor (DOL), and Department of Health and Human Services (HHS) (collectively, Departments) released two final rules on contraceptive coverage exemptions. These rules finalize the Departments' interim final rules that were published on October 13, 2017. HHS also issued a [press release](#) and [fact sheet](#) on these final rules.

The first [final rule](#) provides an exemption from the contraceptive coverage mandate to entities (including certain employers) and individuals that object to services covered by the mandate on the basis of sincerely held religious beliefs.

The second [final rule](#) provides an exemption from the contraceptive coverage mandate to nonprofit organizations, small businesses, and individuals that object to services covered by the mandate on the basis of sincerely held moral convictions.

The final rules will be effective on January 14, 2019.

[Read more about the final rules.](#)

IRS Releases Indexed PCORI Fee

The Patient Protection and Affordable Care Act (ACA) imposes a fee on insurers of certain fully insured plans and plan sponsors of certain self-funded plans to help fund the Patient-Centered Outcomes Research Institute (PCORI). The PCORI fee is due by July 31 of the year following the calendar year in which the plan or policy year ends.

The Internal Revenue Service issued [Notice 2018-85](#) to announce the PCORI fee of \$2.45 for policy years and plan years that end on or after October 1, 2018, and before October 1, 2019.

Plan/Policy Year	Last Year Fee Is Due (\$2.45, indexed/person)
Nov. 1, 2017 - Oct. 31, 2018	July 31, 2019
Dec. 1, 2017 - Nov. 30, 2018	July 31, 2019
Jan. 1, 2018 - Dec. 31, 2018	July 31, 2019
Feb. 1, 2018 - Jan. 31, 2019	July 31, 2020
March 1, 2018 - Feb. 28, 2019	July 31, 2020
April 1, 2018 - March 31, 2019	July 31, 2020

Plan/Policy Year	Last Year Fee Is Due (\$2.45, indexed/person)
May 1, 2018 - April 30, 2019	July 31, 2020
June 1, 2018 - May 31, 2019	July 31, 2020
July 1, 2018 - June 30, 2019	July 31, 2020
Aug. 1, 2018 - July 31, 2019	July 31, 2020
Sept. 1, 2018 - Aug. 31, 2019	July 31, 2020
Oct. 1, 2018 - Sept. 30, 2019	July 31, 2020

[Read more about the PCORI fee.](#)

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IRS Releases 2019 Inflation-Adjusted Limits

The Internal Revenue Service (IRS) released its [inflation-adjusted limits](#) for various benefits. For example, the maximum contribution limit to health flexible spending arrangements (FSAs) will be \$2,700 in 2019. Also, the maximum reimbursement limit in 2019 for Qualified Small Employer Health Reimbursement Arrangements will be \$5,150 for single coverage and \$10,450 for family coverage.

[Read more about the 2019 limits.](#)

Advance Informational Copies of 2018 Form 5500 Annual Return/Report

The U.S. Department of Labor's Employee Benefits Security Administration (EBSA), the Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation (PBGC) released [advance informational copies of the 2018 Form 5500 annual return/report](#) and [related instructions](#).

Here are some of the changes that the instructions highlight:

- **Principal Business Activity Codes.** Principal Business Activity Codes have been updated to reflect updates to the North American Industry Classification System (NAICS). For Line 2d, a plan administrator would enter the six-digit Principal Business Activity Code that best describes the nature of the plan sponsor's business from the list of codes on pages 78-80 of the Form 5500 Instructions.
- **Administrative Penalties.** The instructions have been updated to reflect that the new maximum penalty for a plan administrator who fails or refuses to file a complete or accurate Form 5500 report has been increased to up to \$2,140 a day for penalties assessed after January 2, 2018, whose associated violations occurred after November 2, 2015.

Because the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015 requires the penalty amount to be adjusted annually after the Form 5500 and its schedules, attachments, and instructions are published for filing, be sure to check for any possible required inflation adjustments of the maximum penalty amount that are published in the Federal Register after the instructions have been posted.

- **Form 5500-Participant Count.** The instructions for Lines 5 and 6 have been enhanced to make clearer that welfare plans complete only Line 5 and elements 6a(1), 6a(2), 6b, 6c, and 6d in Line 6.

Be aware that the advance copies of the 2018 Form 5500 are for informational purposes only and cannot be used to file a 2018 Form 5500 annual return/report.

ERISA imposes the Form 5500 reporting obligation on the plan administrator. Form 5500 is normally due on the last day of the seventh month after the close of the plan year. For example, a plan administrator would file Form 5500 by July 31, 2019, for a 2018 calendar year plan.

Tax Relief for Victims of November Wildfire in California

Victims of the wildfires that took place beginning on November 8, 2018, in California may qualify for tax relief from the Internal Revenue Service (IRS). The President declared that a major disaster exists in

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California. The Federal Emergency Management Agency's major declaration permits the IRS to [postpone deadlines](#) for taxpayers who have a business in certain counties within the disaster area.

The IRS automatically identifies taxpayers located in the covered disaster area and applies automatic filing and payment relief. But affected taxpayers who reside or have a business located outside the covered disaster area must call the IRS disaster hotline at 866-562-5227 to request this tax relief.

DOL Releases Employee Benefit Guidance and Relief for 2018 California Wildfire Survivors

The Department of Labor (DOL) released its [FAQs for Participants and Beneficiaries Following the 2018 California Wildfires](#) to answer health benefit and retirement benefit questions.

The FAQs cover topics including:

- Whether an employee will still be covered by an employer-sponsored group health plan if the worksite closed
- Potential options such as special enrollment rights, COBRA continuation coverage, individual health coverage, and health coverage through a government program in the event that an employee loses health coverage

The DOL also released its [Fact Sheet: Guidance and Relief for Employee Benefit Plans Impacted by the 2018 California Wildfires](#) to recognize that employers may encounter problems due to the wildfires. The DOL advises plan fiduciaries to make reasonable accommodations to prevent workers' loss of benefits and to take steps to minimize the possibility of individuals losing benefits because of a failure to comply with pre-established time frames.

The DOL also acknowledged that there may be instances when full and timely compliance by group health plans may not be possible due to physical disruption to a plan's principal place of business. The DOL's enforcement approach will emphasize compliance assistance, including grace periods and other relief where appropriate.

IRS Provides Guidance on Leave-Based Donation Programs' Tax Treatment

The IRS issued [Notice 2018-89](#) to guide employers who adopt leave-based donation programs to provide charitable relief for victims of Hurricane Michael. These leave-based donation programs allow employees to forgo vacation, sick, or personal leave in exchange for cash payments that the employer will make to charitable organizations described under Internal Revenue Code Section 170(c).

The employer's cash payments will not constitute gross income or wages of the employees if paid before January 1, 2020, to the Section 170(c) charitable organizations for the relief of victims of Hurricane Michael. Employers do not need to include these payments in Box 1, 3, or 5 of an employee's Form W-2.

Treasury Releases 2018-19 Priority Guidance Plan

The Department of the Treasury (Treasury) released its [2018-2019 Priority Guidance Plan](#) (Plan) that describes the priorities for the Treasury and the Internal Revenue Service (IRS) for the period from July 1,

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2018, through June 30, 2019. The Plan contains a list of projects that will be the focus of the Treasury and IRS, including:

- Guidance on employer shared responsibility provisions
- Regulations regarding the excise tax on high cost employer-provided coverage (also known as the “Cadillac tax”).

December 2018

December was a relatively quiet month in the employee benefits world. A U.S. District Court issued an order declaring that the Patient Protection and Affordable Care Act (ACA) is unconstitutional. The Equal Employment Opportunity Commission (EEOC) issued two final rules to remove certain wellness program incentives. The Department of Labor (DOL) updated its Form M-1 filing guidance for association health plans.

U.S. District Court Declares ACA Unconstitutional

On December 14, 2018, the U.S. District Court for the Northern District of Texas (Court) issued a [declaratory order](#) in ongoing litigation regarding the individual mandate and the Patient Protection and Affordable Care Act (ACA). The Court declared that the individual mandate is unconstitutional and declared that the rest of the ACA – including its guaranteed issue and community rating provisions – is unconstitutional.

The Court did not grant the plaintiffs' request for a nationwide injunction to prohibit the ACA's continued implementation and enforcement. The Court's declaratory judgment simply defines the parties' legal relationship and rights under the case at this relatively early stage in the case.

On December 16, 2018, the Court issued an [order](#) that requires the parties to meet and discuss the case by December 21, 2018, and to jointly submit a proposed schedule for resolving the plaintiffs' remaining claims.

On December 30, 2018, the Court issued two orders. The first [order](#) grants a stay of its December 14 order. This means that the court's order regarding the ACA's unconstitutionality will not take effect while it is being appealed. The second [order](#) enters the December 14 order as a final judgment so the parties may immediately appeal the order.

On December 31, 2018, the Court issued an order that stays the remainder of the case. This means that the Court will not be proceeding with the remaining claims in the case while its December 14 order is being appealed. After the appeal process is complete, the parties are to alert the Court and submit additional court documents if they want to continue with any remaining claims in the case.

At this time, the case's status does not impact employers' group health plans. However, employers should stay informed for the final decision in this case.

[Read more about the court case.](#)

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EEOC Issue Final Rules to Remove Wellness Program Incentive Limits Vacated by Court

On December 20, 2018, the Equal Employment Opportunity Commission (EEOC) issued two final rules to remove wellness program incentives.

As background, in August 2017, the U.S. District Court for the District of Columbia [held](#) that the U.S. Equal Employment Opportunity Commission (EEOC) failed to provide a reasoned explanation for its decision to allow an incentive for spousal medical history under the Genetic Information Nondiscrimination Act (GINA) rules and adopt 30 percent incentive levels for employer-sponsored wellness programs under both the Americans with Disabilities Act (ADA) rules and GINA rules.

In December 2017, the court [vacated](#) the EEOC rules under the ADA and GINA effective January 1, 2019. The EEOC issued the following two final rules in response to the court's order.

The first [rule](#) removes the section of the wellness regulations that provided incentive limits for wellness programs regulated by the ADA. Specifically, the rule removes guidance on the extent to which employers may use incentives to encourage employees to participate in wellness programs that ask them to respond to disability-related inquiries or undergo medical examinations.

The second [rule](#) removes the section of the wellness regulations that provided incentive limits for wellness programs regulated by GINA. Specifically, the rule removes guidance that addressed the extent to which an employer may offer an inducement to an employee for the employee's spouse to provide current health status information as part of a health risk assessment (HRA) administered in connection with an employee-sponsored wellness program.

Both rules will be effective on January 1, 2019.

[Read more about the EEOC's final rules.](#)

DOL Updates Form M-1 Filing Guidance for Association Health Plans

On December 3, 2018, the Department of Labor (DOL) published its ["10 Tips for Filing Form M-1 For Association Health Plans And Other MEWAs That Provide Medical Benefits"](#) that provides plan administrators with information on when to file and how to complete portions of Form M-1.

The DOL emphasizes that all multiple employer welfare arrangements (MEWAs) that provide medical benefits, including association health plans (AHPs) that intend to begin operating under the DOL's new [AHP rule](#), are required to file an initial registration Form M-1 at least 30 days before any activity including, but not limited to, marketing, soliciting, providing, or offering to provide medical care benefits to employers or employees who may participate in an AHP.

[Read more about the DOL guidance.](#)

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You should not act on this information without consulting legal counsel or other knowledgeable advisors.



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