

Department Of Labor Announces Plans To Expand Reporting Employee Benefits, Wage & Hour, OSHA & Other Reporting & Disclosure Requirements & To Implement Other New Employee Benefit Regulations

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The Employee Benefits Security Administration (EBSA) plans to implement a host of new rules designed to strengthen retirement security by expanding the private employee benefit plan disclosure requirements and enhancing the availability of information to pension plan participants and beneficiaries and employers, according to the Department of Labor (DOL) [2009 Regulatory Agenda](#) (the "Regulatory Agenda") announced recently.

Employee Benefits, Wage & Hour, OSHA & Other Rules Seek To Protect Workers With Transparency

According to the Regulatory Agenda, EBSA plans to promote these goals through the implementation of a host of new rules including:

- Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans, which would increase transparency between individual account pension plans and their participants and beneficiaries by ensuring that participants and beneficiaries are provided the information they need, including information about fees and expenses, to make informed investment decisions.
- Amendment of Standards Applicable to General Statutory Exemption for Services, which would require service providers to disclose to plan fiduciaries services, fees, compensation and conflicts of interest information.
- Annual Funding Notice for Defined Benefit Plans, which would require defined benefit plan administrators to provide all participants, beneficiaries and other parties with detailed information regarding their plan's funding status.
- Periodic Pension Benefits Statements, which would require pension plans to provide participants and certain beneficiaries with periodic benefit statements.
- Multiemployer Plan Information Made Available on Request, which would require pension plan administrators to provide copies of financial and actuarial reports to participants and beneficiaries, unions and contributing employers on request.

The 2009 Regulatory Agenda highlights the most noteworthy and significant regulatory projects that the Labor Department has established for the EBSA, the

Employment Standards Administration (ESA), Mine Safety and Health Administration (MSHA), Occupational Safety and Health Administration (OSHA), and Employment and Training Administration (ETA) for the upcoming year. In addition to the transparency rules planned for EBSA, the 2009 Regulatory Agenda also indicates that employers can expect new Labor Department regulations targeting transparency in other areas. These include:

- The MSHA to propose a rule on Notification of Legal Identity, which would require mine operators to provide increased identification information, would allow the agency to better target the most egregious and persistent violators and deter future violations.
- The Office of Labor-Management Standards' to propose regulations on Notification of Employee Rights Under Federal Labor Laws, which would implement Executive Order 13496 and require all Government contracting agencies to include a contract clause requiring contractors to inform workers of their rights under Federal labor laws.
- The Wage and Hour Division to update its regulations about Records to be Kept by Employers Under the Fair Labor Standards Act to enhance the transparency and disclosure to workers as to how their wages are computed and to allow for new workplace practices such as telework and flexiplace arrangements.
- OSHA to modify its Hazard Communication Standard to require standardized labeling requirements and order of information for safety data sheets and to update its Occupational Injury and Illness Recording and Reporting Requirements rule, which would propose the collection of additional data to help employers and workers track injuries at individual workplaces, improve the Nation's occupational injury and illness information data, and assist the agency in its enforcement of the safety and health workplace requirements.

Other Employee Benefit Regulations Planned

Beyond its planned EBSA transparency initiative, the 2009 Regulatory Agenda reflects that other EBSA regulatory priorities for the year ahead include:

- Issue guidance implementing the group health plan Genetic Information Nondiscrimination Act of 2008 (GINA) amendments to ERISA which generally prohibit group health plans from discriminating in health coverage based on genetic information and from collecting genetic information. This will be a joint rulemaking action with the Departments of Health and Human Services and the Treasury.
- Provide guidance regarding the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) amendments to ERISA. MHPAEA creates parity for mental health and substance use disorder benefits under group health plans by mandating that any financial requirements and treatment limitations applicable to mental health and substance abuse disorder benefits to be no more restrictive than predominant

requirements or limitations applied to substantially all medical and surgical benefits covered by a plan.

- Issue guidance clarifying the circumstances under which health care arrangements established or maintained by state or local governments for the benefit of non-governmental employees do not constitute an employee welfare benefit plan for purposes of ERISA.
- Propose amendments to its regulations to clarify the circumstances under which a person will be considered a fiduciary when providing investment advice to employee benefit plans and their participants and beneficiaries of such plans.
- Explore steps it can take by regulation, or otherwise, to encourage the offering of lifetime annuities or similar lifetime benefits distribution options for participants and beneficiaries of defined contribution plans.

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