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Your Host



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TODAY'S AGENDA

Gabe Oberfield – (12:00PM-12:05PM)

- Welcome and agenda
- The latest on OBBBA implementation and NYS response

Gregory Katz – (12:05PM-12:15PM)

- OBBBA and employee benefits – what's important to know?
- New caselaw concerning pension withdrawal liability

Jillian Jin – (12:15PM-12:20PM)

- OSHA ending certain COVID-19 recordkeeping rules for healthcare employers

Kaydeen Maitland – (12:20PM-12:25PM)

- HHS and the Justice Department form False Claims Act task force

G. Oberfield – (12:25PM-12:30PM)

- Questions / wrap up

Metz, Withdrawal Liability, and You: The Supreme Court Takes Up Assumptions



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Withdrawal what?

- When a multiemployer (union) defined benefit pension plan is underfunded, employers pay a share of that underfunding when they leave the plan.
- Even if you have no union employees or defined benefit plans, you could still end up with withdrawal liability because liability is joint and several on trades or businesses under common control.
 - Withdrawal liability issues can also arise in bankruptcies and corporate transactions—mergers, spinoffs, acquisitions, etc.
- Because of severe underfunding, claims can be very large.
 - Pension plans are often the largest creditor in bankruptcies.

Circuit Split

- Plans set actuarial assumptions used to determine withdrawal liability—different assumptions can create huge differences in the amount of liability.
- *National Retirement Fund v. Metz Culinary Management* was a Second Circuit case that basically said a plan must select assumptions before the year of withdrawal.
- *M&K Employee Solutions, LLC v. Trustees of the IAM National Pension Fund*, in the D.C. Circuit, allowed plans to select assumptions after the fact.

Employers prefer *Metz*

- The *Metz* rule, in the Second Circuit, is more employer friendly in a couple of senses:
 - Allows for more predictability—employers can know what a plan's assumptions are when contemplating leaving or negotiating transactions.
 - (Debatably) less opportunity for bias—plans can't choose assumptions opportunistically because they are set ahead of time.

Reading the Tea Leaves

- With only two circuits weighing in, it's not 100 percent clear what the Court's interest in the case is, but the Solicitor General urged them to take it up.
- The Court seems to be leaning heavily on the federal pension insurer's (PBGC) views, and PBGC supports the less employer-friendly *M&K Employee Solutions* rule.
- If *Metz* is overturned, New York employers will have less predictability on their pension liability.

OSHA is Ending COVID-19 Recordkeeping Rules for Healthcare Employers



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COVID-19 Emergency Temporary Standard

- The COVID-19 Emergency Temporary Standard was issued on June 21, 2021.
- The purpose of the rule was to protect workers in healthcare settings from exposure to COVID-19.
- The Occupational Safety and Health Administration (OSHA) stopped enforcing the bulk of this rule at the end of 2021, but the recordkeeping and reporting provisions remained.

OSHA's Proposed Rule

- OSHA proposed to remove the recordkeeping and reporting requirements under the COVID-19 Emergency Temporary Standard.
- Recordkeeping and reporting requirements:
 - Healthcare employers had to maintain a COVID-19 log and report work-related COVID-19 fatalities and hospitalizations to OSHA regardless of the time elapsed since workplace exposure.

OSHA's Motivation to Remove

- There is no integrated regulatory scheme for these provisions because OSHA stopped enforcing the bulk of the COVID-19 Emergency Temporary Standard.
- Since 2021, the detection of COVID-19 cases and the public health surveillance mechanisms for COVID-19 has improved.

Impact of OSHA's Proposed Rule

- OSHA estimates that this will save employers approximately \$1.6 million annually in compliance costs.
- Employers would not have to maintain COVID logs and no longer have extended reporting timeframes for COVID-19 cases.
 - However, OSHA's standard injury and illness recordkeeping regulations still require work-related COVID-19 cases to be reported.
- The proposed rule is open for public comments until September 2, 2025.

HHS and the Justice Department Form False Claims Act Task Force



Kaydeen M. Maitland

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DOJ-HHS FCA Working Group

- A new joint initiative between DOJ and HHS
- Focused on enforcing the False Claims Act (FCA) in healthcare
 - The Working Group is co-led by senior officials from DOJ, HHS, CMS, and U.S. Attorneys' Offices.
- Difference in focus relative to Biden administration

Goals of the Initiative

- Pace of Investigations
 - Focus on potential delays in fraud case development
- Use of HHS Data
 - Use internal audits, claims data, and OIG reports to identify targets
- Coordination Across Agencies
 - DOJ, CMS, and HHS
- Targeting of Complex Schemes
 - E.g., billing, pricing, and access

Priority Administration Focus Areas



Medicare Advantage

Addressing fraudulent practices within Medicare Advantage plans.



Drug, Device, and Biologics Pricing

Monitoring discounts, rebates, service fees, and price reporting arrangements.



Access Barriers

Examining possible network adequacy issues that affecting patient care access.

Priority Focus Areas (cont.)



Kickbacks

Investigating alleged kickbacks involving drugs, medical devices, durable medical equipment.



Device Safety

Addressing allegedly defective medical devices affecting patient safety.



EHR Manipulation

Examining alterations in electronic health record workflows affecting Medicare billing.

What This Means for Clients

Increased Audit Risk

- Especially for Medicare Advantage and pricing arrangements

More Data-Driven Investigations

- Agencies are proactively identifying targets

Cross-Agency Coordination

- Less room for gaps or inconsistent enforcement

Potentially Higher Stakes

- Civil and potentially criminal exposure for FCA violations

What You Should Do Now



Review Compliance Programs

Especially billing, pricing, and referral practices



Conduct Internal Audits

Identify and address risks before regulators do



Document Decision-Making

Especially around pricing and network adequacy



Seek Legal Review

Before entering into high-risk arrangements



Contact Bond

Re: compliance reviews, audits, and investigations

Questions?



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The Latest on OBBBA Implementation and NYS Response

Gabriel Oberfield, goberfield@bsk.com

How the OBBBA Affects Employee Benefits

Greg Katz, gkatz@bsk.com

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Sexual Harassment Prevention Training

To combat harassment in the workplace, every New York State employer must provide harassment prevention training for all employees annually.

For more information on Bond's online sexual harassment training [click here](#) or email bondonline@bsk.com

Thank You

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It is not to be considered as legal advice.
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