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SPRING 2026 LEGISLATIVE RECAP

The flowers are blooming, the pollen is circulating, and we at Heffernan are working diligently to keep up with the latest headlines. Employer plan sponsors have many annual deadlines approaching, and new lawsuits are making waves as we head into the warmer months.

IRS

Rev. Proc. 2026-22

The adjusted penalty amounts under Section 4989(H), everyone's favorite 'employer mandate' will increase in 2027 as follows:

	2026	2027
4980(H)(a)	\$3,340	\$3,780
4980(H)(b)	\$5,010	\$5,670
Affordability Threshold	9.96%	TBD

Employers can avoid imposition of penalties under section (a) by offering minimum essential coverage to 95% of their full-time workforce (those working 30 or more hours per week), and escape implication under section (b) by making that coverage 'affordable'. The 2027 affordability metric is still TBD at the time of this writing.

COURT DOCKET

Barbich v. Northwestern University

One ERISA fiduciary breach case in a growing line of others is turning heads this month, as it survived a motion to dismiss in the North District of Illinois. Like many employers, Northwestern University offered multiple health plan options to employees, each with different employee contribution amounts and varying plan features. The plaintiffs alleged the more expensive medical plans did not actually offer 'richer' benefits, and that offering them was a breach of the employer's fiduciary duty as plan sponsor. Similar cases filed over the last few years have not made it past the initial motion to dismiss, with courts holding employer health plan line up decisions were 'settlor' (business) decisions and not 'fiduciary' acts. The court here rejected the business versus fiduciary distinction, and agreed the employees had 'standing' (or 'injury') to sue their employer. The defendant University was required to file their answer by late April, and we will watch this case as it progresses.

WHAT'S TRENDING

Direct to Consumer GLP-1 Drugs

Employers feel increasing pressure to cover GLP-1 drugs for non-diabetic diagnoses, as usage soars in the first quarter of 2026. The Business Group on Health reports that 67% of surveyed employers confirmed they cover use of GLP-1 drugs for weight management in 2026³. Of these employers currently providing coverage, 72% state they plan to continue doing so into 2027 and beyond⁴.

Manufacturers have hopped on the opportunity to provide access to these medications outside of insurance plans, offering price information through television and internet advertising campaigns. Platforms such as TrumpRX and Lilly Direct offer an alternative for individuals who do not have access to GLP-1 drugs through their employer or prefer not to use their group insurance. Medications are generally permissible expenses for reimbursement through an FSA or HSA⁵, however these new platforms are uncharted waters in this regard. Additionally, there is the question of whether medications purchased through these platforms would be eligible HRA expenses under employer plans. Rebecca Bush of Amundsen Davis⁶ suggests this inquiry is worth exploring with benefits counsel as the model evolves. Employers are waiting to see if these new channels of supply will lessen the employee demand and corresponding plan costs associated with these expensive drugs.

3. Business Group on Health is a non-profit organization representing employers' perspectives on optimizing workforce strategy through innovative health, benefits and well-being solutions and on health policy issues.

4. Statement by Ellen Kelsay, CEO of Business Group on Health

5. IRC Section 213(d) permits reimbursement for 'medical care' which includes 'prescribed drugs'

6. Rebecca Bush is a Partner with the law firm Amundsen Davis, LLC and authors articles on their Labor and Employment Blog

1. [H.R. 8314](#)

2. May 10, 2026 proposed Rule from the DOL, IRS, and HHS

CONGRESS

The OPTIONS Act

On April 15, the House passed the OPTIONS Act¹ which, if signed into law, would amend the Internal Revenue Code to permit employers to offer their employees a choice among a multitude of tax-free employer contributions. Section 125, which currently permits pre-tax premium contributions for medical, dental and other similar benefits, would be amended to add a new section '125A- qualified benefit option plans'. Akin to a marketplace, employees would have a menu of options to choose from, such as contributions to an HRA, an educational assistance program, and non-elective employer contributions for retirement purposes. This would not replace traditional employer sponsored medical insurance but would offer some additional flexibility to meet the needs of different employees with more nuanced needs.

DOL

Fertility Benefits as 'Excepted Benefits'

Following the President's February [Executive Order](#) aimed at expanding access to fertility care, the Departments have announced their proposed rule that "would create a new category of limited excepted benefits to further expand the ability of employers to offer meaningful fertility benefits to their employees."² Benefits classified as 'excepted' generally do not have to comply with the numerous provisions of the Affordable Care Act, HIPAA, or other laws. The proposed rule creates a new 'excepted benefit' fertility offering that can be provided to employees regardless of their enrollment in an employer's underlying medical plan. The departments are accepting comments until July 10 at which time we will likely see this rule in final form.

STATE LEVEL ACTIVITY

California

Looking ahead to July, 2028, California employees will be eligible to collect up to 8 weeks of PFL benefit payments when they are unable to work due to their caregiving needs for an ill 'designated person'. [Senate Bill 590](#) expands the use of state PFL to include "any care recipient related by blood or whose association with the individual is the equivalent of a family relationship." This broader eligibility aligns with the California Family Rights Act.

