

July 17, 2020

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington DC 20510

The Honorable Chuck Schumer
Democratic Leader
United State Senate
Washington, DC 20510

Dear Leaders McConnell and Schumer,

On behalf of The ERISA Industry Committee (ERIC), thank you for working on legislation to help address the COVID-19 pandemic and reopen the U.S. economy. Our member companies look forward to getting the virus under control, bringing Americans back to work, and restore financial security and stability to tens of millions of American workers.

As part of this effort, we applaud your consideration of policy changes to ensure that out-of-control lawsuits do not hamper recovery efforts. There are indeed many risks inherent in reopening worksites, bringing workers back, and inviting customers and the public to visit businesses once again. As you consider the protections necessary to restoring confidence and provide certainty to employers, we ask that you also consider protections to ensure employers can continue to offer benefits like health insurance and retirement plans to workers and their families.

ERIC is the only national trade association that advocates exclusively for large employers on health, retirement, paid leave, and compensation public policy issues on the federal, state, and local levels. You and your constituents are likely to engage with an ERIC member company when you drive a car or fill it with gas, use a cell phone or a computer, visit a bank or hotel, fly on an airplane, watch TV, benefit from our national defense, go shopping, receive or send a package, use cosmetics, or enjoy a soft drink. All ERIC member companies offer comprehensive retirement and health benefits to employees, their families, and often to retirees as well. Policy changes to protect these employers from frivolous COVID-related lawsuits pursuant to their employee benefit plans, will be a critical boost to help employers get workers back to business, and ensure no disruption to their benefits.

ERIC urges that the following provisions be included in potential COVID-19 legislation:

- **Prevent abusive “stock drop” lawsuits**, if the plaintiff cannot prove that the volatility of the investment was due to a cause other than COVID-19;
- **Prevent abusive “imprudent investment” lawsuits**, if the plaintiff cannot prove that the volatility of the investment was due to a cause other than COVID-19;
- **Prevent abusive COBRA lawsuits**, by clarifying that it is the responsibility of a plan participant to disclose to providers the source of their health insurance coverage;
- **Prevent abusive ERISA disclosure lawsuits**, by requiring plaintiffs to demonstrate actual harm in a case based on failure to provide an ERISA-required disclosure or respond to a document request in a timely manner; and
- **Protect employers from excessive HIPAA liability**, by permitting employers to collect and use information related to COVID-19 infections among their worker population.

We have provided an additional document that lays out in greater detail the problems these lawsuits could pose, and the rationale for making targeted policy changes to solve those problems.

Thank you for taking our concerns into account as you continue drafting the next legislative package to address the COVID-19 pandemic. ERIC and our member companies across all industry sectors are eager to work with you to advance solutions to help restore the economy and get Americans back to work. Should you have any questions, please contact me at ERIC or 202-789-1400.

Sincerely,

A handwritten signature in black ink, reading "Annette Guarisco Fildes". The signature is fluid and cursive, with the first name "Annette" being the most prominent.

Annette Guarisco Fildes
President and CEO
The ERISA Industry Committee