WINSTON & STRAWN LLP

BLOG

Health and Welfare Benefit Roundup – Five Recent Developments for Plan Sponsors

AUGUST 6, 2025

1. The One Big Beautiful Bill Act

The One Big Beautiful Bill Act (the OBBB) contains several changes affecting employer-provided health and welfare benefits as well as fringe benefits. The OBBB makes the following changes:

- Permanently extends the telehealth safe harbor allowing high-deductible health plans (HDHPs) to provide pre-deductible coverage for telehealth and other remote care services while permitting covered individuals to maintain health savings account (HSA) eligibility. This change is effective retroactively to December 31, 2024, which means that the relief extends back to the expiration date of the last telehealth safe harbor.
- Allows individuals who enroll in Bronze or Catastrophic level health plans through the individual market on an exchange to contribute to an HSA.
- Allows individuals enrolled in HDHPs to concurrently enroll in direct primary care (DPC) service arrangements, maintain their HSA eligibility, and pay for DPC coverage using HSA funds, up to a limit of $150 per month ($300 per month for family arrangements).
- Increases the maximum annual exclusion for employer-provided dependent care (such as a dependent care flexible spending account) to $7,500 (or $3,750 for married couples filing separately), effective for the 2026 tax year.
- Raises the employer-provided childcare tax credit maximum from $150,000 to $500,000 (indexed for inflation) and increases the percentage of covered childcare expenses from 25% to 40% of qualified expenses (e.g., amounts incurred in constructing a childcare facility or training childcare employees). To claim the full credit, a business must spend at least $1.25 million in a year on childcare services.
    - For eligible small businesses, the maximum is raised to $600,000 with a 50% credit rate. To claim the full credit, a small business must spend $1.2 million a year on childcare services.
- Permanently extends the CARES Act amendment to Internal Revenue Code (Code) section 127, allowing educational assistance plans to continue making or reimbursing qualified student loan repayments. The OBBB also indexes the maximum exclusion under Code section 127 for inflation.

- Creates new tax-favored investment accounts (also known as Trump Accounts) for children.
- Permanently extends the federal paid family and medical leave tax credit for employers.
- Eliminates the income exclusion for employer-provided qualified bicycle commuting reimbursements.
- Eliminates the deduction for moving expenses and the income exclusion for employer-provided qualified moving expenses.
- Eliminates the deduction for providing food or beverages to employees.

For additional information, see our complete summary of the OBBB's health and welfare and fringe benefit provisions here.

2. New York City Paid Prenatal Leave

Following New York State's requirement to provide a separate bank of paid leave specifically for prenatal health care services, New York City amended the Earned Safe and Sick Time Act (ESSTA) to implement the state mandate and provide additional written policy, notice, documentation, and recordkeeping requirements, which became effective July 2, 2025 (the NYC amendment can be found here).

Since January 1, 2025, private employers in New York State have had to provide employees with 20 hours of paid prenatal leave per year. This paid prenatal leave is separate and apart from other sick leave benefits or paid time off benefits. Paid prenatal leave applies only to the employee directly receiving prenatal care—which includes health care during their pregnancy or related to their pregnancy, such as fertility treatment and end-of-pregnancy care.

New York City's amendments to the ESSTA incorporate the state mandate and require additional requirements for New York city employers, including:

Written Policy

Employers must prepare a written policy that covers paid prenatal leave benefits and distribute a copy of it to employees upon hire, within 14 days of the effective date of any changes to the policy, and upon request by an employee. The policy must lay out any rules, limitations, and/or conditions on the use of paid prenatal leave.

Employers must maintain all sick leave policies and paid prenatal leave policies in a single writing, not split up across multiple documents. However, a multistate employer may supplement a national policy with a New York–specific policy.

Notices to Employees

Employers must post and provide employees with an updated copy of the Notice of Employee Rights related to the ESSTA. The updated notice clarifies that the paid prenatal leave benefits are in addition to sick leave and that the prenatal leave benefit may be used only by employees who are pregnant or receiving health care related to pregnancy. Employees who attend treatments or appointments with a pregnant spouse or partner are not entitled to paid prenatal leave.

Requests for Leave

New York allows employers to require notice of prenatal leave up to seven days in advance when the leave is foreseeable. Leave is not foreseeable when the employee is not aware of the need to use the paid prenatal leave seven days or more in advance. For unforeseeable leave, employers cannot require advance notice but may require notice as soon as practicable under the circumstances.

Recordkeeping

Employers will need to document the date, time, and amount paid whenever an employee uses paid prenatal leave. Further, for each pay period, an employer must provide employees with an accounting of how much paid prenatal leave was taken in that pay period as well as the balance that remains. Employers may provide this accounting on the employee's pay statement or in another form of written documentation given to the employee.

Documentation

New York allows employers to request documentation that the leave was taken for a purpose authorized under the law if an employee's use of paid prenatal leave results in their absence for more than three consecutive workdays.

Reasonable documentation includes a note signed by a licensed clinical social worker, licensed mental health counselor, or other licensed health care provider. Employers should note that if the licensed health care provider charges the employee a fee for the requested documentation, the employer is responsible for reimbursing the employee for the fee and all reasonable costs or expenses incurred in obtaining the documentation.

3. Department of Health and Human Services (HHS) Marketplace Integrity and Affordability Final Rule (90 Fed. Reg. 27074)

For plan years beginning in 2026, the maximum dollar out of pocket limit for self-only coverage will be $10,600 (up from the proposed limit of $10,150 and the 2025 limit of $9,200), and $21,200 for family coverage (up from the proposed limit of $20,300 and the 2025 limit of $18,400).

Beginning with the 2026 plan year, the term Essential Health Benefits ("EHBs") will not include "specified sex-trait modification procedures," which are sometimes referred to as "gender affirming care." This means that costs accrued for specified sex-trait modification procedures would not be required to count toward deductibles or out-of-pocket maximums and would not be protected from lifetime limits.

HHS defines "specified sex-trait modification procedure" as:

> *any pharmaceutical or surgical intervention that is provided for the purpose of attempting to align an individual's physical appearance or body with an asserted identity that differs from the individual's sex either by:*
>
> > *(1) intentionally disrupting or suppressing the normal development of natural biological functions, including primary or secondary sex-based traits; or*
> >
> > *(2) intentionally altering an individual's physical appearance or body, including amputating, minimizing or destroying primary or secondary sex-based traits such as the sexual and reproductive organs.*
>
> *Such term does not include procedures undertaken (1) to treat a person with a medically verifiable disorder of sexual development, or (2) for purposes other than attempting to align an individual's physical appearance or body with an asserted identity that differs from the individual's sex.*

HHS notes that this rule would not prohibit health plans from voluntarily covering sex-trait modification as a non-EHB consistent with applicable state law, nor would it prohibit states from requiring the coverage of sex-trait modification, subject to the rules related to state-mandated benefits.

4. Internal Revenue Service (IRS) Revenue Procedure 2025-25: Affordable Care Act (ACA) Affordability

The IRS issued Revenue Procedure 2025-25, which increased the ACA affordability threshold to 9.96% of the employee's household income for taxable years and plan years beginning in 2026. This is an increase from the 2025 threshold of 9.02%.

This Revenue Procedure adopts the new methodology for calculating premium growth that was announced in HHS's June 2025 Marketplace Integrity and Affordability rule (discussed above). Beginning in calendar year 2026, the premium growth calculation captures increases in individual market premiums in addition to increases in employer-sponsored insurance premiums.

Employers offering a medical plan option in 2026 that provides minimum value and costs employees no more than $129.89 per month for employee-only coverage will automatically satisfy the ACA affordability standard under the federal poverty line affordability safe harbor.

5. IRS Revenue Procedure 2025-26: Employer Shared Responsibility Payments (ESRPs)

The IRS updated the annual ESRP amounts, which are penalties that large employers must pay for not offering minimum coverage under the ACA.

The ACA requires employers with at least 50 full-time employees to offer "minimum essential coverage," which is coverage that is considered affordable and covers at least 60% of expected costs. The guidelines released in Revenue Procedure 2025-26 increase the penalties to account for inflation.

Employers who do not offer minimum essential coverage to at least 95% of their workforce and who have at least one employee receiving the ACA's premium tax credit will pay a penalty of $3,340 per employee in 2026 (an increase from the 2025 penalty of $2,900). The penalty is multiplied by the employer's total number of workers, minus the first 30.

Employers who generally offer minimum coverage to at least 95% of their workforce and who have at least one employee receiving the premium tax credit will pay a penalty of $5,010 (an increase from the 2025 penalty of $4,350), but only for each affected employee.

Although expressed here as annual numbers, each penalty is determined on a month-by-month basis.

WINSTON TAKEAWAYS

Many of the changes discussed above provide plan sponsors with increased flexibility to optimize benefits offered to their eligible employees and their dependents. However, plan sponsors will need to be proactive to minimize risk and anticipate compliance issues. Plan sponsors should review their offerings now to implement any changes before the beginning of the 2026 plan year.

Plan sponsors should also review their plans and policies to ensure compliance with the rapidly changing landscape of state and local paid leave laws.

Please contact a member of the Winston & Strawn Employee Benefits & Executive Compensation Practice or your Winston relationship attorney for further information.

7 Min Read

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