



**ERIC**

# The ERISA Industry Committee

Washington Update Call  
June 6, 2016

# Participation Procedure

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- Procedure for audience participation
- Audience will be in a “listen-only” mode
- If you wish to ask a question or make a comment:
  - Use the Q&A box at the top of your screen to anonymously ask a question.
  - Press \*6 on your telephone to “un-mute” your telephone.
    - After speaking, please press \*6 again to re-enter “listen-only” mode.

# ERIC's Antitrust Policy

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As a reminder, all ERIC meetings and activities are to be conducted in full compliance with the ERIC Antitrust Policy. The antitrust laws prohibit competitors from agreeing on prices to be charged or otherwise taking steps that harm free and fair competition among them. While ERIC's primary mission and activities are entirely consistent with the antitrust laws, if you have any concerns about a particular topic or discussion, please raise it with ERIC staff.

# Washington Update Call Agenda

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- Welcoming Remarks
- Hill Briefing: James Brandell, *Dykema*
- Health Update
- Retirement Update
- ERIC's State Mandate Action Program™
- Concluding Remarks & Questions

*Questions and comments are welcome at any point during the call.*

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# Health



# Health Care Regulations

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Recently Out:

- Final HHS OCR Nondiscrimination Rule
- Final EEOC Wellness Rule

What's left?

- Cadillac Tax Rule???

# HHS OCR Nondiscrimination Final Rule

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- Mostly unchanged from proposed rule
- Self-insured plans ARE covered, because of TPAs in exchanges
- No specific benefit mandates, but plan cannot be “discriminatory” or have a disparate impact
- If plan design is discriminatory, HHS will refer complaints to EEOC, but if the complaint is about the administration of the plan, HHS will pursue TPA
- Effective 01/01/2017, no “good faith compliance” safe harbor
- Compliance requires meeting all the notice requirements and language requirements, regardless of other requirements in other statutes or provisions

# EEOC Wellness Final Rules

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- Mostly reflected what we expected – not much deviation from the proposed rules
- Remember – In these rules, ADA covers employees; GINA covers dependents
- Dodged a number of bullets – new consent requirements, stricter confidentiality standards, even more notices
- Regulators called out *Seff* and *Flambeau* – say courts wrong



# EEOC Wellness Final Rules (cont.)

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- 50% inducement (tobacco) only if NO biometric element
- EEOC doubles down – no safe harbor
- 30% max incentive for spouse based on cost of self-only coverage
- Effective immediately for most provisions, but notice rules, incentive limits, and GINA rules for spouse’s HRA start on 01/01/2017
- “Reasonable plan design” – must be designed to improve the health of enrollees
- NO “gated plans”, must be voluntary – cannot make participation mandatory to enroll in health insurance
- NO “de minimus” incentives – everything has to be in that 30%

# Wellness / *Flambeau*

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- ERIC has filed *amicus* brief with HSPA, ABC, and USCC.

## Key arguments:

- Wellness programs are good for employees & plan sponsors
- Wellness programs are important to group health plans, because they help identify and mitigate risks, keep costs down, and forecast plan costs
- Wellness programs are already heavily regulated with privacy requirements under HIPAA
- EEOC has rewritten ADA's insurance safe harbor contrary to the statute

# Wellness Tip from the IRS

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- IRS memo clarifies tax-treatment of compensation in regard to wellness plans:
  - Cash rewards? Taxable income.
    - Payment or reimbursement of gym fees is a cash benefit that is not excludable
  - If an employee pays a pre-tax premium to participate in a wellness program, and employer then reimburses employees for some or all of that premium cost... that reimbursement is taxable income.

# Cadillac Tax Regulations Coming?

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- Treasury has not issued final regulations
- Delay until 2020 is going to further enable a slow-walk
- Treasury asked for comment twice last year; issued Notices
- There is still hope that Administration might “clarify” some aspects in order to mitigate some adverse consequences

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# Retirement



# Legislative Activity

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- PBGC Premiums

- Bill Introduced on House side (H.R. 4955); Congressman Renacci (R-OH) is lead sponsor and Congressman Pocan (D-WI) lead House Democrat; 13 Co-Sponsors since Introduction; 8 Republicans and 5 Democrats
- Several Senate Meetings Held to Advance Introduction; Senator Enzi (R-WY) will be lead sponsor; slightly different approach to legislation

- Electronic Reporting

- The Receiving Electronic Statements to Improve Retiree Earnings Act (H.R. 2656)
- Congressman Jared Polis is lead sponsor (19 Co-Sponsors)
- Authorizes a document that is required or permitted to be given to a retirement plan participants to be given in electronic form if certain conditions are met

# Key Regulatory Concerns

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- DOL Fiduciary Rule Released
  - Plan Sponsors on Wait & See Status
  - Resolution of Disapproval Passed House and Senate
  - Two lawsuits filed last week against the rule
- EEOC EEO-1 Form Reporting Changes
  - House Education & Workforce held listening session
  - Rule still needs to go to OMB
- Frozen DB Plan Regulations
  - Provides Certain Relief for Mature Plans
  - ERIC Held FocusOn Call to Discuss Impact on Member Plans
  - Comments Submitted on April 28<sup>th</sup>
  - ERIC Testified at Hearing on May 19th

# Overtime Rule Impact on Benefits

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- Overtime Rule Released with Slight Changes from Proposed
  - Review 401(k) Plans to Determine Impact
    - Definition of Compensation
    - Full Time vs. Part Time (Salaried vs. Hourly)
    - Will it impact HCE vs NHCE count? (Non Discrimination Testing)
  - Analyze Other Benefits
    - Hour Requirement for Eligibility
    - Salaried Requirement for Eligibility



# Next Up on the Regulatory Agenda

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- IRS

- 457(f) Regulations on Non-Qualified Deferred Compensation Plans for Tax-Exempt and Government Entities
  - Expect it to possibly open door for further 457A guidance
- Determination Letter Program – expect around June 30<sup>th</sup>
- Final Frozen/Closed Plan Regulations

- Department of Labor

- Form 5500 Changes – mainly to Schedule H (Investments/Financial)
- State Retirement Plans
- Paid Sick Leave for Federal Contractors
- Voluntary Fiduciary Correction Program

# ERIC's State Mandate Action Program™

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- Tracking system in place – website ready very soon
- Identifying state and local rules impacting employee benefits – paid/parental leave, vaccine mandates, retirement plans, biosimilars, minimum wage, etc.
- Still very active on telemedicine (biweekly newsletter)
- Contact Allie Wils at [awils@eric.org](mailto:awils@eric.org) or (202) 627-1925
  - Schedule a one-on-one webinar for your team, customized to the issues/mandates important to you
  - Wednesday, June 15 from 3:00 – 3:30 p.m. EDT
  - Be added to our email list with developments on state issues



# Upcoming ERIC Calls & Webinars

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- **Wednesday, June 15, 3:00 – 3:30 p.m. EDT**  
Overview of State Mandate Action Program
- **Thursday, June 16, 4:00 – 5:00 p.m. EDT**  
Third Thursday Call of the ERIC Health Policy Committee
- **Tuesday, June 21, 2:00 – 3:00 p.m. EDT**  
FocusOn Call on Prevention: Identifying and Mitigating Employee Kidney Disease Risks
- **Wednesday, June 22, 2:00 – 3:00 p.m. EDT**  
FocusOn Webinar on Missing Participants
- **Thursday, July 21, 4:00 – 5:00 p.m. EDT**  
Third Thursday Call of the ERIC Health Policy Committee
- **Monday, August 1, 11:00 a.m. – 12:00 p.m. EDT**  
Washington Update Webinar



# To Receive ERIC Updates

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- If you were forwarded this email but would like to receive our communications directly, please email **memberservices@eric.org** with your contact information and company name.
- ERIC members may sign up for the following email lists:
  - **As-It-Happens** Health Care (includes Wellness)
  - **As-It-Happens** Defined Benefit Plans
  - **As-It-Happens** Defined Contribution Plans
  - **Weekly** Health Care Newsletter
  - **Weekly** Retirement Newsletter (includes Defined Contribution and Defined Benefit Plans)
  - **Bi-Weekly** Telehealth Newsletter
  - **Monthly** ERIC Newsletter
  - Legal
  - Government Affairs
- If you are not receiving the right emails from us, please contact anyone on the ERIC staff to change your subscription preferences.



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