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UBA
Compliance Advisor

What every HR leader should know about compliance



Compliance Recap

October 2019

October was a relatively quiet month in the employee benefits world.

The U.S. District Court for the Northern District of Texas vacated portions of the current rule implementing Section 1557 that prohibit discrimination on the basis of gender identity and pregnancy termination. The U.S. Court of Appeals for the 9th Circuit affirmed a district court's preliminary injunction of final rules regarding contraceptive coverage exemptions.

The Office for Civil Rights (OCR) and the Office of the National Coordinator for Health Information Technology (ONC) released the latest version of the Department of Health and Human Services (HHS) Security Risk Assessment Tool. The Internal Revenue Service (IRS) updated its webpage that has general information about the CP233J notice. The Treasury released its 2019-2020 Priority Guidance Plan.

UBA Updates

UBA released one new advisor: [Health Reimbursement Arrangements Comparison Chart](#)

UBA updated or revised existing guidance:

- [Sample Open Enrollment Notice Packet](#)
- [HRAs, HSAs, and Health FSAs – What's the Difference?](#)
- [The Play-or-Pay Penalty and Counting Employees under the ACA](#)
- [Update on Nondiscrimination Regulations Relating to Sex, Gender, Age, and More](#)
- [Update on Nondiscrimination Regulations Relating to Sex, Gender, Age, and More – for Health Care Providers](#)
- [State Guide to Small Employer Definition](#)
- [Contraception Mandate Rolled Back for Employers](#)
- [Frequently Asked Questions about Grandfathered Plans](#)
- [Update on Tri-Agency Final Rules on Health Reimbursement Arrangements](#)



District Court Vacates Parts of ACA Section 1557 Nondiscrimination Rule

As background, the Patient Protection and Affordable Care Act (ACA) [Section 1557](#) provides that individuals shall not be excluded from participation in, denied the benefits of, or be subjected to discrimination under any health program or activity which receives federal financial assistance from the Department of Health and Human Services (HHS), on the basis of race, color, national origin, sex, age, or disability. The current rule applies to any program administered by HHS or any health program or activity administered by an entity established under Title I of the ACA. These applicable entities are “covered entities” and include a broad array of providers, employers, and facilities. On May 13, 2016, the Department of Health and Human Services (HHS) issued a [final rule](#) (current rule) implementing Section 1557, which took effect on July 18, 2016.

On October 15, 2019, the U.S. District Court for the Northern District of Texas (District Court) [vacated](#) portions of the current rule implementing Section 1557 that prohibit discrimination on the basis of gender identity and pregnancy termination. The District Court remanded the vacated portions of the current rule to HHS for revision. While those portions of the current rule have been vacated, covered entities subject to Section 1557 may still face private lawsuits for discrimination based on gender identity and pregnancy termination.

Employers who are subject to Section 1557 should stay informed on this litigation because it is anticipated that the District Court’s ruling will be appealed to the Fifth Circuit Court of Appeals.

Please see our UBA Advisors “[Update on Nondiscrimination Regulations Relating to Sex, Gender, Age, and More](#)” and “[Update on Nondiscrimination Regulations Relating to Sex, Gender, Age, and More – for Health Care Providers](#)” for more information.

Court of Appeals Affirms Preliminary Injunction of Contraceptive Coverage Exemptions Final Rule

As background, the Patient Protection and Affordable Care Act (ACA) requires that non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage provide coverage of certain specified preventive services, including contraceptive services, without cost sharing. The Treasury, Department of Labor (DOL), and Department of Health and Human Services (HHS) (collectively, the Departments) released two final rules on November 7, 2018, regarding contraceptive coverage exemptions based on [religious beliefs](#) and [moral beliefs](#). These rules finalize the Departments’ interim final rules that were published on October 13, 2017.

On January 13, 2019, the U.S. District Court for the Northern District of California (California Court) granted a [preliminary injunction](#) that prohibits the final rules’ implementation and enforcement against California, Connecticut, Delaware, Hawaii, Illinois, Maryland, Minnesota, New York, North Carolina, Rhode Island, Vermont, Washington, Virginia, and the District of Columbia. On October 22, 2019, the U.S. Court of Appeals for the 9th Circuit [affirmed](#) the California Court’s preliminary injunction that prohibits the two final rules’ implementation and enforcement against the thirteen plaintiff states and the District of Columbia.

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



OCR and ONC Release HHS Security Risk Assessment Tool Version 3.1

The Office for Civil Rights (OCR) and the Office of the National Coordinator for Health Information Technology (ONC) have released [version 3.1](#) of the [HHS Security Risk Assessment \(SRA\) Tool](#). The tool is designed to help small- to medium-sized health care organizations perform risk assessments regarding potential malware, ransomware, and other cyberattacks.

IRS Updates CP233J Notice Webpage

The Internal Revenue Service (IRS) updated its webpage titled "[Understanding Your CP233J Notice](#)." The CP233J notice notifies employers of changes to the amount of the employer shared responsibility payment due to the IRS. The IRS webpage has general information about the notice including what the notice is, what an employer needs to do when it receives the notice, and answers to common questions.

The Treasury Releases 2019-2020 Priority Guidance Plan

The Treasury released its [2019-2020 Priority Guidance Plan](#) (Priority Guidance Plan) that sets forth guidance priorities for the Treasury and the Internal Revenue Service (IRS) during the twelve-month period from July 1, 2019, through June 30, 2020. The Priority Guidance Plan lists several priorities, including guidance under Section 125 on health flexible spending accounts (HFSAs), guidance on contributions to and benefits from paid family and medical leave programs, and guidance on the Cadillac tax.

Question of the Month

Q: Has the Internal Revenue Service (IRS) released the 2020 health flexible spending account (health FSA) contribution limit (also known as the employee deferral limit) or the 1094 / 1095 reporting forms for 2019?

A: No. The IRS has not released the 2020 health FSA contribution limit and has not released the 1094 / 1095 reporting forms for 2019. The IRS has not indicated when it plans to release either the health FSA contribution limit or the 1094 / 1095 reporting forms. At a recent conference, IRS staff (in their unofficial capacity) said that the 1094 / 1095 reporting forms have been delayed, in part, because the IRS is considering whether to change the forms to reflect the fact that the individual mandate's penalty is \$0 as of 2019.

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