IN THE KNOW

Bulletins for Benefits & HR Professionals

VCG

June 24, 2020

Supreme Court Holds Employers Cannot Discriminate Against LGBTQ Employees: Are Your Employee Benefit Plans Up to Snuff?

"The Final Regs under ACA Section 1557 are not directly impacted by the Court's ruling in Bostock. Nevertheless, it is likely they will be challenged citing Bostock as evidence that HHS wrongly concluded that 'sex' for purposes of Section 1557 does not include sexual orientation or gender identity." **Full Article**

Snell & Wilmer

CMS Scales Back ACA Nondiscrimination Rules

"The Section 1557 regulations will no longer: 1. define sex discrimination to include gender identity and sex stereotyping; 2. require certain health plans and insurers to cover gender reassignment surgery; 3. maintain specific grievance procedures to address complaints of discrimination under section 1557; or 4. require the distribution of nondiscrimination notices and foreign language taglines. The new final rules also narrow the application of the nondiscrimination requirements to apply to health insurers only for programs and activities that receive financial assistance from HHS."
Full Article

Ballard Spahr LLP

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EEOC Will Advance New Wellness Regs

"In a public meeting on June 11, 2020, the EEOC voted to advance a new notice of proposed rulemaking on wellness programs. The EEOC intends to move forward with the proposed rule after parts of its last regulation were invalidated in court and even as the value of wellness programs has been refuted in several recent studies. This post summarizes the status of regulations for wellness programs, the comments made during the public meeting, and what to expect next." **Full Article**

Katie Keith, in Health Affairs

Department of Treasury and IRS Clarify Tax Treatment of Direct Primary Care Arrangements and Health Care Sharing Ministries

"The Proposed Rule does not address any issues under Title I of ERISA, such as whether any particular arrangement or payment constitutes, or is part of, an employee welfare benefit plan within the meaning of ERISA Section 3(1). However, the Proposed Rule highlights that an employer's funding of a benefit arrangement, in most circumstances, is sufficient to treat an arrangement that provides health benefits to employees as an ERISA-covered plan. Thus, DPCAs that are funded, in whole or part, by an employer subject to ERISA will likely be treated as employer group health plans for purposes of ERISA." **Full Article**

Winston & Strawn LLP

What Employers Should Know about ACA Shared Responsibility Payments

"A recent TIGTA report shows a wide gap between the ACA shared responsibility payment amounts the IRS initially predicted would be assessed in 2015 and 2016 (approximately $17 billion) and the actual amounts assessed once employers were given a chance to contest the proposed amounts ($749 million). The TIGTA also estimates that longer term revenue from these payments will fall very short of the amount estimated by Congress. For the 10-year period starting with fiscal year 2016, the Joint Committee on Taxation's earlier projection was that the shared responsibility payments would generate revenue of $167 billion. Using the actual assessment rates, the TIGTA's projection for this same period is approximately $8 billion. The TIGTA's report also identified areas where IRS procedural issues or improper employer reporting resulted in an inaccurate initial calculation." **Full Article**

Proskauer

Don't Leave Eligible FFCRA Tax Credits on the Table

"Employers can choose to pay employees on qualified leave more than the CARES Act provides, but the Credit cannot exceed those amounts. Employers that choose to pay more should consider whether it is more advantageous to count an employee's pre-tax salary reductions for health benefits as wages or as health plan expenses." **Full Article**

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