

Benefits & Executive Compensation Issues to Watch in 2023

January 12, 2023

NGE's Employee Benefits & Executive Compensation practice hosted a comprehensive webinar series discussing a few of the most pressing benefits and compensation issues that companies will face in 2023. Recordings of the webinars can be viewed at the links below.

[Post-Dobbs Decision Considerations for Employers and Group Health Plans:](#)

The Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* overturned nearly 50 years of precedent, creating significant confusion and uncertainty for companies' health plans and employment policies.

- Businesses with self-funded plans can offer more abortion-related coverage than those with fully insured plans, but companies should be cognizant of the risks of offering coverage to employees in states that have outlawed the procedure.
- Employers should also be mindful of running afoul of federal laws like the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Family Medical Leave Act when developing policies around abortion – and pregnancy – related accommodations.



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[DOL & IRS Focus on Group Health Plans: How Employers Need to Prepare:](#)

Federal regulators are ramping up enforcement of laws that require insurers and health plans to cover mental health and substance abuse care on par with medical/surgical benefits in the wake of a new requirement that group health plans demonstrate their compliance with the parity rules as applied to non-quantitative treatment limitations or "NQTs."



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- According to a 2022 report to Congress, insurers and health plans are not providing coverage for services that treat mental health issues and substance abuse disorders as required under the Mental Health Parity Act of 1996 and the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA).
- The US Dept. of Labor (DOL) has stepped up MHPAEA enforcement and pending lawsuits from the DOL and patients are challenging coverage denials and reviewing policies for parity.
- Plan sponsors who want to ensure their group health plans comply with MHPAEA should request that their third-party administrators (TPAs) demonstrate parity with respect to NQTs as applied to mental health/substance use disorder benefits as compared to medical/surgical benefits, ask the TPA to disclose any audits that have been conducted by the DOL, seek indemnity for fees and penalties for TPA noncompliance with MHPAEA and consider an independent review of their TPA's compliance with the parity rules.

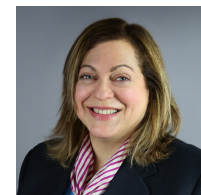
Cybersecurity Issues for Retirement Plans:

As more retirement plan interactions take place via electronic methods, plan accounts are ripe targets for cyberattacks.

- Plan fiduciaries should develop strong policies and procedures to minimize the risk of cyberattacks.
- Key steps include taking stock of data, implementing frequent employee training and testing on cybersecurity best practices and ensuring that third-party vendors follow appropriate protocols.
- Fiduciaries should also stay abreast of relevant state cybersecurity and data privacy laws in jurisdictions in which they are operating.



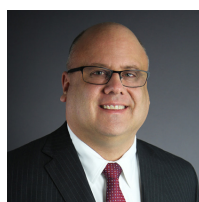
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SEC's Final Pay vs. Performance Disclosure Rules:

Publicly traded companies must comply with the most significant change in executive compensation disclosures in years—so-called pay vs. performance rules that aim to clarify the relationship between executive pay and the company performance.



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- Under these rules, companies must compile data and metrics that demonstrate their performance and the executive compensation relative to that performance.
- Parts of the disclosure may involve complex calculations.
- While the full impact of these rules may not be realized for several years, activist investors will likely use the required disclosure in proxy fights and campaigns opposing say-on-pay proposals, when such disclosure appears to show that executive pay and company performance are not properly aligned.

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