

ABC's Benefit News!

First Quarter, 2023

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Challenges &
Opportunities in a Post-
COVID World**

**January 21, 2023 Health
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Evolving***

**Updated No Surprised
Act Notice**

**ABC Lunch & Learn
April 11, 2023—
California's Pay
Transparency Act
Workshop**

AND MUCH MORE!!!

RECRUITING & RETAINING TALENT:

CHALLENGES AND OPPORTUNITIES IN A POST-COVID WORLD



- LABOR SHORTAGES
- REMOTE OR HYBRID WORK
- MORE BENEFITS
- BETTER BENEFITS
- HIGHER PAY
- MORE FLEXIBILITY
- ADVANCEMENT OPPORTUNITIES
- RECOGNITION AND REWARDS



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2022 National Awards Recap:

Why Were We Selected the

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HR Tech

Outlook Magazine's

Top 10 Employee Benefits

Companies for 2022

(and placed on the national magazine's cover) and named

Manage HR

Magazine's "Editor's Choice" for

their Top 10 Employee Benefit

Administration Services

Companies for 2022!

It was Because of You,

Our Clients!

From Everyone at ABC:

Thank you!



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**Meet the
Editor of
ABC Benefit
News
Client
Newsletter**



ABC's Benefit News Editor

Dorothy Cociu, RHU, REBC, GBA, RPA, Editor

Hello, everyone. I'm Dorothy Cociu, President of Advanced Consulting. I think you all know me, but those new with your firms, I look forward to getting to know you better.

I have spent over 3 decades in this business, as most of you know. I started in the TPA business, running a self-funded Third Party Administrator for 12 years. I then moved to another administrator for a short time, then finally decided in 1995 to start my own employee benefits consulting firm and health insurance agency. From there, we expanded our consulting side to HIPAA Privacy & Security as well as overall compliance consulting. Because of my past administrative experience (and also auditing experience in the very beginning of my career), I learned complex laws like ERISA from the ground up. I've made it my mission to follow all federal and state legislative and regulatory actions that affect our clients.

I've always enjoyed writing, and I really enjoy researching complex topics and breaking them down into understandable pieces for you, our clients.

We were honored in 2022 by being named [HR Tech Outlook Magazine's Top 10 Employee Benefits Service Companies for 2022](#) and Editor's Choice for Top 10 Employee Benefit Administration Services Companies by [Manage HR Magazine](#). We couldn't have done that without you, our clients, so I'm dedicating this issue to all of you!

Please call my cell if you need me... (714) 519-4420.
Thanks!

Advanced Benefit Consulting



The annual listing of 10 companies that are at the forefront of tackling customer challenges

ABC Is Awarded Another Top Honor!

(The Second National Magazine Acknowledgement in 6 Months!)

Besides being named Top Employee Benefits Services Company for 2022 by HR Tech Outlook Magazine (award to the right), we have been named "Editor's Choice" for Top 10 Benefits Administration Service Companies for 2022 by Manage HR Magazine! (award certificate above). A 3-page feature appeared in their December, 2022 issue (and found in the ABC Benefit News 4th Quarter, 2022 issue).



RECOGNIZED BY
HR TECH OUTLOOK



Feature Article: Recruiting Talent: Challenges & Opportunities in a Post-COVID World

By Dorothy M. Cociu, RHU, REBC, GBA, RPA, LPRT

President, Advanced Benefit Consulting & Insurance Services, Inc.

It's happened again... You spent the last 6 weeks looking for good candidates to fill your multiple job openings, and although you continue to interview what seems to be great people, and you've made multiple offers of employment, you are still struggling to fill even one of the 20+ jobs you have open. The supervisors and managers are screaming for help, demanding that you bring them the people they need, and executives are making tough decisions on budgets and strategic planning, and can't seem to get past the first step until multiple positions are filled and production or services can get back to where they need them to be for the company to be or continue to be profitable. As an HR professional, you are expected to help in this process; fill the open jobs and keep the employees happy and content, but no matter what you do, it seems more are leaving than coming in the door to begin employment.

As an employee benefits consultant and health insurance agent/broker, I have watched my employer clients, as well as non-client employers, struggle to recruit and retain talent since the Pandemic years of 2020 and 2021. While COVID-19 illnesses are now less severe and more manageable, one fact remains true....It's just really difficult to fill jobs... And not just production or low wage jobs, but jobs at all tiers, all levels of education and training. The employers are no longer in the driver's seat while recruiting or retaining employees. It's the employees themselves, or potential employees, who are now in control in most cases.

I was fortunate to have two incredibly talented and knowledgeable experts join me in presenting several classes during Advanced Benefit Consulting's Lunch & Learn program in January, 2023; Kathy Ruffino, Vice President & HR Consultant and Trainer

from Train Me Today, and Marilyn Monahan, Esq, of Monahan Law Office, ABC's benefits and insurance attorney. While putting together the four classes for that program, we were able to share ideas, experiences and expertise in a way that was very productive, creative and interesting for the attendees and for us, the presenters, as well. Our second class presentation was of the same title as this article, followed by Benefit Programs to Attract and Retain Talent for All Job Tiers. I learned so much from this experience that I wanted to share it with others, so I hope you'll enjoy reading about this important topic.

Challenges for Employers Post-Pandemic

I think that one of the greatest challenges employers have in our post-pandemic world is recruiting talent and keeping



those recruited from moving on quickly to other employers, after tremendous time, energy, effort and money was spent on bringing them on and training them for their new positions. It's an HR Professional's nightmare, as well as senior management, as the turnover never seems to end, with what seems like little or no hope for improvement any time soon. Let's face it; employers,

as I mentioned, are at the mercy of the employees they are trying to recruit and retain. So, what makes one employer better than the other, as a job candidate creates their potential job spreadsheet, and you fit only into a simple square that may contain only a check-mark or a one word comment when they go back to compare job possibilities? How do you stand out? What will make those job candidates want to work for you, and want to stay with you for multiple years?

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Recruiting Talent, Continued From Page 5

What have we seen post-COVID? Everything has changed... Employee engagement has diminished, people are discovering, or re-discovering, the need for life/work balance, and the labor force expectations and demands have changed. Most notably, employers have experienced a shrinking labor pool for jobs that had previously been easily filled. And simultaneously, new labor laws have made things even more difficult for employers. So how do you navigate all of this change?

We are seeing now “quiet quitting,” which Kathy Ruffino says is now the new slang for employee engagement. “What they are telling you now is that they are not going to do seven jobs for the pay of one.” Post-COVID employees are saying they will no longer work their 40 hours during the week and another 10-20 over the weekend. The new workforce post-COVID, per Kathy, is saying “No, you know what? I’ll work 40 hours. That’s what you pay me for, so that’s what I’ll do.”

What, specifically, are job applicants looking for post-pandemic? “It’s pretty simple, actually,” stated Kathy Ruffino. “Applicants are expecting rewards that compensate them for the work they do.” So, what do employees or job applicants want? Although we’ll get more into details later, they want:

- More and better benefits
- Higher pay
- More flexibility in their work schedule
- Remote or hybrid work
- Advancement opportunities
- Recognition and rewards programs.

Kathy stated, “They are looking for you to value them. Recognize their hard work. Recognize what they contribute to your organization’s success. It doesn’t always have to be monetary, but it has to be sincere and authentic.”

The Need for Remote or Hybrid Workers

One of the most common themes of the majority of job candidates is the need to find remote or hybrid work. For those jobs that can be done from home, full-time or part-time, human resources and supervisors and managers are struggling to figure out how to design job descriptions for remote employees at all tiers, and are finding it even more challenging to hire a remote or hybrid work force. As an employer, what do you need to offer in the form of benefits that attract and retain recruits, and keep them on the job? What can you do to keep them on your team, and what tools do you



need to keep employees engaged long-term if they are working remotely?

It's true; workplaces changed dramatically during the pandemic. There are now fewer people in offices, and more and more people working from home, or wherever they may be, but somehow, the work still needs to get done! So, how do you manage all of this?

First, you need to take a step back and determine exactly what jobs can be offered remotely or on a hybrid basis. Stop thinking about what you thought to be true in 2019, and get onboard with what's going on in 2023. Many managers may automatically say no, this job or that can't be done remotely, but is that really true? Here is the reality in 2023.... 80% of workers want jobs that are remote or hybrid, so if you are refusing to offer remote or hybrid jobs, you will not find good candidates to fill those jobs in many cases, because quite simply, they will go somewhere that does.

We all know that there are some jobs that are not conducive to working from home, so let's put those aside first... Think production jobs, manufacturing, tool making, bank tellers, etc. But what about the other positions in the company? From a strategic planning perspective, you need to consider the essential duties of the job and determine whether all or part of them can be performed offsite. Then, if you determine that some of these jobs can be done from home or on a hybrid basis, how will you manage your remote workers? How will you keep them engaged while off-site, and what new expectations will be placed on managers that have employees working off-site? “Ask your employees. They have

amazing ideas,” stated Kathy. “What does it cost you to have people remote? What does it cost you to not?” stated Kathy. The reality is, you could lose 40-60% of your potential applicants by not offering remote work.

Marilyn Monahan stated that she has read that countries like “Spain, as well as 25 other countries, are offering new work visas for people that want to work remotely.” These opportunities will only increase the likelihood that more individuals will be looking for fully remote positions.

Matters of confidentiality and technology cannot be overlooked if working at home. Can information be properly protected from unauthorized access, deletion, or alteration? “If the only option is using the family computer, then you’ve got issues,” stated Marilyn Monahan, particularly if the remote

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worker will be handling confidential, protected, or trade secret information. “Can you support them by providing them with a company computer?” This topic is something I’m personally very familiar with, as we are HIPAA Privacy & Security consultants and trainers also, and we work with an elite group of technology partners that are experts in electronic and cyber security. Our last class on January 24th actually discussed this topic, but unfortunately it’s too much information to include in this article!

Employers need to weigh the costs of a remote or hybrid workforce to determine if it’s feasible. While we all know many employers prefer to have their employees working onsite, failing to consider the viability of remote or hybrid work as an incentive to job applicants and employees may actually be far less costly than the lost productivity due to the employer’s failure to hire and retain good people in all job tiers!

How to Offer Cost-Effective Additional Job Benefits and Incentives to Stay on the Job Long-Term

One effective solution, according to Kathy Ruffino of Train Me Today, has been to provide incentives to help you recruit and retain quality employees. You need to think outside of the box and the usual “menu” of pay and benefits to create a total rewards package that will attract applicants and retain employees.

How do you do that? By offering both company-paid and voluntary (supplemental) benefits to your employees, by providing on-site day care or offsite day care subsidies, by providing ride-sharing, student debt and college tuition assistance, by creating career pathing and promotions within the company culture, by having a strong employee reward and recognition program or programs, by training and developing your employees, and by providing personal days off, usually on a monthly or quarterly basis. Most importantly, states Kathy, is that you “must deliver what you promise!”

“On-site day care is always an interest for the employees, but not so much for employers... The insurance for that is *phenomenal*. The risk of having a child care center on site is incredibly expensive from the insurance and safety perspective, and lawsuits,” stated Kathy. “A lot of employers pulled away from that. The subsidies, *sure*. That’s always attractive, especially for parents that are working hourly wages.

Daycare is expensive.”

Student tuition debt and tuition assistance has come back strongly. “In the 80’s, tuition reimbursement was a standard. Then it kind of went away, but now it’s something to think about again,” commented Kathy. It’s a big cost. But, you can tie it to certain things, like grades, etc.

Can these types of benefits be offered by class? Yes, they can be offered by class, as long as you don’t discriminate within a class. It’s always best to have your benefits lawyer review these before implementing.

You can tie things to a time-frame, like tuition reimbursement, to assure longevity. It’s best to talk this through with an expert. You want to be sure you’re offering the right benefits to attract workers, and look beyond that as well.

“People don’t leave just based on benefits, pay and child subsidies. They leave because they don’t like management. More employees quit because of their management than anything else,”

stated Kathy Ruffino. Perhaps management training is more important today than ever before.

How to Stand Out on a Job-Seeker’s Job Comparison Spreadsheet

The most important thing you can do to stand out to applicants, according to

Kathy, is to develop your Employer Value Proposition. In our live presentation on January 24, 2023, Kathy referred to a survey conducted by Universum of nearly 2,500 HR, Marketing and Talent Acquisition Managers from 50 countries that found that these types of companies have created employer value propositions: 67% of large companies (10,000 employees), 55% of medium-sized companies (1,000 to 9,999 employees), and 30% of small companies with fewer than 999 employees. Why do this? According to Kathy, you need to do this to show job seekers who you are, and to show them what they can expect if they are to work with your organization. A Value Proposition will teach you to promote careers, not just the job, and how to use social media to tell your story to potential applicants. Very importantly, a good Value Proposition will



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allow you to share news about the awards the company has received, the partnerships it has, and the advances in your industry. All in all, a Value Proposition will help you to STAND OUT to applicants in every way possible.

“Candidates today are looking for purpose,” stated Kathy. ...“What is the purpose of your company and why would I want to work for you? It’s no longer ‘I just need a job’. They are in high demand. They know they can work anywhere they want. What makes you different? What makes them say I want to work for this company because, *wow, look at what they believe in*. Employer Value Propositions tell the candidates who you are.”

Good examples of Employer Value Propositions include HubSpot, a software developer, whose emphasis is that employees are treated like people, not bottom-line items. “Employees are whole people, with families, hobbies, and lives outside of work. We work remotely, keep non-traditional hours, and use unlimited vacation to create work-life fit for us and the people we love.” While not every organization would want or could afford unlimited vacation time, it’s definitely a strong Value Proposition to attract talent!

Another example of a good Value Proposition is Unilever, who works in consumer goods. Its emphasis is on the opportunity to work alongside brilliant, inspiring leaders. “Unilever is the place where you can bring your purpose to life through the work that you do, creating a better business and a better world. You will work with brands that are loved and improve the lives of our consumers and the communities around us.”

Recruit and Select the “A” Players

Key steps to recruiting and selecting the “A” players include conducting thorough interviews, but using more than one qualified interviewer whenever possible. “It shortens your bias. It gives you a better view... Use more than one person if you can,” recommended Kathy.

Another key step is to ask success-prediction questions, to dig deep and learn what is important to each candidate. What are they passionate about? What might attract them to accept the job and stay? Interviewers need to pay attention to patterns for why they accepted previous jobs and perhaps ask

about the impact they made on previous companies when working for them. According to Kathy, “Lackluster candidates will be lackluster employees.” If you’re hearing one theme, pay attention... It’s the common theme with all of their jobs, and that’s not going to be offered, so you’re probably not going to keep that person.”

One important thing to NOT do, according to Kathy, is to show candidates around and introduce them to your team unless you have made an offer. If you do, it sends the wrong message, and makes them think they have the job. “It sends a really bad message... Why would you introduce them if you weren’t [hiring them]? Please stop doing that. It’s really bad PR for your company, because now when they don’t get the job, they are going to tell everyone how horrible you were.”



Retaining Your Employees

Now that you have quality new hires, how do you retain them, along with retaining your current/ longer-term employees? One thing to keep in mind is that while you’re putting most of your efforts into bringing on new and quality new hires, your current employees may very well be looking for new opportunities them-

selves! Because let’s face it... *they know what’s going on in the world and they know that if you don’t give them what they want, they can go somewhere else that can and will.*

Keep in mind; culture is everything. You need to create and maintain a culture that shows you value your employees and demonstrate that culture in everything you do. You should also provide learning and development, and provide your employees opportunities to learn and develop new skills and increase their self-worth and value within the organization.

Something that should not be forgotten is that supervisors and managers want and need training. You should require training for your leadership team to learn and fine-tune their skillsets needed to be effective leaders. According to Kathy, supervisor and manager training is their most popular training in recent years. “Organizations have discovered that we promote people into management positions, and they have no skills in which to manage. They have no idea

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how to be a manager or a supervisor. They have no idea how to stop being friends with co-workers and now they have to manage them.” Make sure you give them the skill sets and make sure they are ready. Not all excellent producers are good managers. You could not only have a poor manager, but also lose an excellent producer. If you can’t train them, you may not want to promote them.

“I had an employee who was amazing at her job and her manager kept wanting to promote her,” recalled Kathy. “She came into my office and said please don’t let them promote me. I don’t want to be in management, and her manager did it anyway, and did it in a town hall meeting. She quit the next day. She was an amazing, 11-year employee, and she left.”

As an employer, you should re-engage your workforce on a continuous basis. You should create opportunities for all employees at all levels to reconnect and re-engage with each other.

In addition, you should remember to pay equitably. The compensation you offer as an employer needs to reflect the job requirements. You should keep in mind that employees will no longer do three jobs for the compensation of one job. If you do that, they will move on to another employer, sooner rather than later.

Another good thing to keep in mind is to promote from within. If you show your employees that there are real opportunities within your organization, they may not be as quick to look elsewhere. Be sure to post your open positions internally regularly, and be sure all of your employees are aware of openings on a consistent basis.

Another way to retain the employees that you value is to provide a mentoring partner in your organization who can mentor them in their career path.

As mentioned previously, reward learning and skills development. Provide recognition to your employees and rewards (monetary or in-kind) to employees when they learn new applicable skills or gain additional knowledge.

Lastly, be present, and actively and intentionally connect with your employees. You should develop a frequent walk-through of the office, acknowledge people by name, ask casual questions to get to know more about the people who work for you

and with you. *Show them that you know them, and show them that you see them!*

Benefit Programs to Attract and Retain Talent at All Job Tiers

In another session on January 24th, Marilyn Monahan and I discussed in detail the types of benefit programs that attract and retain talent at all job tiers. I’d like to share some of that with you in this article.

In a SHRM State of the Workplace Study for 2021-2022, the top 2021 Occupational Challenges included, in the top category, Labor Shortages, with approximately 85% of companies having them. In that same study, the highest number of responses indicated that employers need to increase benefits and compensation for current and/or new talent: “Offer more competitive wages to existing and loyal employees, and new talent.” Also included in this were “Lower insurance costs, better compensation, leave policies, and work flexibilities.” In addition, MetLife’s 20th Annual US Employee Benefits Trends Study in 2022 stated that overall job satisfaction has reached a 20-year low, and loyalty continues to decline, particularly among women. “Concerns about job security, prevalent early in the pandemic, have been replaced by a sense of empowerment. Knowing that they are in demand, many workers are convinced they can find more attractive roles, opportunities, and compensation elsewhere.”

So, how can you best attract talent? According to these and other surveys, an employer must offer good medical and dental benefits that meet their needs and budgets. You can’t assume that one size fits all, and all employees want the same thing. Offering only one medical and one dental plan may not put you on top of that candidate spreadsheet. It may, in fact, drop you to the bottom, because you’re not attempting to meet their particular needs. It’s important to understand that not all candidates want the same thing. If for example, you are looking for a new Vice President of Sales, and your top candidate is a healthy, athletic 30 year old single man that has sizable student loan debts still, and rarely sees a doctor, your very rich “Platinum” level plan may not be of interest to him. He may instead take a job from an employer that gave him 3 medical plan choices, and the one he chose was a “bronze level” medical plan, but he selected from the 3 dental plans offered a rich PPO dental plan with a \$2,000 annual limit, plus a Section 127 Educational Assistance Program, which could help him pay down his high cost student loan, and a strong

and with you. *Show them that you know them, and show them that you see them!*

Graphic above provided by Train Me Today

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Clients: Don't Forget About ABC's Empowered Education Center, available on our website at www.advancedbenefitconsulting.com

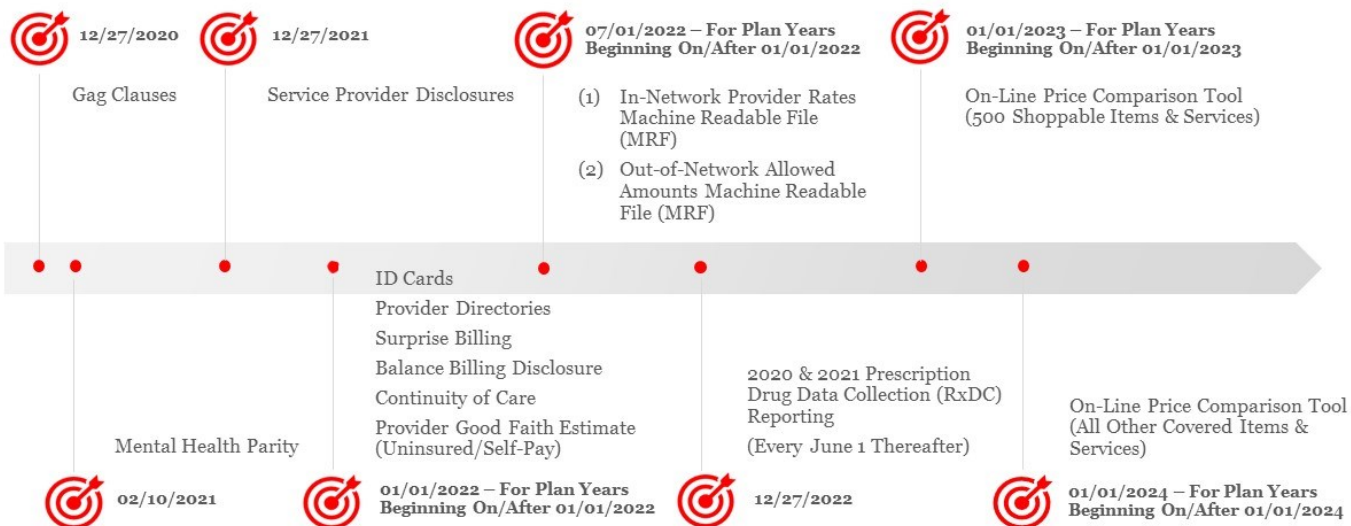
The Clients Only section contains recordings of trainings, webinars, downloadable privacy training and more, free of charge to all clients, available on-demand 24/7. Sign up now for administrative access! HR Departments can sign up their employees for on-demand privacy training, cybersecurity training and more!

Contact Dorothy Cociu or Ted Flittner for assistance with sign-ups!

TiC Final Rule/CAA Deadlines

Delayed:

- Gag Clause Attestation
- Prescription Drug MRF
- Provider Good Faith Estimate (Insured)
- Advanced Explanation of Benefits
- Air Ambulance Reporting



TiC Final Rule/CAA Deadlines Graphic Provided By Marilyn Monahan, Monahan Law Office. ABC Clients may request a copy of this graphic by contacting Dorothy Cociu.

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401(k) plan with matching employer contributions, because those are the benefits he was looking for.

The most wanted candidate for the new position of President you were looking for may not accept your job because he is in his late 40s, has a large family, 3 homes and several garages full of new vehicles. He wants a rich medical plan, rich dental plan, a disability plan, a good retirement plan with employer matching, and many ancillary benefits. Your high deductible health plan, with or without an HRA, HSA or Section 125 plan may not be of as much interest to him, particularly if that's all that you offer.

Your opening for a Production Line supervisor is a key position to keeping the company running smoothly. Your best candidate is a 52-year old man, slightly overweight, not very active, loves his weekends with football and beer. He is married with 1 child who is 16 and one who is 20 and is in college. He and his wife were most interested in saving money for the kids' college education. The job he chose over yours, which offered only a 70% medical plan, no company-paid dental plan and no retirement plan, was a job that offered a "gold-level" medical plan, a dental DMO with low copays, a 401(k) with matching, an FSA, and a Section 127 educational assistance plan.

If you're a hotel or a restaurant and have openings for restaurant workers, like waiters and waitresses, those employee needs may be different than your management staff. Your best candidate would be paid just above minimum wage but would receive good tips. She is a single parent, goes to college at night, age 25, healthy, with a 5-year old child with chronic allergies, who needs to have an EpiPen handy, just in case, and will need braces soon. You offered a high-benefit, but also a high cost from payroll deductions, medical plan, and a dental PPO plan without orthodontia that was also pricy from her perspective. The employer she selected, in lieu of you, is an employer who offered an enhanced silver plan with a high deductible, with a \$25 PCP office visit and \$10 generic drug copay, a DMO dental plan with orthodontia and no annual limit, an FSA with Child Care benefits, and a Section 127 educational assistance plan.

So what do these selections tell you, other than you missed out on some excellent candidates? Most importantly,

that one size does not fit all, and limited benefit options will even more limit your pool of candidates.

We always suggest that you should perhaps view the ACA requirements for "affordability" and ask yourself if your benefits are truly "affordable" to the types of employees you need to hire. If you only offer a rich PPO and nothing else, although the government may say your contributions are "affordable," are they really, to that job candidate? Or maybe they are affordable, but

you're offering too rich a plan for that particular employee. What the pandemic and the aftermath of the employment world of 2023 is showing us is that you need many choices to attract and retain employees. If you can offer, for example, 3 different medical plans with varying benefits and payroll deduction amounts, you can serve a much wider population of

good candidates. If you have a "core" benefits plan and two buy-up plans, you may see more options that look good to potential employees. Your dental plan should also have options... Maybe a PPO plan and a DMO (dental HMO) option with ortho coverage, as the DMO would be more attractive to lower paid workers and those with kids needing a lot of dental care, while others may like the richer PPO, even though it will cost them more.

Another example: You only offer a region-specific HMO. This option will not be attractive to remote workers if they live out-of-the-area or out-of-state. Consider offering a second or third option with broader coverage.

With today's inflation, employees are struggling. Employers need to be sensitive to this. Are your plans truly affordable to your lower-paid employees? Have your wages kept up with the cost of living in 2023?

"When you're looking at true affordability for the employees, you can make an argument that making your plans cheaper, so that more of the employees will sign up, is a benefit to the employer... You're going to have a healthier workforce. As I understand it, workers' compensation claim costs, and therefore premiums, go down as more employees enroll in your insurance. So, it may seem like more of an outlay toward your health benefit costs, but there be could be other benefits down the line by structuring your contributions in a way that you maximize who is going to sign up for the coverage," suggested Marilyn Monahan.

Employers need to listen to employees during interviews and see what candidates seem to be most interested in. Listen to your



Recruiting Talent, Continued from page 11

existing employees, listen to human resources, or do surveys. Maybe you are paying for benefits that no one is interested in, so it's wasted money. If the majority of your workers do physical labor the majority of the week, a gym benefit may not be as important to that population (although it may be to the office staff). Pay attention to your demographics... If your population is over 40, orthodontia may not be needed. Having choice is the best thing you can offer.

Some candidates may hesitate to ask about your benefit package, so provide information about your benefits package up front. Marilyn Monahan shared these thoughts with me. "I have talked to young women who were hesitant to ask about maternity benefits, because they were afraid they would not be hired if their employer thought they might soon be taking maternity leave. I

have also known people to be concerned about asking too many questions about health benefits, in case the employer would think they would heavily utilize

the plan and cost the plan too much money, and that would weigh against them in the hiring process. Of course, not hiring someone on these bases is discriminatory and prohibited by law, but employees still worry about asking and then being turned down for the job. All the more reason for the employer to be up-front about what they offer."

"Years ago I was a VP of HR for a company and the president, in his infinite wisdom, decided that everyone should go on Kaiser, because he was on Kaiser, and because at that time, Kaiser was the cheapest, and **we had 47 resignations within an hour**, so what Dorothy is saying is absolutely true. It was removing the choice that made the difference. He wanted to drop the other option and put everyone on Kaiser," commented Kathy Ruffino.

Importantly, you shouldn't stop at just medical and dental benefits. Job candidates want more choices, more options, so that they can pick what they want, as they know if you don't offer it, someone else will.

Consider, even if on a voluntary basis, vision, disability, 401(k) plans, as well as life, cancer and other voluntary options, and if you want to hire younger people in any job position, particularly high tech jobs, consider adding a Section 127 Educational

Assistance Program, as many young people are carrying heavy student loan debt, or continuing to finish college part-time, and would appreciate the tax-preferred benefits under Section 127.

A Section 127 Educational Assistance Program is an effective way to attract younger and high-tech employees, particularly, but they are helpful to many. An amendment to Section 127—passed during the pandemic—allows employers to set up Educational Assistance Programs that reimburse either tuition or qualified student loan debt tax-free to the employee. "The total contribution an employer can make is a maximum of \$5,250 per year, for both tuition or student loan debt," stated Marilyn. "If you have a workforce that is carrying a lot of student loan debt, you can pay up to \$5,250 per year. At the federal level, that is tax free to the employee. California has not passed a conforming bill, but there are still



benefits on the federal side." You need a separate plan document to offer this type of plan, and there are some hoops to jump through, but they

are generally worth it. The tax benefit runs out at the end of 2025, but it is possible Congress could extend the benefit beyond that date. The popularity of this benefit is huge, particularly with this inflation. If you're not offering one, you should talk to a benefits expert to help you set one up.

Other benefits that are polling well now include adoption assistance, fertility benefits, long-term care, parking benefits, child-care options (even if only a subsidy or reimbursement through a section 125 cafeteria plan), gym memberships, cancer, critical illness, short- and long-term disability, and of course, educational assistance programs.

Another benefit that has been popular lately is pet insurance. "Employers can't subsidize it or offer it on a group basis, but by offering it they can make it easier for the employee to locate and sign up for it," commented Marilyn.

If you don't think these plans are affordable to you, you should talk to a qualified broker/consultant that can walk you through how you can offer these types of plans on a cost-effective basis. You may be able to use alternate fund-

Continued on page 13

Recruiting Talent, Continued from page 12

ing arrangements to lower your costs considerably, so speak to an expert on self-funding, level funding and other alternate funding arrangements.

Most importantly, you need to pay attention to what is happening in the employment world right now, and if you want to fill those 20+ jobs that are open, you may need to adjust your thinking a bit and conform to what is happening today.

Happy job-filling! ##

Author's Note: I'd like to thank Marilyn Monahan (marilyn@monahanlawoffice.com) and Kathy Ruffino (kathy@trainmetoday.com) for their assistance with this article. You can find out more about all of these things by reviewing our recorded sessions from January 24, 2023's Lunch & Learn program, on our website at www.advancedbenefitconsulting.com on our Empowered Education Center, with on-demand video education programs, or by listening to our podcast series, the Benefits Executive Roundtable, found on all podcast platforms. You can also reach the author, Dorothy Cociu, at (714) 693-9754 x 3, or by email at dmcociu@advancedbenefitconsulting.com.





Lunch & Learn April 11, 2023

California's SB 1162 - Pay Transparency Act

Featuring:
Kathy Ruffino, MSHRM, SHRM-SCP, SPHR, PHRca & Jacqueline Thorp, MSHR, SPHR, PHRca, Train Me Today
Moderated by Dorothy Cociu, President, Advanced Benefit Consulting

Employers with 15 or more employees must now post pay scales on all job postings, including internal postings, agency posting and job boards, and employers must retain pay data records for each employee, including their job titles and wage history. Certain employers must submit their pay data report no later than May 10, 2023. Violations contain huge penalties per employee, and noncompliance could result in claims and potential lawsuits and reputational damage. Learn the details and how to report with this seminar and workshop on use of the filing portal! Time is running out to comply and file! Register now!

11:30 am - 1:30 pm
In Person Training & Workshop
Train Me Today Training Rooms, 5151 California Ave, Suite 100, Irvine, CA 92617
(across from UC Irvine campus)
Or Hybrid Zoom Livestream Webinar

In-Person Registration includes lunch (served 11:30-12 noon) and presentation (12 noon to 1:15 pm, with Q&A from 1:15-1:30 pm, \$49 per registrant. Zoom Webinar Registration \$25 per registrant. Clients are complimentary (subject to verification)

Register at: www.advancedbenefitconsulting.com/April11-23-L&L

Program Details:

California's SB 1162, Pay Transparency Act

11:30 am – 1:30 pm

In Person Training & Workshop

Train Me Today Training Rooms, 5151 California Ave, Suite 100, Irvine, CA 92617

(across from UC Irvine campus)

Or Hybrid Zoom Livestream Webinar

In-Person Registration includes lunch (served 11:30-12 noon)
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MARCH 21, 2023 ZOOM WEBINAR

HEALTH PLAN COMPLIANCE FOR EMPLOYER PLAN SPONSORS

10 AM TO 12:30 PM PACIFIC TIME



Featuring: Marilyn Monahan, Esq, Monahan Law Office & Dorothy Cociu, President, Advanced Benefit Consulting



In this webinar, we review the compliance requirements of employer plan sponsors. This includes ERISA compliance; the importance of being a plan fiduciary, reporting and disclosure requirements, 5500 filing, plan documents, summary plan descriptions, wrap-around plan documents, leave law language, SBCs, foreign language requirements, distribution rules, compliance traps to consider, and DOL audits. We will also discuss IRS requirements, including ACA requirements and reporting, cafeteria plans and IRS plan auditing. In addition, we will provide a HIPAA Privacy & Security, HITECH and electronic security overview. Whether you're brand new to health plan compliance or a seasoned professional with many years of experience, this webinar has something for everyone!

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Program Learning Objectives:

- To understand the federal oversight in health plan compliance
- To understand ERISA compliance and when it applies
- To understand the importance of being a plan fiduciary
- To understand reporting & disclosure requirements for health plans, including 5500 filings, Schedule A and Schedule C, who has to file and when, and the Delinquent Filer Voluntary Compliance Program
- To learn how to do a self-audit and prepare for DOL audits
- To understand the requirements for plan documents, SPDs, Wrap-Around Documents
- To understand the contents of an SBC
- To understand foreign language and distribution rules
- To understand the role of the IRS in the Affordable Care Act, employer reporting, and the impact of IRS audits
- To understand the basics of HIPAA compliance, HIPAA Privacy & Security, HITECH and Electronic Security in your organization

Speaker Mini Bios

Marilyn Monahan, ESQ, Monahan Law Office

Marilyn A. Monahan is the owner of the Monahan Law Office in San Marcos. Marilyn focuses her law practice on advising employers and consultants on compliance with employee benefit and insurance laws, including ACA, ERISA, HIPAA, and COBRA. Her volunteer activities include serving as Secretary of the Employee Benefit Planning Association (EBPA). Marilyn has also served on the Board of Directors of the Professionals in Human Resources Association (PIHRA) (2008-2018). She has represented Advanced Benefit Consulting since its inception in 1995.

Dorothy M. Cociu, RHU, REBC, GBA, RPA, President, Advanced Benefit Consulting

Dorothy Cociu is the President of Advanced Benefit Consulting & Insurance Services, Inc.. She is a leading compliance consultant in the areas of ERISA, HIPAA Privacy & Security, The Affordable Care Act, CAA, Transparency in Coverage and other federal laws and regulations. She is a published author, with a compliance manual ([The ABC's of HIPAA Compliance](#), published 2000, with updates), and over 90 articles published on the topics above, plus self-funding, cost containment, reference based pricing, and other employee benefits and compliance topics. Her firm specializes in large group employee benefits programs and benefits compliance.

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PCORI FEE ADJUSTED FOR 2023

PCORI Fee Amount Adjusted for 2023

The Internal Revenue Service (IRS) has issued [Notice 2022-59](#) to increase the Patient-Centered Outcomes Research Institute (PCORI) fee amount for plan years ending on or after Oct. 1, 2022, and before Oct. 1, 2023. The updated PCORI fee amount is **\$3.00** multiplied by the average number of lives covered under the plan.

For plan years that ended on or after Oct. 1, 2021, and before Oct. 1, 2022, the PCORI fee amount is **\$2.79** multiplied by the average number of lives covered under the plan.

Applicability of PCORI Fee

The PCORI fee was created by the Affordable Care Act (ACA) and first applied for plan or policy years ending after Sept. 30, 2012. The fee is imposed on health insurance issuers and self-insured plan sponsors to fund comparative effectiveness research. The PCORI fee was originally scheduled to expire in 2019. However, a [federal spending bill](#) extended the PCORI fee for an additional 10 years. As a result, the PCORI fee will apply through the plan or policy year ending before Oct. 1, 2029.

Payment Deadline

PCORI fees are reported and paid annually on IRS [Form 720](#) (Quarterly Federal Excise Tax Return). These fees are due each year by July 31 of the year following the last day of the plan year. For plan years ending in 2022, the PCORI fee is due by **July 31, 2023**. Employers with self-insured health plans should have reported and paid PCORI fees for 2021 by Aug. 1, 2022 (since July 31, 2022, was a Sunday).

Calculating the PCORI Fee

The PCORI fees are calculated based on the average number of covered lives under the plan or policy. This generally includes employees and their enrolled spouses and dependents, unless the plan is an HRA or FSA. [Final rules](#) outline a number of alternatives for issuers and plan sponsors to determine the average number of covered lives.

Self-Funded Clients of ABC be advised...

Our office will calculate your PCORI Fee as we have done each year.

Key Facts

Covered Plans

The PCORI fees generally apply to insurance policies providing accident and health coverage and self-insured group health plans.

Applicability Dates

The PCORI fee applies to plan or policy years ending after Sept. 30, 2012, and before Oct. 1, 2029.

Payment Deadline

PCORI fees are due for plan or policy years ending in 2022 on July 31, 2023.

For plan years ending on or after Oct. 1, 2022, and before Oct. 1, 2023, the PCORI fee amount increases to \$3.00 per covered life.

ABC Named "Editor's Choice" for Top 10 Benefits Administration Services Companies for 2022 by [Manage HR Magazine](#), a national HR magazine.

We were featured in the December, 2022 edition of [Manage HR Magazine](#)! An advance copy of the article was included in our ABC Benefit News Fourth Quarter, 2022 Edition, found on pages 28-30! Link to magazine available on our website at

www.advancedbenefitconsulting.com

Legal Update:

White House Announces End of COVID-19 Emergency Periods



On Jan. 30, 2023, the Biden administration released a [statement](#) announcing that it plans to end the COVID-19 public health emergency (PHE) and national emergency on **May 11, 2023**.

Timeline for Ending Emergency Periods

The COVID-19 PHE and national emergency were declared in early 2020 and are currently set to expire on March 1, 2023, and April 11, 2023, respectively. The Biden administration intends to extend the emergency periods until May 11, 2023, and then end both periods on that date. According to the White House, this timeline supports an orderly wind-down of emergency measures and aligns with its commitment to give at least 60 days' notice before the termination of the PHE.

Republican lawmakers in the U.S. House of Representatives have proposed legislation, such as [H.R. 382](#), that would immediately end the PHE and national emergency. The Biden administration opposes these bills, stating that an abrupt end to the emergency declarations would "create wide-ranging chaos and uncertainty throughout the health care system."

Impact on Health Plan Coverage

The end of the COVID-19 emergency periods triggers the end of numerous emergency measures related to the federal government's pandemic response, including some requirements for employer-sponsored health plans. For example, when the PHE ends, health plans will no longer be required to cover COVID-19 diagnostic tests

and related services without cost sharing. Non-grandfathered health plans will still be required to cover recommended preventive services, including COVID-19 immunizations, without cost sharing; however, this coverage requirement will be limited to in-network providers.

IMPORTANT DATES

Jan. 31, 2020

The Trump administration declared a PHE exists due to the COVID-19 pandemic.

March 13, 2020

The Trump administration declared the COVID-19 pandemic constitutes a national emergency.

May 11, 2023

The PHE and national emergency for the COVID-19 pandemic are scheduled to end.

By ending the COVID-19 emergency periods, the White House is signaling that the crisis stage of the COVID-19 pandemic is over.

Legal update provided by Zywave, Inc. This update should not be considered legal advice.

We always advise that you seek the advice of legal counsel.

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The ACA: Always Evolving

By: Marilyn Monahan, Monahan Law Office



Since it was signed into law in March 2010, the Affordable Care Act (ACA) has become one of the dominant features of the health and welfare benefits world. It has also continued to evolve. We have seen some provisions go away (the Cadillac Tax), some become virtually irrelevant (the individual shared responsibility penalty, due to its reduction to zero), some re-evaluated (the Family Glitch), some resurrected (the PCORI fee), some newly emerge (the Transparency in Coverage Final Rule), and some which seem to be perpetually in abeyance (the nondiscrimination rules for fully insured plans). One thing is clear: the ACA never remains static. And this constant evolution creates challenges, but also opportunities, for producers and benefit professionals.

So, where do we stand and what are the latest developments which we should be focusing on for 2023?

Transparency in Coverage (TiC) Final Rule

One of the newest ACA developments—the TiC Final Rule—is a set of regulations that creates two new disclosure requirements for group health plans and health insurance issuers offering group and individual coverage. The authority for these regulations is in the original text of the ACA—section 1311(e)(3)—but the final version of the regulations was not actually published until 10 years later (November 2020), and the first effective date did not kick in until 2022.

Machine-Readable Files: The first part of the TiC Final Rule is the machine-readable files (MRFs) mandate. Under this mandate, non-grandfathered group health plans and health insurance issuers must disclose—on a public website—and in three separate machine-readable files (MRFs)—information regarding (a) in-network rates for covered items and services, (b) out-of-network allowed amounts and billed charges for covered items and services, and (c) negotiated rates and historical net prices for covered prescription drugs. The last MRF in this list—relating to prescription drugs—has been delayed indefinitely, but the first two MRF requirements went into effect July 1, 2022, for plan years beginning on or after January 1, 2022. For 2022 plan years beginning subsequent to July 1, 2022, plans and issuers were required to post the two MRFs in the month in which the plan year (in the individual market, policy year) began. The effect of this implementation structure is that with the end of 2022, all non-grandfathered group health plans should be in compliance with the mandate.

On-Line Price Comparison Tool: The second part of the TiC Final Rule—the on-line price comparison tool—has a staggered implementation process, with the first component going into effect in 2023.

For those of you who have studied the MRFs, you will know that, despite a plain language requirement, the MRFs are not very user-friendly. In contrast, the price comparison tool is intended to be very user-

friendly, by providing participants and beneficiaries with individually tailored price information for covered items and services that will allow them to shop and compare. According to CMS, “For the first time, most consumers will be able to get real-time and accurate estimates of their cost-sharing liability for health care items and services from different providers in real time, allowing them to both understand how costs for covered health care items and services are determined by their plan, and also shop and compare health care costs before receiving care.”

Under the rules, participants should be able to enter a billing code (or description of a service or item) and a provider name and have the system generate an estimate of their cost-sharing liability for that service with that provider. The cost-sharing estimate will be calculated based on accumulated amounts (for example, how much the participant has already incurred toward their deductible), the in-network rate (including the negotiated rate and the underlying fee schedule rate), and the out-of-network allowed amount.

The estimate will include additional disclosures, such as a notice explaining whether coverage of the item or service is subject to a prerequisite. A plain language statement will also be included that explains the participant may receive a balance bill, actual charges may differ, the estimate is not a guarantee, whether the plan counts copayment assistance or other third-party payments in the calculation of the deductible or out-of-pocket maximum, an item or service may not be subject to cost-sharing if preventive care, and any additional information or disclaimers the plan deems appropriate. Upon request, the data must be provided on-line, in paper form, and by telephone.

The price comparison tool must be available to participants and beneficiaries for plan years beginning on or after January 1, 2023, with respect to 500 shoppable items and services, and with respect to all covered items and services, for plan or policy years beginning on or after January 1, 2024. The 500 shoppable services that must be included have already been identified by the Departments implementing the mandate (Treasury, Labor, and Health and Human Services).

If your plan is fully insured, you may satisfy both the MRF and the on-line price comparison tool mandates by entering into a written

Continued on page 21

agreement with your carrier to provide the information. If your plan is self-funded, you may also satisfy these requirements by entering into a written agreement with a third party (such as a TPA or ASO). However, in the case of a self-funded plan, if the contracted third party fails to provide the required information, the plan will be deemed to be in violation of the Final Rule (and subject to any applicable penalties).

As noted above, the TiC Final Rule’s MRF mandate does not apply to grandfathered plans. The price comparison tool mandate in the TiC Final Rule also does not apply to grandfathered plans—but an almost parallel provision in the Consolidated Appropriations Act, 2021 (the CAA) does. As a result, both grandfathered and non-grandfathered plans must provide their participants and beneficiaries with the price comparison tool.

IRC Section 4980H Payments

Significantly, since 2015, the ACA has required “applicable large employers” (ALEs) to offer their full-time employees (and their dependent children) “minimum essential coverage” (MEC) that is also “minimum value” (MV) and “affordable.” Failure to offer MEC, MV, affordable coverage to a sufficient number of full-time employees could result in the employer receiving a 226J letter from the Internal Revenue Service (IRS) proposing an Internal Revenue Code (IRC) section 4980H(a) or (b) penalty. Appropriately, section 4980H continues to drive decisions ALEs make each year about the coverage they will offer, to whom, and at what cost.

The (a) and (b) penalties adjust each year (showing only 2019 to current— 2015-2018 available upon request):

	2019	2020	2021	2022	2023
4980 (H)(a)	\$2,500	\$2,570	\$2,700	\$2,750	\$2,880
4980 (H)(b)	\$3,750	\$3,860	\$4,060	\$4,120	\$4,320

Coverage is “affordable” if the amount of the employee’s monthly contribution toward self-only coverage under the employer’s lowest-cost plan satisfies one of three safe harbor methodologies: W-2, rate of pay, or federal poverty line (FPL). The percentage used to calculate affordability adjusts each year. Over time, the percentage has been (showing only 2019 to current— 2015-2018 available upon request):

2018	2019	2020	2021	2022
9.56%	9.86%	9.78%	9.83%	9.12%

Each year prior to open enrollment, ALEs and benefit professionals should ensure that MEC coverage is being offered to at least 95% of the ALE’s full-time employees (and their dependent children). In addition, ALEs and benefit professionals should be running the numbers to ensure that, using one or more of these safe harbors, the MEC, MV coverage being offered is “affordable.” Taking these steps will help

to ensure that the ALE avoids the 4980H penalties.

2022 IRS Forms 1094/1095 Reporting

To determine whether an employer may or may not owe a 4980H penalty, the IRS needs the data provided in the Forms 1094/1095-C. Therefore, ALEs must continue to prepare, furnish, and file these forms each year. (Small employers that self-fund must also prepare, furnish, and file the Forms 1094/1095, but they use the B-series forms rather than the C-series forms.)

Under the law, the Forms 1095-C must be mailed to employees by January 31 (the same day as W-2s must go out). Each year since 2015, however, the IRS has given employers an automatic 30-day extension to distribute the forms. This year, it was announced that the extension has been made permanent. Every year going forward, employers have until March 2 to mail the forms. No further extensions will be granted, however.

The applicable IRS deadlines for furnishing and filing the 2022 Forms 1094/1095-C are:

Employer Obligation	Due Date
Furnishing 1095-Cs to Employees	March 2, 2023
Filing 1094-C and 1095-Cs with the IRS	February 28, 2023
Filing 1094-C and 1095-Cs with the IRS (electronically) (required if filing ≥250 1095-Cs)	March 31, 2023

The same IRS announcement extending the deadline to furnish the Forms 1095-C included more good news if you are an insurance company. Insurers do not have to mail the Form 1095-B to all participants—in 2023 or in the future. Instead, the insurer may provide a clear and conspicuous notice on its website explaining that the form is available upon request. Then, if a request is received, the Form 1095-B must be furnished within 30 days. (This option does not apply to ALEs furnishing their full-time employees with the Form 1095-C; ALEs still have to distribute the Form 1095-C to full-time employees.)

Tax preparers sometimes ask their clients for copies of both the Form 1095-C (which they should receive from their employer) and the Form 1095-B (which they should receive from their insurer), prompting employees to then ask the human resources department or the producer where they can find these forms. So, it is helpful for pro-

Continued on page 22

ACA Update, Continued from page 19

ducers and benefits professionals to know that the insurer typically does not mail the Form 1095-B to participants, but it is available upon request.

Finally, this same notice included another **very** important announcement for employers: The IRS confirmed that good faith penalty relief is no longer available. This means that if an employer furnishes and files the 2022 Forms 1094/1095 on time, but the forms are not filled out completely or accurately, the employer could be subject to penalties under sections 6721 and 6722 of the IRC (unless the employer can show that the failure was due to reasonable cause and not willful neglect). Good faith penalty relief had been available up until last year, but seven years into the reporting mandate, the IRS has decided that the relief is "no longer appropriate." With this announcement, there is increased pressure on employers to ensure not only that they file and furnish the forms on time, but that they fill them out properly.

What are the penalties if an employer fills out the forms incorrectly? They are the same penalties that apply if the employer fails to furnish and file the forms on time. For the 2022 forms, the penalty could be up to \$290 per form (the penalties could be lower if the forms are filed within certain timeframes). These IRS penalties adjust each year. Over time, these penalties have been (2015-2017 available upon request):

	2018	2019	2020	2021	2022
Failure to file with IRS (max)	\$270 \$3,275,500	\$270 \$3,339,000	\$280 \$3,392,000	\$280 \$3,426,000	\$290 \$3,532,500
Failure to furnish to employee (max)	\$270 \$3,275,500	\$270 \$3,339,000	\$280 \$3,392,000	\$280 \$3,426,000	\$290 \$3,532,500
Intentional disregard	\$540 (no cap)	\$550 (no cap)	\$560 (no cap)	\$560 (no cap)	\$580 (no cap)

For example, if an employer fails to file and furnish one Form 1095-C on time, the employer could be penalized \$290 for failure to furnish the form, and another \$290 for failure to file the form. If the form is furnished and filed on time, but it contains errors, the IRS can impose a \$290 penalty per form for that error as well.

2022 Forms 1095-C Reporting: The Franchise Tax Board

While the ACA individual shared responsibility penalty was reduced by Congress to zero, several states now have an individual coverage mandate (CA, DC, NJ, MA, RI, and VT), requiring residents of those states (or DC) to have health coverage. In order to monitor compliance with these mandates, most of these jurisdictions require employers to furnish forms to their employees and file those forms with state tax authorities. These state mandates are in addition to the required IRS reporting.

For example, if you have employees in California, and your plan is self-funded, in addition to filing with the IRS, under state law you are also obligated to furnish the Forms 1095-C to employees and then file them with the Franchise Tax Board (FTB). (If your plan is fully insured and the insurer files its Forms 1095-B with the FTB, the employer does not have to file the C-series forms.) These are the FTB's deadlines for furnishing and filing the 2022 Forms 1095-Cs:

Insurer/Employer	Due Date
Furnishing Forms 1095-B/C to Employees	January 31, 2023
Filing Forms 1094/1095-B/C with the FTB (electronic filing required if filing ≥250 1095-Cs)	March 31, 2023 (extended to May 31, 2023)

The Family Glitch

In another notable change to existing ACA rules, on October 13, 2022, the IRS issued a final rule on the "Affordability of Employer Coverage for Family Members of Employees." (87 Fed. Reg. 61979.) This final rule eliminates the "family glitch" which has been in effect since the ACA Marketplaces were created and section 4980H went into effect. The final regulations on the Family Glitch were effective on December 12, 2022, and they apply to taxable years beginning after December 31, 2022.

Under ACA practice before this final rule took effect, if an ALE offers full-time employees and their family members MEC coverage that is also MV and "affordable," the employee, spouse, and dependent children are all ineligible for a premium tax credit (PTC) if they waive employer coverage

Special thanks to Marilyn Monahan for this article!



based on the plan year--everyone files on July 31.

Preventive Care

Under the ACA, non-grandfathered health plans must cover preventive services without cost-sharing when the services are provided in-network. During the pandemic, COVID-19 vaccines became a part of this preventive care mandate. But this is not the only recent adjustment to the scope of the preventive care mandate, and these changes mean expanded coverage for participants and beneficiaries.

For plan years beginning on or after December 30, 2022, the preventive services guidelines for women have been updated so that there will be enhanced coverage of breastfeeding services and supplies, well-woman preventive care visits, access to contraceptives and contraceptive counseling, screening for human immunodeficiency virus (HIV), and counseling for sexually transmitted infections (STIs). In addition, a new guideline was approved that aims to prevent and reduce obesity in midlife women (ages 40 to 60) through counseling. (87 Fed. Reg. 1763.)

The scope of preventive services for infants, children, and adolescents was also expanded by adding universal screening for suicide risk to the current Depression Screening category for individuals ages 12 to 21; new guidance for behavioral, social, and emotional screening; new guidance for assessing risks for cardiac arrest or death for individuals ages 11 to 21; and new guidance for assessing risks for hepatitis B virus infection in newborn to 21 year-olds.

Conclusion

The ACA continues to drive many of the decisions employers and producers make each year as they decide which benefit packages to offer, and how much they should ask employees to contribute toward the cost of coverage. The ACA has expanded the range of both covered benefits and compliance tools available to participants, but keeping up with and implementing these changes has also created additional challenges. Knowing how the benefits world is evolving, and how Congress, the states, and the marketplace are responding, are essential components of the producer and benefits professional's job.

Editor's Note: I'd like to thank Marilyn Monahan for allowing us to print this article. She can be reached at marilyn@monahanlawoffice.com.

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and instead purchase a policy from a Marketplace (such as Covered California). This was true even though the employer's affordability calculation was based only on the amount the employee was asked to pay for self-only coverage. In other words, even if the employer does not contribute any amount toward the cost of family coverage, the employee's spouse and dependent children would not be eligible for a PTC, if the cost of employee-only coverage was deemed affordable under the ACA's rules. This is the "family glitch."

The new final rule does not change how employers calculate affordability for ACA purposes, and does not subject ALEs to any additional penalty exposure under section 4980H. However, under the final rule, Marketplaces (such as Covered California) will take into account the cost of dependent coverage for the employer's lowest cost MV plan when determining whether the spouse and dependent children are eligible for a PTC. If the cost of coverage for the spouse and dependent children under the employer's MV plan exceeds the affordability threshold, the spouse and dependent children will be eligible for a PTC if they decline the employer's plan and purchase a policy through the Marketplace instead.

Although employers will not have to change how they calculate affordability under this rule, employers might want to consider whether and how much they might contribute toward the cost of dependent coverage, and the impact those contributions may have on enrollment in the employer's plan. With this change, more family members could decide to decline employer-sponsored coverage in favor of a Marketplace plan. At the same time, if family members decide to split coverage between the employer's plan and the Marketplace, they will have to meet separate deductible and out-of-pocket limits. As a result of this new rule, both employers and employees will have some decisions to make when the next open enrollment period rolls around.

PCORI Fee

The Patient-Centered Outcomes Research Institute (PCORI) Fee was originally scheduled to expire, but it was resurrected for 10 more years through the Further Consolidated Appropriations Act, 2020 (Pub. L. 116-94), signed into law on December 20, 2019. The PCORI fee mandate now ends in 2029.

The IRS announced this fall—as it does each year—that the PCORI fee for policy and plan years that end on or after October 1, 2022, and before October 1, 2023, is \$3.00. (IRS Notice 2022-59.) For plan and policy years that end on or after October 1, 2021, and before October 1, 2022, the fee is \$2.79 (the latter fee amount was previously announced in IRS Notice 2022-4).

Self-funded plans must file IRS Form 720, and pay the applicable PCORI fee, each year on July 31. The filing deadline is not

Have You Updated Your No Surprises Act Notice?

In the fall of 2022, a new set of instructions and new model notices for the No Surprises Act were released. Employer plan sponsors were allowed to continue to use their prior notices in 2022, but were required to use the new notices in 2022 and beyond. Slight modifications were included in the new model notices. Instructions are below...

Instructions for Group Health Plans and Health Insurance Issuers (For use for plan years beginning on or after January 1, 2022)

Federal law requires group health plans and health insurance issuers offering group or individual health insurance coverage to make publicly available, post on a public website of the plan or issuer, and include on each explanation of benefits for an item or service with respect to which the requirements under section 9816 of the Internal Revenue Code (the Code), section 716 of the Employee Retirement Income Security Act (ERISA), and section 2799A-1 of the Public Health Service Act (PHS Act) apply, information in plain language on:

- 1) the restrictions on balance billing in certain circumstances,
- 2) any applicable state law protections against balance billing,
- 3) the requirements under Code section 9816, ERISA section 716, and PHS Act section 2799A-1, and
- 4) information on contacting appropriate state and federal agencies in the case that an individual believes that a provider or facility has violated the restrictions against balance billing.¹

Plans and issuers may, but aren't required to, use this model notice to meet these disclosure requirements. To use this document properly, the plan or issuer should review and complete it in a manner consistent with applicable state and federal law. The Departments of Health and Human Services, Labor, and the Treasury (the Departments) will consider use of this model notice in accordance with these instructions to be good faith compliance with the disclosure requirements of section 9820(c) of the Code, section 720(c) of ERISA, and section 2799A-5(c) of the PHS Act, if all other applicable requirements are met.

If a state develops model language for its disclosure notice that is consistent with section 9820(c) of the Code, section 720(c) of ERISA, and section 2799A-5(c) of the PHS Act, the Departments will consider a plan or issuer that makes good faith use of the state-developed model language to be compliant with the federal requirement to include information about state law protections.

[Language access](#)

Use of Plain Language

Plans and issuers are encouraged to use plain language in the disclosure notice and test the notice for clarity and usability when possible.

Plain language, accessibility, and language access resources:

[Plainlanguage.gov/guidelines](https://www.plainlanguage.gov/guidelines)

[Section508.gov](https://www.section508.gov)

[LEP.gov](https://www.lep.gov)

Compliance with Federal Civil Rights Laws

Entities that receive federal financial assistance must comply with federal civil rights laws that prohibit discrimination. These laws include section 1557 of the Affordable Care Act, Title VI of the Civil Rights Act of 1964, and section 504 of the Rehabilitation Act of 1973. Section 1557 and title VI require covered entities to take reasonable steps to ensure meaningful access to individuals with limited English proficiency, which may include offering language assistance services such as translation of written content into languages other than English.

Section 1557 and section 504 require covered entities to take appropriate steps to ensure effective communication with individuals with disabilities, including provision of appropriate auxiliary aids and services. Auxiliary aids and services may include interpreters, large print materials, accessible information and communication technology, open and closed captioning, and other aids

or services for persons who are blind or have low vision, or who are deaf or hard of hearing. Information provided through information and communication technology also must be accessible to individuals with disabilities, unless certain exceptions apply. Plans and issuers are reminded that the disclosure notice must comply with applicable state or federal language-access standards.

NOTE: The information provided in these instructions is intended to be only a general summary of technical legal standards. It is not intended to take the place of the statutes, regulations, or formal policy guidance on which it is based. Refer to the applicable statutes, regulations, and other interpretive materials for complete and current information.

Do not include these instructions with the disclosure notice provided to participants, beneficiaries, or enrollees.

Paperwork Reduction Act Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. The valid OMB control number for this information collection is 0938-XXXX. The time required to complete this information collection is estimated to average 3.5 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: CMS, 7500 Security Boulevard, Attn: PRA Reports Clearance Officer, Mail Stop C4-26-05, Baltimore, Maryland 21244-1850.

Note: All ABC Clients are provided customized New No Surprises Act Notices upon renewal. ABC Broker Co-op Clients are being provided sample notices for customization.

MODEL NO SURPRISES ACT NOTICE—AMENDED FALL, 2022 (CAN BE USED IN 2022 AND BEYOND)

Your Rights and Protections Against Surprise Medical Bills

When you get emergency care or are treated by an out-of-network provider at an in-network hospital or ambulatory surgical center, you are protected from balance billing. In these cases, you shouldn't be charged more than your plan's copayments, coinsurance and/or deductible.

What is “balance billing” (sometimes called “surprise billing”)?

When you see a doctor or other health care provider, you may owe certain [out-of-pocket costs](#), like a [copayment](#), [coinsurance](#), or [deductible](#). You may have additional costs or have to pay the entire bill if you see a provider or visit a health care facility that isn't in your health plan's network.

“Out-of-network” means providers and facilities that haven't signed a contract with your health plan to provide services. Out-of-network providers may be allowed to bill you for the difference between what your plan pays and the full amount charged for a service. This is called “**balance billing**.” This amount is likely more than in-network costs for the same service and might not count toward your plan's deductible or annual out-of-pocket limit.

“Surprise billing” is an unexpected balance bill. This can happen when you can't control who is involved in your care—like when you have an emergency or when you schedule a visit at an in-network facility but are unexpectedly treated by an out-of-network provider. Surprise medical bills could cost thousands of dollars depending on the procedure or service.

You're protected from balance billing for:

Emergency services

If you have an emergency medical condition and get emergency services from an out-of-network provider or facility, the most they can bill you is your plan's in-network cost-sharing amount (such as copayments, coinsurance, and deductibles). You **can't** be balance billed for these emergency services. This includes services you may get after you're in stable condition, unless you give

Continued on page 26

Model No Surprises Act Notice 2022 & Beyond, Continued from Page 25

written consent and give up your protections not to be balance billed for these post-stabilization services.

[Insert plain language summary of any applicable state balance billing laws or requirements OR state-developed language as appropriate]

Certain services at an in-network hospital or ambulatory surgical center

When you get services from an in-network hospital or ambulatory surgical center, certain providers there may be out-of-network. In these cases, the most that those providers can bill you is your plan's in-network cost-sharing amount. This applies to emergency medicine, anesthesia, pathology, radiology, laboratory, neonatology, assistant surgeon, hospitalist, or intensivist services. These providers **can't** balance bill you and may **not** ask you to give up your protections not to be balance billed.

If you get other types of services at these in-network facilities, out-of-network providers **can't** balance bill you, unless you give written consent and give up your protections.

You're never required to give up your protections from balance billing. You also aren't required to get out-of-network care. You can choose a provider or facility in your plan's network.

[Insert plain language summary of any applicable state balance billing laws or requirements OR state-developed language regarding applicable state law requirements as appropriate]

When balance billing isn't allowed, you also have these protections:

You're only responsible for paying your share of the cost (like the copayments, coinsurance, and deductible that you would pay if the provider or facility was in-network). Your health plan will pay any additional costs to out-of-network providers and facilities directly.

Generally, your health plan must:

- Cover emergency services without requiring you to get approval for services in advance (also known as "prior authorization").
- Cover emergency services by out-of-network providers.
- Base what you owe the provider or facility (cost-sharing) on what it would pay an in-network provider or facility and show that amount in your explanation of benefits.
- Count any amount you pay for emergency services or out-of-network services toward your in-network deductible and out-of-pocket limit.

If you think you've been wrongly billed, contact *[Insert contact information for entity responsible for enforcing the federal and/or state balance or surprise billing protection laws. The federal phone number for information and complaints is: 1-800-985-3059].*

Visit *[Insert website describing federal protections, such as www.cms.gov/nosurprises/consumers]* for more information about your rights under federal law.

[If applicable, insert: Visit [\[website\]](#) for more information about your rights under [\[state laws\]](#).]

Don't forget to register for our upcoming educational programs:

March 21, 2023—Health Plan Compliance for Employer Plan Sponsors—Webinar—see page 14 & 15

April 11, 2023—Lunch & Learn—California's SB 1162—Pay Transparency Act—Hybrid In-Person and Zoom Webinar—see page 28 & 29

News Brief:

Job Openings Increased to 11 Million in December

The U.S. Bureau of Labor Statistics (BLS) recently released its December [Job Openings and Labor Turnover Summary](#). This month's report revealed the number of job openings increased from around 10.5 million in November to 11 million in December, resulting in 1.9 job openings for every unemployed worker. The job opening rate also increased from 6.4% to 6.7%.

The number of job openings is viewed as an indication of the strength of the labor market and the broader economy. Economists had expected job openings to drop slightly in December; however, openings remained historically high, outnumbering unemployed workers by about 5.3 million. The largest increases in job openings were in accommodation and food services, retail trade and construction.

In addition to the continued high number of job openings, the total employee quits changed little from 4.2 million in November to 4.1 million in December. The number of employee quits in December is below the record 4.5 million recorded in November 2021. Despite the slight decrease in total employee quits, December's rate of employee quits was unchanged at 2.7%. Notably, other services saw a slight increase in employee quits while transportation, warehousing and utilities decreased somewhat. Because employee quits are generally voluntary separations initiated by the employee, the quit rate can serve as a measure of workers' willingness to or ability to leave jobs.

Other key takeaways from December's report include the following:

- The number and rates of hires increased slightly from November's 6.1 million and 3.9%, respectively, to 6.2 million and 4.0% in December.
- The number and rates of discharges changed very little from November's 1.4 million and 0.9%, respectively, to 1.5 million and 1.0% in December.
- The federal government saw increases in layoffs while total layoffs remained relatively low.

Employer Takeaways

December's high number of job openings and employee quits suggests the labor market remains resilient despite the current economic uncertainty. This is an indication that the Federal Reserve's strategy to cool the labor market and ease pressure on wages may not be taking hold. A drop in the number

of job openings and a larger decrease in employee quits would be seen as a softening in the labor market.

Despite December's slight decrease in the number of total employee quits, the number remains elevated. This suggests that workers continue to feel confident to switch jobs despite inflation and the current economic uncertainty. As a result, employers continue to struggle to attract and retain workers, resulting in increased labor costs for employers as they raise wages and offer competitive benefits to attract talent. As such, employers should continue to monitor employment trends to stay competitive in today's evolving market. Contact Advanced Benefit Consulting for more resources.

This information should not be considered legal advice. Update provided by Zywave, Inc. ABC is a content subscriber of Zywave, Inc.

ABC Is Awarded Another Top Honor!

(The Second National Magazine Acknowledgement in 6 Months!)

Besides being named Top Employee Benefits Services Company for 2022 by [HR Tech Outlook Magazine](#) (award to the right), we have been named "Editor's Choice" for Top 10 Benefits Administration Service Companies for 2022 by [Manage HR Magazine](#)!

A 3-page feature appeared in their December, 2022 issue, and an advance look at the article and magazine spread was provided in the ABC Benefit News 4th Quarter, 2022 Edition.



Lunch & Learn April 11, 2023

California's SB 1162 – Pay Transparency Act

Featuring:

Kathy Ruffino, MSHRM, SHRM-SCP, SPHR, PHRca & Jacqueline Thorp, MSHR, SPHR, PHRca, Train Me Today
Moderated by Dorothy Cociu, President, Advanced Benefit Consulting

Employers with 15 or more employees must now post pay scales on all job postings, including internal postings, agency posting and job boards, and employers must retain pay data records for each employee, including their job titles and wage history. Certain employers must submit their pay data report no later than May 10, 2023. Violations contain huge penalties per employee, and noncompliance could result in claims and potential lawsuits and reputational damage. Learn the details and how to report with this seminar and workshop on use of the filing portal! Time is running out to comply and file! Register now!

11:30 am – 1:30 pm

In Person Training & Workshop

Train Me Today Training Rooms, 5151 California Ave, Suite 100, Irvine, CA 92617 (across from UC Irvine campus)
Or Hybrid Zoom Livestream Webinar

In-Person Registration includes lunch (served 11:30-12 noon) and presentation (12 noon to 1:15 pm, with Q&A from 1:15-1:30 pm. \$49 per registrant. Zoom Webinar Registration \$25 per registrant
Clients are complimentary (subject to verification)

Register at: www.advancedbenefitconsulting.com/April11-23-L&L

PAYMENT OPTIONS

Check enclosed. **Make Check Payable to: Advanced Benefit Consulting** and Mail to: Seminar Reservations, Advanced Benefit Consulting, P.O. Box 6677, Fullerton, CA 92834-6677.

Bill my credit card. FAX this form to (714) 693-9768 or mail to address above.

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SIGNATURE: _____

YES! I want to attend:

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Please register me for in-person attendance at \$35 each as an ABC Broker Co-op Member (subject to verification) Number of Attendees: _____

Please register me as an ABC Group Benefits Client with complimentary on-site registration (subject to verification) Number of Attendees: _____

Please register me for Zoom attendance \$25 each. Number of attendees: _____

Please register me as an ABC Group Benefits Client or an ABC Broker Co-Op Member with complimentary Zoom Registration (subject to verification) Number of attendees: _____

Name: _____

Title: _____

Company Name: _____

Phone: () _____ Fax: () _____

Address: _____

City, State, Zip Code: _____

Email Address: _____

Additional Attendees from same firm: _____

Email Addresses for All Other Registrants: _____

Program Details:

California's SB 1162, Pay Transparency Act

11:30 am – 1:30 pm

In Person Training & Workshop

Train Me Today Training Rooms, 5151 California Ave, Suite 100, Irvine, CA 92617

(across from UC Irvine campus)

Or Hybrid Zoom Livestream Webinar

In-Person Registration includes lunch (served 11:30-12 noon)

Presentation 12 noon to 1:15 pm, with Q&A from 1:15-1:30 pm.

Includes a workshop-type review of the state portal for reporting!

\$49 per registrant. Clients are complimentary (subject to verification)

Zoom Webinar Registration \$25 per registrant, ABC Group Clients are Complimentary (subject to verification)

ABC Broker Co-Op Members \$35 for in-person per registrant, complimentary for Zoom registration (subject to verification).

Register at www.advancedbenefitconsulting.com/April11-23-L&L

Speaker Bios:

Jacquelyn Thorp, MSHRM, SHRM-SCP, SPHR, PHRca, CEO, Train Me Today

Jacquelyn is the founder and CEO of Train Me Today. After four decades in the corporate world as a Human Resources professional, Jacquelyn's tireless commitment to people and business management, and her passion to fight discrimination and harassment drove her to launch Train Me Today in 2003. She is the driver and team leader for the Professional in Human Resources California (PHRca®) Exam Preparation Study Guide.

Today Jacquelyn devotes her time to managing Train Me Today's progress towards goals and how to move forward to meet client expectations and improve financial growth. She is a graduate of Chapman University with a Master of Science in Human Resources. She is a nationally certified Senior Professional in Human Resources (SPHR®) as well as a California-specific HR specialist (PHRca®).

Kathy Ruffino, MSHR, SPHR, PHRCA, SHRM-SCP, Vice President, Train Me Today

Kathy's deep understanding of business operations and HR practices allows her to work with companies to create innovative and creative solutions while maintaining compliance in a complex employment landscape. Kathy continues to share her passion for HR as an instructor and mentor, developing and delivering national and international courses on HR, Anti-harassment, leadership development and more. Kathy serves as Vice President at Train Me Today. She has a Masters in Human Resource Management from Brandman University. She is a nationally certified Senior Professional in Human Resources (SPHR) and Senior Certified Professional (SCP), as well as a California-specific certification (PHRca).

For Questions or Seminar Reservations, Please Call (714) 693-9754 x 2, or Toll-Free at (866) 658-3835 x2.

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Significant Form I-9 Changes

Are Expected to Impact Employers in 2023

Despite employers' best efforts, complying with Employment Eligibility Verification form (Form I-9) requirements can be difficult, and organizations spend a great deal of time and resources trying to comply with Form I-9 requirements. Even small errors can subject employers to expensive violations that can result in fines and penalties.

In recent years, the federal government has increased its Form I-9 enforcement efforts. The U.S. Citizenship and Immigration Services (USCIS), part of the U.S. Department of Homeland Security (DHS), recently requested money from Congress to hire approximately 700 new positions in 2023, signaling a likely increase in Form I-9 audits. This makes Form I-9 compliance especially critical for employers in 2023, as significant changes are expected. By understanding the potential changes to Form I-9 requirements, organizations can reduce their potential legal risks, stay compliant and improve their Form I-9 process.

New Version of Form I-9

The Immigration Reform and Control Act (IRCA) took effect in 1986 to prevent the employment of immigrants lacking permanent legal status in the country. IRCA requires employers, regardless of size, to hire and retain only individuals authorized to work in the United States and imposes strict penalties on those that knowingly employ immigrants who are living in the country illegally. To enforce these guidelines, IRCA requires employers to complete Form I-9 to verify a newly hired employee's eligibility to work in the United States. By completing Form I-9, employers certify that they have inspected documents verifying that a newly hired employee is authorized to live and work in the United States.

The DHS occasionally revises Form I-9, and employers are required to use the current version of the form for new hires and reverification of employees. On Jan. 31, 2020, the USCIS issued the current version of Form I-9, which expired on Oct. 31, 2022. On Oct. 11, 2022, the DHS announced that employers should continue using the current Form I-9 until further notice. The updated Form I-9 is expected sometime in 2023, and the DHS will publish a Federal Register notice to announce the new version of the form once it becomes available.

The new version of the form is expected to bring major changes to Form I-9 compliance, including condensing Sections 1 and 2 from two pages to one and making Section 3 a supplement. The

form's instructions may also be reduced from 15 pages to seven. Converting Form I-9 to one page will likely streamline the process as well as reduce errors and paper use. Employers can find the most current Form I-9 on the USCIS' [web-site](#).

Alternatives to Form I-9 Document Verification

Federal law requires employers to physically examine documents that confirm an employee's identity and employment eligibility documentation to determine if it reasonably appears genuine and relates to the employee presenting it. On March 19, 2020, in response to the COVID-19 pandemic, the DHS allowed an exemption, permitting employers operating remotely to conduct virtual verification of an employee's approved Form I-9 documents. Qualifying employers can review an employee's identity and employment eligibility documentation over videoconference, fax or email. This remote verification exemption was set to expire on Oct. 31, 2022; however, on Aug. 18, 2022, the DHS and the USCIS formally published a proposed permanent rule to allow employers to remotely review the Form I-9 identity and employment authorization documents when hiring, reverifying or rehiring employees.

In light of technological advances and new work arrangements—like remote work—the DHS is exploring alternative options for Form I-9 document verification. If finalized, the proposed rule would allow the DHS to create a framework to authorize alternative options for Form I-9 document examination procedures for some or all employers. The proposed rule would formalize the department's authority to extend flexibilities, provide alternative options and conduct pilot programs to further evaluate alternative procedures for some or all employers, regardless of whether their employees physically report to work at an employer's work site.

Virtual verification may reduce burdens on employers and employees while maintaining the integrity of the Form I-9 verification process, according to the department's announcement. Such remote verification would allow employers to centralize their Form I-9 verification process, potentially reducing costs and helping to ensure compliance by

Continued on page 31

permitting experienced staff to perform virtual examinations of documents. It would also enable employers to verify employees' identity and employability in situations where in-person verification is burdensome or not practical. The DHS also proposed updating Form I-9 to allow employers to indicate whether they inspected employee identity and employment authorization documents using alternative procedures, like remote verification.

Employer Takeaway

Form I-9 requirements impact all employers. As enforcement actions continue to escalate, Form I-9 compliance appears to be especially vital in 2023. By understanding the expected updates and changes to Form I-9 and the document verification process, employers can help ensure their organizations meet Form I-9 requirements and avoid possible government audits and fines.

Disclaimer: This information is not intended to be legal advice. We always recommend you seek the advice of legal counsel as situations vary. This article was provided by Zywave, Inc. ABC is a content subscriber of Zywave, Inc.

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Don't Miss Our Lunch & Learn

California's SB 1162—Pay Transparency Act Workshop

April 11, 2023

**Hybrid In-Person (Irvine, CA)
and Zoom Webinar**

11:30 am to 1:30 pm

(Lunch 11:30-12:00)

Register Now! See page 28 & 29

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Benefits Insights: What You Should Know About Biosimilar Drugs



What You Should Know About Biosimilars

Rapidly increasing health care costs will likely continue to impact employers in the foreseeable future. As a result, many employers are considering strategies to manage health care costs and explore prescription drug trends. The introduction of biosimilar drugs as an alternative to biologics may bring value to health care by offering cost savings and increasing employee access to necessary medications. While biosimilars can potentially combat rising prescription drug costs, employers will need to learn more about them before considering how their health plans can accommodate these newer drugs.

This article explores biosimilar drugs and ways employers can promote or manage their use.

Understanding Biosimilars

Unlike generic drugs, biosimilars are not identical to their reference biological products (also called the brand-name counterpart) and aren't created from synthesized chemicals. A biosimilar drug is a biological product produced from living organisms—humans, animals or microorganisms. Approved by the Food and Drug Administration (FDA), biosimilars are similar to the reference drug (a previously FDA-approved biologic) but have no significant clinical differences. Compared with biologics, biosimilars have the same strength, dosage and potential side effects but provide the same treatment benefits. The FDA rigorously evaluates biosimilars to validate their efficacy, safety and quality. The FDA has approved more than 40 biosimilars; however, not all are commercially available.

Employer Considerations for Biosimilars

The Biosimilars Council estimates that by 2025, 1.2 million people will have access to more-affordable biologic medicines as a result of the availability of biosimilars. Its research data suggests that women, lower income and elderly individuals stand to benefit most from access to biosimilars. The organization reports that biosimilars will save the national health care system up to \$183 billion by 2025.

Current legislation aims to increase competition and decrease prescription drug prices by enhancing education concerning biosimilar drugs. As biosimilar acceptance and uptake increase, employers should consider the following actions as they design their benefits plans:

- Discuss biosimilars with partners (e.g., carriers, advisors and pharmacy benefits managers).
- Advocate for full cost transparency on specialty drugs to keep tabs on drug spending trends.
- Review health plans and drug use patterns to identify savings opportunities.
- Encourage the inclusion of biosimilars on formularies.
- Understand how rebates can impact overall drug pricing.
- Advise employees about prescription drugs as part of overall benefits education.

Regulations, along with new drug approvals, are always updating, so it's important for employers to continually research how biosimilars can be incorporated into their health plans.

Summary

Biologics account for much of specialty drug costs and are typically cited as a leading driver of rising prescription drug costs. As the potential for biosimilars continues to grow, more employers may consider promoting them to help realize cost savings in their health plans and offer less expensive drug alternatives to their employees.

Contact Advanced Benefit Consulting to learn more about the latest prescription drug trends.

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Editor's Note: ABC presented two highly informative webinars in May and June, 2022 on health plan financing and cost containment. In part 2 of a 2-part series, ABC presented Controlling RX Drug Costs in Your Drug Plan, where experts from a PBM Consulting Firm and one of our PBMs discussed detailed ways to lower pharmacy costs, and discussed Biosimilars in detail. You can watch the recorded session (session one of part 2, June 8, 2022) on our Empowered Education Center on-demand education platform, free of charge.

HR Insights: Supreme Court Cases That May Impact Employers in 2023



During its 2022-2023 term, the U.S. Supreme Court will hear and decide several cases that could have a significant influence on the workplace. Even though labor and employment laws and regulations change every year, the current Supreme Court term will likely have a greater impact on employers than previous terms. It can be difficult for employers to stay informed of these cases and their potential impacts on the workplace; however, it's vital that employers are aware of them and understand how their organizations may be affected.

This article highlights the topics in Supreme Court cases that may impact workplaces in 2023 to help employers prepare for potential changes and navigate the evolving labor and employment law landscape.

Overtime Exemptions

On Feb. 22, 2023, the Supreme Court held in *Helix Energy Solutions Group Inc. v. Hewitt* that employees must be compensated on a salary basis to qualify for the highly compensated employee overtime exemption under the Fair Labor Standards Act (FLSA). The case involved an oil rig worker who earned more than \$200,000 per year and was paid daily rather than on a salaried basis. The employer claimed that the employee was exempt from overtime under the FLSA's white collar exemptions that apply to highly compensated employees. The Supreme Court disagreed, ruling that the FLSA plainly requires highly compensated employees to receive a salary; this requirement is not met when an employer pays an employee by the day.

It's unlikely that many employers will have to change their payroll policies and procedures for highly compensated employees in response to the ruling in this case. However, this decision is a clear signal that courts may require strict compliance with FLSA overtime exemptions. As a result, employers should review their exempt employee classification process to ensure they meet duty qualifications and salary requirements.

Religious Accommodations

Two cases in this term could affect religious accommodations in the workplace. The first is *303 Creative LLC v. Elenis*, which was heard on Dec. 5, 2022. This case challenges the public accommodation provision of Colorado's Anti-discrimination Act, which prohibits places of public accommodation, such as businesses, from denying services to individuals based on a protected characteristic (e.g., sexual orientation). In this case, the owner of a graphic design company wants to design wedding websites; however, she is opposed to same-sex marriage on religious grounds. The owner wants to deny services to LGBTQ customers and announce her intentions to do so on the company's website. The question raised in this case is whether a state

can prohibit a business from denying services to customers on the basis of a protected characteristic when the denial is based on a religious belief. While this case does not directly affect employers, the Supreme Court's ruling could have employment-related ramifications regarding anti-discrimination policies and religious exemptions in employment.

The second case is *Groff v. DeJoy*. This lawsuit was brought by a U.S. Postal Service mail carrier after being disciplined for refusing to work on Sundays due to religious reasons. The Postal Service argued that accommodating the employee would create an undue hardship on the organization and burden other employees by requiring them to work more weekends. Title VII of the Civil Rights Act (Title VII) requires covered employers to reasonably accommodate employees' sincerely held religious beliefs, including when an employee's religious observance conflicts with work requirements, unless doing so would create an undue hardship on the employer. There is no statutory definition of "undue hardship" under Title VII; however, the Supreme Court held in *Trans World Airlines Inc. v. Hardison* that requiring an employer to bear more than a "de minimis cost" is considered an undue hardship when accommodating an employee's religious beliefs.

The Supreme Court's ruling in *Groff* could significantly limit an employer's ability to deny employee requests for religious accommodations even if those requests burden the employer. Additionally, during the COVID-19 pandemic, many employers saw an increase in employee requests for religious accommodations, such as being excused from vaccine mandates. A Supreme Court ruling expanding religious accommodations for employees that applies retroactively could create significant operational challenges for employers. Oral arguments on this case are scheduled for April 18, 2023.

Affirmative Action

On Oct. 13, 2022, the Supreme Court heard oral arguments on two cases brought by the activist group Students for Fair Admissions addressing affirmative action in university admissions. These cases will likely be the most consequential cases the Supreme Court will decide this term in terms of altering existing legal precedent.

In *Students for Fair Admission Inc. v. President & Fellows of Harvard College* and *Students for Fair Admissions Inc. v. University of North Carolina*, the Supreme Court will review the legality of considering race in university admissions for private and public institutions. In doing so, the court will reconsider its 2003 decision of *Grutter v. Bollinger*, which allows universities to consider race—among other factors—in university admissions because diversity in education is a le-

Continued on page 35

Legal Update

Proposed Rule Would Expand Access to Contraceptive Coverage



On Jan. 30, 2023, the Departments of Health and Human Services, Labor and the Treasury (Departments) released a [proposed rule](#) that would expand access to contraceptive coverage.

Current Rules

The Affordable Care Act (ACA) requires non-grandfathered health plans and health insurance issuers to cover certain contraceptive services without cost sharing. Current rules include an exemption and optional accommodations process for eligible employers with sincerely held religious or moral objections to contraceptive coverage.

When an employer qualifies for the exemption but does not use the optional accommodations process, employees and their dependents do not have access to first-dollar contraceptive coverage through the plan.

Proposed Changes

The proposed rule would **rescind the moral exemption** to covering contraceptives but retain the existing religious exemption. The proposed rule would also **establish a new way for individuals to access contraceptives at no cost** when they are enrolled in plans that qualify for an exemption and do not use the optional accommodations process.

Under the proposed rule, individuals would be able to obtain contraceptive services at no cost directly from a willing health care provider. The provider would be able to seek reimbursement for its costs by entering into an agreement with an issuer in an ACA health insurance Exchange, which in turn may seek a user fee adjustment.

Proposed Changes

The proposed rule would make the following changes to strengthen access to contraceptive coverage:

Eliminate the exemption for employers who object to contraceptive coverage based on moral convictions (but retain the exemption based on religious beliefs); and

Create a new way for individuals to receive no-cost contraceptive coverage directly through a health care provider.

At this time, the rules are only in the proposed form and have not been finalized. The Departments are accepting comments on the proposed rule until April 3, 2023.

The proposed rule would allow individuals to receive contraceptive coverage at no cost from a willing provider.

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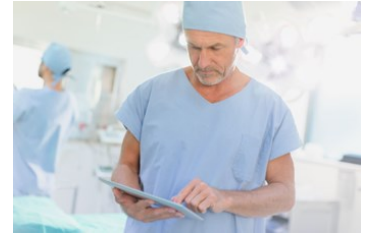
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News Brief

Record Number of Americans Delayed Medical Care in 2022 Due to Cost



The annual Gallup [poll](#) found that a record number of Americans postponed medical care last year. In the survey, 38% of respondents said they or a family member postponed care in 2022, compared to 26% in 2021. The 2022 percentage is the highest figure since Gallup began tracking Americans' postponed medical care in 2001.

The survey, conducted from Nov. 9 to Dec. 2, 2022, asked respondents about medical treatment within the past 12 months. Given the poll's timing, most Americans said inflation is creating hardships for them, impacting their decisions to receive medical care. Moreover, it remains to be seen how quickly inflation will return to normal after a year and a half of unusually rapid increases. A full deceleration may well be a long process, pushing Americans to continue making health-related decisions based on cost. Americans were more than twice as likely to report the delayed treatment in their family was for a serious rather than a nonserious condition or illness. In 2022, 27% of respondents said the treatment they delayed was for a "somewhat" or "very" serious condition, while 11% said it was "not very" or "not at all" serious.

Lower-income adults (an annual household income under \$40,000), younger adults (aged 18 to 49) and women have consistently been more likely than their counterparts to say they or a family member have delayed care for a serious medical condition.

Takeaway

Not surprisingly, many Americans are deciding to hold off on medical care for financial reasons. This behavior is expected to continue as inflation strains Americans' finances. Employers can help workers struggling with health care costs by sharing the following tips:

- Use in-network providers to control the cost of health care services.
- Consider the deductible and opt for additional treatments once the deductible has been hit to save costs.
- Seek preventive care, including screenings and immunizations, which are often covered at no cost.
- Boost health literacy by being an engaged patient and asking providers questions about treatments, alternative options and costs.

Employers should continue to monitor health care trends, utilization and spending. Contact Advanced Benefit Consulting today for more on employee financial wellness. ##

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Supreme Court Cases, Continued from page 33

gitimate aim. Students for Fair Admissions is asking the Supreme Court to overrule this existing legal precedent, claiming it discriminates against Asians and whites based on their race.

While the Supreme Court's ruling in these cases will likely not directly affect employers, it could impact workplace diversity, equity, inclusion and belonging initiatives, including the ways organizations promote and implement them in the future as well as employer affirmative action programs.

National Labor Relations Act

On Jan. 10, 2023, the Supreme Court heard oral arguments in *Glacier Northwest Inc. v. International Brotherhood of Teamsters Local Union No. 174*. This case will determine whether the National Labor Relations Act (NLRA) preempts a common law state tort claim against a labor union for intentionally destroying an employer's property during a labor dispute. Glacier Northwest sells ready-mix concrete, and during collective bargaining agreement negotiations in August 2017, its drivers went on strike for a day without providing notice. As a result, concrete that had already been mixed for delivery was wasted.

Under the NLRA, workers' right to strike is protected; however, they must take reasonable precautions to protect their employer's property from foreseeable hazards resulting in sudden work stoppages. In the past, the Supreme Court has ruled that the NLRA preempts state law claims. If the Supreme Court rules in favor of Glacier Northwest, it could establish legal precedent making it easier for employers to sue and recover damages from labor unions that damage an employer's property during a labor strike.

Employer Takeaway

These cases' rulings could have major impacts on employers, altering established labor and employment laws and workplace practices. Being aware of these cases and their potential effects on workplaces can help employers prepare and feel confident in their abilities to navigate any changes. For more workplace resources, contact Advanced Benefit Consulting today. ##

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