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Compliance Connection

May 2025

Federal Compliance Update

It has been a busy month…

Independent Contractor Misclassification Enforcement

On **May 1, 2025**, the U.S. Department of Labor (DOL) issued Field Assistance Bulletin (FAB) 2025-1 on how to determine employee or independent contractor status when enforcing the Fair Labor Standards Act (FLSA).

Background

On Jan. 10, 2024, the DOL published a final rule revising the agency's guidance on analyzing who is an employee or independent contractor under the FLSA. This rule rescinded the 2021 Independent Contractor Rule. Several lawsuits are pending in federal courts challenging the 2024 final rule. In those lawsuits, the DOL has taken the position that it is reconsidering the final rule, including whether to rescind it. Additionally, the DOL's Wage and Hour Division (WHD) is currently developing a standard for determining employee versus independent contractor status under the FLSA.

Enforcement Guidance

While the DOL reviews the 2024 final rule, the WHD will no longer apply the rule's analysis when determining employee versus independent contractor status in FLSA investigations. Instead, the WHD will rely on principles outlined in Fact Sheet #13 and the reinstated Opinion Letter FLSA2019-6, which addresses classification in the context of virtual marketplace platforms. According to the DOL, this approach will provide greater clarity for businesses and workers navigating modern arrangements while legal and regulatory questions are resolved.

Employer Takeaway

The DOL's guidance does not change existing regulations but reflects how the department is allocating enforcement resources during the review of the 2024 final rule. The FAB supersedes any prior or conflicting guidance provided to the WHD staff on enforcement related to independent contractor misclassification. Until further action is taken, the 2024 final rule remains in effect for purposes of private litigation, and the FAB does not change the rights of employees or the responsibilities of employers under the FLSA. Employers should continue to monitor the situation for updates.

HHS Rescinds Section 1557 Interpretation and Enforcement Guidance From 2021

On **May 14, 2025**, the U.S. Department of Health and Human Services (HHS) rescinded its Section 1557 interpretation and enforcement guidance from May 10, 2021, effective immediately. According to HHS, the rescission is part of an agency-wide initiative to reduce regulatory burdens in accordance with the Trump administration's policies, and the guidance no longer represents the legal views of the agency.

Background

Section 1557 of the Affordable Care Act prohibits discrimination based on race, color, national origin, sex, age or disability in certain health programs and activities. Section 1557 has been in effect since its enactment in 2010, with HHS' Office of Civil Rights (OCR) enforcing the provision.

The rules and guidance HHS has published to implement Section 1557 have been the subject of numerous lawsuits, dating back to when initial regulations were issued in 2016. The litigation has primarily focused on:

- Which health programs and activities are subject to Section 1557's nondiscrimination requirements; and
- Whether sex discrimination includes discrimination based on gender identity, sexual orientation and termination of pregnancy.

Rescinded Guidance From 2021

The 2021 HHS guidance was issued after the U.S. Supreme Court's June 2020 ruling in *Bostock v. Clayton County*, where the Court held that employment discrimination based on gender identity or sexual orientation violates federal law.

Effective May 10, 2021, HHS announced in its guidance that it would interpret and enforce Section 1557's prohibition on sex discrimination to include discrimination based on sexual orientation and gender identity, consistent with the Supreme Court's *Bostock* decision. At the time, HHS stated that the interpretation would guide the OCR in processing complaints and conducting investigations but noted that the interpretation would not determine the outcome in any particular case or set of facts on its own.

Action Steps

While the rescission of the 2021 guidance does not appear to impact the most recent iteration of the Section 1557 final regulations from 2024, implementation of those regulations remains in flux as federal courts have blocked enforcement of certain provisions relating to how the rule defines sex-based discrimination. Thus, plan administrators and issuers should continue to monitor all developments in this area in consultation with benefits counsel and work closely with their advisors in complying with their Section 1557 obligations.

Federal Court Vacates EEOC Guidance on Gender Identity and Sexual Orientation Harassment

On **May 15, 2025**, the U.S. District Court for the Northern District of Texas ruled that the U.S. Equal Employment Opportunity Commission (EEOC) exceeded its authority by issuing enforcement guidance expanding gender identity and sexual orientation protections. The ruling vacates relevant portions of such guidance and applies nationwide.

Background

On Apr. 29, 2024, the EEOC issued an updated Enforcement Guidance on Harassment in the Workplace (Enforcement Guidance). Among the updates, the EEOC added protections for harassment on the basis of gender identity and sexual orientation to incorporate case law, including the Supreme Court's 2020 decision in *Bostock v. Clayton County*, that holds discrimination on the basis of sexual orientation constitutes sex discrimination under Title VII of the Civil Rights Act (Title VII).

Court Ruling

In *Texas v. EEOC*, the Texas District Court held that the EEOC exceeded its authority in expanding the definition of "sex" to include "sexual orientation" and "gender identity" and that neither Title VII nor the ruling in *Bostock* define "sex" accordingly. In its ruling, the Texas District Court vacated certain elements of the updated Enforcement Guidance, including:

- All language defining "sex" in Title VII to include "sexual orientation" and "gender identity"';
- The entire section of the Enforcement Guidance outlining harassment based on sexual orientation and gender identity(including that discriminatory harassment includes failure to accommodate transgender bathroom, pronoun and dress preferences);
- The example that states misgendering an employee may constitute a hostile work environment; and
- All language defining "sexual orientation" and "gender identity" as protected classes under Title VII.

The other portions of the Enforcement Guidance remain in effect.

Employer Takeaways

Although the Texas ruling affects how the EEOC may evaluate claims of harassment at the federal level, Bostock still prohibits employment discrimination based on sexual orientation and gender identity. In addition, employers may be subject to prohibitions on sexual orientation and gender identity harassment and discrimination under state and federal laws. Therefore, employers should continue to ensure compliance with all relevant discrimination and harassment laws and guidance.

Washington Expands Pregnancy and Lactation Accommodations

On **May 20, 2025**, Washington amended the Healthy Starts Act (Act), which requires covered employers to provide reasonable accommodations for pregnancy and related conditions. The amended Act, which takes effect **Jan. 1, 2027**, will cover more employers and expand employee protections.

Background

Washington currently requires employers with **15 or more employees** to provide reasonable accommodations for an employee's pregnancy and pregnancy-related health conditions, including the need to express breast milk, unless doing so would impose undue hardship on the employer.

Amendment Overview

Effective Jan. 1, 2027, all Washington employers with **one or more employees** will be required to provide pregnancy accommodations under the Act. The amended Act will also provide greater protections for employees, including:

- **Paid lactation breaks**—Currently, the Act requires employers to provide reasonable break time to express breast milk. The amended Act will require employers to provide paid lactation breaks at the employee's regular compensation rate. Such paid breaks must be in addition to any legally required meal and rest breaks.
- **Scheduling flexibility for postpartum visits**—The Act requires employers to provide scheduling flexibility for prenatal visits as a reasonable accommodation. The amended Act will require employers to provide such flexibility for postpartum visits as well.

The amended Act will also transfer enforcement authority from the attorney general to the Washington Department of Labor and Industry, which may assess civil penalties. Individuals will continue to have a private right of action as well.

Employer Takeaways

Small employers not currently required to provide pregnancy accommodations may be required to do so, effective Jan. 1, 2027.Such employers may take steps to ensure compliance, such as training relevant personnel and updating accommodation policies. In addition, all covered employers may review policies and practices to ensure compliance with the expanded law by the effective date.

Federal Court Vacates PWFA Abortion Accommodation Mandate

On **May 21, 2025**, the U.S. District Court for the Western District of Louisiana vacated the U.S. Equal Employment Opportunity Commission's (EEOC) requirement that employers must accommodate elective abortions and the inclusion of abortion as a pregnancy-related medical condition for purposes of the Pregnant Workers Fairness Act (PWFA).

Background

The PWFA took effect on June 27, 2023, and requires employers with 15 or more employees to provide reasonable accommodations for an individual's known limitation related to pregnancy, childbirth or related medical condition unless doing so would impose an undue hardship on the employer. The EEOC published a final rule to implement the PWFA that took effect on June 18, 2024.

In its final rule, the EEOC defined "related medical condition" under the PWFA to include a "termination of pregnancy, including via miscarriage, stillbirth or **abortion**." Consequently, the final rule required employers to reasonably accommodate an individual's abortion, including elective abortions.

Court Ruling

In *Louisiana v. EEOC*, the plaintiffs (including the states of Mississippi and Louisiana and religious organizations) argued that the EEOC exceeded its statutory authority to implement the PWFA by including the abortion accommodation mandate in the EEOC's final rule.

The court ruled in favor of the plaintiffs and vacated any portion of the final rule that includes abortion in the definition of related medical condition," as well as any portion of the rule that requires or suggests that employers are required to accommodate purely elective abortions that are not necessary to treat a medical condition related to pregnancy. The court further ordered the EEOC to modify any applicable guidance to conform with the court's decision.

Employer Takeaways
Pursuant to the ruling, the PWFA no longer requires employers to provide reasonable accommodations for purely elective abortions. However, covered employers must still provide reasonable accommodations for pregnancy terminations, including abortions, that are necessary to treat a medical condition related to pregnancy. In addition, some states and municipalities have passed their own pregnancy accommodation laws that may provide greater protections to employees than those provided under federal law. Therefore, employers should carefully review and ensure compliance with all applicable laws when evaluating an employee's request for a reasonable accommodation.
Employers may also monitor for updated PWFA guidance from the EEOC.

State Compliance Update

Nothing for this month…

Compliance Calendar

June
6/2 – Prescription Drug Data Collection Reporting – group health plans and health insurers are required to submit data regarding drug costs to the Department of Treasury, Department of Labor (DOL) and Health and Human Services (HHS). Reporting is due annually on June 1st, or the first business day after, if June 1st falls on a weekend day or holiday.

6/24 – 2024 EEO-1 Component 1 Filing Data Filing Deadline

July
7/31 – Form 5500 Filing Deadline (Calendar year Plans)
7/31 – Form 941 Filing Deadline (Second Quarter)
7/31 – PCORI Fee Deadline

August
8/1 – Vets-4212 Filing Open (federal contractors)