

Weekly Digest

• December 19, 2023 •

EMPLOYEE
BENEFITS

Health & Welfare Benefits Monthly Update, December 2023 (PDF)

"Topics: [1] Year-end Washington update; [2] End of the Public Health and National Emergencies and Outbreak Period; [3] Developments in prescription drug coverage; [4] CAA, 2021 Updates: TiC and IDR; [5] Preventive services developments; [6] HIPAA developments; [7] 2023 Mental Health Parity proposed regulations; and [8] Grab bag report and reminders." [Full Article](#)

Alston & Bird

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Data Theft Was Not Necessarily "Gross Misconduct" That Would Preclude COBRA Coverage (PDF)

"The court acknowledged that prior case law has established that criminal theft indisputably constitutes gross misconduct but noted that the former employees had not admitted to stealing the data and the city had not offered admissible evidence proving the employees' actions." [Full Article](#)

Thomson Reuters / EBIA

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The ERISA Edit: More Litigation Involving Health Plan Savings Fees

"This case is one of a growing number of lawsuits alleging improper self-dealing by third-party administrators (TPAs) for charging 'savings fees' to self-funded plans based on alleged savings achieved for the plans through the TPAs' processing of out-of-network claims." [Full Article](#)

Miller & Chevalier Chartered



Continuation of Health Benefits on Unpaid Leaves Can Cause Stop Loss Coverage Headaches

"Unless the employer wants to modify its handbook and plan documents (and for self-funded plans, stop loss coverage) to provide continued active coverage during an unpaid leave, the employer instead should consider categorizing the coverage during the unpaid leave as COBRA coverage. Failure to do so could result in the stop loss carrier or insurance company denying claims during the period of the unpaid leave, as the employee was not actively at work, on a protected leave, or on COBRA." [Full Article](#)

Haynes and Boone, LLP

Participant May Sue Plan for Facial Feminization Surgery Coverage

"The court determined that the participant had presented facts sufficient to show that the plan had applied its cosmetic procedure exclusion in a discriminatory manner. It explained that the facts alleged by the participant show that the plan's denial of coverage for the surgery was based, at least in part, on considerations of gender stereotypes and gender conformity or nonconformity." [Full Article](#)

The Wagner Law Group



Signed, Sealed, Delivered ... Have You Completed Your Plan's "No Gag Clauses" Attestation?

"All group health plans, whether fully insured or self-insured, are required to submit an attestation to CMS confirming that the plan has been compliant with the prohibition on gag clauses since December 27, 2020. This must be completed by December 31, 2023, and annually thereafter. Plans are permitted to contract with their TPA or carrier to complete the gag clause reporting on behalf of the plan." [Full Article](#)

Holland & Hart LLP