Employee Benefits Report

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New Labor Policies to Be Aware of in 2023

2023 promises to bring sweeping changes for employers and the employee experience. A host of new labor laws, rules, and regulations are set to come into effect in the coming year, with a focus on wage equity, expanded healthcare benefits, and other initiatives.

Some of the more significant changes employers may have to deal with this year include:

The Pregnant Workers Fairness Act

President Biden signed the Pregnant Workers Fairness Act of 2023 (PWFA) into law in December 2022, which will take effect on June 27, 2023. The PWFA will provide new protections for pregnant and nursing employees.

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The Financial Impact of COVID-19 on Employers

The pandemic caused massive disruption to the global economy, and employers have been hit particularly hard. According to the Integrated Benefits Institute (IBI), lost work hour costs due to the COVID-19 pandemic in the U.S. alone have totaled over $231 billion from March 2020 through February 2022. The total number of work hours lost equated to 6.6 billion over both years.

The hardest hit sectors were educational services, healthcare, and social assistance with a loss of $30.8 billion, public administration with $27.1 bil-

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Thus, companies with more than 15 employees must grant temporary and reasonable accommodations for pregnant workers. These accommodations may include providing more frequent restroom breaks, providing seating, or allowing modified work schedules. The PWFA also applies to nursing mothers, requiring employers to provide reasonable break times and a private space other than a bathroom for them to express milk during the workday.

FTC's Proposal to Ban Non-Compete Clauses

The Federal Trade Commission (FTC) recently proposed banning non-compete clauses, which prevent employees from working for competing businesses for a particular amount of time after leaving their current employment. The FTC's proposed rule would prohibit employers from using these clauses, giving workers more freedom to switch jobs and pursue better wages and working conditions.

According to the FTC, non-compete clauses can hurt competition in the labor market by limiting worker mobility and preventing them from taking advantage of higher wages or better working conditions. They also believe these clauses can limit innovation by preventing businesses from hiring employees with specialized skills or knowledge.

The proposed ban has been met with both support and criticism. Supporters argue that it will give workers more freedom to move between jobs, while critics worry that it could lead to an increase in the poaching of employees by competitors — not to mention the loss of customers when employees transfer the relatsionships they've created during their previous employment to their new employer.

Family Leave Benefit Policy Expansions

Despite having limited state-wide policies for paid family leave, many states have expanded their coverage this year. New York's Paid Family Leave program updated its definition of "family member" to include siblings on January 1, 2023. This gives individuals caring for their brother or sister the same benefits and opportunities as those looking after spouses, domestic partners, parents, and children.

In Vermont, employers who want to provide paid family and medical leave benefits can do so through private insurance plans starting in July of 2023. Employees are eligible for up to six weeks of leave in situations such as childbirth, adoption, or when caring for a spouse, child, or parent with a serious health condition.

Virginia has also expanded access to paid family leave by allowing employers to purchase family leave insurance for employees — similar to how they purchase disability and life insurance for employees — giving them up to 16 weeks of one hundred percent paid leave for various circumstances, including bonding with a new child.

Pay Transparency Rules

The start of 2023 has seen the introduction of new pay transparency laws in several states.

In California, employers must now disclose the wage scale or salary range for an opening in any job posting. The Washington State Department of Labor & Industries requires employers to include a wage range or salary range in job postings. In Rhode Island, employers must post anticipated salary ranges in job postings.

lion, construction ($23.9 billion) waste management ($22.4 billion) and manufacturing ($21.5 billion).

However, these estimates do not account for all the potential financial losses associated with the pandemic, as cases are expected to occur due to new variants such as "Kraken." This will continue to put employers at risk of financial loss due to COVID-19.

Mitigating the Financial Risks

Given the potential for further financial losses due to COVID-19, employers need to take action now to protect their businesses and employees.

Encouraging employees to undergo preventive screenings and attend wellness visits can help identify potential risks and address them before they become costly. Employers should also consider implementing an employee wellness program to encourage healthy habits and reduce the risk of absenteeism due to COVID-19.

Rather than adopt a more relaxed approach to safety protocols, employers should continue to take the virus seriously, including finding innovative solutions to enable employees to get tested and treated to ensure good health.

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These new laws also require employers to provide additional information, such as benefits and other compensation information. For example, Colorado and Washington's laws require employers to disclose benefits in job postings; while New York City's law requires employers to make available certain compensation data upon request from current or prospective employees.

For a summary of how pay transparency rules affect each state, please see Pay Transparency Laws By State [2023] – Zippia.

House Votes for Federal Workers to Return to the Office

On February 1, 2023, the U.S. House of Representatives passed legislation mandating federal bureaus to reinstate their pre-pandemic remote work regulations. The bill, called the SHOW UP Act, would require federal agencies to return to the telework policies that were in place before the pandemic hit. However, the largely Republican-backed bill is not expected to pass the Democrat-led Senate.

Biden Administration's ESG DOL Rule Under Fire from Multiple Fronts

The Department of Labor's (DOL) new rule on "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights," which allows for consideration of environmental, social, and governance (ESG) factors when making investment decisions, has come under fire from multiple fronts.

What Is the New ESG DOL Rule?

In late 2022, the DOL under President Biden promulgated the new rule to allow retirement plan fiduciaries to consider the potential financial benefits of investing in companies that consider ESG factors. This standard allows fiduciaries to make an investment decision based on the collateral benefits of ESG factors if two conditions are met:

1. The fiduciary must determine that such considerations are economically relevant to its investment objectives.

2. The fiduciary must not sacrifice investment return or take on additional risk due to such considerations.

Criticisms of the ESG DOL Rule

This rule has been met with strong opposition from 49 Republican lawmakers and Democratic Senator Joe Manchin of West Virginia, who have filed a joint Congressional Review Act

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(CRA) measure to nullify it. The CRA enables Congress to repeal recent federal regulations with a simple majority vote. If the measure is successful, the CRA says that "no substantially similar rule" could be issued in the future.

In addition, 25 states, including Utah, Texas, Louisiana, and Virginia, have filed a lawsuit against this rule. They claim it violates ERISA law by allowing fiduciaries to prioritize non-financial interests over financial interests when making investments.

Opponents of the new ESG DOL rule argue that the rule "politicizes 401(k)s" during a time when Americans are already suffering due to record-high inflation and market downturns. According to Senator Manchin, it is "irresponsible of the Biden Administration to jeopardize retirement savings for more than 150 million Americans for purely political purposes."

Critics argue that this rule will lead to higher costs for retirement plans due to the increased complexity associated with incorporating ESG criteria into their investments. They also believe this could lead to lower returns since many ESG investments may not be as profitable as traditional investments.

Statistics show that funds with the best Morningstar sustainability scores had the worst returns in the first half of 2022, losing 13% on average compared to those with lower scores that lost 4%. In addition, a Bloomberg analysis revealed that global ESG funds have "underperformed the broader market in the past five years."

Furthermore, detractors argue that this rule could open up retirement plans to litigation risks since there is no clear definition of what constitutes an ESG factor or how much weight it should be given when making investment decisions.

Some states have already taken measures against the DOL's new rule. For example, in August, Governor Ron DeSantis backed a resolution prohibiting state pension funds in Florida from incorporating ESG factors into their decision-making. Other states, such as Arkansas, Missouri, and Oklahoma, have introduced similar bills.

What Do Supporters Say?

Despite these efforts by critics of the DOL's new rule, proponents argue that retirement plans must keep up with changing investor preferences and remain competitive in today's market. They claim that many investors now prefer companies with strong sustainability practices and are willing to pay a premium because they perceive long-term value-creation potential.

For this reason, they believe incorporating ESG criteria into retirement plan investments can help reduce risk and achieve competitive returns in the long run.

They also argue that the new DOL rule does not require retirement plan fiduciaries to prioritize non-financial interests over financial interests. Instead, it allows them to consider ESG factors when making investment decisions without sacrificing financial objectives.

Conclusion

The new DOL rule is a controversial measure that has sparked debate among investors, lawmakers, and other stakeholders. Supporters argue that retirement plans should be allowed to invest in companies with solid sustainability practices.

At the same time, opponents claim that the rule could lead to higher costs and lower returns while enabling fiduciaries to make politically and socially driven decisions instead of prioritizing financial interests. ■

How Employers Can Benefit from Accommodating Disabled Workers

President George H.W. Bush signed the Americans with Disabilities Act (ADA) into law on July 26, 1990. The ADA is a civil rights law that forbids individuals with disabilities from being discriminated against in all areas of public life, including employment, transportation, and public and private places open to the general public.

Under the ADA, employers must provide reasonable accommodations for employees with disabilities to enable them to perform their job duties effectively and safely. Additionally, employers must ensure that their facilities are accessible and usable by people with disabilities.

The Reality of Disabled Employment

Despite the protections provided by the ADA, many organizations are still struggling to accommodate workers with disabilities and make their workplaces more inclusive. For example, a 2022 report from the U.S. Equal Opportunity Employment Commission showed that only 19% of working-age people with a disability had a job.

There are several potential reasons for this gap in disabled employment, but some likely stem from misconceptions. Some employers might have an unconscious bias because they may believe people with disabilities are not qualified or require expensive accommodations.

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Several studies have shown that employees with disabilities are not absent any more than employees without disabilities, and many workers with disabilities require no special accommodations or their need for accommodations are much less than employers perceive.

But the level of accommodations should not be the focus, say critics. Instead, the focus should be on how to provide people with disabilities with all the tools and resources they need to be effective in their roles. Just because their required accomodations might differ from what other employees need doesn't mean they are not just as effective at their jobs.

The Benefits of Accommodating Workers with Disabilities

Accommodating disabled workers in the workplace can bring many benefits beyond just meeting legal requirements or avoiding potential litigation risks.

For starters, creating a welcoming environment where disabled workers feel valued and respected can lead to improved morale among all employees. When people see how far their company is willing to go to make their workplace more inclusive, they often feel a greater sense of loyalty and connection with the organization.

Accommodating people with disabilities also improves productivity, reduces absenteeism, and increases retention — all of which can lead to cost savings.

Lastly, in a global economy where talent is scarce, employers must look for every advantage. Accommodating workers with disabilities allows employers to tap into a larger talent pool and gain access to skilled workers.

How Can Employers Accommodate Disabled Workers?

Some examples of accommodations could be providing additional support or technology assistance, adjusting work hours or tasks to accommodate limitations, or creating a flexible working environment that allows for remote work opportunities.

To close the disability employment gap, employers need to recognize ableism and create an inclusive environment for all job seekers. This includes providing reasonable accommodations, offering training opportunities, and creating a culture of acceptance and understanding.

Organizations like the Disability Management Employer Coalition (DMEC) provide education and resources to help employers understand how to hire people with disabilities and create an inclusive workplace.

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Telehealth Services, Mental Healthcare, and the Consolidation Appropriations Act of 2023

The Consolidated Appropriations Act of 2023 was signed into law on December 29, 2022, by President Biden. This $1.7 trillion omnibus spending bill is set to fund the US federal government for the 2023 fiscal year. It includes several provisions that will significantly impact telehealth and mental health care services in the coming year.

Telehealth Expansion

The Consolidated Appropriations Act of 2023 expands access to telehealth services by allowing Medicare beneficiaries to receive care from any location, regardless of where they are located. This expansion is expected to increase access to care for rural and underserved communities and provide greater convenience for patients who may not be able to travel long distances for medical appointments.

Furthermore, the bill extends first-dollar coverage for telehealth services as laid out by the CARES Act to December 31, 2024. First-dollar coverage allows High Deductible Health Plan (HDHP) enrollees to access telehealth without first meeting their deductible. In other words, HDHP enrollees can receive covered services without incurring the out-of-pocket expense of a deductible.

According to the Kaiser Family Foundation, telehealth rose in popularity during the pandemic, going from fewer than 1% of outpatient visits pre-pandemic to 13% during it. While usage has since slipped to 8%, it is still a significant increase from before and indicates that many Americans are using telehealth.

Increased Funding for Mental Health Services

The Consolidated Appropriations Act of 2023 also includes the Restoring Hope for Mental Health and Wellbeing Act. It is meant to improve opioid addiction treatment, mental health care, and other services related to mental health.

The act reauthorizes critical programs that support mental health and wellness, including those that provide access to evidence-based treatments for opioid use disorder. It also includes provisions to expand Medicaid coverage for mental health services, increase funding for research on mental health disorders, and create new grants to support community-based organizations providing mental health services.

According to experts, the ultimate goal of the act is to increase the number of mental health providers and reduce the stigma surrounding mental health issues. In addition, it aims to improve access to care in underserved communities by creating new resources and expanding existing ones.

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