Legislative Updates

Supreme Court Makes It Easier to Bring ERISA Claims Against Plans

- Plaintiffs bringing prohibited transaction claims under ERISA do not have to satisfy additional pleading requirements. Concerns of a flood of litigation. District courts have procedural tools at their disposal to dismiss meritless cases but Congress may enact a legislative "fix" to ERISA to circumvent this decision.

ACA's No-Cost Preventive Care Mandate is Before the Supreme Court

- Certain no-cost preventive services such as cancer screenings, pregnancy care, etc., offered by group health care plans might eventually become subject to cost-sharing due to an upcoming benefits case before the US Supreme Court.
- On appeal, the 5th US Circuit Court of Appeals held on June 21, 2024, that members of the US Preventive Services Task Force were not constitutionally appointed and, therefore, any of their preventive care recommendations made after the ACA was enacted on March 23, 2010, would not be required to be covered without cost share. The recommendation for pre-exposure prophylaxis ~~(PrEP)~~ antiretroviral medication, used to prevent the spread of HIV, coverage to be no-cost was made well after this date.
- ~~If the parties continue to litigate the case and the Supreme Court affirms the 5th Circuits decision, any updates to the task force's recommendations after the ACA was enacted would not have the force of the law.~~
- ~~However, if the high court strikes down the preventive care mandate, attorneys do not think plans and issuers can simply stop offering the updated preventive service without cost-sharing.~~
- In addition, states have their own preventive care mandates and some states may have adopted the ACA preventive services as a state law requirement. Virginia does mandate this.

Supreme Court Case Could Redefine Religious Exemptions

- The US Supreme Court is being asked to decide whether a religious nonprofit offering services that are arguably secular should be exempt from paying into a state unemployment system.
- Depending on the court's ruling, this could redefine how religious exemptions apply in the workplace. If the court finds in favor, it has the potential to have far reaching consequences since it would create the opportunity for bottom-line employers to take advantage of the decision to affiliate with religious organizations to avoid paying unemployment benefits for their workers.
- For HR, the two-part exemption test that is currently in place could potentially be eliminated that that ambiguity is where the HR risk lives.

- The court is expected to issue a decision by summer.

OSHA Deregulation Will Likely Target Pending and Final Rules

- Under Secretary of Labor Lori Chavez-DeRemer, many enforcement efforts for OSHA are expected to remain the same. However, with resources shrinking due to the DOGE and shifting priorities under the Trump administration, some changes are likely.
- The Trump administration will likely pause pending rulemaking including proposed heat standard which to shield workers from heat and proposed emergency responder standard. The new administration could also seek to revoke or revise rules that were made during the Biden administration.
- It is anticipated that the Trump administration will drop its defense of the agency's walkaround rule which grants employees the right to have a representative accompany an OSHA compliance officer when conducting an inspection. This is because it does not a substantive safety regulation and business groups argue that it is just a way for unions to get through the door.
- If federal OSHA enforcement is substantially reduced, states with their own enforcement plans may attempt to fill that gap.

New Executive Order Targets Workplace Civil Rights Protections

- On April 23rd, President Trump issued a new EO that targets Title VI and Title VII of the Civil Rights Act of 1964 in a move that would weaken discrimination protections for workers. The administration states that disparate-impact liability "all but requires individuals and businesses to consider race" and doesn't allow businesses to make employment decisions based on "merit."
- The order takes aim at disparate-impact liability rules at government agencies and any organization that receives federal funding.

Biden-era 2024 Independent Contractor Rule Shelved

- On May 1, 2025, the U.S. Department of Labor issued a field assistance bulletin, **Wage and Hour Memorandum No. 2025-1**, stating that it would no longer apply the 2024 Rule used to determine when workers are independent contractors or employees under the Fair Labor Standards Act. Instead, the DOL said it will enforce the FLSA in accordance with **Fact Sheet #13 (July 2008)** (copy is on tables).
- The Trump DOL did not rescind the regulations that created the 2024 Biden-Era Rule, it simply stated it plans to not to use it.
- The 2008 Fact Sheets requires DOL to consider 7 distinct criteria. The Fact Sheet also notes that some factors are "immaterial" to the determination. For example, the place where the work is performed, the lack of a formal agreement, whether the worker is licensed by the state or local government, and the time or mode of

payment for services are said to have no bearing on determinations of whether there is an employment relationship.