2024
Employee Benefits Market Outlook

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Benefit Group

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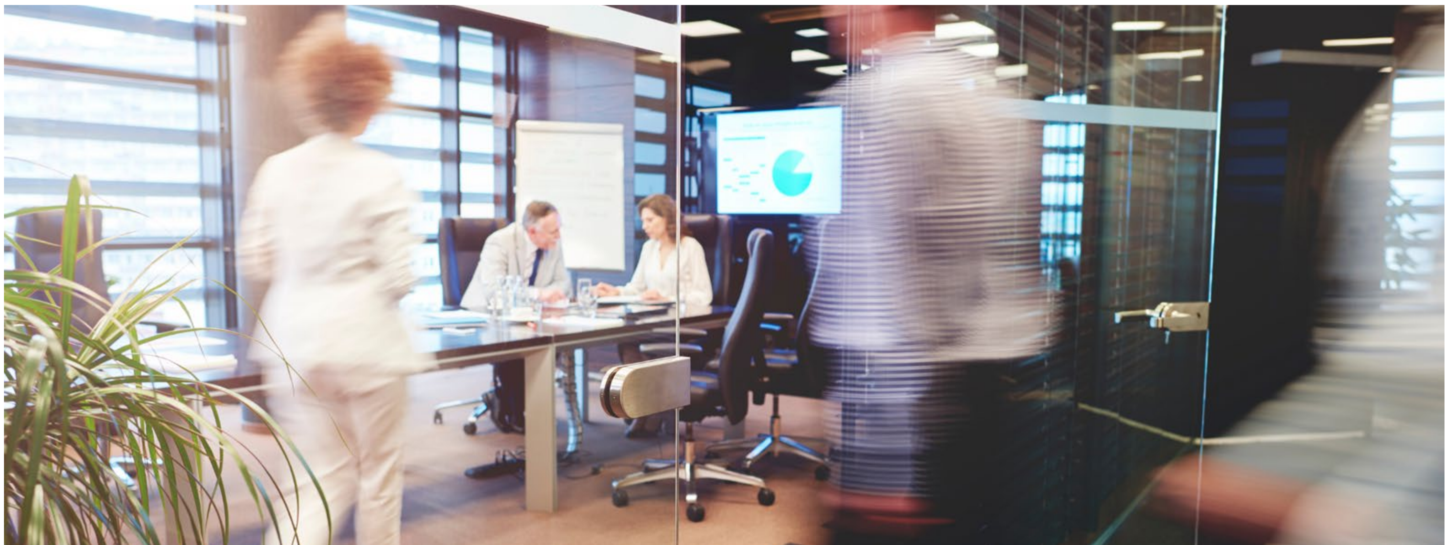
Executive Summary

In 2023, employers were forced to confront several new and enduring challenges, including rising health care costs, regulatory changes, ongoing high inflation, a competitive labor market and growing employee demands. For many organizations, these challenges resulted in a difficult and demanding year. While many of these difficulties will likely continue through 2024 and beyond, understanding these challenges as well as likely trends can help employers develop effective and efficient strategies to address them. Employers that prepare and act proactively will likely gain a competitive advantage in the market. Addressing the challenges presented in this Market Outlook will be the key to employers' success in 2024 and beyond.



Employers face the difficult task of finding effective ways to address rising health care costs while keeping benefits affordable for employees. Reining in rising health care costs has been a major employee benefits challenge for employers for many years. However, health care costs are expected to increase more in 2024 than they did in 2023. Therefore, it's critical that employers find effective solutions to control costs while still delivering benefits employees want and need. To accomplish this, employers will likely need to plan and implement multiple strategies, including plan design alteration, cost-sharing initiatives, evaluation of specialty drug costs and claims data utilization. In some instances, some employers may need to take more drastic measures in 2024, such as modifying health plan designs to properly address health care cost increases. Employers have traditionally shifted increasing health care costs to employees to address rising costs. However, the competitive labor market over the last few years has forced employers to keep employee coverage affordable to attract and retain talent. Consequently, employers have shied away from cost-sharing initiatives to avoid disrupting recruitment efforts. As 2023 ended, the labor market showed signs that it is softening and, as a result, more employers may revisit cost-sharing initiatives to rein in rising health care costs in the upcoming year.

Many organizations have embraced offering personalized voluntary benefits as an integral part of their benefits strategy, and more employers will either embrace these benefits or expand their offerings in 2024. These benefits are popular with employees and allow employers to tailor their benefits to employee demands and needs. Bolstering voluntary benefits will be an effective way for employers to expand their benefits offerings without raising costs in 2024. Additionally, many employers will embrace a holistic approach to employee well-being to address employees' physical and mental concerns. In 2024, inflationary pressures exacerbated many physical and mental health issues in the workplace. Employer efforts will include focusing on financial benefits and education to help reduce inflation's impact on workers. Moreover, family-building benefits will become much more important for employers in the upcoming year as they try to meet employees' benefit needs and demands.

Even though the labor market is expected to soften somewhat in 2024, it is still expected to remain competitive. Because of this, strategies employers have implemented to address the tight labor market over the last few years are changing. For example, in 2024, employers plan to increase employee compensation and adjust their recruitment strategies to focus more on skills-based hiring to

find capable workers to fill open roles. Despite budgeting for compensation increases in the upcoming year and the fact these increases will be high by historical standards, it's unlikely that they'll meet employee demands.

Establishing proactive and resilient organizations will be critical for a successful 2024. Employers should ensure that they can quickly and effectively respond to challenges. For example, artificial intelligence (AI) has made its way into many workplaces, forever altering how employees work and employers operate. More employers are relying on AI for recruiting and hiring. While this allows organizations to lower costs and operate more efficiently, it presents certain challenges they must contend with in the upcoming year. Additionally, for the last few years, employers have tried to force and incentivize employees to return to the office, often with mixed results. Overall, employers are pushing for their workers to return in 2024, but going forward, they will likely focus on approaches and work models that balance employee demands with organizational productivity and efficiency. Organizations will also need to address anticipated regulatory changes, such as a new overtime rule, state-mandated leave policies and increased enforcement actions by federal agencies.

As employers read the Market Outlook, they should consider which trends they may be susceptible to in the upcoming year. Then, reach out to us to discuss the next steps and request valuable resources to help evaluate potential solutions and raise the challenges 2024 may bring. Together, we can meet the challenges and identified opportunities presented in 2024.

2024 Outlook

This section explores important trends and challenges employers should monitor in 2024, discussing why they're important and how they might impact employers. These trends will likely impact and shape the employee benefits market throughout the upcoming year and beyond.

Rising Health Care Costs

Amid ongoing inflation pressures, employees and employers alike can expect their health care costs to increase in 2024. According to several industry surveys and reports, employers anticipate health care costs to grow between 6% and 8.5% in 2024, the largest increase in more than a decade. As a result, employer-sponsored health care plans may cost more than $15,000 per employee. While mitigating rising health care costs has historically been one of the most pressing employee benefits challenges for employers, it's becoming increasingly difficult. As employers brace for further health care cost hikes in 2024 and beyond, they are urgently searching for solutions to manage their growing costs and address the long-term impacts of these increases on their organizations.

Some employers may be frustrated with the limited options to address their rising health care costs, especially since many may feel they've exhausted traditional approaches to mitigate health care costs; however, they can consider the following four drivers of 2024 health care costs and strategies to manage them:

Mental health challenges—Employees' mental health concerns and needs, such as depression, anxiety and substance use disorder, undoubtedly rose during the COVID-19 pandemic and continue to linger in its aftermath. Employees and employers alike will continue to notice a prolonged impact of mental health challenges. In response, employers are expected to continue to expand access to mental health support and services, and many plan to provide more options for support and reduce cost barriers to care. Organizations may also explore manager and employee training to recognize mental health issues, anti-stigma campaigns and flexible working arrangements so employees can discreetly seek mental health care during regular working hours.

Pharmacy costs—In 2024, pharmacy costs will continue to impact employers significantly. Specialty and costly prescription drugs, especially the high demand for diabetes and obesity drugs, and cell and gene therapies (CGTs) are behind employers' pharmacy cost increases in 2024. The rising median prices of new pharmaceuticals as well as the high prices of drugs already on the market are driving up employers' pharmacy costs. Additionally, the U.S. Food and Drug Administration (FDA) has been approving a greater number of high-cost drugs, which is causing drug price inflation. To address rising drug costs, employers can implement pharmacy management strategies, including prioritizing transparent PBM practices (e.g., requesting detailed reports, auditing PBM services, requiring compensation and pricing disclosures, and negotiating contract terms) and plan design changes to address costly medications and treatments (e.g., prior authorization, step therapy and sites of care management).

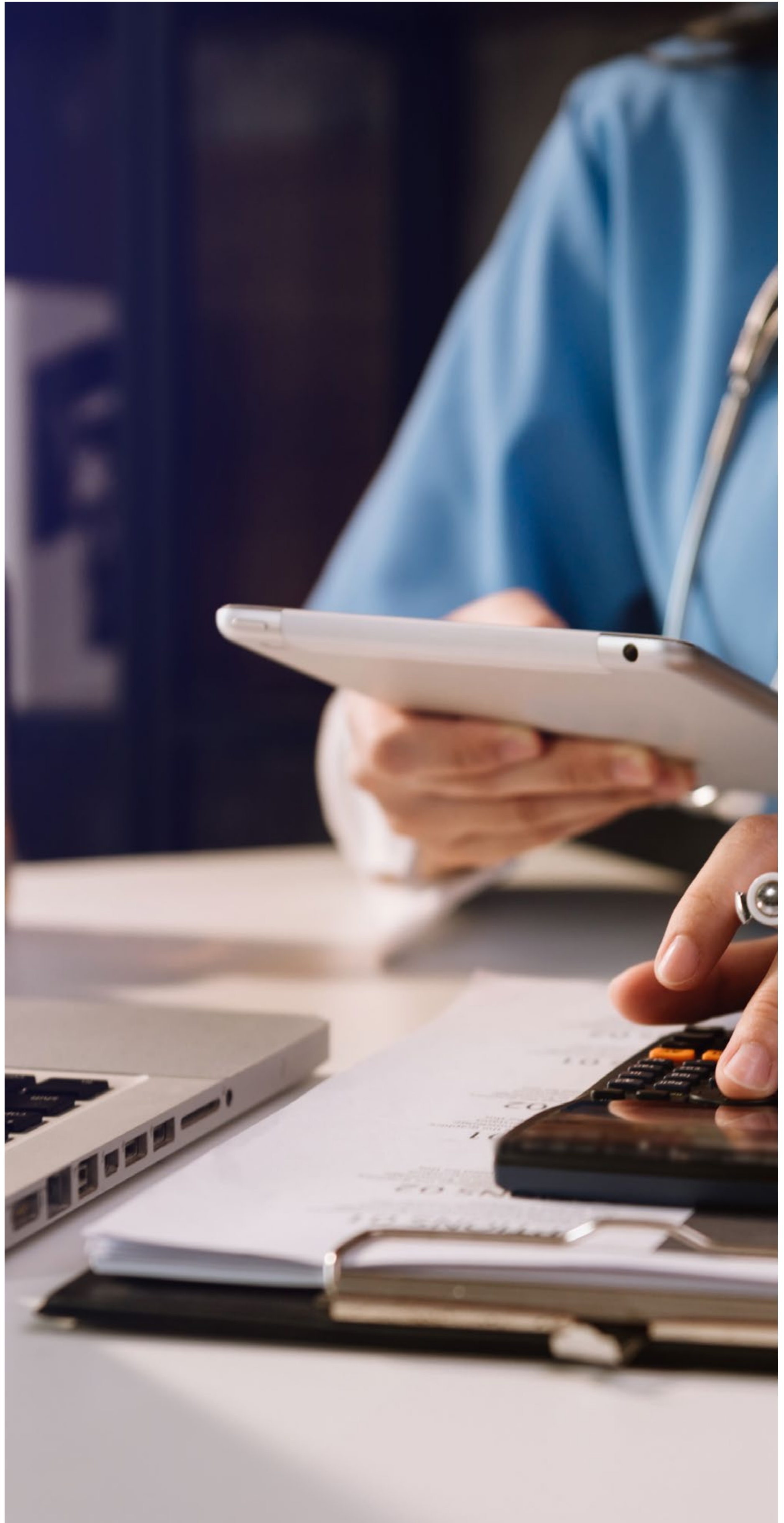
Cancer treatment—Preventive screenings were a critical health care component disrupted during the pandemic. As a result, employers are anticipating more late-stage cancers among workers. In response to rising cancer care, employees can encourage advanced screening measures and maintain full coverage of recommended prevention and screening services. Employers can also monitor oncology clinical advancements (e.g., biomarker testing and immunotherapies) and help guide employees to high-quality care to improve health outcomes.

Health care delivery—Health care innovations, specifically on-site or near-site clinics and virtual care, gained popularity during the pandemic, but demand is starting to level out. This is likely the result of employers migrating to a hybrid or remote work environment, reducing the need for health services at the workplace. However, such types of care continue to be critical for employees as they prioritize primary or preventive health care. Moving forward, more employers are looking to expand health care offerings to better support primary care and mental health and prioritize employee health outcomes.

Heightened health care costs are likely to continue impacting employers for the foreseeable future. Looking ahead to 2024, many employers are focusing on impacts related to mental health, medications, cancer and health care delivery. To combat rising costs, employers are focusing on improving employee health outcomes, reducing unnecessary services and prioritizing prevention and primary care.

Many employers have avoided shifting increasing health care costs onto employees due to the tight labor market and ongoing attraction and retention challenges. Despite employers' reluctance to shift the burden of rising costs onto employees, more employers will likely increase cost-sharing amounts somewhat in 2024. However, it's unlikely that these employers will shift enough costs through cost-sharing initiatives to lower their projected cost increases. Consequently, with many organizations avoiding cost-shifting altogether and others being hesitant to shift a large portion of costs onto employees in the new year, employers will have to get creative with plan design. For example, many employers are looking to enhance benefits by seeking opportunities to add value. That could mean filling gaps in current offerings to make them more inclusive. Behavioral health care remains a strong focus for many employers, so an example of a benefit enhancement would be expanding employee assistance program services and adding virtual behavioral health care options.

In 2024, employers will focus on benefits education and employee communication, with the goal of helping them thoroughly understand their benefits. Many employees are looking for ways to stretch their hard-earned dollars further, and employers can step in to provide that much-needed guidance. In turn, employer efforts focused on preventive and proactive health care can help curb health care costs.



Shifting Labor Market and Talent Trends

Attraction and retention challenges remained persistent in 2023 as organizations across industries struggled to find and keep workers. Zywave's 2023 Attraction and Retention Employer Pulse Survey found that over 60% of respondents listed attraction and retention as a top-five business challenge, but this was notably down from 80% in 2022. Looking ahead to 2024, labor markets are expected to remain competitive yet ease up compared to what employers have experienced since the beginning of the COVID-19 pandemic. Competition to win over talent against competitors remains year over year, but how employers react and win over workers continues to change. This year, employers should understand how the market is shifting while focusing on new talent strategies.

2024 Labor Market Preview

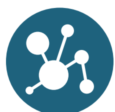
Since the onset of the pandemic, the talent market has been a day-to-day challenge for most organizations. According to the U.S. Bureau of Labor Statistics (BLS), the total number of employee quits and job openings have reached record highs in the past two years. The BLS' October 2023 Job Openings and Labor Turnover Summary reported 8.7 million open jobs and 3.6 million employee quits. These numbers have trended down from all-time highs of employee quits (November 2021) and job openings (March 2022) but remain higher than pre-pandemic levels, highlighting the market's continued competitive nature. These numbers showcase that while the labor market may be easing, it remains competitive for employers. For example, Zywave's survey found that the majority of employers (66%) expect attraction and retention challenges to "stay about the same" in 2024, while 15% expect them to improve. Specifically, organizations reported more difficulty with attracting new workers than retaining existing ones, as more workers have decided to stay put rather than test the labor market. In summary, employers can expect the labor market to moderate—but should not expect talent challenges to go away. While the labor market isn't likely to be the significant challenge of previous years, employers will need to stay agile and adaptive.

2024 Labor and Talent Trends

While labor challenges are trending down, they remain an operational challenge for employers—especially when it comes to attracting new employees. Changes to the economy, technology and worker desires are unavoidable. As such, employers will be tasked with navigating these factors as they change year over year. These labor and talent trends are likely to shape the employment market in 2024:

Increased compensation—According to industry data, employers are budgeting for an average salary increase of 4% in 2024, down from 4.4% in 2023. While these numbers are high by historical standards, they don't match the raises workers want. Zywave's research found that employers listed "matching worker demands for compensation" as their top current attraction and retention challenge, with 48% listing it in their top three. Survey results further revealed that half of employers plan on raising employee compensation to win over new workers, while even more (53%) are planning on improving compensation to better retain employees. These findings, paired with inflation and market research, show that organizations will try to win over talent by offering more money in 2024. Employers will need to make tough decisions about how to increase employee compensation or face the prospect of losing workers to competitors who are offering more.

Skills-based hiring—Employers are struggling to find employees with the right skills and develop them for roles that are increasingly complex. According to Zywave's 2023 Employer Attraction and Retention Pulse Survey, "finding the right skill sets" was the number two talent challenge for employers, right behind compensation. The skills needed to perform a job at a high level change every year, leaving employers with the option of trying to acquire those skill sets by hiring or upskilling current employees. Skills-based hiring allows employers to hire for specific skills rather than focus on candidates' education or certifications. While some positions have a legitimate business case for more requirements, employers are finding that focusing on skills-based selection processes can grow their talent pool and help find the right candidate for a job.



AI in recruiting—Many employers already use AI in recruiting. This presents certain opportunities and challenges. Employers that aren't effectively leveraging technology—including AI—are a step behind in terms of reaching a wider talent pool while creating operational efficiencies. However, AI also poses risks, such as biased or discriminatory employment selection and errors. In 2024, AI is likely to impact more aspects of the workplace, including HR functions. Employers will want to explore efficiencies but remain cautious about how they use these tools.

The Great Gloom—Employers will face significant employee engagement challenges in 2024, referred to as the "Great Gloom." Employees aren't likely to resign as fast in 2024 as in previous years, but many are increasingly unhappy with their jobs. Employee happiness has decreased for three years through June 2023, and this trend is likely to continue in 2024. This dissatisfaction can be due to general stress, worsening mental health, return-to-office mandates, low wages and a lack of career advancement opportunities. The reasons employees are dissatisfied can vary by industry; however, savvy employers across industries will prioritize improving employee engagement in 2024 and avoiding the negative impacts of this trend.

Generation (Gen) Z's growing workforce presence—A report from employment website Glassdoor predicts that in 2024, Gen Z will surpass the "baby boomer" generation (those born between 1946 and 1964) in workforce participation. Gen Z is defined by the U.S. Census as individuals born between 1997 and 2013. This group is rapidly changing the workplace—making employers rethink how they attract and retain workers. For example, this generation prioritizes culture, wants learning and development opportunities, and desires flexibility. They also want a say in reshaping how the workplace works and hope to be able to contribute and problem-solve—even in entry-level roles. To win over this generation, employers will need to rethink how they recruit workers. Expanding an online presence, using social media, and using university and college recruiting strategies are good channels to reach younger workers. Creating a collaborative culture with career advancement will help keep them.

Voluntary benefits—For employers unable to raise employee pay as high as they would like, voluntary benefits can offer more perks to employees without raising health care costs. Voluntary benefits supplement traditional benefits (e.g., health insurance) and are usually employee-paid. These perks have become more popular in recent years, with even more employers planning to expand their offerings in 2024. Employers can explore offering core voluntary benefits (e.g., dental, vision and life insurance; short- and long-term disability) if they don't already or consider expanding to more options, such as hospital indemnity insurance, pet insurance and gym memberships. Surveying employees can offer a way to learn more about which voluntary benefits meet the desires of a specific workforce.

These factors are likely to influence the talent market in 2024. Employers will need to adapt by taking inventory of how these trends are likely to impact their workplace and prioritizing strategies to help them navigate the ever-changing labor market.

Employers have been hearing that the labor market "may ease" for a few years now, but many are still dealing with attraction and retention challenges. The reality is that the labor market remains competitive for employers, and current trends are changing what employers must do to win over employees. In 2024, employers can expect trends such as continued demands for compensation, return-to-office mandates, the need for workers with the right skills and AI to be some of the biggest obstacles. Successful employers will continue to monitor these trends, informing their talent strategies in an evolving labor market.

Continuing Litigation and Compliance Challenges

New regulations combined with continued workforce demands mean employers will likely see an increase in employment-related lawsuits and action from federal, state and local agencies in 2024. According to research from the BTI Consulting Group, employment litigation is expected to increase by 6.8% in 2024. Class actions and cybersecurity litigation are also expected to increase significantly in 2024 (7.5% and 9.9%, respectively). These types of lawsuits are becoming costly and more complex each year, and as a result, employers are likely to experience increased compliance burdens and costs in 2024.

In 2023, the U.S. Supreme Court issued several consequential decisions that altered established labor and employment laws and workplace practices. These decisions addressed religious accommodations, union strike misconduct, overtime pay and affirmative action. The Supreme Court will hear several cases during its current term, which started on Oct. 2, 2023, that will similarly impact employers going forward. For example, in *Loper Bright Enterprises v. Raimondo*, the Court will consider whether to overturn a long-standing precedent that allows federal agencies the wide authority to interpret federal laws and enact regulations. If the Supreme Court overturns this doctrine, it could have a significant impact on employers since it would limit federal agencies' ability to address issues such as labor conditions and public health. In *Acheson Hotels v. Laufe*r, the Court will decide whether a "tester" plaintiff—an individual who goes from business to business looking for a reason to initiate a lawsuit—has standing to sue an employer for alleged violations under the Americans with Disabilities Act (ADA) when the tester had no intention of patronizing the business. This case is noteworthy because the ADA doesn't require claimants to notify an organization of alleged violations or provide them with an opportunity to address and remedy the violations before filing a lawsuit. As a result, businesses can be caught off guard and face costly discrimination lawsuits. Further, in *Muldrow v. St. Louis*, the Supreme Court will decide whether Title VII of the Civil Rights Act (Title VII) prohibits discrimination in lateral transfer decisions when the transfer did not result in a significant disadvantage to the employee. In this case, an employee was forced to accept a lateral transfer that provided the same pay and benefits. The employee claimed that the transfer was based on illegal gender bias. Several federal courts have held that a forced lateral transfer is an adverse employment action under Title VII, even if an employee fails to show that the move caused any additional injury. This case is expected to provide employers with clarity on what is considered an adverse employment action under Title VII.

In addition to these Supreme Court cases, many developments may impact employer health care and employee benefits-related obligations in 2024. For example, in March 2023, the U.S. District Court for the Northern District of Texas struck down a key component of the Affordable Care Act's (ACA) preventive care mandate as unconstitutional. The ACA requires health insurance plans to cover certain preventive services without cost sharing. When Congress drafted the law, it failed to specify the covered services and instead delegated the task to the U.S. Preventive Services Task Force, Advisory Committee on Immunization Practices, and the Health

Resources and Services Administration. These government bodies are allowed to add new services without Congress having to pass new legislation. The Biden administration is currently appealing the District Court's decision. However, non-grandfathered health plans and issuers must continue to cover, without cost sharing, the full range of preventive care services required by the ACA. Employers should continue to monitor this case in 2024 because it could impact their health coverage.

Additionally, federal agencies have indicated they may expand the ACA's preventive care mandate to include over-the-counter (OTC) preventive products in 2024. Notably, in July 2023, the FDA approved the first nonprescription daily oral contraceptive (Opill), which is expected to become available in stores and online in early 2024. Current guidance requires coverage for OTC preventive products without cost sharing only when they are prescribed by a health care provider. In 2024, employers should watch for any changes regarding coverage of OTC preventive products and make any necessary adjustments to their health plan coverage. Finally, the Biden administration has indicated its intention to expand access to contraceptives by narrowing the exemptions to the ACA's contraceptive coverage mandate. Under the ACA, churches and houses of worship are not required to cover contraceptives. Also, current guidance exempts certain employers from covering contraceptives if they object to this coverage based on sincerely held religious beliefs or moral convictions. In January 2023, federal agencies released a proposed rule that would rescind the moral exemption to covering contraceptives but retain the religious exemption. Employers who rely on the moral exemption to cover contraceptives should monitor the release of a final rule in 2024 and adjust their health coverage going forward, if necessary.

Moreover, the IRS, the U.S. Department of Health and Human Services (HHS), and the Employee Benefits Security Administration issued a proposed rule in August 2023 that, if finalized, would make extensive changes to the Mental Health Parity and Addiction Equity Act's (MHPAEA) requirements. The proposed rule would require health plans and issuers to collect, evaluate and consider relevant data on access to mental health and substance use disorder coverage related to access to medical and/or surgical coverage instead of relying on descriptions of coverage. The proposed rule would also impose a special rule for nonquantitative treatment limitations related to network composition and establish additional standards for comparative analysis. Accordingly, employers should carefully monitor MHPAEA compliance to protect themselves from U.S. Department of Labor (DOL) enforcement action and lawsuits.

In 2023, health plan coverage of fertility care became the subject of litigation due to the definition of infertility. The Centers for Disease Control and Prevention generally defines infertility as not being able to conceive after one year (or longer) of unprotected sex. While this definition has been adopted by many insurers, it has been challenged in court as discriminatory against same-sex couples who can only conceive through fertility treatment. For example, health plan participants filed a class action lawsuit in the U.S. District Court case of *Murphy v. Health Care Serv. Corp.*, alleging that their policy's terms were discriminatory against certain participants based on their sexual orientation, violating ACA Section 1557, which prohibits discrimination in covered health programs and activities based on sex, race, color, national origin, age or disability. The court concluded that the policy was written in a way that a significant portion of the LGBTQI+ community could not meet the definition of infertility without incurring out-of-pocket costs compared to their straight counterparts. As a result, the court held that the plaintiffs adequately alleged that the policy discriminated against certain participants based only on their sexual orientation. Adding another layer of complexity to these cases is the uncertainty surrounding Section 1557's prohibition on sex discrimination. This definition is currently being challenged in the court system, with a divide over whether sex discrimination includes discrimination based on sexual orientation and gender identity. Litigation surrounding Section 1557's definition of sex-based discrimination will be another area for employers to watch in 2024.

Supreme Court decisions, new rulings and other litigation will likely continue to impact employers in the upcoming year. Many of these decisions and rulings will have a lasting impact on employers' practices, adding to or creating new administrative and compliance burdens in 2024 and beyond. By staying informed about these decisions and rulings, employers can be prepared for any changes and better ensure compliance, avoiding costly litigation and administrative enforcement actions.

Expanding State Paid Leave Mandates

2023 brought many shifting compliance obligations for employers, including new federal and state laws and regulations expanding worker protections. The widespread adoption of remote and flexible work arrangements over the last few years has led to an increasing number of states and localities passing paid sick leave, paid leave for any reason, and paid family and medical leave. While paid leave gained a stronger foothold in 2023, there's no reason to expect this trend to slow down, as more states and local governments are likely to enact similar legislation in 2024. This means more organizations will be subject to paid leave requirements in the upcoming year, increasing employers' compliance and administrative burdens.

At the start of 2023, 14 states—Arizona, California, Colorado, Connecticut, Maryland, Massachusetts, Michigan, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont and Washington—already had paid sick leave mandates in place. On the other hand, Maine and Nevada require employers to provide paid leave for any reason. During the year, Minnesota and Illinois both passed paid leave laws, which take effect Jan. 1, 2024. Some states amended their existing paid sick leave laws in 2023 to benefit employees. For example, California expanded the amount of paid sick leave employers must provide workers from three days per year to five, effective Jan. 1, 2024. Connecticut added mental health wellness days as covered time under its paid sick leave law, and it extended paid sick leave to the parents of victims of family violence and sexual assault. Meanwhile, Colorado amended its paid sick leave law to cover bereavement, caring for a family member whose school or place of care was closed, and for home evacuations.

11 states—California, Colorado, Connecticut, Delaware, Maryland, Massachusetts, New Jersey, New York, Oregon, Rhode Island and Washington—had already passed paid family and medical leave programs at the start of 2023.

Throughout the year, Maine and Minnesota enacted new paid family and medical leave laws, bringing the number of states with these programs to 13. Even in states that enacted paid family and medical leave laws before 2023, there was plenty of activity surrounding such legislation during the year. For instance, in Colorado and Oregon, employer and employee contributions to fund paid family and medical leave began in January. As a result, Oregon issued regulations and began offering these benefits in September. Colorado and Delaware also implemented such regulations, Maryland delayed and amended its program, and Massachusetts changed its law to permit workers to "top off" their paid family and medical leave compensation with pay from employer-provided paid leave. 2023 also saw novel developments in paid family and medical leave. In particular, Washington passed legislation that will require transportation network companies to pay drivers' paid family and medical leave premiums. Additionally, as they do toward the end of every year, states began announcing their updated paid family and medical leave contribution and benefits rates for 2024.

Looking forward to 2024 and beyond, Jan. 1 marks the date paid family and medical leave benefits become available in Colorado. This is also the deadline for small employers in Delaware to elect to reduce employees' parental leave by 50% (for the first five years of the program) and for employers to apply for five-year grandfathering of existing plans. The state's paid family and medical leave benefits will start on Jan. 1, 2026. Maryland delayed the start of its program so that contributions will begin Oct. 1, 2024, with benefits starting Jan. 1, 2026. Family, private and nonstate public employers will be able to buy coverage for Vermont's voluntary program starting July 1, 2024. Insurance becomes available for purchase by individual workers and employers with only one employee in 2025.

In 2024, employers not subject to state or local paid sick leave requirements should be attuned to legislative momentum on this topic in locations where they operate, as it's likely that more areas will pass paid leave mandates. Employers already subject to paid sick leave laws should stay alert to amendments that would expand such leave, especially for reasons related to reproductive loss, bereavement, organ donation and public health emergencies, all areas in which states have increasingly granted leave entitlements in recent years.

While paid leave laws will likely become more widespread as additional states and local governments pass related legislation, employers can consider embracing this trend even if they're not legally required to do so. Although paid leave may seem like another expensive benefit for employers to offer, it presents an opportunity to cultivate employee loyalty, boost engagement and improve productivity. Establishing loyalty among workers is vital for employers struggling to navigate the competitive labor market. Offering attractive benefits, such as paid leave, can make organizations more enticing to applicants and strengthen retention among existing workers. Flexible benefits, including paid sick and medical leave, are extremely popular with employees, especially among younger workers. Therefore, providing paid leave benefits can help organizations remain competitive when recruiting key talent in 2024. Furthermore, paid leave can be an important component of providing a safe and healthy workplace for employees. With this in mind, while offering paid leave is an expense, it's also an investment, which can be good for workers' productivity and morale and an organization's bottom line.

Increasing EEOC Enforcement Activity

The U.S. Equal Employment Opportunity Commission (EEOC) is a federal agency responsible for enforcing federal employment discrimination laws. The agency's goal is to advance workplace opportunity by enforcing these laws. The EEOC experienced several noteworthy changes in 2023, including new leadership, structural changes and an increased budget. It also multiplied its enforcement efforts; at the end of fiscal year (FY) 2023, the agency reported a 52% increase in lawsuit filings from the previous year. These efforts are likely to continue in 2024. As a result, employers must prepare now for increased EEOC activity by better understanding their legal obligations related to discrimination laws and proactively preventing workplace discrimination.

In 2023, the U.S. Senate confirmed Kalpana Kotagal as the newest EEOC commissioner, giving the Democrats the majority on the agency's five-member panel. This will likely allow current EEOC Chair Charlotte Burrows to move more quickly when enacting agency policies and deciding EEOC enforcement priorities. In addition, there was a flurry of EEOC activity in 2023. The commission issued new guidance and technical assistance on several topics, including:

- Hearing impairments and conditions and the ADA
- Visual disabilities and the ADA
- Workplace equality for LGBTQI+ employees
- Automated systems use, including AI, in employment decisions
- Harassment in the workplace

In September 2023, the EEOC released its Strategic Enforcement Plan (SEP) for FYs 2024-28, which emphasizes a greater focus on discrimination against vulnerable populations. This document establishes the agency's enforcement priorities as it works to prevent and remedy discrimination in the workplace. According to the SEP, the EEOC is prioritizing the following subject matters over the next five years:

- Eliminating barriers in recruitment and hiring
- Protecting vulnerable workers and persons in underserved communities from employment discrimination
- Addressing selected emerging and developing issues
- Advancing equal pay for all workers
- Preserving access to the legal system
- Preventing and remedying systemic discrimination

The 2024 SEP also incorporates and expands on priorities outlined in the EEOC's previous SEPs. Specifically, the 2024 SEP:

- Includes new categories of workers (such as "LGBTQI+ individuals") for targeted education and outreach
- Recognizes employers' increasing use of technology, such as AI or machine learning
- Addresses other recent developments, such as COVID-19-related discrimination, new pregnancy-related protections, new technology-based employment practices, and certain high-profile incidents of bias and violence based on protected traits
- Identifies certain contracts, such as nondisclosure or nondisparagement agreements, that will receive increased scrutiny to help preserve access to the legal system

The agency also published its Strategic Plan (SP) for FYs 2022-26, providing the framework for achieving the EEOC's mission. The SEP works together with the SP by establishing substantive enforcement priorities.

Additionally, the EEOC started accepting charges of discrimination under the new Pregnant Workers Fairness Act (PWFA), which went into effect on June 27, 2023, and requires covered employers to provide reasonable accommodations to a qualified individual's known limitations related to pregnancy, childbirth or related medical conditions. The PWFA builds upon existing protections against pregnancy discrimination under Title VII and access to reasonable accommodations under the ADA. To further its enforcement efforts of the new law, the EEOC proposed a rule to implement the PWFA and new educational resources for workers.

The agency also announced a formal partnership with the DOL's Wage and Hour Division in September to enhance and maximize the enforcement of federal laws and regulations through improved coordination and communication. Notably, the EEOC settled its first lawsuit alleging discrimination arising from an employer's use of AI in recruiting and hiring in 2023.

In 2023, the commission's litigation activity reached a level that hasn't been seen in recent years—a signal that the EEOC is returning to prior levels of litigation activity. At the end of 2023, the EEOC significantly increased the number of lawsuits it filed, including 67 in September. This helped boost the total number of lawsuits the agency filed in 2023 to 143, representing a 52% increase from 2022. The number of lawsuits the EEOC filed in FY 2023 was the most it had filed in five years. Considering that the EEOC only filed three cases during the first four months of FY 2023, it provides employers with a likely preview of what to expect in 2024. Employers can expect the EEOC to be even more active in 2024 than last year since the agency received a 6% (or $26 million) budget increase for FY 2024, providing the EEOC with more resources for investigations, enforcement actions and lawsuits. Prudent employers need to take heed of these developments in 2024, especially after the EEOC issued a rare press release at the end of FY 2023 highlighting its increased litigation activity. EEOC Chair Burrows stated, "The EEOC's litigation program is an important tool to ensure compliance with the nation's anti-discrimination laws and promote equal employment opportunities when the commission is unable to obtain voluntary compliance." Much of the agency's litigation efforts in FY 2023 were focused on the subject matter addressed in its recently published guidance.

With this increased activity, it's vital that employers prioritize compliance with federal employment laws. Organizations can minimize their exposure to EEOC's increasing enforcement actions by remaining compliant with federal laws, training managers and employees, reviewing workplace policies and handbooks, and staying informed about the agency's strategies. Employers should consider focusing on practices that may expose them to liability, such as systemic lawsuits, and subjects on which the agency has recently published guidance.

Managing Costly Prescription Drugs and Gene and Cell Therapy

Employers' health plans have increasingly been pressured by rising prices of new specialty drugs and existing ones—and pharmacy costs are not expected to slow down in 2024. Two specific specialty drug trends are propelling the increase of specialty drug spending: Weight loss drugs and new CGTs are receiving accelerated approvals. Undoubtedly, employers will continue to struggle with controlling rising health care costs and providing employees with affordable and quality care options. Also, as more employees demand these types of drugs and treatments, employers may consider ways to include them in their benefits offerings to attract and retain more talent. Ultimately, understanding weight loss drugs and CGT and their potential impacts on health care costs allows employers to better prepare and implement effective cost-mitigating strategies.

Part of the reason for higher costs associated with weight loss drugs is due to increased use. GLP-1 drugs, which suppress hunger and make a person feel full longer, were originally designed to treat diabetes but are now also being used off-label for weight loss treatment. GLP-1 drugs are typically priced at around $1,000 per patient per month. Despite the rising popularity of GLP-1 drugs for weight loss, employers remain divided on coverage, especially because of their off-label use. Off-label use isn't likely covered by health insurance, which could force workers to pay for out-of-pocket treatment. Also, many employers are concerned that these high-cost weight loss drugs will further contribute to rising prescription drug costs. More employers are exploring weight loss drugs as this option for weight loss becomes more popular among workers. This pressure will likely further increase in 2024 as some GLP-1 drugs are being approved for weight loss treatment by the FDA. However, covering these drugs may increase the cost of health insurance for all employees at a time when prescription drug prices are already soaring, leaving employers with much to consider.

Next, the recent rise of CGT may create even more concern for employers as it relates to pharmacy costs. These treatments typically range from $250,000 to $3.5 million per individual. One of the main reasons CGT is extremely costly is that developing and manufacturing the treatment takes a significant amount of time and resources. Developing CGTs can cost more than $5 billion, more than five times the average cost of developing traditional drugs. Additionally, these treatments are manufactured using manual processes and are typically produced in small quantities. This limits the production capability of these therapies. As a result, the current demand for CGT is outpacing manufacturing capacity. By 2025, it's estimated that nearly 100,000 patients in the United States will be eligible for CGT, which could cost $25 billion. The increased demand in CGT forces therapy developers to outsource treatment production and manufacturing, which is often very complex, resulting in increased production time and costs.

As organizations face skyrocketing prescription drug costs, more employers are considering the following strategies for managing specialty drug and treatment costs:

Managed access—Some employers have started to use independent third parties when prior authorization is required for expensive specialty drugs and treatment. This helps employers mitigate against pharmacy benefit managers' use of rebates and prior authorization, which can result in increased approval for CGT, creating more savings for employers. Other control initiatives may include case management, disease management and nurse advice lines.

Exclusions—Some employers have limited or outright excluded plan coverage of certain specialty drugs. However, limiting or excluding specialty drugs like CGT from health plan coverage may result in compliance risks.

Cost sharing—Some employers may implement higher cost sharing, including deductibles, copays, coinsurance and premium contributions, for high-cost or low-value specialty medications.

Keep in mind that CGT operates very differently from traditional treatments. These treatments are generally administered once or twice over a patient's lifetime. With traditional treatments, a drug is administered and paid for over time as the prescription is filled, and patients receive the health benefits incrementally. With CGT, payment occurs upfront, and the patient experiences health benefits over time. As a result, employers can explore nontraditional payment models offered by insurance and pharmaceutical companies to help offset CGT treatment costs.

For most employer-sponsored health plans, the cost of specialty drugs is their fastest-growing expense. As these treatments become more widely available, employers will likely be forced to address even higher specialty drug costs.

Preparing for the DOL's New Overtime Rule

On Aug. 30, 2023, the DOL announced a proposed rule to amend current requirements that executive, administrative and professional employees (EAPs) must satisfy to be exempt from the Fair Labor Standards Act's (FLSA) minimum wage and overtime requirements. The proposed rule to amend the FLSA white-collar exemptions was published in the Federal Register on Sept. 8, 2023. The DOL established the rule's 60-day comment period, which closed on Nov. 7, 2023. This proposed overtime rule is expected to become final during the first part of 2024. If it is finalized and implemented, the overtime protections will extend to approximately 3.6 million more workers in the country and increase the salary threshold by nearly 55%. However, many experts expect the final rule to be challenged legally by states and business groups before it is implemented.

Under the FLSA, covered employers must pay employees at least the federal minimum wage for all hours worked and overtime pay—at a rate of 1.5 times their regular pay rate—for all hours worked over 40 in a workweek. However, the FLSA provides several exemptions from minimum wage and overtime pay requirements. The most common are "white-collar" exemptions. These exemptions mainly apply to EAPs but include outside sales personnel and certain computer and highly compensated employees (HCEs).

To qualify for a white-collar exemption, an employee must satisfy the following tests:

- The salary basis test ensures the employee is paid a predetermined and fixed salary that is not subject to reduction due to variations in the quality or quantity of work.
- The salary level test confirms that the employee meets a minimum specified amount to qualify for the exemption. The current salary threshold is $684 per week ($35,568 per year) for EAPs and $107,432 per year for HCEs.
- The duties test requires that the employee's job duties conform to EAP duties. To satisfy the duties test, an employee's actual work responsibilities must match the description the FLSA assigns to the exemption.

The proposed overtime rule doesn't impact the duties test for the white-collar FLSA exemptions. The DOL is proposing to increase the standard salary level from $684 to $1,059 per week ($35,568 to $55,068 per year) for EAPs and from $107,432 to $143,988 per year for HCEs. The rule would also enable the DOL to update salary levels automatically every three years without having to rely on the rulemaking process.

With this substantial increase, more workers will likely qualify for overtime pay. If the final overtime rule is implemented as proposed, employers would have to either increase exempt employees' pay to put them above the threshold or shift impacted employees to hourly pay and create processes to track their hours. The DOL expects the proposed rule to transfer $1.2 billion in wages from employers to employees from new overtime premiums and projected pay raises. According to the agency's estimates, the new overtime rule will result in small entities having an average total cost of $4,323 and average payroll increases of $2,638 per affected entity in the first year. The Economic Policy Institute estimates that the rule would nearly double the percentage of full-time salaried workers who are entitled to overtime from 15% to 30%, resulting in 300,000 manufacturing workers, 300,000 retail workers, 180,000 hospitality workers and 600,000 health and social service workers becoming eligible for overtime.

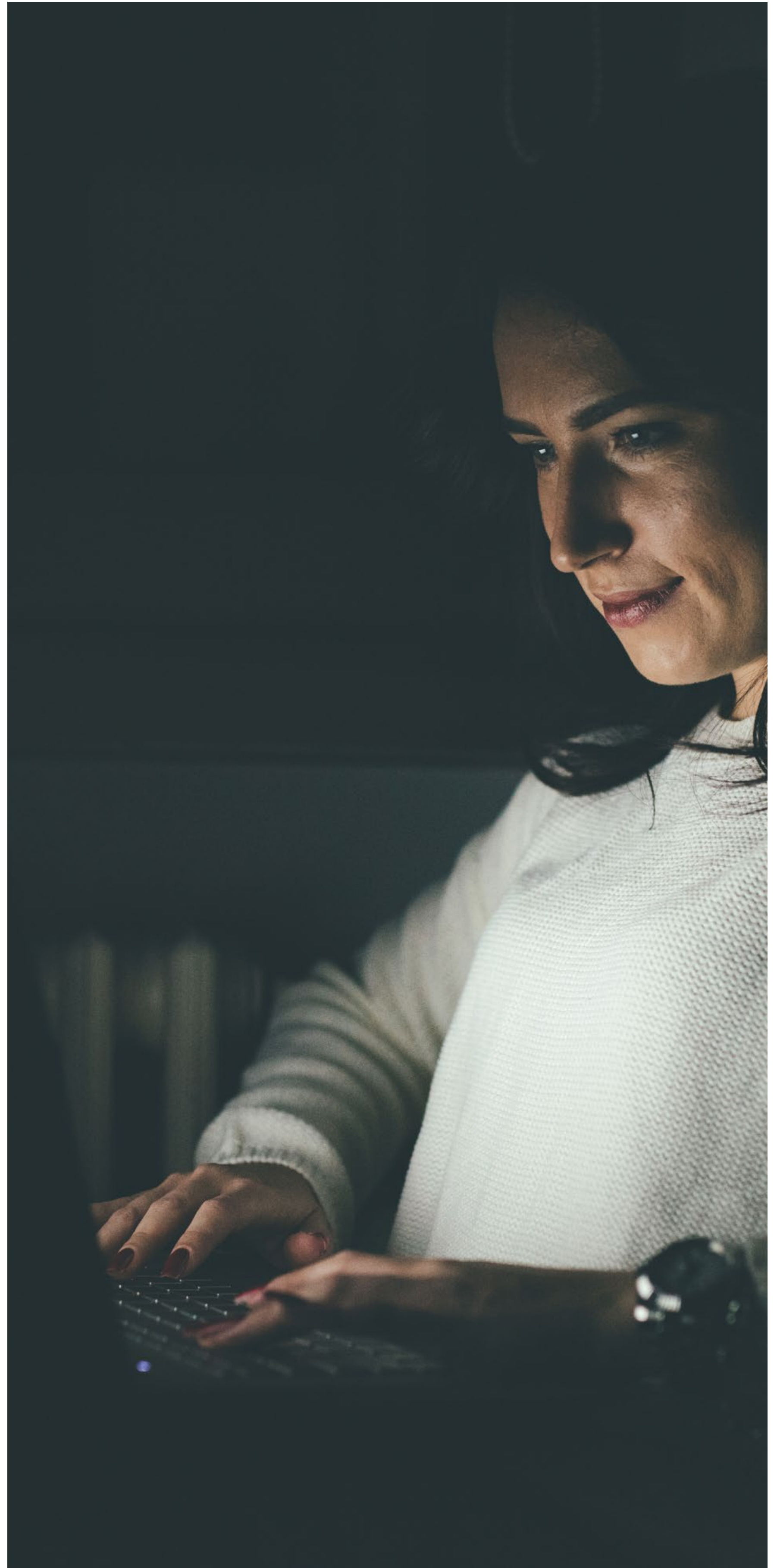
The DOL received more than 33,000 comments regarding the proposed rule, which the agency must review before it can start preparing its final rule. Many business groups oppose the proposed rule change, arguing that it would increase employer payroll costs, harm small businesses and violate the Administrative Procedure Act. Some argue that the new rule will result in employers being forced to cut expenses, reduce headcount and, in some cases, permanently close. In 2016, when former President Barack Obama tried to increase the salary threshold for exempt employees to $913 per week, it resulted in lawsuits from 21 states and business groups as well as a federal court injunction. Consequently, the new rule's significant changes to the salary threshold will likely result in similar legal challenges, which could delay the implementation of the DOL's new overtime rule.

While the agency's new overtime rule doesn't impose any new requirements on employers at this time, it could significantly affect organizations' operational and compliance costs and increase their litigation risks. Therefore, employers should become familiar with the proposed overtime rule and evaluate what changes they may need to adopt if the rule is implemented as proposed. Employers can

review their employees' compensation to determine which of their employees may be impacted. After reviewing affected employees' salaries, employers can further prepare by determining whether to increase employees' salaries to the new threshold to maintain their exempt classification or reclassify exempt employees to nonexempt status and pay them overtime for all hours worked over 40 in a workweek.

Additionally, under the FLSA, an employee's job title is not determinative of whether they are exempt. Therefore, employers can also prepare for the new overtime rule by auditing their exempt employees' job duties to determine whether the duties and responsibilities those workers are actually performing satisfy the FLSA's duties test for the white-collar exemptions. Employers can then update employee job descriptions and duties to accurately reflect the work those employees perform. Moreover, many states and even some localities have their own overtime requirements that differ from the FLSA. To avoid potential violations and penalties, employers need to be familiar with all laws that apply to their organizations.

If the DOL's overtime rule becomes final, it will significantly impact many organizations in 2024. Understanding the FLSA's proposed overtime rule and its potential impacts allows employers to prepare, adapt and set their organizations up for long-term success. Savvy employers can use the proposed rule as an opportunity to revisit their exemption determinations more broadly, bolster their organizations' financial stability and protect against potential legal risks.



Improving Access to Mental Health Care

Mental health parity continues to be a top federal enforcement priority. On July 25, 2023, the DOL, HHS, and Treasury (Departments) issued a proposed rule to strengthen the MHPAEA requirements. According to the Departments, the proposed rule is designed to achieve MHPAEA's purpose of ensuring that participants, beneficiaries and enrollees do not face greater restrictions to obtaining mental health and substance use disorder (MH/SUD) benefits than they would face for medical or surgical benefits.

If finalized, the proposed rule would establish new requirements for group health plans to collect and evaluate relevant data to assess the impact of a nonquantitative treatment limitation (NQTL) on access to MH/SUD benefits and medical or surgical benefits. Health plans and issuers would be required to consider this impact as part of their analysis of whether the NQTL, in operation, complies with federal parity requirements. Key provisions of the proposed rule include:

- Providing examples of prohibited prior authorization and other medical management techniques
- Establishing standards for determining network composition and out-of-network reimbursement rates
- Requiring plans to assess and take action to address differences in access to MH/SUD and medical or surgical services
- Sunsetting the ability of nonfederal government plans to opt out of federal parity requirements
- Codifying standards for comparing the use of NQTL in coverage

The proposed rule would impose a special rule for NQTLs related to network composition. It would also amend existing examples and add new examples of applying the rules for NQTLs to clarify and illustrate the protections of MHPAEA. Additionally, the proposed rule would establish minimum standards for developing NQTL comparative analyses to assess whether an NQTL—both written and in operation—complies with MHPAEA's requirements.

Despite the law's promise of parity between mental health and medical or surgical benefits, many people with treatable mental health conditions face obstacles when seeking care (e.g., unexpected charges, strict preauthorization requirements and limited in-network providers). In fact, since the MHPAEA final rules were issued in 2013, the Departments have continued to receive and investigate complaints that plans fail to comply with MHPAEA. This noncompliance is especially evident in the design and application of NQTLs that apply to MH/SUD benefits.

Before the federal parity laws, many employers offering health coverage skimped on mental health and substance use benefits or didn't offer such benefits at all. While employers thought mental health and substance use benefits might be too costly, in the long run, it's clear that the reality is the opposite. In fact, lack of access to mental health and substance use services can increase physical health care costs. As it pertains to the workplace, employees struggling with mental health and substance use conditions may also have lower productivity and higher turnover rates. In preparation for mental health parity law changes, employers can focus on the following:

Benefits administration—Employer-sponsored health plans will likely have to review and improve their mental health and substance abuse treatment provider networks, data collection for evaluating the parity in care, and the development of NQTL comparative analysis reports. To prepare for these changes, employers will want to ensure that their health plans comply with MHPAEA standards, including financial requirements (e.g., deductible, copays and coinsurance), quantitative treatment limitations (e.g., day or visit limits) and NQTLs (e.g., prior authorization requirements).

Compliance changes—The proposed data-informed approach to compliance would require all plans to audit the possible impact of certain coverage limits on behavioral health if they want to continue to use those limits. For the first time, the parity proposal would require private self-insured employers to review and document the status of their behavioral health networks. These plans would also have to disclose claim denial information upon request.

Increased regulation—Enhanced enforcement of these mental health parity rules will continue to be the focus as advocates call out the use of medical management techniques to improperly deny behavioral health claims. Plans often claim that provider shortages are beyond their control, reducing access to behavioral health care.

MHPAEA's parity requirements apply to group health plans for employers with more than 50 employees as well as insured health plans in the small group market due to an ACA reform.

The mental health parity law doesn't require employer-sponsored health plans to offer any specific mental health benefits. It simply requires that they not make it more challenging for employees to use their plan to access care for a mental health condition or substance use disorder than to access medical care. Simply put, it should be just as easy for an employee to get treated for a behavioral condition as it is if they have asthma, diabetes or other common health conditions.

According to the Departments, people seeking MH/SUD care coverage continue to face greater barriers when seeking these benefits than when seeking medical or surgical benefits. The proposed rule is intended to strengthen MHPAEA's requirements and provide guidance to health plans on how to comply with the law's requirements. Employers play a key role in upholding the MHPAEA and can prepare for the proposed rule by reviewing their current health plans and evaluating the parity in care for MH/SUD benefits.

Embracing Innovative Solutions for Student Loan Debt Relief

The U.S. Department of Education's COVID-19 relief for student loans, which paused student loan payments and set the interest rate to zero percent, has ended. On Sept. 1, 2023, student loans began accruing interest once more, and payments restarted in October. This has significantly impacted millions of American workers with student loan debt and their employers. According to the Federal Reserve, roughly 43.5 million Americans had student loan debt at the end of 2022, totaling over $1.7 trillion. This accounts for roughly 1 in 5 adults. With renewed interest accrual, many employees may face additional struggles paying off their loans. As a result, employees are increasingly looking to their employers for student loan assistance.

The impacts of student loan debt are felt most heavily by younger generations, in particular those under the age of 40. These borrowers tend to have the highest outstanding student loan debt compared to older generations. Student loan debts can have a significant impact on employees' mental, physical and financial wellness, resulting in many borrowers experiencing mental health issues, such as anxiety, depression, insomnia and panic attacks, because of their student debt. Moreover, when student loan debt causes stress to employees, not only can it reduce workplace productivity, performance and morale, but it may also lead to high rates of employee turnover as employees seek employers with better student loan assistance programs or higher compensation packages.

Highly educated workers are often among organizations' most skilled and experienced workers; however, this often correlates with higher levels of student debt. Therefore, employers may lose some of their most valued employees if these workers leave for new opportunities. Student loan assistance is also anticipated to play a crucial role in attracting recent graduates in 2024. Since many 2024 graduates expect to carry student loan debt, their debt will influence the jobs they consider upon graduation. As a result, student debt relief programs will likely become increasingly more widespread as employers look to attract and retain younger generations of workers in 2024 and beyond.

Considering these trends, it's not surprising that many employers are responding to employee wants and expectations by expanding student debt relief benefits. As more employers embrace this trend, they're offering various student debt-related benefits, including student loan repayment assistance, financial literacy and planning services, student loan contribution plans, retirement savings and tuition assistance. In addition to helping individuals pay off student debt, these programs can show employees they're valued by their employers, increasing employee engagement, satisfaction and retention and lowering their loan repayment-related stress.

Recent legislative changes have expanded the student loan benefits that employers can offer in 2024. Under the Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act), employers can pay employees up to $5,250 per year for student loan repayments as part of an educational assistance program. While many employers have taken advantage of this option to provide tuition reimbursement in 2023, allowing employers to simultaneously develop workforce talent and boost employer branding and employee engagement, more employers are expected to take advantage of this law in 2024 to assist employees with student loan debt. The law is currently set to expire on Dec. 31, 2025. However, there is a possibility that the law will be revised or amended, extending the expiration date or making the law permanent.

The SECURE 2.0 Act, effective Jan. 1, 2024, will also provide employers with another means to assist employees with student debt in the upcoming year. This act will allow employers to provide matching employee contributions under a 401(k) plan, 403(b) plan or SIMPLE IRA with respect to qualified student loan payments. It's intended to enable employees to pay off student loan debts while simultaneously contributing to their 401(k)s, which has historically been difficult for employees to manage. This is the first time a law will link employee payment of student debt with defined contribution retirement plans, making it an attractive offering for employers in 2024.

As managing student loan debt becomes an increasing burden for employees, many employers are considering expanding student loan assistance benefits to attract and retain talented individuals in 2024.

The Biden administration is also making another attempt to address student loan forgiveness through negotiated rulemaking under the Higher Education Act. This proposal, which is expected to be finalized in 2024, seeks to establish a new student loan forgiveness program for certain borrowers. Groups of borrowers that are being considered for eligibility include those who currently have balances

larger than what they originally borrowed, entered repayment at least 25 years ago, attended career-training programs that created "unreasonable" debt loads, provided "insufficient" earnings or have an "unacceptably" high student loan default rate, and borrowers who are eligible for existing student loan forgiveness programs but haven't applied. If passed, borrowers wouldn't be affected until the summer or fall of 2024 at the earliest. Additionally, the Biden administration's student loan forgiveness plan wouldn't affect all borrowers.

These recent developments indicate that student loan assistance benefits are likely here to stay. By offering student loan support in 2024, employers can show employees they're valued as whole people and provide workers with much-needed financial assistance and support, increasing employee retention, productivity, engagement and happiness. Employers who take advantage of these opportunities in the upcoming year will likely gain a competitive advantage over organizations that fail to support their indebted workers.

Increased Adoption of Fertility and Family-building Benefits

In the wake of the U.S. Supreme Court's *Dobbs v. Jackson Women's Health Organization* decision, which ended federal protections for abortion rights and permitted states to implement their own regulations, reproductive health care benefits were a key issue for employers in 2023. This will likely continue in 2024.

In the aftermath of the Supreme Court decision, states have adopted divergent abortion policies, with some enshrining abortion access in the state constitution and others outlawing the procedure entirely. This has created legal complexity for employers with employees in states with vastly different abortion policies. Furthermore, some states require abortion coverage to be included in private health insurance plans; these regulations may require private health insurance plans to provide abortion coverage with no copayment or with any plan that offers prenatal care. Other states limit coverage to certain circumstances, including cases of life endangerment, rape and incest. In response to increasingly restrictive state abortion laws, some employers have started offering separate reproductive health benefits, including covering related travel expenses with a relief fund or one-time bonus. Other employers are enhancing abortion coverage under their group health plans to ensure employees have access to reproductive health care. Employers providing benefits for legal reproductive care will need to assess the implications of offering these benefits as abortion laws evolve.

The *Dobbs v. Jackson* decision has also placed heightened importance on the issue of access to contraceptive services. On Jan. 30, 2023, the HHS proposed a rule to strengthen access to birth control coverage under the ACA. If finalized, this

rule would allow women enrolled in ACA plans to obtain birth control, regardless of employer exemptions. The proposed rule would eliminate the moral exemption, which was put in place in 2018, that allows employers to opt out of providing contraceptive services due to their moral convictions. It would also create an independent pathway for individuals enrolled in plans arranged or offered by objecting entities to make their own choices regarding contraceptive services directly through a willing contraceptive provider without any costs. This would allow women and covered dependents to navigate their own care and obtain birth control if their plan or insurer has a religious objection. The proposed rule would, however, allow the existing religious exemption for entities and individuals as well as the optional accommodation for coverage. Employers should continue to monitor this rule in 2024.

Even when not required, providing employees with access to reproductive health care and contraceptives can help organizations stay ahead in a tight labor market. Since experts expect employers' labor challenges to continue in 2024, many employers are expanding fertility and family-building benefits to attract and retain talented individuals. Many Americans face barriers or struggle to build families. According to the World Health Organization, 1 in 6 people struggle with infertility—defined as the inability to conceive after a full year of trying without the use of contraceptives. Infertility affects men and women and can put incredible strain on relationships, causing partners to feel inadequate, depressed, ashamed or guilty. In turn, this can impact workplace dynamics, causing employees to be distracted, stressed and less productive. Fertility and family-building benefits are part of a growing trend of offering employees benefits that support their financial, mental and emotional well-being. Employees who receive family-building benefits typically feel more loyal and committed to their employer and stay at their jobs longer. Additionally, women who received in vitro fertilization with the support of their employer tend to return to work after maternity leave. Since work and family life are two of the most important components of an individual's life, employers who support employees' family needs and expectations can show employees they're valued as human beings, increasing engagement, productivity, satisfaction and retention. While employers may be hesitant to extend coverage options amid rising health care plan costs, many organizations will expand fertility benefits to improve attraction and retention in 2024.

Family-building benefits are valued by employees regardless of their gender identity or relationship status. This benefit can provide services for single and LGBTQI+ employees as well as heterosexual and same-sex couples who depend on fertility treatment for their family-building journey. Family-building benefits can also include menopause support and treating testosterone deficiency. Savvy employers recognize fertility and family-building benefits as a crucial aspect of diversity, equity and inclusion (DEI) programs and ensure all employees have access to the resources and support they need to start a family. As a result, many employers are planning

to increase family health benefits within the next few years. While these benefits often improve the attraction and retention of young generations of workers who are looking to start or build their families, the impact of these benefits extends well beyond affected individuals. Many employees want their employer to support women's health and DEI initiatives. Comprehensive family-building benefits demonstrate that the organization cares about all its employees. In turn, when employees feel welcomed and supported in the workplace, employee engagement, productivity and retention are likely to increase. This can also help boost the organization's employer brand to current and prospective employees and the public as well as improve its bottom line.

While many employers are hesitant to adopt fertility and family-building benefits because they're concerned with raising health care costs, research indicates that these benefits may not be as expensive as some employers think. In fact, many organizations don't experience a significant increase in costs when they offer fertility coverage. Offering these benefits can help employees access cost-effective quality care and improve and boost attraction and retention and DEI efforts in 2024.

Improving Access to Preventive Care Services

Once an underused component of health care that aids both employees' health and employers' health care spending, preventive care is now a centerpiece of health benefits. Preventive care can help detect or prevent diseases and medical problems before they become more serious. It may also be used interchangeably with "routine care" and includes screenings, annual checkups, immunizations and counseling.

According to the Centers for Medicare & Medicaid Services, annual growth in national health spending is expected to average 5.1% over 2021-30, reaching nearly $6.8 trillion by 2030. Rising costs of medical care paired with inflation rates are also preventing many people from getting necessary preventive care. As a result, many Americans delayed routine health care in the past three years because of cost concerns. Additionally, the COVID-19 pandemic disrupted preventive care over the years. Fortunately, employers are uniquely positioned to help improve their workers' preventive care utilization and alleviate cost barriers to preventive care in 2024. Employers can help workers get into the habit of receiving preventive checkups, screenings and the like. So much time and effort go into designing benefits plans that employers should be heavily invested in helping employees understand how to use these benefits best while keeping health care costs in check.

Technology—including robotics, wearables and data analytics—continues to shape the future of health care. As it relates to preventive care, AI and other technology can shift the focus from treating health conditions to predicting them. Specifically, AI can help enhance personalization, precision and efficiency in health care delivery. It can assist with the interpretation of health-related results and generate personalized recommendations. Also, generative AI technology could quickly turn a doctor's interaction with a patient into clinician notes in seconds. Patient health care information is sensitive, so data security is a major concern for hospitals or clinics implementing AI or other technology. Looking to 2024, health care companies are likely to start using generative AI with administrative or organizational applications, given their lower risk. Then, they could start using the technology with clinical applications.

As far as costs are concerned, under the ACA, private insurers—except for plans that have been grandfathered—and self-funded group health plans are required to cover certain preventive services without any cost sharing when in-network providers administer the services. Medical services such as immunizations, screening tests, medications and other services that would prevent disease, injury and premature death fall under the umbrella term "preventive care." The ACA has prioritized value-based care, continuing to incentivize health care providers to maintain patient well-being.

Employer-sponsored health plan compliance burdens will continue in 2024, and there are many potential ACA-related legal changes on the horizon that employers must be aware of, including the following:

Contraceptives—Under the ACA, most plans are required to offer coverage of birth control with no out-of-pocket cost. In July, the FDA approved the first nonprescription, progestin-only, daily contraceptive pill, which will become available in early 2024. It has the potential to enhance access to affordable contraception. While the ACA requires move private health plans to cover the full range of FDA-approved contraceptive methods, including the new over-the-counter option, there's currently no specific requirement or policy that the products should be covered without a prescription.

HIV/PrEP—Despite ongoing legal battles, under the ACA, most health insurance plans must cover certain recommended preventive services, including HIV testing for everyone aged 15 to 65 and other ages at increased risk without additional cost sharing. Preexposure prophylaxis (PrEP) for HIV prevention is free under almost all health insurance plans.

Changing rules and guidelines for the upcoming year require employers to remain vigilant about preventive service coverage provisions within their plan design.

Preventive care is essential in the early detection of serious diseases and overall long-term health outcomes. With rising health care costs, preventive care is becoming even more important for both employers and employees. Employees may not know preventive care is covered under their health plans and, as a result, they delay screenings or checkups because they're concerned about sky-high medical costs putting them in debt. Fears about medical debt can cause people to avoid medical care; however, in the long run, those who receive preventive care can help reduce their risk for disease or disability, which can come with exorbitant associated costs. To

combat this, many employers will focus on providing benefits education to help guide employees on their journeys to be educated health care consumers, maximize their benefits and understand the importance of routine care. They should consider covering the following topics in preventive care education:

- **An overview of preventive care, highlighting the difference between preventive and diagnostic care**
- **The importance of preventive care, along with associated costs**
- **Preventable health conditions (especially chronic conditions) and their potential risk factors**
- **Preventive care's benefit of early health condition detection, which can help employees save their hard-earned health care dollars**
- **Preventive care services that the organization's health plan offers, highlighting undervalued and underused preventive health benefits (e.g., benefits provided under the ACA)**
- **Ideas or suggestions to help encourage employees to use preventive services or screenings (e.g., a spreadsheet or poster that outlines recommending timing for common preventive services)**

It comes down to helping employees be educated on the preventive care services a health plan offers, their potential health risk factors and the benefits of preventive medicine. After a foundational education is in place, employers can help increase access to preventive care opportunities. Many employees are looking for ways to stretch their hard-earned dollars further, and employers can step in to provide that much-needed guidance and underline the importance of preventive care.

Shifting Dynamics Leads to More In-person Work

In 2023, many employers responded to a tight labor market by offering increased flexibility to attract and retain talented individuals. Chief among these benefits were remote and flexible work opportunities. However, as the COVID-19 pandemic fades and the labor market recenters, many employers are requesting or requiring employees to return to the office. According to a recent survey by ResumeBuilder, 9 in 10 organizations with office space will require employees to return to in-person work by 2024. Although remote work remains a popular benefit among employees, many organizations are responding to the shift in employer-employee dynamics by implementing return-to-office (RTO) mandates in 2024.

The shift to remote work caused many employees to reprioritize work as a part of their lives and not as the primary focus. As a result, employees who have experienced the benefits of working from home often prefer flexible work arrangements. These employees often feel they can remain productive while gaining personal time for family responsibilities and hobbies. This has allowed employees to improve their work-life balance and general well-being. Additionally, many workers restructured their lives around remote work by relocating to cheaper cities or moving closer to family. This can create issues for employees whose employers are planning an RTO in 2024. Despite these issues, many employers who started requiring in-person work after the COVID-19 lockdown and into 2023 noticed benefits associated with their RTO implementations, such as improved revenue, productivity, retention, employee relationships and company culture. 2023 industry research found that 72% of employees who remained at the same organization since the beginning of the COVID-19 pandemic and transitioned to remote work at some point during the pandemic described their return-to-work experiences as somewhat or very positive.

While many employers are excited to get employees back into the office—citing the need for in-person collaboration and benefits to workplace culture, engagement and productivity—other employers are concerned with how existing employees will react. In 2023, many organization regretted their initial RTO decisions and would've approached their plans differently if they had a better understanding of employees' office attendance, their use of office amenities and other factors. Large corporations, such as Amazon, Apple and Twitter, have faced employee backlash over RTO orders, with employees staging walkouts and refusing to follow RTO mandates. Even when employers have mandated employees' return to the office, several have consented to employee demands and refusals to return. Employers have either backed down completely when asking employees to return or softened their demands. This was mainly in response to the tight labor market. Although the power dynamics in the labor market are currently shifting in employers' favor, market dynamics are ever-evolving and can change rapidly. Many employers fear that pressuring employees to return to in-office work will result in employees quitting in mass or damaging their organization's reputation, hampering future recruitment efforts. As such, it's uncertain how many employers will continue their RTO plans in 2024 if faced with employee backlash.

Increased surveillance is also a component of many employers' RTO plans, with companies who have returned to the office tracking employee attendance. It's likely that organizations that plan to launch RTO policies in 2024 will also track employee attendance. Additionally, some of those organizations may threaten to fire employees who fail to meet RTO requirements. However, requiring in-person work without considering employees' well-being or expectations could result in increased turnover and decreased morale. Similarly, making work unappealing with heightened scrutiny or requirements that force employees to relocate to new or existing office locations will likely cause an increase in voluntary quits. Organizations that want to retain employees while instituting mandatory RTO policies may need to compromise by permitting hybrid work or finding other ways to promote work-life balance.

For some individuals, even threats of termination are insufficient to persuade them to comply fully with RTO orders. It's likely that some employees would attempt to find a new job if fired for not returning to the office instead of asking for their job back. This is particularly true among Generation Z workers. Furthermore, mandated RTO policies may create setbacks for female employees, many of whom prefer remote working to men. This divide has already been noticed by some organizations that have ordered RTO policies, where fewer women returned to work than men. As a result, organizations that are rigid in their RTO policies may risk losing talented individuals and harming diversity, equity and inclusion efforts. They may also struggle to attract new employees from a smaller talent pool.

As the RTO trend gains traction in 2024, employers will increasingly focus on balancing in-person requirements and employee expectations and desires for flexibility. For many organizations, hybrid work may be a better solution. These flexible work arrangements have often led to increased innovation, a positive workplace culture and improved employee well-being. Providing workers with a greater level of choice regarding where and how they work can also increase employee engagement, loyalty and satisfaction.

Many employees may wonder why they're required to work in person after successfully working remotely for years. Employers can use this as an opportunity to promote transparent communication. Even if employers require employees to spend all five days in-office, simply discussing their reasoning behind the shift can help build trust. Employers may also offer incentives for in-person employees, such as commuter benefits, child care benefits and catered meals. In 2024, as more organizations require workers to return to in-person work, employees are increasingly expecting employers to prioritize safe, empathetic and transparent workplace environments that are free from toxicity to promote their well-being as they return to in-office work. Employers who fail to do this may struggle with their RTO efforts. Further, savvy employers will seek to motivate, rather than force, employees to return to the office. They'll encourage workers to return by promoting the benefits of in-person work, including increased collaboration, relationship-building opportunities and an improved employee experience.

Conclusion

Many of the workplace challenges employers dealt with in 2023 will continue through 2024 and beyond. While some of these challenges are familiar, others are not. Consequently, employers may need to operate more effectively and efficiently to set themselves apart from their competition. This will likely require employers to proactively embrace and simultaneously respond to the evolving employee benefits market. Critical to employers' success in 2024 will be protecting workers' health and well-being, accommodating employees' needs and desires, embracing cost-effective strategies, and prioritizing attracting and retaining skilled workers.

Organizations that prepare and act quickly will stand out in today's competitive market. This may also allow them to weather the challenges this year may bring and position themselves for sustained growth and success. The best strategies will vary by workplace, but being aware of the trends and themes presented in this Market Outlook can guide employers as they plan and establish benefits strategies in 2024.

Contact us for more information about these trends and to request additional resources on these and other important workplace topics.

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