

Legal Developments Impacting Health and Welfare Plans (Other than Health Care Reform (“PPACA”)) 2014 Year End Update

1. In June 2013 the Supreme Court issued its decision in *U.S. v. Windsor*, invalidating a section of **DOMA**, the law which limited federal recognition of marriages to opposite-sex couples.¹ On June 5, 2014, the Washington State Attorney General, Office of the Insurance Commissioner, and Human Rights Commission (the “Washington Agencies”) jointly issued an announcement clarifying that under Washington State law (which recognizes same-sex marriages and prohibits discrimination on the basis of sexual orientation), all group health plans providing coverage to opposite-sex spouses – including uninsured plans – must extend that coverage to same-sex spouses as well. Notably, the Washington Agencies have taken the position that with regard to such uninsured plans, ERISA does not preempt these Washington laws. This issue is currently before the U.S. District Court for the Western District of Washington.² Read more at: <http://www.songmondress.com/Articles/Agency-Announcement-Washington-State-Law-Requires-Self-Insured-ERISA-Plans-Cover-Same-Sex-Spouses.shtml>.
2. The Sixth Circuit Court of Appeals recently held that an ERISA plan administrator’s benefit denial letters must identify any **contractual statute of limitations to file a lawsuit** in order for that limitation to be enforceable.³
3. The Equal Employment Opportunity Commission (“EEOC”) has filed at least three **lawsuits in 2014 targeting wellness programs** that the EEOC claims are not “voluntary,” and are therefore in violation of the Americans with Disabilities Act (“ADA”).⁴ Additionally, the EEOC has announced that it intends to issue proposed regulations in February 2015 addressing the interaction of the ADA and financial incentives or penalties as part of wellness programs offered through health plans.⁵
4. On July 14, 2014, the EEOC issued enforcement guidance under the Pregnancy Discrimination Act of 1978, and the ADA as it applies to pregnant workers.⁶ While it primarily addresses workplace discrimination, it does address potential discrimination issues arising under employer-sponsored health coverage with respect to infertility treatment and contraceptive coverage.
5. In late 2014, California and Massachusetts joined Connecticut as the second and third U.S. **states requiring employers to provide their employees with paid sick leave.**⁷ Both laws take effect on July 1, 2015, but differ in many other regards. Employers with operations in

these states will need to review whether they are subject to these laws, and if so, ensure that their sick leave policies are in compliance.

6. The **annual dollar limit on employee contributions** to a Health FSA increased to \$2,550 in 2015, up from \$2,500 in 2014.⁸ The inflation-adjusted annual limit on HSA contributions increased to \$3,350 (individual) and \$6,650 (family) in 2015, up from \$3,300 (individual) and \$6,550 (family) in 2014.⁹
7. In May 2014, the DOL updated its **model COBRA and CHIP notices**. The changes are primarily intended to provide employees with more information about the availability of alternative coverage through the State-based Exchanges.¹⁰ At the same time, DOL published a notice of proposed rulemaking which would remove the DOL's model COBRA notices from its COBRA regulations, instead allowing the model notices to be posted on the DOL's website.¹¹
8. On October 1, 2014, the agencies issued final regulations that make it easier for certain employee assistance programs and limited-scope dental and vision coverage to qualify as excepted benefits. The final regulations are effective for plan years beginning on and after January 1, 2015.¹²
9. In December 2014, the DOL, IRS and HHS issued proposed regulations that would create a temporary **pilot program allowing employers to offer limited wraparound coverage** as an excepted benefit in certain circumstances. In general terms, "limited wraparound coverage" is employer-provided coverage that supplements an individual insurance policy.¹³
10. On December 8, 2014, the DOL issued FAB 2014-02, which provides guidance on the use of plan assets by **apprenticeship and training plans** to pay for various expenses associated with skills-based competitions.

From all of us here at Song Mondress, your employee benefits law firm.

Not intended as legal advice.

¹ *U.S. v. Windsor*, 133 S. Ct. 2675 (2013).

² *Hall v. BNSF Railway Company*, No. C13-2160 RSM, 2014 WL 4719007, at *5 (W.D. Wash. Sept. 22, 2014) (declining to dismiss Washington's Laws Against Discrimination claims on ERISA preemption grounds at the current stage of the proceedings). This case is among the first of what will likely be many cases addressing issues relating to health and welfare plans' coverage of same-sex spouses following *Windsor*.

³ *Moyer v. Metropolitan Life Ins. Co.*, 762 F.3d 503 (6th Cir. 2014).

⁴ E.g., <http://www.eeoc.gov/eeoc/newsroom/release/8-20-14.cfm>. You can read more about the EEOC's 2013 final wellness programs regulations and the Americans with Disabilities Act at: <http://www.songmondress.com/Articles/May-2013-Final-HIPAA-Wellness-Program-Regulations.shtml>.

⁵ See <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201410&RIN=3046-AB01>.

⁶ See http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm#act.

⁷ See <https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml;jsessionid=b694978fb477e3e0d8fab0b06615> and http://electionstats.state.ma.us/ballot_questions/view/2468/. In addition to these three states, a number of individual cities across the U.S. currently have paid sick leave laws on their books.

⁸ IRS IR-2014-104 (Oct. 30, 2014), available at <http://www.irs.gov/uac/Newsroom/In-2015,-Various-Tax-Benefits-Increase-Due-to-Inflation-Adjustments>.

⁹ Rev. Proc. 2014-30.

¹⁰ See generally <http://www.dol.gov/ebsa/faqs/faq-aca19.html>.

¹¹ 79 Fed. Reg. 26192 (May 7, 2014).

¹² 79 Fed. Reg. 59130 (Oct. 1, 2014). Until the effective date of the final regulations, the IRS, DOL, and HHS will consider dental, vision, and EAP benefits meeting the conditions of the 2013 proposed regulations *or* these final regulations to qualify as excepted benefits.

¹³ 79 Fed. Reg. 76931 (December 23, 2014).