

# Monthly Benefit News & Developments

## GAO REPORTS OF INTEREST

The Government Accountability Office released:

▪ [Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas](#), warning that the retirement benefits for millions of workers and retirees could be significantly reduced without PBGC reforms. The report notes that while PBGC faces a long-term challenge with its single-employer program, the agency faces an immediate and critical challenge with its multiemployer program.

▪ [Retirement Security: Most Households Approaching Retirement Have Low Savings, an Update](#), providing revised figures for the GAO's 2015 estimates on the percentage of households aged 55 and older without retirement savings or a defined benefit pension plan. Using data from the September 2017 Survey of Consumer Finances, the most recent study available, the GAO found that the percent of households headed by someone aged 55 and over that had no retirement savings decreased from about 52% in 2013 to about 48% in 2016.

▪ [Private Health Insurance: Enrollment Remains Concentrated among Few Issuers, Including Exchanges](#), finding that enrollment in private health coverage continued to be concentrated among a small number of insurance issuers in 2015 and 2016. In the overall large group, small group, and individual markets, the three largest issuers held at least 80% of the market in at least 37 states, similar to GAO's figures for 2011 through 2014.

## UPCOMING KEY DATES

**5/31/19** – Extended deadline for submission of EEO-1 Employer Information Report survey for 2018 company data on employment categorized by race/ethnicity, gender, and job category.

**7/31/19** – Reporting and payment of (the final) PCORI fee by affected self-insured group health plans and insurance issuers for plan/policy years ending on/after 10/1/18 and on/before 10/1/19.

**12/31/19** – Expiration of the tax credit for qualifying health insurance costs purchased by eligible individuals, including Trade Adjustment Assistance recipients, PBGC pension recipients, and workers with certain COBRA coverage.

## Legislative Activity on the Benefits Front

The House voted 242 – 187 to approve and send to the Senate the “Paycheck Fairness Act” (H.R.7), a Democratic priority that would amend the Fair Labor Standards Act (FLSA) and the Equal Pay Act (EPA) regarding compensation and provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex. Among other things, the bill would:

- replace “any other factor” with a non-sex-based “bona fide factor” – such as education, training, or experience – when employers defend their differences in wages, and require that pay differences are consistent with business needs;
- prohibit the paying of different wages to men and women unless the differences are based on seniority, merit, production, and “any other factor other than sex”;
- prohibit employers from retaliating against employees for discussing wages or who have filed complaints related to pay discrimination;
- prohibit employers from making employment or pay decisions based on a prospective employee's wage history;
- require an employer to consider workers employed by its other offices in the same area as employees working in the same establishment;
- impose penalties for violations consisting of compensatory damages and possible punitive damages; and
- permit employees to bring a class action suit without requiring employees to consent in writing to join a pay discrimination lawsuit.

In healthcare-related developments, a subcommittee of the House Energy and Commerce Committee approved a dozen bills aimed at lowering prescription drug costs or defending the Affordable Care Act (ACA). One in particular – H.R.1010 – would overturn regulations that allow short-term, limited duration health plans to be sold for up to three years.

Meanwhile, some of the bills approved by the subcommittee also found their way into H.R.1884, the “Protecting Pre-Existing Conditions and Making Health Care More Affordable Act” that was introduced by Rep. Frank Pallone, Jr. (D-NJ) and that has the support of House Speaker Nancy Pelosi (D-CA). This bill also includes several provisions of direct interest to employer-sponsored healthcare coverage, including: expanded eligibility for and an increase in the size of the premium tax credits to determine affordability; a fix for the “family glitch” so that an employer's offer of “minimum essential coverage” is considered affordable if the cost to an employee is no more than 9.5% of family (rather than self-only) coverage; restrictions on federal agencies to enforce the rules governing “association health plans” and “short-term, limited duration” health insurance policies; and a requirement that all plans cover “essential health benefits.”

Up for formal consideration by House committees in early April are bills addressing retirement income security and some of the challenges that disproportionately affect women in retirement. And the House Education and Labor Committee could act on a bill (H.R.582) to raise the federal minimum wage to \$15/hour by 2024.

## MENTAL HEALTH PARITY IN LARGE GROUP HEALTH MARKETS

The Department of Health and Human Services' Assistant Secretary for Planning and Evaluation Office of Disability issued *Assessing the Impact of Parity in the Large Group Employer-Sponsored Insurance Market: Final Report*, which assesses the impact of the 2008 Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act (MHPAEA) on the private, large group employer-sponsored insurance market. The study focused on outpatient services using interrupted time series regression analysis to determine the law's effects on mental health and substance use disorder utilization and spending outcomes.

### BLS REPORTS

The Bureau of Labor Statistics released:

- [\*Beyond the Numbers: Compensation trends into the 21st century\*](#), which reviews the evolution of private industry health and retirement plans (with a focus on defined contribution/savings and thrift retirement plans) and provides an analysis using recent estimates from the National Compensation Survey. The report shows that increases in health costs have been moderate since the early 2000s. In the current economy, 28% of all workers have access to health savings accounts. The study also finds that the most common type of defined contribution plan is the savings and thrift plan; 40% of full-time workers and 32% of part-time workers currently participate in these plans. Notable features of this type of plan include automatic enrollment and immediate-full and graded vesting.

- [\*Persons with a Disability: Labor Force Characteristics — 2018\*](#), which shows that the annual unemployment rate for persons with a disability dropped to a record low of 8.0% in 2018, down from 9.2% the previous year.

### LATEST REPORTS FROM CRS

The Congressional Research Service released the following:

- [\*H.R. 397 \(116th Congress\), Rehabilitation for Multiemployer Pensions Act\*](#)
- [\*Pension Benefit Guaranty Corporation: A Primer\*](#)
- [\*The Social Security Retirement Age\*](#)
- [\*U.S. Health Care Coverage and Spending\*](#)
- [\*Employer Tax Credit for Paid Family and Medical Leave\*](#)

## Regulatory Roundup

### FROM THE DEPARTMENT OF TREASURY/IRS:

- [\*Revenue Ruling 2019-06\*](#), containing the 2019 covered compensation tables.
- [\*Notice 2019-26\*](#), providing updated mortality improvement rates and static mortality tables for defined benefit pension plans for 2020.
- [\*Notice 2019-18\*](#), announcing that the agency no longer intends to amend the required minimum distribution rules to prohibit lump-sum windows to current annuitants in a defined benefit retirement plan (see [\*Benefits Alert 2019-1\*](#)).
- A [\*web update\*](#) with new items for 2019 in the Operational Compliance list for retirement plan sponsors.

### FROM THE DEPARTMENT OF LABOR:

- [\*Proposed rule, fact sheet, Frequently Asked Questions, and Overtime Pay Website\*](#) on raising the salary level for overtime pay exemption under the Fair Labor Standards Act (FLSA) to \$35,308 (see [\*BA 2019-2\*](#)).
- [\*Proposed rule, fact sheet, FAQs\*](#), on the "regular rate of pay" under the FLSA.
- Wage and Hour Division's Opinion Letters: [\*FMLA2019-1-A\*](#), on the obligation to designate Family and Medical Leave Act-qualifying leave and prohibition on expanding FMLA leave; and [\*FLSA2019-2\*](#), on "compensatory" time under the FLSA when workers spend time participating in an employer-sponsored community service program.
- An [\*Information letter\*](#) on the right of an individual to select for himself/herself an authorized representative under an ERISA-covered health plan's benefit claims procedures, and specifying that the procedures for such designations must also be included in the plan's summary plan description or a separate document that accompanies the SPD.

### FROM THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION:

- [\*Final rule\*](#) updating the civil monetary penalty for notice-posting violations.

### Litigation on Healthcare: Three Cases to Watch

The Department of Justice filed a letter with the Court of Appeals for the Fifth Circuit, supporting the district court's December 2018 ruling that the entire Affordable Care Act should be invalidated (*Texas v. United States*, No. 19-10011). The court struck down the individual mandate and held that the mandate could not be severed from the entire ACA, thereby invalidating the entire law. Reversing its earlier stance that the individual penalty was legally distinct from other parts of the ACA and seeking to strike down only the law's consumer protections, the DoJ's new filing states that the Administration agrees with the lower court.

*Separately*, a federal district court in California ruled that a company administering mental health and substance use disorder benefits for ERISA-covered health benefit plans breached its fiduciary duty when it applied its own flawed medical review guidelines in rejecting participants' claims for behavioral health services (*Wit v. United Behavioral Health*, No. 14-cv-02346-JCS). The case raised a key issue about coverage for behavioral and substance use disorders as chronic, rather than acute, conditions, with plaintiffs arguing that the guidelines limited coverage once a patient's symptoms subsided and did not cover services needed to stabilize his or her condition over a longer term. The court noted that the Mental Health Parity and Addiction Equity Act requires parity of coverage for depression or addiction with medical conditions, but, the court concluded, the guidelines adopted appropriate standards of care for medical conditions but not for the mental health conditions. (See [\*BA 19-3\*](#)).

*And a federal district court in Washington, D.C.* struck down the DoL's final rule on "association health plans," calling it "clearly an end-run" around the ACA's consumer protections (*State of New York v. U.S. Department of Labor*, No. 18-cv-1747).

## Other Recent Milliman Publications You May Be Interested in:

- **[Pension Funding Index, March 2019](#)**
- **[Health and Group Benefits News and Developments, March 2019](#)**
- **[Multiemployer Review: PBGC proposed rule: Methods for computing withdrawal liability](#)** In February, the Pension Benefit Guaranty Corporation issued a proposed rule to amend and simplify the calculation of withdrawal liability for plans with rehabilitation plans or funding improvement plans that have made certain benefit or contribution changes. This paper provides a detailed review of these proposed rules.
- **[Impending merger or acquisition? The health of employee benefit programs can be a make-or-break issue](#)** Employee benefits programs can deeply affect a potential merger or acquisition, sometimes to the surprise of the acquiring company.
- **[Congress asked nine questions about single payer. Here are 27 answers.](#)** In recent weeks, single-payer healthcare proposals have begun to emerge in Congress. While much of the attention during the single-payer discussion has been on specific proposals, Milliman has tried to take a broader view—via questions from a congressman to the Congressional Budget Office about a potential single-payer system in the U.S.
- **[The Withdrawal Delay Cohort under VM-21/AG-43: The case for random sampling](#)** The VM-21 Standard Projection is essentially a complete overhaul of the existing Actuarial Guideline 43 Standard Scenario framework.

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