

Employee Benefits Update: 2025 Highlights and 2026 Work Plan

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<https://www.verrill-law.com/blogs/benefits-law-update/>

We will race walk through . . .

- Legislative and regulatory updates
 - Key developments from 2025
 - Legal compliance priorities for 2026
- ERISA litigation updates and takeaways
 - Use of 401(k) plan forfeitures
 - Protection of participant data
 - Selection of voluntary benefits
 - Fiduciary decision-making
 - Regulation of ESG investments

SECURE 2.0: Implementation and Plan Amendments

- Roth catch-up contribution requirement took effect January 1!
 - Participants with FICA wages of \$150,000 or more in 2025
 - The \$150,000 threshold will be indexed for inflation
- **Deadline for adopting plan amendments covering CARES Act, SECURE 1.0, and SECURE 2.0:**
 - **Most plans - December 31, 2026**
 - Collectively bargained plans – December 31, 2028
 - Governmental plans – December 31, 2029

CARES, SECURE 1.0 and 2.0 Amendments

- Pre-approved plans provided by record keepers
 - Roll out, timing, and process will vary by vendor
 - You will likely receive a new Adoption Agreement and BPD with a summary of the changes
 - For 403(b) plans, timing of Cycle 2 restatements may complicate the process (Cycle 2 restatements are not the same as CARES/SECURE restatements)
- Individually designed plans – the work effort will vary depending on optional changes adopted by plan sponsor

One Big Beautiful Bill Act (2025)

- Created Section 530A IRA accounts (a/k/a Trump Accounts) for children under age 18 with \$1,000 federal seed money for a limited time only! Employer contributions allowed up to \$2,500. (See IRS Notice 2025-68 more information.)
- Liberalized rules governing eligibility for and use of HSA accounts
 - Remote care services (including free telehealth services) can be used prior to meeting annual HDHP deductible without jeopardizing HSA eligibility
 - Participation in a direct primary care arrangement will not jeopardize HSA eligibility
 - Individuals enrolled in a bronze or catastrophic care health plan can now contribute to an HSA
 - See IRS Notice 2026-05 for more information

Uncashed Retirement Plan Checks (IRS Rev. Rul. 2025-15)

- Long standing problem for employers, record keepers, trustees, and others – IRS guidance provides a couple of key answers
- Uncashed first check – no adjustment in tax or available refund for payee for amount correctly withheld, paid to IRS, and reported on Form 1099-R and no need to amend the 1099-R
- If second check is sent and the amount of the second check is not more than first (and the first check was reported on Form 1099-R), no federal income tax withholding is required when the second check is issued, and no corresponding Form 1099-R reporting is required

Amendment to Maine Revised Unclaimed Property Act

- L.D. 1969 (2025) enacted to simplify and clarify the "presumption of abandonment" for “tax-advantaged” retirement and other tax-deferred accounts (among other things) under Maine’s statutory escheat law
- In general, property held in a “pension account or retirement account that qualifies for tax deferral **or tax advantage**” is presumed abandoned if unclaimed by the apparent owner 3 years after ***final date by which distribution is required to avoid penalty under federal tax law***
- Likely preempted by ERISA for all practical purposes even before the amendment – amendment doesn’t change that but may pick up some kinds of accounts not clearly covered before.

“Self-Correction” Opportunity under DOL VFCEP

- DOL Voluntary Fiduciary Correction Program allows sponsors and fiduciaries of ERISA pension and welfare benefits to voluntarily report breaches and confirm payment of excise tax (if any) and thereby avoid penalties for the breach
- Retirement plans subject to ERISA can now self-correct late deposits of employee contributions and loan repayments under the VFC Program if employer is not currently under investigation and several requirements are met

“Self-Correction” under VFCP (cont’d)

- Lost earnings on the delinquent participant or loan repayments contributions must be *less than \$1,000*
- Late contributions or loan repayments must be **remitted to the plan within 180 calendar days from the date of withholding** from participants’ paychecks or receipt by the employer
- The **plan sponsor files a self-correction notice**, with name and an email address for the self-corrector, plan name, plan sponsor’s EIN, plan’s PIN, the principal amount and amount of lost earnings and the date of withholding or receipt, and the number of participants affected by the correction

Pending Legislation and Proposed Regulations

- Retirement Fairness for Charities and Educational Institutions Act – irons out securities law wrinkles in order to allow 403(b) plan assets to be invested in CITs
- Helping Young Americans Save for Retirement Act – reduces minimum age threshold for retirement plans from 21 to 18
- ERISA Litigation Reform Act – would raise the bar for plaintiffs to bring certain types fiduciary breach claims
- DOL Proposed Regulations regarding new PBM fee disclosure requirements

DOL Health Plan Enforcement Priorities

- Cybersecurity and data protection – policies, oversight of TPAs, incident response practices
- MHPAEA – investigation of unjustified treatment exclusions, discriminatory claims processes, and compliance with NQTL comparative analysis requirements
- No Surprises Act – treatment of charges for emergency treatment, compliance with notice requirements, timely payments, and IDR
- Protection of employee contributions – timely remittance and proper treatment of employee premiums and FSA contributions

<https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/enforcement>

Updates to HIPAA Notice of Privacy Practices

- By **February 16, 2026**, covered entities must update their NPPs to reflect amendments to the HIPAA Privacy Rule that align HIPAA with federal confidentiality rules for substance use disorder (SUD) treatment records.
- The changes stem from a multi-year federal effort to harmonize HIPAA and special confidentiality protections for SUD treatment information.
- Plan sponsors should also remove from their NPPs references HIPAA Privacy Rule amendments addressing 2024 reproductive health care information rules that were ultimately vacated and are no longer in effect.

<https://www.verrill-law.com/blog/hipaa-notice-of-privacy-practices-refresh-for-self-insured-group-health-plans-what-to-change-before-february-16-2026/>

ERISA Litigation

- Use of 401(k) plan forfeitures
- Protecting participant data
- Selecting voluntary benefits
- Fiduciary decision-making
- Regulation of ESG investments

Use of 401(k) plan forfeitures

- Permitted uses of forfeitures, if authorized by the plan document –
 - Pay plan administrative expenses
 - Reduce employer contributions
 - Allocate to participant accounts
- Recent lawsuits have alleged that plans misused forfeitures by using them to reduce employer contributions, instead of using them to pay plan expenses that would otherwise be passed on to employees or allocating the forfeitures to participant accounts
- Takeaways:
 - Check your plan document and know how forfeitures may be used
 - Follow those rules – if you don't like the rules, change them!
 - Use forfeitures by the end of the following year

Participant data

- Participant data is an asset of ERISA plans, and the employer has a fiduciary duty to protect it
- New lawsuit goes further and targets Empower for using participant data for marketing
- Takeaways – Be aware of the duty to protect participant data, and when engaging vendors confirm that –
 1. The vendor is required to protect plan and participant data using appropriate cybersecurity safeguards, and
 2. The vendor is not permitted to use plan and participant data for purposes unrelated to the services they are hired to perform

Voluntary benefits – four new class actions

- Voluntary benefits (e.g., hospital indemnity, critical illness, cancer, accident coverage)
- ERISA definition of “voluntary benefit”:
 - Premiums are 100% employee-paid
 - Participation is entirely voluntary
 - Employer does not receive any consideration from the insurer beyond reasonable administrative compensation
 - Employer has “minimal participation” and does not “endorse” the benefit
- Early stages of litigation, but takeaways include –
 - Make sure ERISA benefits are correctly identified
 - Treat selection of brokers the way you treat selection of all your ERISA plan vendors – process, process, process
 - Pay attention to the fees being paid to brokers, including the fees and commissions they receive from insurance companies
 - Get benchmarking data for voluntary benefit premiums – don’t just accept the insurer recommend by your broker

Fiduciary decision-making

- Waldner v. Natixis Investment Managers – Federal district court in Mass. provides a useful articulation of a “prudent process” for ERISA fiduciary decision-making
- Elements of a prudent process:
 - Seek outside expert advice
 - Meet more than once per year
 - Document committee activity and decisions – take minutes
 - Distribute information and materials (such as reports prepared by advisors) to all committee members
 - Use a systematic process for selecting vendors:
 1. Ask an independent advisor to help with RFP and evaluate multiple options
 2. Review and discuss the advisor’s report
 3. Narrow the options to a few finalists
 4. Obtain additional information about the finalists
 5. Select from among the finalists
- Ultimately, it’s about engaging in a prudent process, making reasoned decisions, and documenting them

Regulation of ESG investments

- ESG – environmental, social, and governance
 - Describes investment funds and proxy voting strategies that seek to promote environmental and social issues
- For decades, the US Department of Labor has flip-flopped on whether an employer can choose to include ESG investments in an ERISA plan
 - The current administration is more aggressively anti-ESG than past administrations
- Spence v. American Airlines
 - Federal District Court in Texas found that American Airlines violated its ERISA fiduciary duties by not monitoring and preventing “ESG activism” by the manager of investment funds offered in the plan
 - No monetary penalties, but extensive disclosure requirements

Thank You!

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