

Weekly Digest

• February 13, 2024 •

EMPLOYEE
BENEFITS

Draft IRS Publication 969: Health Savings Accounts and Other Tax-Favored Health Plans (PDF)

"For use in preparing 2023 returns.... What's New: ... **Notice 2023-37** addresses the announced end of the COVID-19 public health emergency and the National Emergency Concerning the Novel Coronavirus Disease 2019 Pandemic ... Notice 2023-37 also clarifies whether certain items and services are treated as preventive care under section 223(c)(2)(C)." [Full Article](#)

Internal Revenue Service [IRS]



Tri-Agencies Issue FAQs on Contraceptive Coverage

"For plans and issuers that seek to impose cost-sharing or medical management techniques on certain contraceptives without a therapeutic equivalent, [the authors] anticipate greater scrutiny of the plan/issuer's exceptions process, both in terms of how it is communicated to participants and providers, as well as the scope of deference given to the treating provider regarding the medical appropriateness of the particular contraceptive." [Full Article](#)

Groom Law Group

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Federal Poverty Level Announced for 2024—What Does This Mean for Employer Shared Responsibility Rules

"The 2024 federal poverty level was announced as \$15,060. This is an increase from \$14,580 in 2023. Employers whose plan years begin on or after July 1, 2024, and who expect to rely on the FPL safe harbor should review their single employees' lowest-cost coverage premiums/contributions for their medical coverage offerings and make any required adjustments to premiums/contributions in order to ensure compliance with the ACA's affordability requirements." [Full Article](#)

Winston & Strawn, LLP



Johnson & Johnson Case Signals Employee Drug Price Suits to Come

"A novel lawsuit from an employee suing Johnson & Johnson Inc. for allegedly mismanaging drug benefits appears a harbinger of litigation to come against companies, especially those that rely on pharmaceutical industry middlemen to negotiate pricing and rebates. Employers can mitigate their liability exposure to these types of cases by ensuring they are engaged in a prudent process in selecting and monitoring their service providers, according to benefits attorneys who represent companies." [Full Article](#)

Bloomberg Industry Group, Inc

Court Awards ERISA Penalties for Plan's Failure to Furnish Documents During COVID-19

"In a ruling that was largely favorable to the employer/plan sponsor, the district court in this case expressly referenced the DOL's COVID-related 'outbreak period' rules which suspended the deadlines for some plan compliance obligations." [Full Article](#)

Thomson Reuters Practical Law



Transparency in Coverage Rules: When Accurate Estimates for Low-Utilization Items and Services Are Not Available

"In [FAQ Part 65](#), the Departments announced that they are likely to exercise discretion to not bring an enforcement action where a plan fails to provide certain information with respect to these items and services. This exercise of discretion is limited to cost-sharing information otherwise required to be provided to the participant or beneficiary (through the self-service tool or in hard copy or by phone) where: The cost estimate would need to be based on past claims data AND there have been fewer than 20 claims in the past three years." [Full Article](#)

Proskauer Rose LLP