

# Benefits WEEKLY DIGEST

May 28, 2019

## DOL Announces Statement of Temporary Non-Enforcement Following AHP Ruling

"The Department's policy statement and FAQ are intended to allow employers [who were] participating in insured AHPs before the district court's decision to keep their coverage through the end of the plan year or contract term ... Employers that have purchased health insurance coverage through an AHP maintained by an association of unrelated employers after the district court's decision should immediately explore other options." [Full Article](#)

*Winston & Strawn LLP*

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## Court Finds No COBRA Obligations Toward Employee Terminated for Gross Misconduct

"[B]ecause gross misconduct terminations tend to involve heightened emotions and disputed facts, there is an increased risk of a costly court challenge. The employer in this case prevailed on its gross misconduct claim, albeit for procedural reasons, and this court declined to assess penalties ... But an employer that is wrong about gross misconduct can face not only an award of retroactive COBRA coverage but also the imposition of penalties of up to \$110 per day for failure to provide required notices." [Full Article](#)

*Thomson Reuters / EBIA*

## CMS Takes Action to Lower Prescription Drug Prices and Increase Transparency

"After an implementation period, Part D plans will be required to ... provide clinicians with access to price information for different prescription drugs.... To further promote transparency, after an implementation period [this] rule will also require the Explanation of Benefits document that Part D enrollees receive each month to include information on drug price increases and lower-cost therapeutic alternatives." [Full Article](#)

*Centers for Medicare & Medicaid Services [CMS], U.S.  
Department of Health and Human Services [HHS]*

## Do Accumulating HSA Balances Affect Use of Health Care Services and Spending?

"[This study finds] that as individuals build up balances in HSAs, they use more health care services than they otherwise would. In essence, HSA balances may blunt the cost-reducing effect of high-deductible health plans over time.... [E]mployers may want to consider the impact of the size of the plan's deductible. Another approach is to explore education around the long-term benefits of saving the HSA balance for health care expenses in retirement." [Full Article](#)

*Employee Benefit Research Institute [EBRI]*



## Employer-Issued Fitness Trackers Are All the Rage -- But Are Your Privacy Practices Up to Snuff?

"While the employer-provided fitness tracker trend is growing at a significant rate, it is unlikely the law will advance as rapidly. However, there is current legislation that can affect what an employer can do with information obtained by fitness trackers, and there are best practices that employers can implement to mitigate risk." [Full Article](#)

*Fisher Phillips, via Recruiter*

## Are Surprises Ahead for Legislation to Curb Surprise Medical Bills?

"[P]olicymakers agree on the need to take patients out of the middle of the fight over charges, but crafting a legislative solution will not be easy. A hearing of the House Ways and Means health subcommittee [on May 21] quickly devolved into finger-pointing as providers' and insurers' testimony showed how much they don't see eye to eye.... As Congress weighs how to address the problem, here's a guide to the bills and what to watch." [Full Article](#)

*Kaiser Health News*

## ACA Litigation Round-Up: Contraceptive Coverage Mandate

"With the final rules enjoined, the Obama-era accommodation for the contraceptive mandate remains in place. Given this, two couples and a business in Texas brought a class action lawsuit to challenge the Obama-era rules. This lawsuit is advancing quickly and could lead to a situation where both the Obama-era rules and the Trump-era rules on the contraceptive mandate are set aside in dueling preliminary injunctions. This post summarizes the current status of the litigation in California, Massachusetts, Pennsylvania, and Texas." [Full Article](#)

*Katie Keith, in Health Affairs*



## DOL Regulatory Agenda, Spring 2019

Proposed Rules (EBSA): [1] Fiduciary Rule and Prohibited Transaction Exemptions, [2] Grandfathered Group Health Plans and Grandfathered Group Health Insurance Coverage, [3] Improving Effectiveness of and Reducing the Cost of Furnishing Required Notices and Disclosures. Final Rules (EBSA): [1] Amendment of Abandoned Plan Program 1210-AB47, [2] Electronic Filing of Apprenticeship & Training Plan Notices, and Top Hat Plan Statements, [3] Adoption of Amended and Restated Voluntary Fiduciary Correction Program, [4] Health Reimbursement Arrangements and Other Account-Based Group Health Plans, [5] Definition of an 'Employer' Under Section 3(5) of ERISA -- Association Retirement Plans and Other Multiple Employer Plans." [Full Article](#)

*Employee Benefits Security Administration [EBSA], U.S. Department of Labor [DOL]*