

2022 Employee Benefits Update and Common Compliance Pitfalls

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Agenda

Legal Update:

- SECURE 2.0
- No Surprises Act
- "Substantially Equal Periodic Payments"
- Proposed RMD Regulations
- Wellness Plan Incentives
- Cryptocurrency and Cybersecurity
- Case Law Update

Common Compliance Pitfalls

SECURE 2.0

- Mandatory automatic enrollment provisions
- Additional RMD delays
- Catch-up contribution limit increased
- More long-term, part-time employees eligible
- Matching contributions tied to student loan payments
- Other

No Surprises Act

- Aims to address concept known as "balance billing"
- Addresses gap for self-funded plans
- Effective for plan years beginning on and after January 1, 2022

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"Substantially Equal Periodic Payments"

- IRS Notice 2022-6
- Updates guidance on when a series of payments from a retirement plan account is considered a series of "substantially equal periodic payments" for purposes of the exemption for the 10% excise tax on early distributions

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Proposed RMD Regulations

- Reflects increased RMD age to 72 (but no similar change to actuarial increases)
- Implements 10-year rule
- Limits the exception for "eligible designated beneficiaries"
- Clarifies that the age of majority is 21

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Wellness Plan Incentives

- More than "de minimis," but rule is still uncertain
- Yale University settlement in connection with weekly "opt-out" fee
- Takeaway: if offering incentives to participate in (or penalties for failure to participate in) a wellness program, consider whether program is "voluntary"

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Cryptocurrency & Cybersecurity

- Plan fiduciaries should exercise "extreme care" before they consider adding a cryptocurrency option to the investment menu of self-directed plans
- DOL cybersecurity guidance, including:
 - Tips for hiring a service provider
 - Cybersecurity program best practices
 - Online security tips

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Case Law Update

- *Hughes v. Northwestern University*
 - Supreme Court reiterated that plan fiduciaries are required to conduct their own independent evaluation to determine which invests may be prudently included in the plan's menu of options.
 - "If the fiduciaries fail to remove an imprudent investment from the plan within a reasonable time, they breach their duty."
- *Yates v. Symetra Life Insurance Co.*
 - Participants must exhaust a plan's administrative remedies before filing suit, but absent a claims procedure for participants to exhaust in the written plan document, exhaustion is not required (or is deemed met).

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Miscellaneous

- Updated HSA limits
- ACA Affordability Changes
- Other

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Common Compliance Pitfalls

- Definition of "compensation" in retirement plan
- Cafeteria plan document
- Others?

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Questions?

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